

Limited Conservatorships for Persons with Developmental Disabilities



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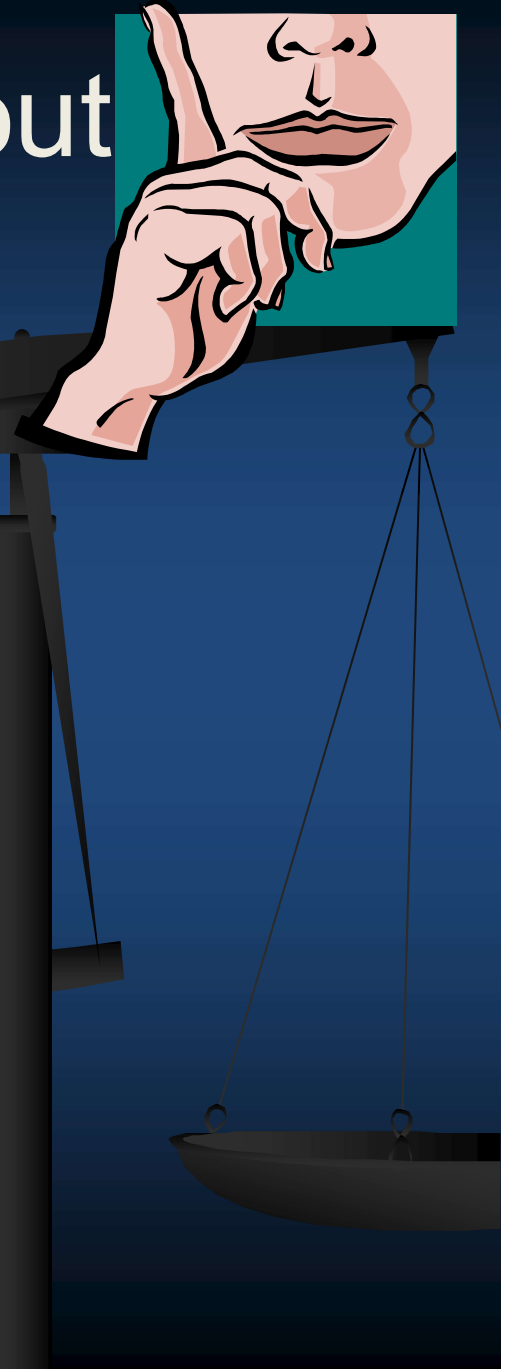
Pacheco, CA 94553

Serving the needs of persons with disabilities and
their families

www.achievingindependence.com/conservatorship/

Things to Think About

- One of the many difficult decisions that a parent of a developmentally disabled child must make is whether or not to conserve their child when the child turns 18.
- Must balance between allowing your child to make choices for themselves, and authorizing someone to make decisions for them.
- Conserving a person is limiting their civil rights.



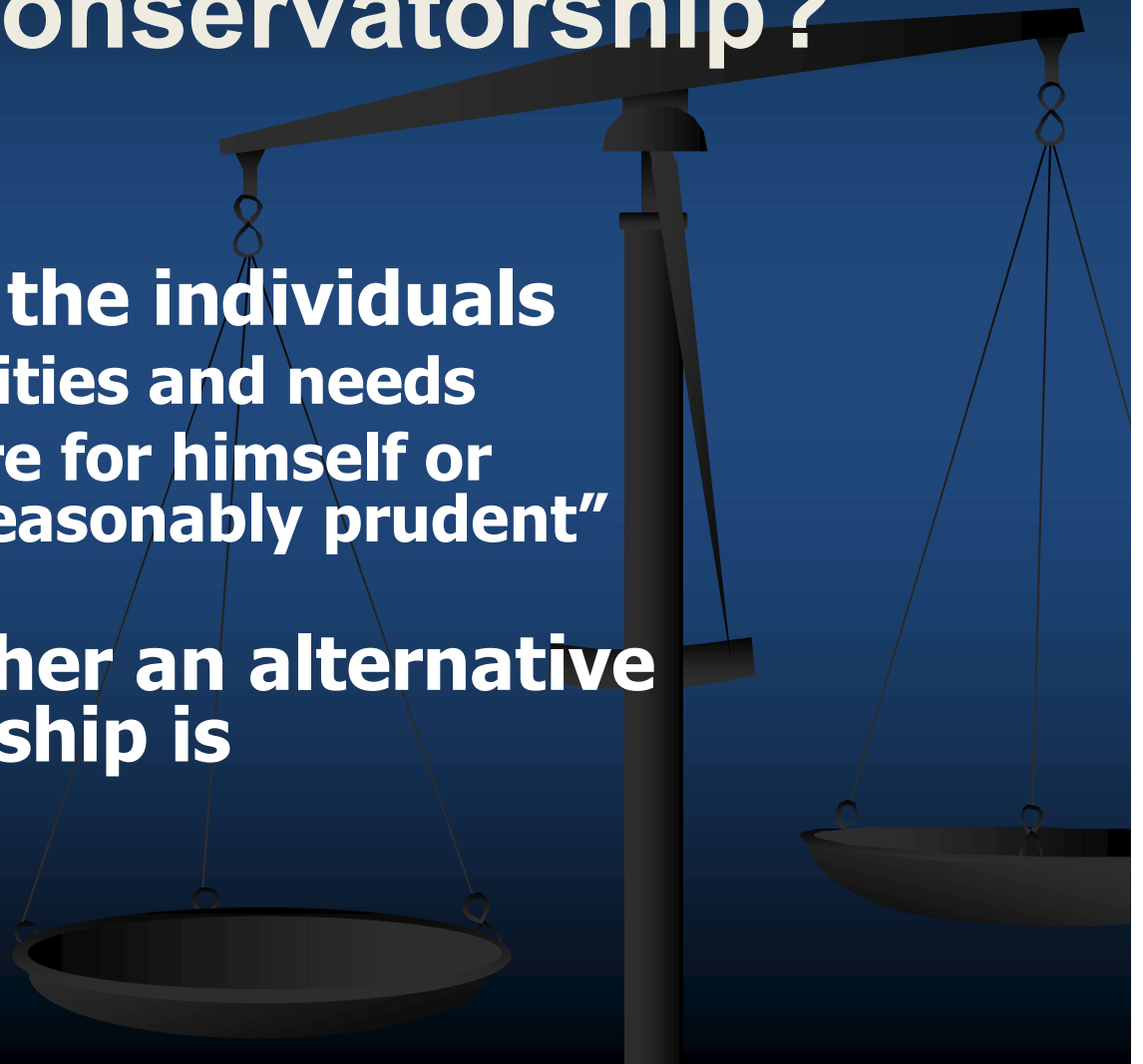
Age 18

- Legal decision making authority of the parents ends regardless of the circumstances
- A person is not presumed incompetent merely because of a diagnosis of a developmental disability



