



What is Conservatorship? A Guide to the Process in Tribal Court

Shingle Springs Band of Miwok Indians Tribal Court
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<https://www.shinglespringsrancheria.com/tribal-court/>

Conservatorship Pamphlet

What does this Pamphlet explain?

This pamphlet explains what a conservatorship is, who might need a conservator, and who can be a conservator. Important definitions are given on the first page for reference. This pamphlet also describes the different types of conservators that the Tribal Court can appoint for an adult. Then, this pamphlet explains the conservatorship process, starting with how to file a conservatorship petition, and following with the court hearing and the court order. Finally, this pamphlet explains how to change a conservatorship either by ending it entirely or changing who the conservator is. For additional information on conservatorships, contact the Self Help Center.

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Conservatorship Pamphlet

What is a Conservatorship?

A conservatorship is a court-ordered arrangement where another person is given responsibility over an adult's personal and/or financial affairs because they cannot properly take care of these things on their own.

The person who the Tribal Court appoints to take over some or all of the adult's affairs is called the conservator.

The adult who requires a conservator is called the Conservatee.

When is a Conservatorship Appropriate?

Jurisdiction

The Tribal Court can appoint a conservator for any member of the Tribe whether or not the member lives on the Rancheria.

Adults that Might Need a Conservator

A conservatorship is appropriate when an adult is either **incompetent** or **vulnerable**.

- **Incompetent Adult**

A person over 18 years who cannot manage or take care of themselves or their personal affairs without assistance. A medical professional, such as a licensed psychiatrist, psychologist, or physician may determine whether or not an adult is incompetent based on their observations. If a medical professional believes an adult is incompetent, then the Tribal Court may find that there is a "lack of capacity." This is a legal determination that can lead to a conservatorship.

For example, an adult with dementia may be unable to remember to pay their bills, or they may not be able to take care of themselves fully. The adult could qualify as incompetent if the Court accepts the medical professional's view that their dementia makes them unable to manage their affairs.

For example, an adult who suffered a traumatic brain injury in a car crash may not be able to perform certain basic tasks because of their injury. The adult could qualify as incompetent if the Court accepts a medical professional's view that the injury has made them unable to manage their affairs.

Important Definitions

Conservator: the person who takes over responsibility for part or all of an adult's personal and/or financial affairs.

Conservatee: the adult who requires a conservator to manage their personal and/or financial affairs. Before the Tribal Court appoints a conservator, this person is often called the "Proposed Conservatee," or the "Incompetent Adult."

Incompetent Adult: a person over the age of 18 who cannot properly manage or take care of themselves or their affairs without assistance. This may be determined by a medical professional such as a psychiatrist, psychologist or physician. If a professional determines the adult is incompetent the Tribal Court may make the finding that there is a "lack of capacity" and order a conservator for the incompetent adult.

Elder: A person 55 years or older.

Per Capita Distribution: payments made to a tribal member or minor member from gaming revenues as a part of the Revenue Allocation Plan

Elders Stipend: financial assistance to tribal members age 55 or older to assist with housing, food, clothing and transportation costs. For more information about Elder's Stipends, contact Tribal Services.

Family Members: Parents, grandparents, children and siblings over 18 years of age.

- **Tribal Elders**

The Tribal Court Judge has the authority to appoint a conservator for a Tribal Elder even if no one asks the Court so long as the Court finds that the Elder has been the victim of physical, emotional or financial abuse in violation of Tribal law.

For example, a Tribal Elder who was the victim of a theft and the Tribal Court is hearing the theft case. If the evidence shows that the Tribal Elder was financially abused by someone, the Court could appoint a conservator for the Tribal Elder even though no one filed a request for Conservatorship.

Who Can Be a Conservator?

Any person who is over the age of 18 and who the Tribal Court determines is qualified to be a conservator can be a conservator.

Note: The Tribal Court will require the proposed conservator to disclose the following information:

- Age;
- Occupation;
- Relationship to the proposed Conservatee;
- Any criminal history of fraud, theft, or embezzlement.

The Tribal Court will also order a background check for proposed conservators.

The Types of Conservators

There are different types of conservators depending on what the proposed Conservatee needs help with. The Tribal Court's Order will describe the conservator's responsibilities in greater detail.

Conservator of the Estate	Conservator of the Person	General Conservator
Manages the Conservatee's <u>Per Capita Distributions</u> and <u>Elders Stipends</u> . (includes opening/managing a Conservatorship account)	Manages the Conservatee's <u>care and protection</u> . This may include taking care of the Conservatee's physical health, food, clothing, and shelter.	Manages both the Conservatee's <u>Per Capita Distributions / Elders Stipends</u> and the Conservatee's <u>care and protection</u> .

While the types of conservators listed above are separated into categories, the Tribal Court can assign conservators any range of responsibilities it thinks are necessary to help the Conservatee. This might mean giving a conservator some estate responsibilities and some personal responsibilities.

For example, the Tribal Court could appoint a conservator to make sure the rent and utilities for the Conservatee's apartment are paid, but not require the conservator to purchase or prepare the food for a Conservatee. Or, the Tribal Court could appoint someone as the conservator of the estate and a different person as the conservator of the person. The Tribal Court's order will specify what the conservator's responsibilities are.

