

My Loved One Needs Assistance

What Are My Legal Options?

A. USE AN EXISTING ESTATE PLAN: Did he or she create an estate plan?

Look for the following documents:

1. Revocable Living Trust
2. Power of Attorney for Financial Matters
3. Power of Attorney for Healthcare or Advance Health Care Directive

If there is an existing estate plan you will need to determine if the person(s) nominated in these documents is **willing and able** to act in the best interest of your loved one, and what authority this person(s) has. An attorney will need to evaluate the plan to determine its effectiveness. An attorney will also be able to direct you **how to begin** the process of having the successor trustee(s) or other agents take over financial and care management decisions.

At this point there are a few factors to consider:

1. Consider hiring other types of professionals to build a **team** to support you at this time. This is often the best way to minimize your legal fees and prevent burnout. (See Coaching sheet.)
2. Start with a **family meeting** so that all interested parties can be involved in the decision-making process. (See Family Meetings suggestions.) If all family members are involved from the beginning it is less likely disagreements will arise in the future.
3. This is the most **cost-effective** and straightforward way to proceed.

B. CONSERVATORSHIP: There is not an estate plan, or it is not fully effective, what now?

The courts are available to appoint a Conservator of the Person, to manage health and personal care, and/or a Conservator of the Estate, to manage financial matters. Conservatorship proceedings **can be straightforward when the process is uncontested**. An uncontested Conservatorship can move forward if your loved one is willing to **accept** your help and no other interested parties, such as family members or close friends, will be upset if you ask the Court for authority to manage your loved one's care. A doctor will also need to **certify** that your loved one is not able to make financial and/or personal care decisions.

Before deciding to obtain a conservatorship, consider the following factors:

1. The court process requires that a **Court Investigator** visit your loved one. This person is the eyes and ears of the Court, and will speak with all relevant parties.
2. An attorney may be appointed by the court for your loved one. It is this attorney's job to be an **advocate** and object if there are circumstances that seem to contradict the need for Conservatorship or the choice of you as Conservator.
3. The Court process tends to take **at least two months**, but can often involve more than one hearing and a longer timeline. You must attend the Court hearing(s) to be appointed, which means taking time off from other daily responsibilities. Your loved one **must also attend** at least one Court hearing unless a doctor will certify that there is a medical reason preventing attendance.
4. Once appointed, the **Court continues supervision** of the case. If money will be managed under the Conservatorship, routine accountings will be required and an

5. insurance policy called a bond will also be required. There are yearly or bi-yearly costs associated with accountings and bond premiums.
6. A conservatorship is an invasive process due to the fact that the Court system becomes involved in the **personal affairs of your loved one**. An uncontested Conservatorship will often cost in the range of \$5,000 to \$7,000. This provides for Court filing fees, attorney's fees (possibly for two attorneys), Court Investigator fees, and if there are assets involved, a Court-ordered Appraisal.

C. CONTESTED CONSERVATORSHIP: There is an objection to my involvement in the process, what are my options?

The process of obtaining a Conservatorship, when the person you seek to care for or other involved parties **object** to your appointment, is quite difficult. Think through your decision with the following items in mind:

1. Are the people objecting likely to hire an **attorney**?
2. How much **money** am I willing to spend on this process?
3. **Consult a Probate Litigation attorney** for advice. Contested Conservatorships are the **most expensive** option, often in the range of \$50,000 to \$100,000.
4. The outcome is **always uncertain** in contested Conservatorship cases.
5. This is the **most invasive** way to attempt to assist your loved one.

D. OTHER OPTIONS: None of the options above feel appropriate.

1. Call **Adult Protective Services** to make a report if you feel that your loved one is being abused or neglected. The Santa Clara County APS Hotline is (408) 975-4900 or (800) 414-2002.
2. Call the **police** to make a report of elder abuse, fraud, or harmful behavior.
3. These actions **may trigger an investigation** or involvement of the Public Guardian.

FOR MORE INFORMATION CONTACT:

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