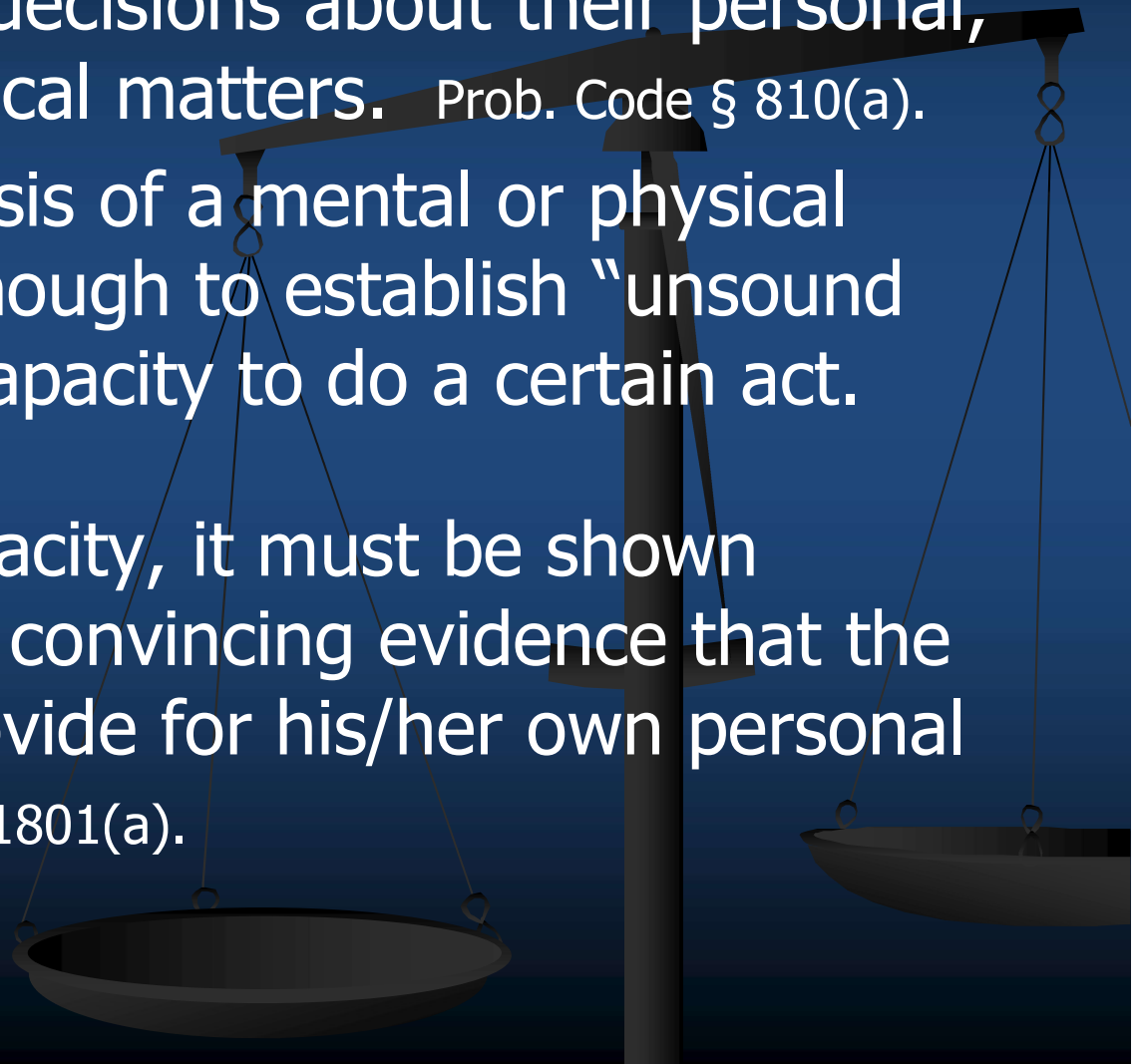
Does Every Developmentally Disabled Person Need A Limited Conservatorship?

- NO!
- Depends upon the individuals
 - functional abilities and needs
 - capacity to care for himself or herself as a “reasonably prudent” person.
- Consider whether an alternative to conservatorship is appropriate