The Conservatorship Process

1. File the Petition

The conservatorship process starts when someone who thinks an adult needs a conservator files a petition with the Tribal Court. The petition should include evidence showing that the adult (now known as the proposed Conservatee) is unable, without assistance, to properly manage or take care of themselves or their personal affairs.

2. Notice

After the petition has been filed, Tribal Services and the Tribal Court will notify all of the proposed Conservatee's known family members that there will be a hearing to decide whether the proposed Conservatee is able to take care of themselves or not.

You can ask the Tribal Court to skip the notice process. To do so, you have to convince the Tribal Court Judge that there is a good reason not to tell any or all of the family members about the conservatorship hearing.

3. Hearing

At the hearing, the Tribal Court will decide whether the proposed Conservatee needs a conservator. If there are any psychiatrists, psychologists, or physicians who have evaluated the proposed Conservatee, the Tribal Court can consider this evidence when making its decision. The Tribal Court will make a decision that helps protect the proposed Conservatee's best interests.

4. Order

If the Tribal Court believes a conservatorship is in the proposed Conservatee's best interests then it will issue an order naming a conservator and defining the conservator's responsibilities.

The Tribal Court may put one conservator in charge of everything (General Conservator) or appoint different people to manage the proposed Conservatee's personal care (Conservator of the Person) and the proposed Conservatee's finances (Conservator of the Estate).

The Tribal Court may also further order that the conservatorship be reviewed after the passage of time (i.e. yearly) to ensure the conservatorship is still working and necessary.

5. Letter of Conservatorship

If the Tribal Court orders a conservatorship for the proposed Conservatee, the Court will also issue a Letter of Conservatorship. The Letter of Conservatorship is for the conservator. It will include an oath – or promise – that the conservator will faithfully serve as the Conservatee’s conservator and follow the conservatorship order. The Letter will also include the responsibilities that the conservator agreed to take on for the Conservatee.

Note: Conservatorship of the Estate and the Conservatorship Account.

Once a person is appointed as Conservator to manage the Per Capita Distributions/Elders Stipend, they must open a Conservator Account with a financial institution like a bank. The Finance Department will send payments directly to the Conservator Account. The Conservator must keep an accounting of all income and receipts made with the Conservatee’s Per Capita Distributions/Elders Stipends. The Tribe Court can also require the Conservator to make a budget to show what the Conservatee can afford with their Per Capita Distributions/Elders Stipend; pay the Conservatee’s bills; invest and protect the Conservatee’s Per Capita Distributions/Elders Stipend and account for the management of the Per Capita Distributions/Elders Stipend.

Quarterly and Annual Reviews

When the Tribal Court appoints a Conservator the Court will also appoint a Tribal Services Advocate from the Tribal Services Department. The Advocate will meet regularly – at least once every quarter with both the Conservator and the Conservatee. The Conservator has a duty to provide the Advocate with a Conservator’s Report and Accounting.

- Conservators of the Person must include such things in the Report as a description of the Conservatee’s general physical condition, their type of residence, level of care and other circumstances of the Conservatee.
- Conservators of the Estate must include a detailed accounting of all income and expenses.

The Conservator must also file these Reports and Accountings once a year with the Tribal Court prior to their annual Review Hearing with the Court.

Changing the Conservatorship

Removing or Replacing the Conservator

The Tribal Court can remove or replace a Conservatee’s conservator(s). A Tribal Court will consider removing or replacing a conservator when . . .

1. The conservator resigns;
2. The conservator fails to act in the Conservatee’s best interests.

If any of those situations occur, the Tribal Court will schedule a **Conservator Review Hearing** to review the conservator's behavior. Before the hearing, the Tribal Court will notify the Tribe, the Tribal Services Director, the Tribal Services Advocate and all known family members of the Conservatee about the hearing and the Tribal Services Department will investigate the circumstances and submit a report to the Tribal Court evaluating the conservator's behavior with respect to their duties towards the Conservatee.

At the Conservator Review Hearing, the Judge will review the case and determine if the conservator is still fit to handle the Conservatee's affairs. If the Judge finds that the conservator has not been acting in the Conservatee's best interests or if the conservator wishes to resign, the Judge can remove the conservator and appoint a new one.

Restoring the Conservatee's Competency

If the Tribal Court previously appointed a conservator, but the adult believes they are able to take care of themselves and their property, they can ask the Tribal Court to remove the conservator and regain legal responsibility over themselves and their personal and financial affairs.

To do so, the Conservatee would file a petition with the Tribal Court that explains why they are competent and able to handle their affairs. Then, the Tribal Court would hold a hearing to determine if the Conservatee is able to take care of themselves. The Judge may require that a qualified psychiatrist, clinical psychologist or physician, who is licensed, confirm that the Conservatee is competent. If the Tribal Court decides the Conservatee is able to do so, then the Tribal Court will order the conservatorship to end, and the Conservatee will regain responsibility for themselves and/or their personal and financial affairs.

Questions

If you have any questions about how to fill out the Conservator's Report form, or about the conservatorship process in general, contact the Tribal Court:

Tribal Court Office Address:

Shingle Springs Band of Miwok Indians Tribal Court
5281 Honpie Road
Placerville, CA 95667

Telephone: (530) 698 – 1446

Website: <https://www.shinglespringsrancheria.com/tribal-court/>

Self Help Center:

Open 8:00 am to 5:00pm Monday - Friday.

Attorney consultation by appointment only. Contact the Tribal Court to make an appointment.