

Limited Conservatorships  
and  
Special Needs Trusts

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Our Case ~ Marcía

- ♦ Marcia, just 18, has autism
- ♦ Susan, her mother, has applied for SSI
- ♦ Marcia cannot give informed consent to medical treatment
- ♦ How to handle Marcía's share of Susan's estate

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Medical Consent

- ♦ Can Marcia sign an advance health care directive? Needs capacity to contract
- ♦ If not, need a limited conservator
- ♦ Limited conservator can have 7 powers
- ♦ When is a limited conservatorship appropriate?

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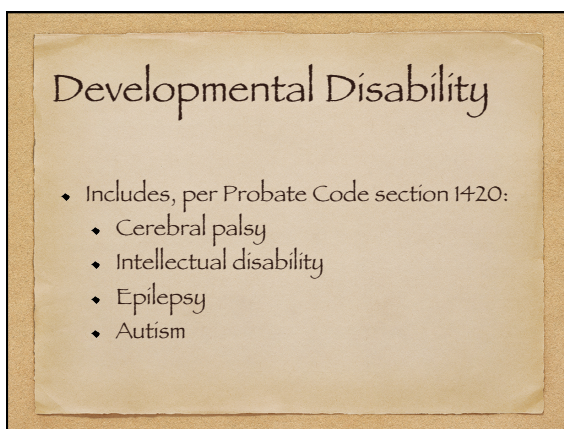
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## Common Terms

- Conservator - person appointed by the court, who makes decisions
- Conservatee - person for whom a decision-maker is appointed
- Petitioner - the person who asks the court for appointment of a conservator

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## Presumptions

- Person at age 18 is presumed to have capacity to give informed consent for medical treatment
- A diagnosis alone is not enough for a determination the person lacks capacity to give consent for medical treatment

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## Seven Powers

- Conservator can request authority to:
  - Make medical decisions
  - Determine where the conservatee lives
  - Access confidential records & papers
  - Consent/withhold consent to marriage
  - Right to contract for the conservatee
  - Make decisions about education
  - Right to control social & sexual contacts

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## How does it start?

- Parent or other family member petitions the court for appointment as conservator
- Can ask for 2 or more conservators - must act by majority
- Filing fee \$465, probate investigator's fee \$607, total \$1,072

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## Fee Waivers

- Can request a waiver of court costs
- Must complete the fee waiver forms and present them with the petition
- Court can waive some or all of the filing fee, the probate investigator's fee, the certified copy fees

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## Notice Requirements

- Once the petition is filed, notice must be given to the relatives in the first and second degree and to Regional Center
- All cases are filed in the Central Courthouse at 111 N. Hill Street, Los Angeles
- Hearing is set 5 - 7 weeks after the filing date

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## Notice to the Conservatee

- Proposed conservatee must be served with a citation at least 15 days before the hearing
- Gives him/her notice of the date, time and place of the hearing
- The proposed conservatee has a court-appointed attorney and usually attends the hearing

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## Regional Center Report

- Regional Center lodges a confidential report with the court before the hearing with its recommendations as to the powers the court should grant to the conservator
- Report is required for Regional Center clients

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## Probate Notes

- Attorneys on the court staff review all petitions and prepare probate notes
- Available on the court's website 1 - 5 days before the hearing
- [www.lasuperiorcourt.org](http://www.lasuperiorcourt.org) under Probate Notes - tells you the further information the judge needs

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## The Hearing

- Can be set for any day of the week except Friday and you can request a certain day when you file the petition
- Set at 10:30 a.m.
- Court will have 20 matters each morning

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## The Hearing

- If the court has more questions, the judge will continue the hearing for you to answer them by filing a supplement to the petition
- If no questions, and all is in order, judge grants the petition
- You submit the order and obtain letters of conservatorship

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## Duration

- A conservatorship remains in place until
  - The conservatee is capable of making decisions or
  - The conservatee dies