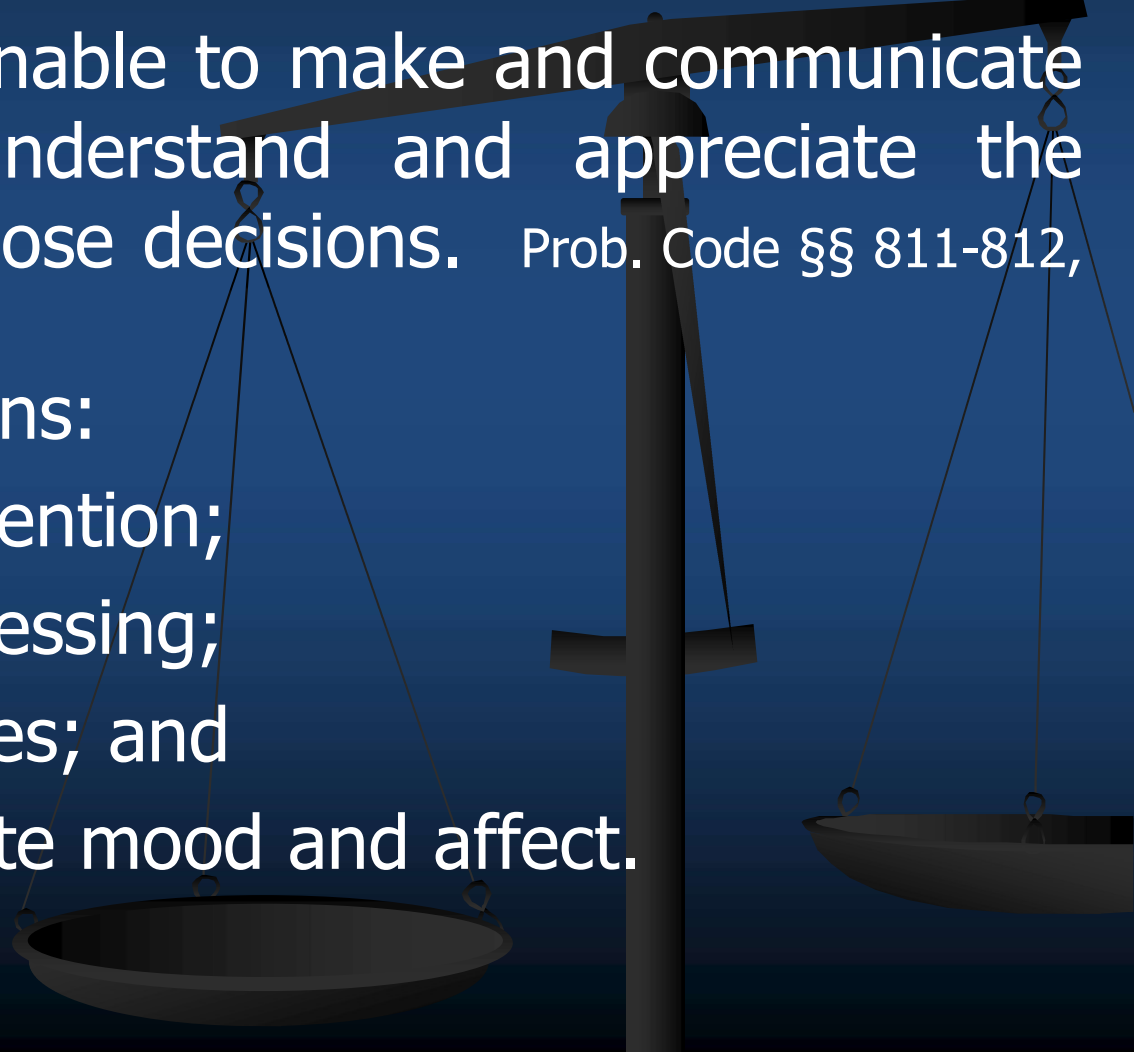
Capacity v. Incapacity

- All persons over 18 are presumed to have the capacity to make decisions about their personal, financial and medical matters. Prob. Code § 810(a).
- The “mere diagnosis of a mental or physical disorder” is not enough to establish “unsound mind” or lack of capacity to do a certain act. Prob. Code § 811(d).
- To establish incapacity, it must be shown through clear and convincing evidence that the person cannot provide for his/her own personal needs. Prob. Code § 1801(a).



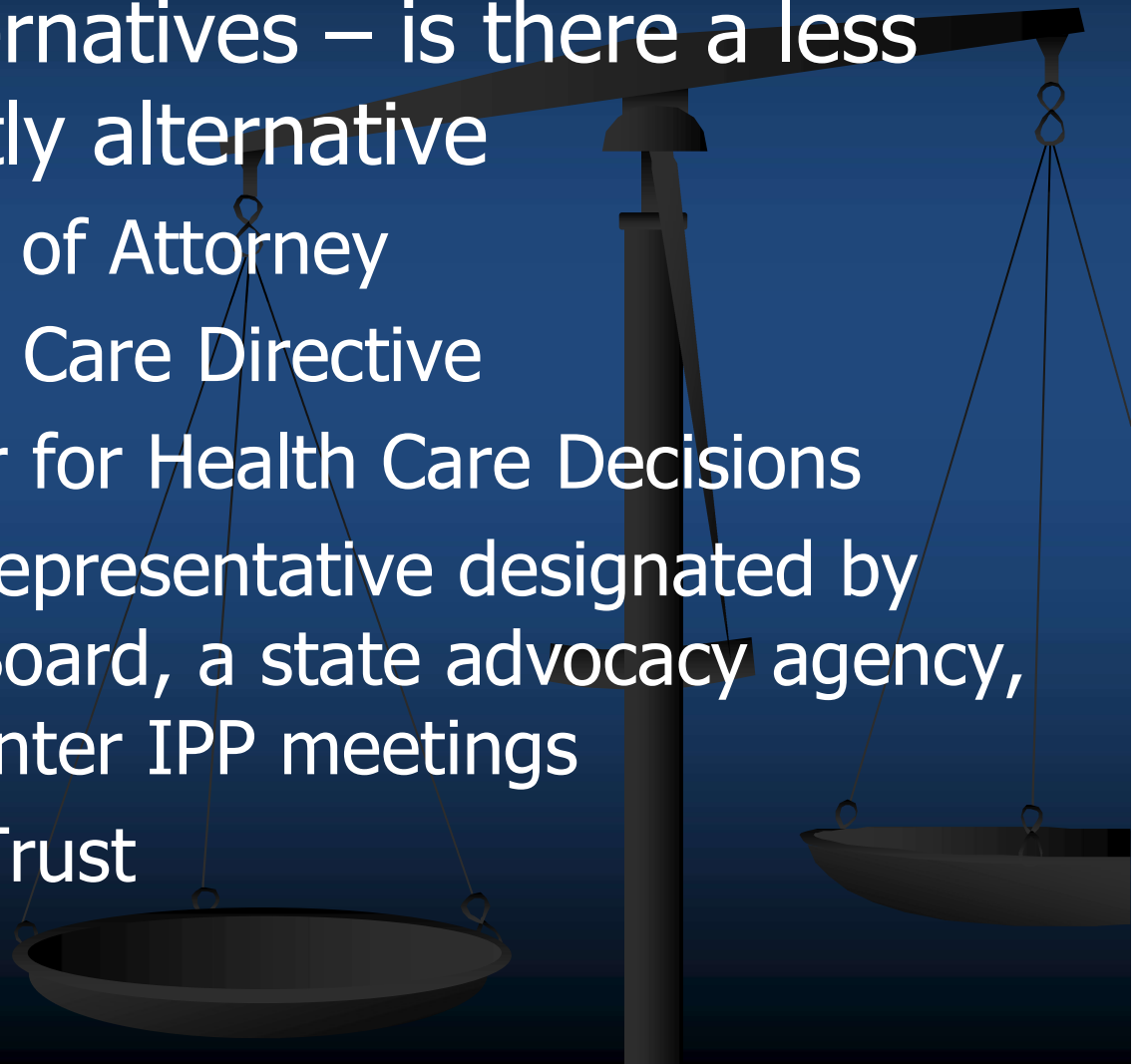
Capacity v. Incapacity

- To establish incapacity, it must be shown that a deficit in at least one of four mental functions renders a person unable to make and communicate decisions or to understand and appreciate the consequences of those decisions. Prob. Code §§ 811-812, 1801.
- Four mental functions:
 - Alertness and attention;
 - Information processing;
 - Thought processes; and
 - Ability to modulate mood and affect.



