

**A LOOK INTO THE LAWS OF  
CONSERVATORSHIP IN THE UNITED STATES**

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**Abstract**

Conservatorships are arrangements that were created in the 1900s to assist incapacitated individuals. Conservatorships are established to aid the conservatee who is an individual that has demonstrated that they cannot handle their financial or personal matters by themselves and need assistance. The conservatee is then granted a conservator who will assist them with their matters while they are incapacitated. Conservatorships can be beneficial for conservatees but also can expose the conservatee to abuse and exploitation. In order to prevent conservatorship abuse and neglect, new laws must be created to prohibit conservatorship abuse. There are existing flaws within the conservatorship system that need to be fixed in order to protect and benefit the conservatee.

## **Introduction**

A conservatorship is an arrangement where an individual (called a conservator) is appointed to handle the financial and in some cases personal matters of an individual (called a conservatee).<sup>1</sup> While conservatorships can be a great resource for individuals with disabilities who need help making decisions, it can also expose them to exploitation which can harm the conservatee. The Britney Spears conservatorship case has shined a light on how crucial it is that we fix the issues within the current conservatorship laws in order to ensure that the conservatorship is effectively helping the conservatee.

## **Types of Conservatorships**

A conservatorship is established when an individual has demonstrated that they have a mental or physical incapacity. Conservatorships can be a great resource for conservatees who are unable to make proper decisions by themselves. It can give them assistance with decisions and protect their assets and finances. For example, a conservatorship may be put in place in the case of an elderly individual who has shown signs of having Alzheimer's and has struggled to handle their personal

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<sup>1</sup> *Conservatorship – seniors selfhelp*, Courts.ca.gov. 2022, <https://www.courts.ca.gov/selfhelp-conservatorship.htm>, [last visited March 11, 2022].

matters effectively by themselves. In a conservatorship, a loved one can serve as the conservator to make the arrangement more comfortable for the conservatee. Conservatorships are unique to the different situations that may occur, they aren't a one size fits all arrangement.

There are various types of conservatorships that are designed for different situations to best serve the conservatee. The fifty states vary in the types of conservatorships they have but the two main types of conservatorships are Probate and Lanterman-Petris-Short (LPS) Conservatorships.<sup>2</sup> Under Probate conservatorships, there are general and limited conservatorships. General conservatorships commonly involve an elderly individual or an individual who has been impaired from an accident or illness. In a limited conservatorship, the individual has more capabilities than the individuals in a general conservatorship but usually need assistance with their finances so the conservator may be involved in certain decisions involving the investments and bills of the conservatee. In an LPS conservatorship, an individual with mental issues is involved. It is common for individuals under this type of conservatorship to resist the conservatorship arrangement as it is sometimes involuntary. Another type of conservatorship is called a full conservatorship.

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<sup>2</sup> Id.

This type of conservatorship is an extreme measure given in a case where the adult has a severe disability.

This type of conservatorship may involve the conservatee giving up certain rights like the right to vote, have a driver's license, make purchases, and more.<sup>3</sup> Full conservatorships are extreme and are used in severe cases. The different types of conservatorships display a wide range of possibilities with conservatorships. People have conservatorships for various reasons and time periods which displays the diversity of these arrangements. Some people only have conservatorships for a few months or years while others in more serious cases have the conservatorship for their entire life. Because of this, it is imperative that the correct conservatorship is appointed for the conservatee.

## **What are the Problems with Conservatorships?**

While conservatorships can be a useful resource for incapacitated individuals and their families, issues may arise during conservatorships. Conservatorships give the conservator in charge of the matters of the conservatee a substantial amount of power when handling decisions. When given too much power, a conservator has the potential to take advantage of the conservatorship which can harm the conservatee. The full conservatorship is concerning for this reason. The conservatee is stripped of

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<sup>3</sup> Stern, K., *Types of Conservatorships, Wills & Estates for the Disabled*, The CP Lawyer, <https://www.thecplawyer.com/estate-planning/conservatorships/types/>, [last visited March 11, 2022].

the ability to make numerous decisions while the conservator is given total control.<sup>4</sup> The conservatee's power is weakened while the conservator's power is strengthened which can lead to abuse, one of the main issues within conservatorships. Some examples of conservatorship abuse include neglect or fraud. While these examples are commonly found in financial conservatorship situations, there are also conservatorships that give the conservator power over the personal decisions of the conservatee.<sup>5</sup> In these conservatorships, the conservator is called the conservator of the person. Conservators of the person are granted the power to handle the healthcare of the conservatee.<sup>6</sup> An instance of neglect with this type of conservatorship could be in a situation where the conservator has not given the conservatee their medication or is not taking proper care of them. This can be especially concerning in an LPS conservatorship where the conservatorship is based around the mental health of the conservatee. Since many conservators are conservators of the estate (conservators who handle the financial aspects of a conservator's life), their access to the conservatee's money gives them the power to use the conservatee's money for their own benefit which is dangerous to the conservatee. For instance, if the conservator used the conservatee's money for their own personal use rather than for the benefit of the

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<sup>4</sup> Id.