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## Marcia

- Her mother petitioned, and was appointed, Marcia's limited conservator, with all 7 powers
- If Regional Center recommends granting less than all 7 powers - the judge can grant all 7

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## Estate Planning

- Susan has conservatorship, now she turns to estate planning
- Marcia's share of her estate will be \$250,000
- What should she do?
- Susan is 58, will retire at 60, and take Social Security at 66

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## Marcia's Benefits

- Applying for SSI, should be eligible
- Will receive Medi-Cal as it comes with SSI
- Once Susan receives Social Security retirement benefits, Marcia will receive Social Security Disability as a Childhood Disability Beneficiary (formerly a DAC)

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## Marcia's Benefits

- After 24 months on SSD, Marcia will receive Medicare
- Currently she will have SSI and Medi-Cal and assets must be below \$2,000
- Once Susan receives Social Security, Marcia will have SSD and Medicare - assets can be over \$2,000 - but she can't manage money

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## Keeping Benefits

- If Marcia's share of Susan's estate is placed in a special needs trust at Susan's death, Marcia's SSI and Medi-Cal will continue
- If Marcia inherits outright, she will lose her benefits

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## Distribution Standards

- Standard living trust provides for outright distribution to child at parent's death OR
- If kept in trust for the child, allows the trustee to distribute for health, education, maintenance and support (HEMS)

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## Special Needs Trust

- A special needs trust gives a trustee discretion to distribute for special needs
- Never allows a trustee to distribute for health, education, maintenance & support

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## Special Needs Trust

- Can authorize the trustee to make distributions which reduce the monthly SSI benefit
- Trustee must be very careful in making such distributions
- Let's look at an example

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## Distribution for Rent

- Marcia moves to an apartment. The rent is \$1,800 per month. Her SSI is \$877. What happens if the trustee pays her rent? Her electric and gas bills? Her cell phone bill?
- Her SSI of \$877 is the \$721 Federal Benefit Rate + the \$156 State Supplemental Payment

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## Payment of Rent

- ♦ Paying her rent causes a reduction in her SSI under the Presumed Maximum Value Rule
- ♦ Her SSI is reduced by 1/3 of the Federal Benefit Rate of \$721 PLUS \$20
- ♦ Total reduction:  $\$240.33 + \$20 = \$260.33$  less \$20 income set aside, reduction is \$240.33
- ♦ Trustee pays rent of \$1800, SSI reduced by \$240.33 from \$877 to \$636.67

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## ISM

- ♦ ISM is in-kind support and maintenance
- ♦ Causes a reduction in the SSI payment
- ♦ ISM includes paying utilities such as electricity, water, heating fuel, garbage collection, sewer charges

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## Electricity & Gas Bills

- ♦ Usually payment of electricity and gas would cause a dollar-for-dollar reduction in Marcia's SSI payment, after the \$20 general income set-aside
- ♦ BUT if her SSI is already reduced for payment of rent, it is NOT reduced if the trustee pays these utilities

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### Cell Phone Bill

- Payment of Marcia's cell phone bill by the trustee has no effect on her SSI
- Trustee can also pay her internet bill, her cable bill, for a housekeeper
- The Trustee CANNOT give her cash - that ALWAYS causes a dollar-for-dollar reduction after the first \$20

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### Third Party SNT

- Set up by a parent, relative, friend
- Funded with assets that NEVER belonged to the beneficiary
- At the death of the beneficiary, assets distributed as provided in the trust
- NO payback required to the DHCS

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### First Party SNT

- Funded with the beneficiary's assets, from a personal injury settlement or an inheritance that did not go into a third party SNT
- Must be established by a parent, grandparent, court or conservator
- MUST contain a payback provision repaying Medi-Cal benefits at beneficiary's death

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## Retirement Funds

- Can name a SNT as the beneficiary of retirement funds - many requirements
- Quite complex but can stretch out benefits
- Trust must be an accumulation trust, not a conduit trust
- Get expert help

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Thank you

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