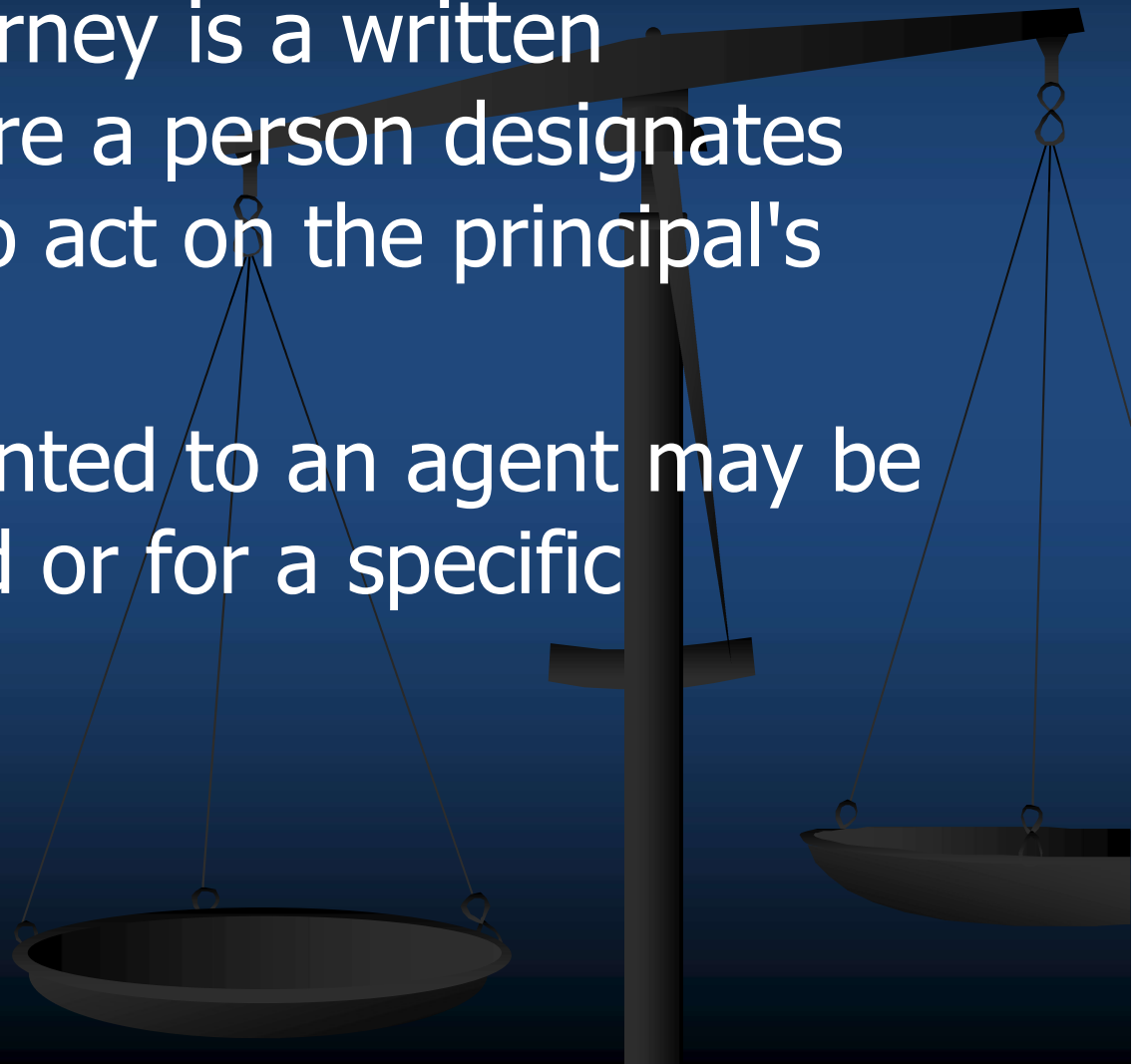
Determining Whether a Conservatorship is Appropriate

- Consider all alternatives – is there a less intrusive or costly alternative
 - Financial Power of Attorney
 - Advance Health Care Directive
 - Regional Center for Health Care Decisions
 - An authorized representative designated by the local Area Board, a state advocacy agency, for Regional Center IPP meetings
 - Special Needs Trust



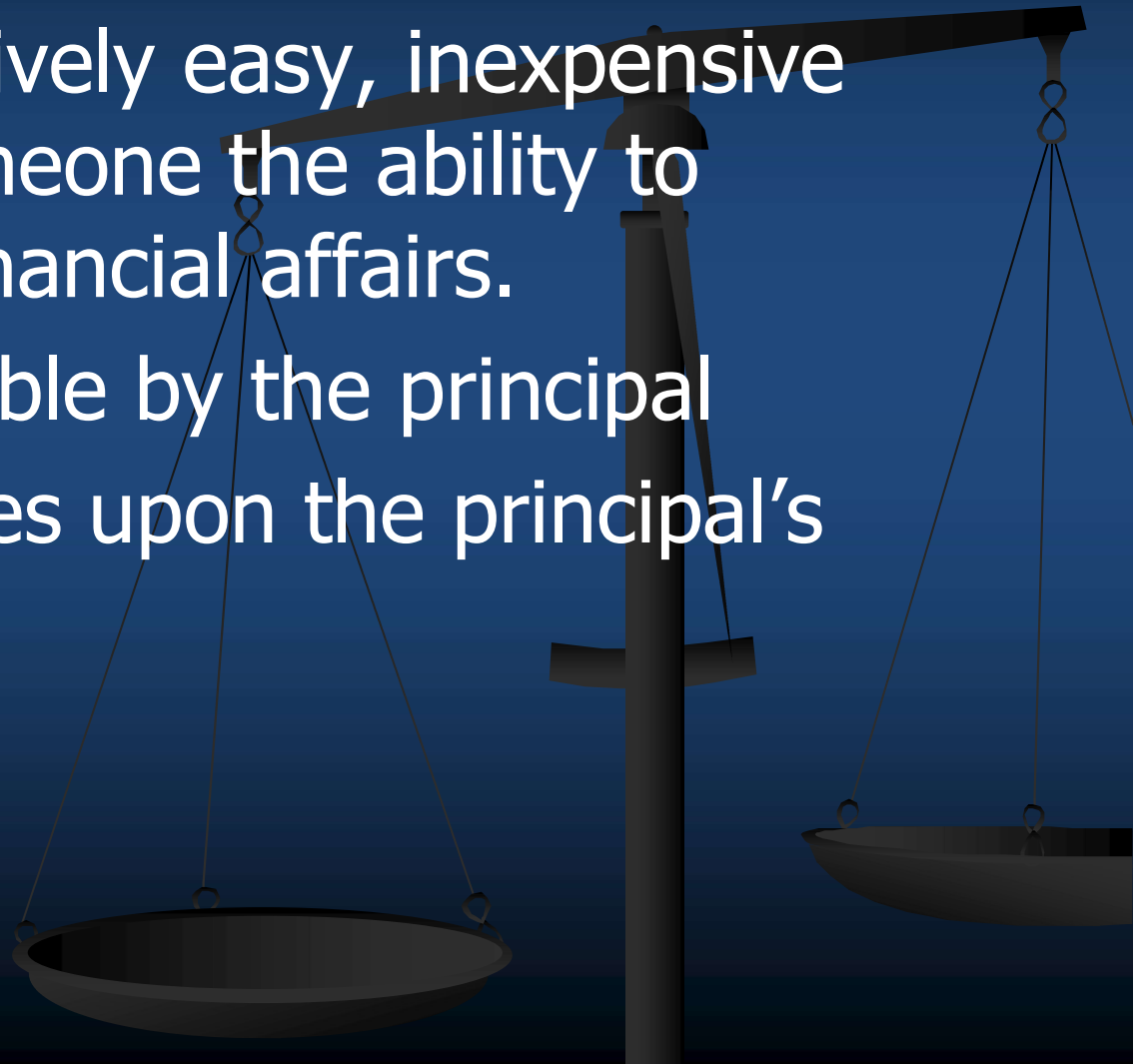
Powers of Attorney

- A Power of Attorney is a written instrument where a person designates someone else to act on the principal's behalf.
- The powers granted to an agent may be extremely broad or for a specific transaction.