<sup>5</sup> *Conservatorship – seniors selfhelp*, Courts.ca.gov. 2022, <https://www.courts.ca.gov/selfhelp-conservatorship.htm>, [last visited March 11, 2022].

<sup>6</sup> Id.

conservatee that would diminish the pool of resources intended for the conservatee and would be considered abusive to the conservatee.<sup>7</sup>

The second issue within conservatorships is the difficulty of removing it. Conservatorships can last for a while and some end when the conservatee passes away. If abuse is present in a conservatorship, it is imperative for the conservatee to end their conservatorship, but it can be difficult for the conservatee to do so. In order to end a conservatorship, the conservatee must first file a petition. They would also need to hire an attorney to move the process forward and be established as competent by a psychologist or psychiatrist.<sup>8</sup> Some conservatees are stripped from certain rights and may be unaware that they have the right to petition their conservatorship to end. With certain rights being stripped away, conservatees may not have access to the resources necessary to end the conservatorship. If the conservator is not in agreement with the conservatee about ending the conservatorship, then that can make the process difficult for the conservatee.

## **The Britney Spears Conservatorship Case**

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<sup>7</sup> *What is Conservatorship Abuse?*, Peck Ritchey, LLC, <https://www.peckbloom.com/articles/what-is-conservatorship-abuse.html>, [last visited Apr 5, 2022].

<sup>8</sup> *Conservatorships: Consequences and Options*, HG.org. Legal Resources, <https://www.hg.org/legal-articles/conservatorships-consequences-and-options-48132>, [last visited March 11, 2022].

One of the most notable conservatorship cases is that of Britney Spears. Britney Spears' conservatorship has brought light to flaws within conservatorships. Britney Spears is a famous singer and songwriter who was entangled in a conservatorship in the late 2000s. After a mental breakdown, Britney was placed on a 5150 hold, a hold that allows a "person with a mental illness to be involuntarily detained for a 72-hour psychiatric hospitalization."<sup>9</sup> After her breakdown, Britney's father, James Spears petitioned for her to have a conservatorship as he was concerned about her ability to make decisions by herself due to her mental health crisis. Britney entered a probate conservatorship of the person and estate after this.<sup>10</sup>

Britney's conservatorship was voluntary and beneficial at first when she was struggling with her mental health. However, as the conservatorship went on, she began to feel like the conservatorship was abusive and sought to make changes to her conservatorship so she could have more control over her life. Her conservatorship began to be repressive, and she was robbed of many rights. For instance, Britney was robbed of reproductive freedom as she was not allowed to have children during her

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<sup>9</sup> *Involuntary Holds*, Family Education and Resource Center, [https://ferc.org/uploads/docs/resources/5150\\_5250.pdf](https://ferc.org/uploads/docs/resources/5150_5250.pdf), [last visited March 11, 2022].

<sup>10</sup> *Britney Spears Conservatorship vs LPS Conservatorship*, Lps Mental Health Conservatorship, 2017, <https://www.lpsconservatorship.com/updates/britney-spears-conservatorship-vs-lps-conservatorship>, [last visited March 11, 2022].

conservatorship despite her wishes of wanting to grow her family.<sup>11</sup> She was also prohibited from getting married during her conservatorship which prevented her from taking control of her life.

Conservators are supposed to take the requests of the conservatee into consideration, but Britney's did not, which was a disservice to her. While Britney's conservatorship was voluntary, she gradually wanted more control over her life so she could make her own decisions. Britney's goal was to gain independence so she could be involved in more business deals as well.<sup>12</sup> For example, when her business manager quit, her father found her a new one but never consulted her about it or made her aware of the cost of having a new business manager.<sup>13</sup> In a situation like this, even though James Spears had the final say, he could have involved Britney by informing her of the situation and showing her his thought process on why he chose the new manager. Conservators are present to help conservatees make decisions for their benefit and part of making those decisions is showing the conservatee how they made the

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<sup>11</sup> Tessa Stuart, *Can Britney Spears' Conservators Legally Bar Her From Having a Baby?* Rolling Stone, 2021, <https://www.rollingstone.com/music/music-news/britney-spears-conservators-baby-marriage-rights-1188207/>, [last visited March 11, 2022].