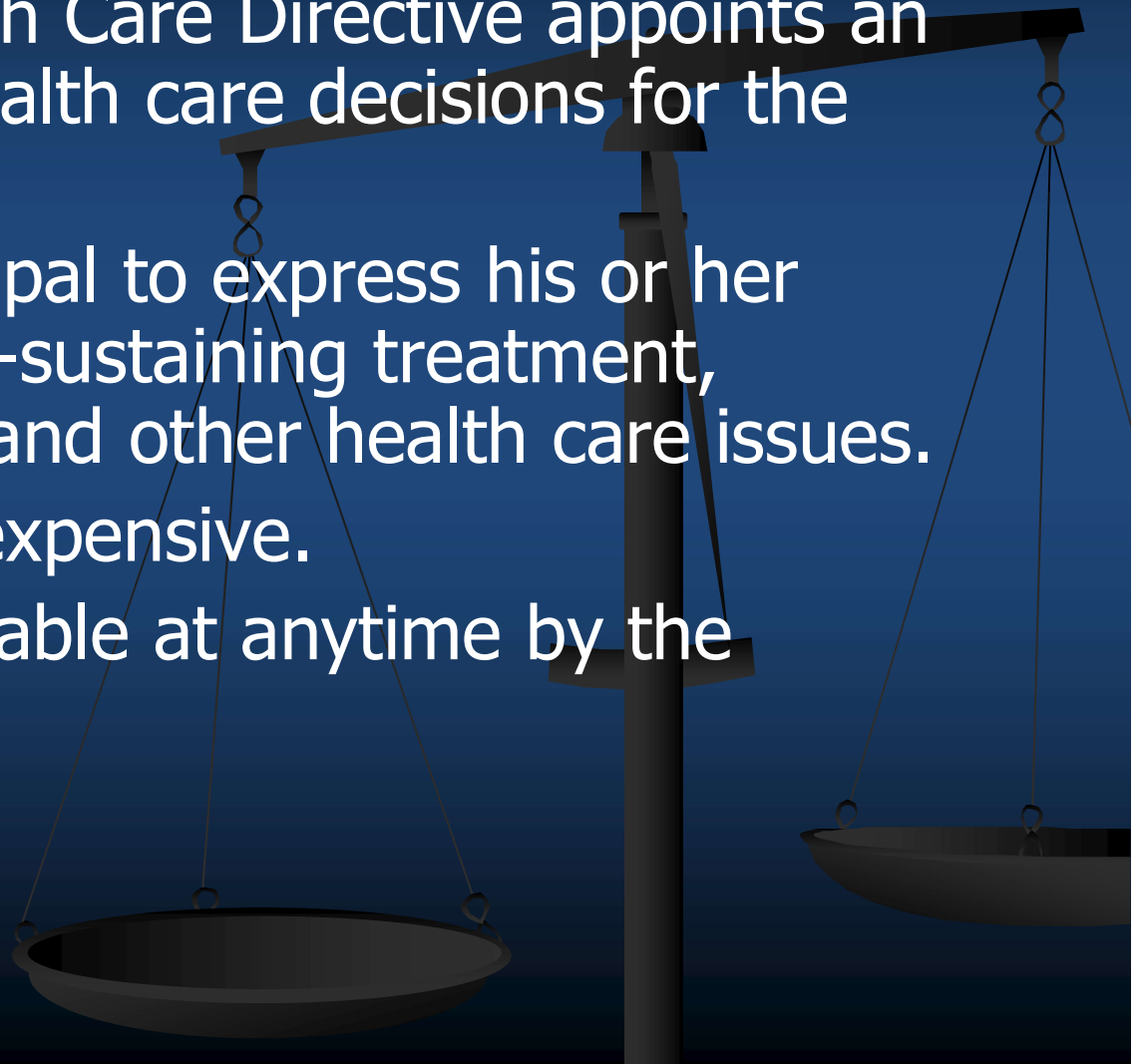
Durable Power of Attorney

- A DPA is a relatively easy, inexpensive way to give someone the ability to manage your financial affairs.
- A DPA is revocable by the principal
- A DPA terminates upon the principal's death.



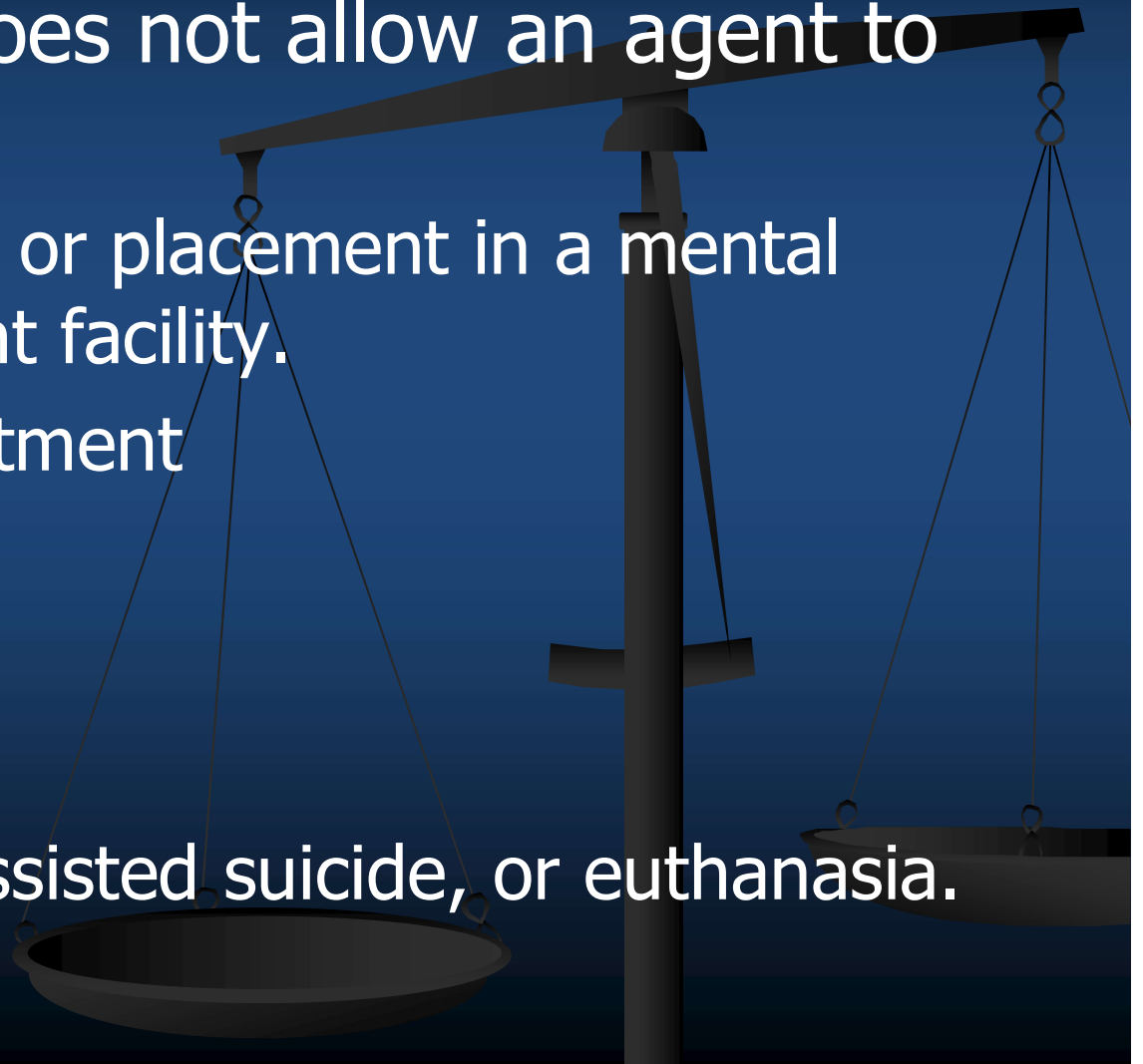
Advance Health Care Directives

- An Advance Health Care Directive appoints an agent to make health care decisions for the individual.
- Enables the principal to express his or her wishes about life-sustaining treatment, anatomical gifts, and other health care issues.
- It is quick and inexpensive.
- An AHCD is revocable at anytime by the principal.



Limitations

- California law does not allow an agent to authorize:
 - Commitment to or placement in a mental health treatment facility.
 - Convulsive treatment
 - Psychosurgery
 - Sterilization.
 - Abortion.
 - Mercy killing, assisted suicide, or euthanasia.



Regional Center Director's Authority to Authorize Medical Treatment under the Lanterman Act



- The director of a regional center or the director's designee may give consent to medical, dental, and surgical treatment of a regional center client and provide for such treatment if the developmentally disabled person has no parent, guardian, or conservator legally authorized to consent.

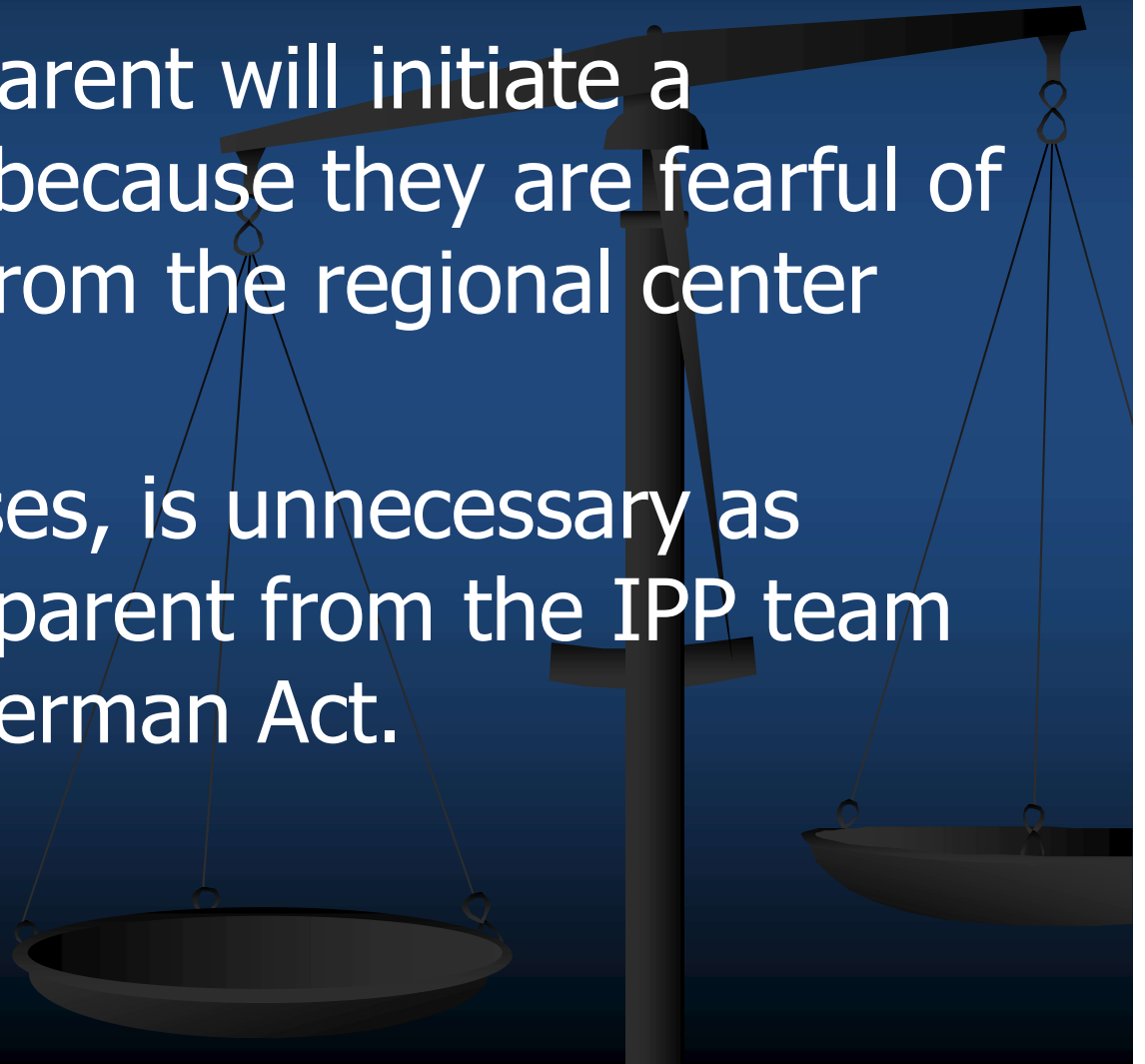
Regional Center Director's Authority to Authorize Medical Treatment under the Lanterman Act



- Although the Lanterman Act does not specify or limit who might be qualified to be designated to make medical decisions, the designee is almost always a regional center staff member.

IPP Participation

- On occasion, a parent will initiate a conservatorship because they are fearful of being excluded from the regional center process.
- This, in most cases, is unnecessary as exclusion of the parent from the IPP team violates the Lanterman Act.



Authorized Representative Assigned by Area Board

- If the rights or interests of a consumer are not properly protected or advocated, the local area board may appoint a person or agency as the Authorized Representative.
- The Authorized Representative may participate in IPPs and Fair Hearings



Types of Conservatorships

Categories

Conservatorship of the Person	Conservatorship of the Estate
General Conservatorship of the Person	General Conservatorship of the Estate
Limited Conservatorship of the Person	Limited Conservatorship of the Estate
LPS Conservatorship for Psychiatric Care	

History of Limited Conservatorships

- Earlier conservatorship laws allowed a person with a developmental disability to be conserved with very little due process
- Decisions were made by professionals and not family



Concept of the Limited Conservatorship

- The limited conservatorship process was created to provide better legal protection for people with developmental disabilities.
- Shifts decision-making power from professionals to family/friends.
- Scope of power is flexible to better match the ability/needs of the person.