<sup>12</sup> Bianca Betancourt, *Britney Spears's Conservatorship Is Officially Terminated*, 2021, Harper's BAZAAR, <https://www.harpersbazaar.com/celebrity/latest/a34113034/why-longtime-britney-spears-fans-are-demanding-to-freebritney/>, [last visited March 11, 2022].

<sup>13</sup> *Id.*



decision so that the conservatee can eventually make their own decisions and gain independence. By preventing this, they continue the cycle of reliance and control.

What makes Britney Spears' case unique is the fact that she was still performing and making music under her conservatorship. While most individuals under a probate conservatorship are impaired in some way, Britney was still working like most individuals. In a situation like this, the conservator should have been preparing the conservatee to gain independence rather than hindering it. In November of 2021, a judge ruled that the conservatorship was not necessary anymore for Britney Spears and it was terminated giving Britney the opportunity to have full control over her financial and personal decisions.<sup>14</sup>

Britney Spears' conservatorship case brings to light an important factor of conservatorships. The capabilities of the conservatee are one of the biggest factors when deciding if a conservatorship is necessary and for how long the conservatorship should be in place. In Britney's case, there was a need for the conservatorship in the beginning, but she eventually demonstrated her capabilities as she continued to make music and perform.

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<sup>14</sup> Joe Coscarelli and Julia Jacobs, *Judge Ends Conservatorship Overseeing Britney Spears's Life and Finances* New York Times, 2021, <https://www.nytimes.com/2021/11/12/arts/music/britney-spears-conservatorship-ends.html>, [last visited March 11, 2022].

### **What are the Possible Solutions?**

For conservatorships to be effective, new laws need to be created. Measures need to be in place to prevent conservatorship abuse and neglect. After the case of Britney Spears was shown, individuals have called for change. The “Free Britney Movement” displayed the flaws in the conservatorship system and has called for change as well. It has even inspired politicians to introduce a new Act: The Free Britney Act. The Free Britney Act has been introduced as a bipartisan act that would protect conservatees in order to prevent conservatorship abuse.<sup>15</sup> The Act would allow the conservatee to have an independent caseworker who would monitor them in order to detect and prevent abuse. The Act would also give more money to states to fund the independent caseworkers. Under the Act, states would be required to give annual reports about the present conservatorships which can allow them to further monitor the conservatorship and prevent abuse. This Act could be a great start for conservatorship reform since it would protect conservatorships and give the states more insight into the well-being of the conservatee. Having an independent caseworker serves as a deterrent for conservatorship abuse which would be helpful.

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<sup>15</sup> Judy Kurtz, *Lawmakers introduce bipartisan Free Britney Act*, The Hill, 2021, <https://thehill.com/blogs/in-the-know/in-the-know/563865-lawmakers-introduce-bipartisan-free-britney-act?rl=1>, [last visited March 11, 2022].

A possible additive to the Act could be a background check requirement on the conservator. A background check would ensure that the conservator does not have a conflict of interest and can effectively serve as the conservator in the case. This way, any concerns surrounding the conservator will be brought to light before the conservatorship begins therefore preventing abuse. Conservatees also need to be aware of their full rights. Britney Spears claimed that she was unaware that she could petition for her conservatorship to come to an end.<sup>16</sup> With these measures in place, conservatorships can serve their original purpose to help the conservatee since it would prevent abuse.

It is important to note that some conservatorships can be planned once an individual acknowledges that their health is deteriorating, but most conservatorships are unplanned. Therefore, it is imperative for individuals to plan how they would like to handle their affairs if they become incapacitated. Appointing someone as a durable power of attorney can help prevent this as well. A durable power of attorney is an individual who continues being the power of attorney after the client becomes

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<sup>16</sup> Jon Blistein, *Britney Spears' Conservatorship: What's Going on and What's Next?*, Rolling Stone, 2021, <https://www.rollingstone.com/music/music-news/britney-spears-conservatorship-timeline-1193156/>, [last visited March 11, 2022].

disabled or incapacitated.<sup>17</sup> This way the individual would have a trusted person in charge if a conservatorship was needed, and they would have their preferences in a legal document to help aid the durable power of attorney. Taking preventative measures would also aid in the elimination of conservatorship abuse if an individual needs one.

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<sup>17</sup> Selby C. Rains, *Pick the Right Power of Attorney Instrument*, American Bar Association, 2017, [https://www.americanbar.org/groups/senior\\_lawyers/publications/voice\\_of\\_experience/2017/march-2017/pick-the-right-power-of-attorney-instrument/](https://www.americanbar.org/groups/senior_lawyers/publications/voice_of_experience/2017/march-2017/pick-the-right-power-of-attorney-instrument/), [last visited March 11, 2022].