What is a Limited Conservatorship?

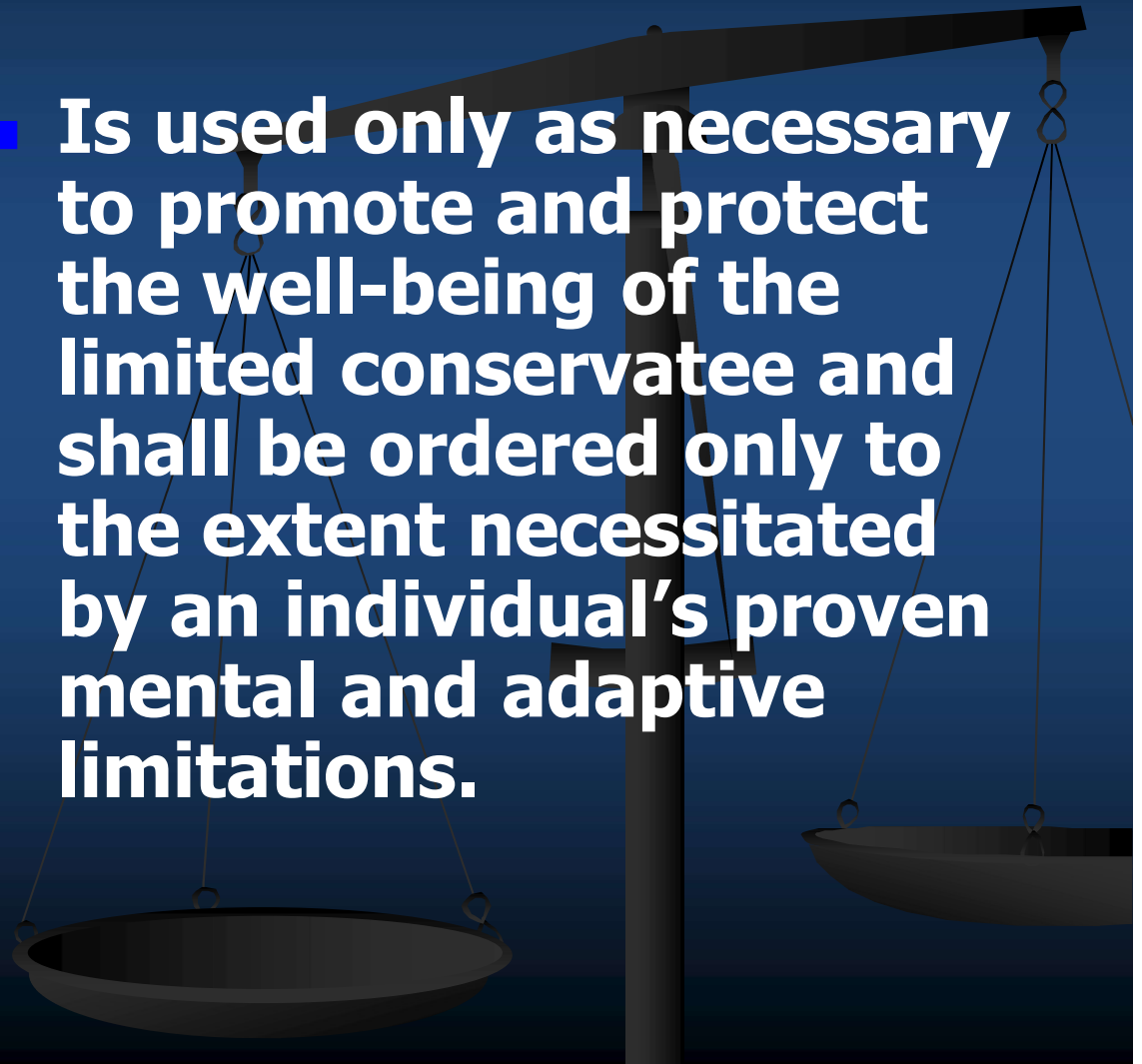
- A limited Conservatorship is a protective judicial proceeding for persons whose developmental disability substantially impairs their ability to care for themselves or their property.



What is a Limited Conservatorship?



- Is used only as necessary to promote and protect the well-being of the limited conservatee and shall be ordered only to the extent necessitated by an individual's proven mental and adaptive limitations.

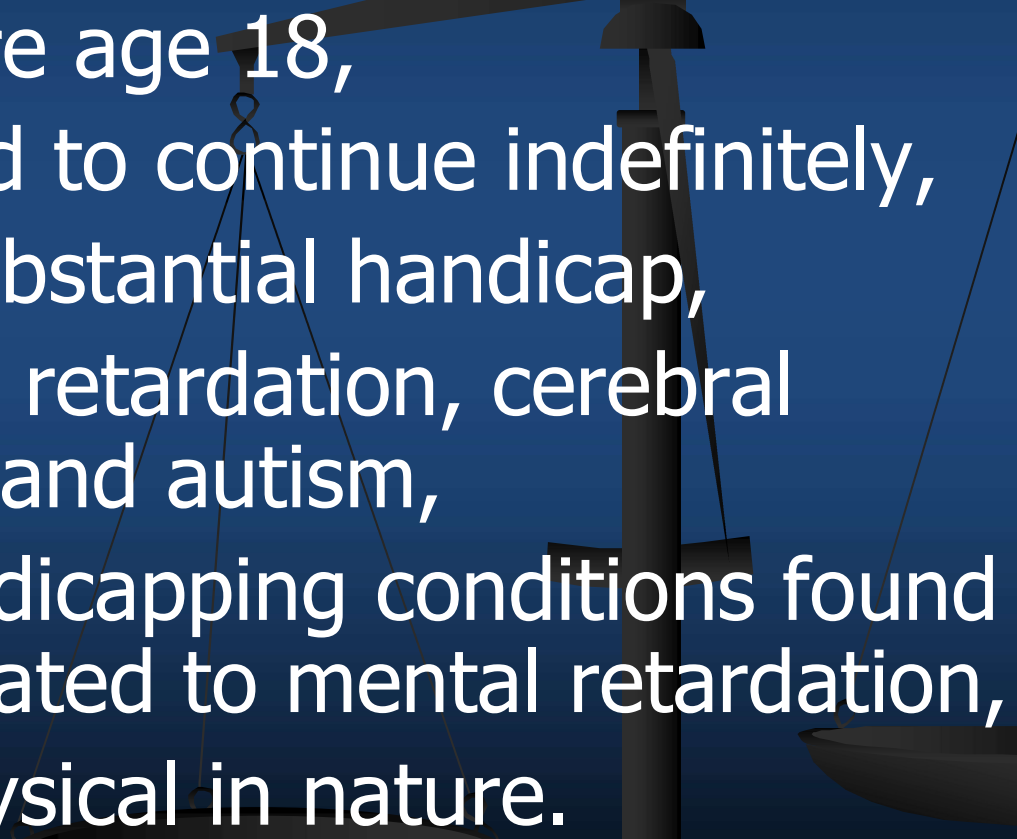


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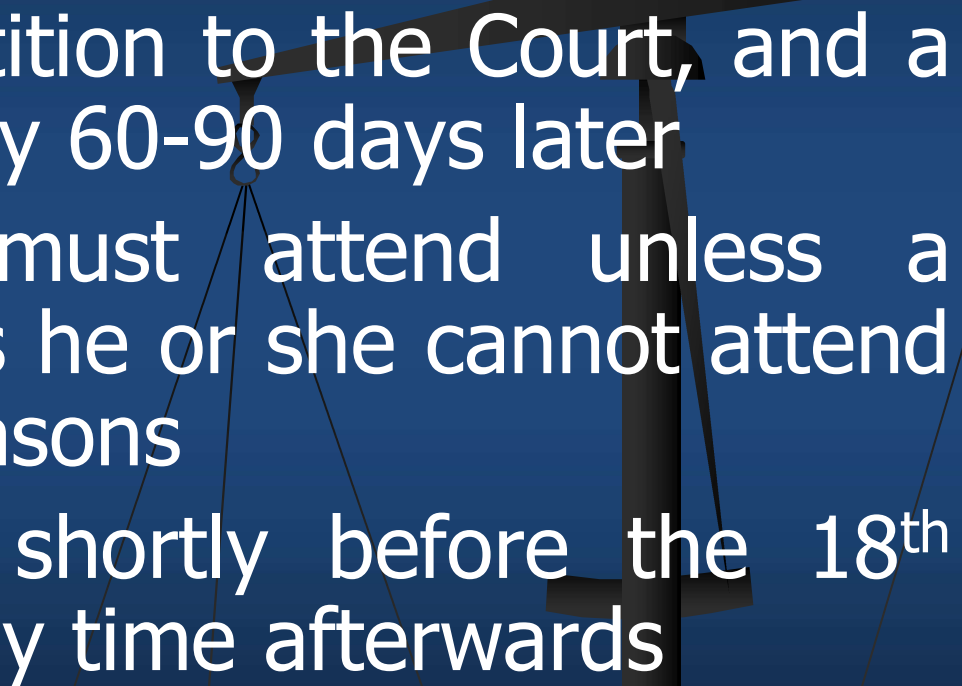
- **The limited conservatee**
 - is not presumed to be incompetent
 - Retain all legal and civil rights except those the court specifically grants to the limited conservator.
- **The limited conservator oversees the care, custody, and control of the limited conservatee, subject to certain limitations ordered by a court.**



What is a Developmental Disability?

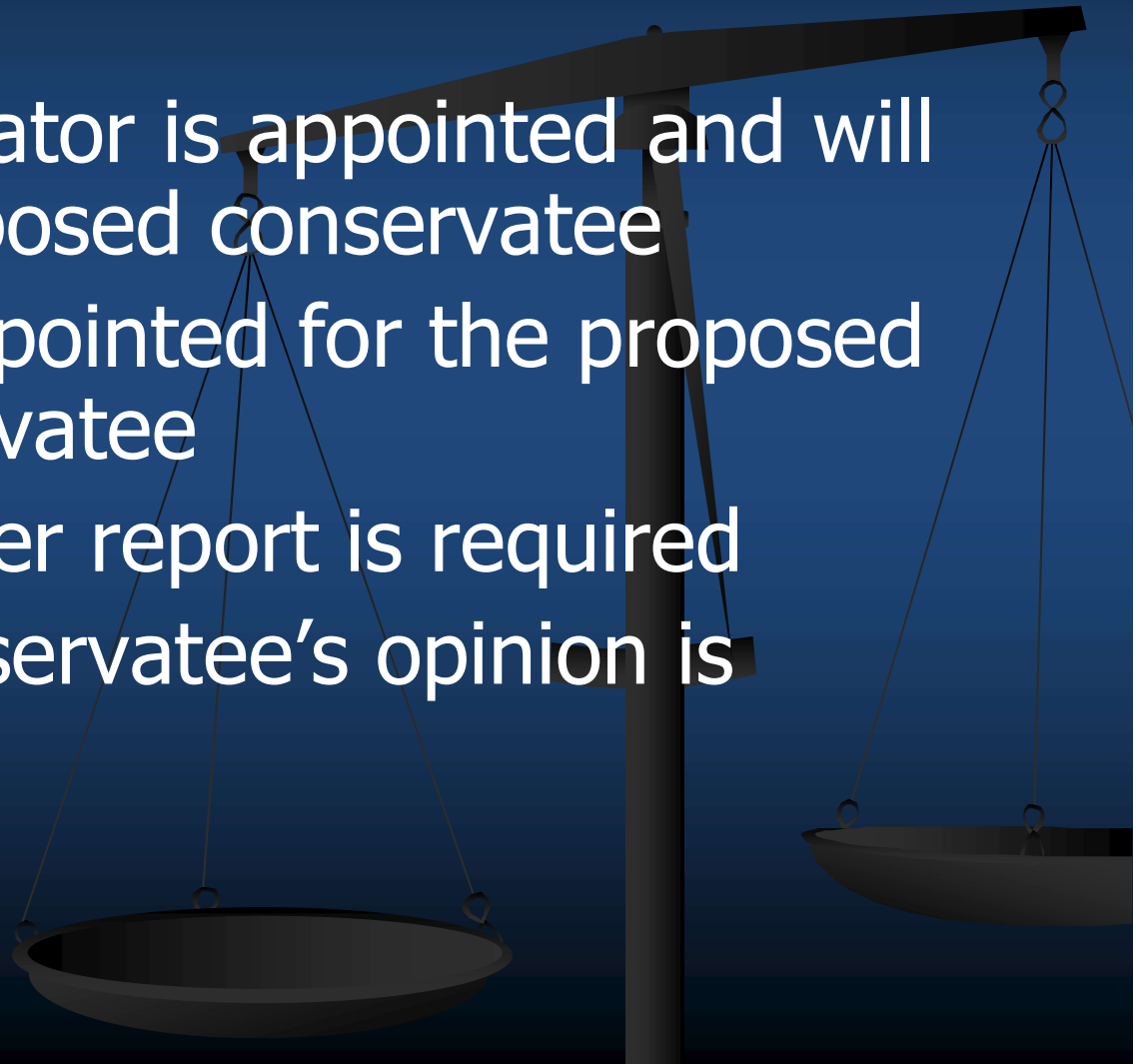
- Originates before age 18,
 - Can be expected to continue indefinitely,
 - Constitutes a substantial handicap,
 - Includes mental retardation, cerebral palsy, epilepsy, and autism,
 - Can be any handicapping conditions found to be closely related to mental retardation,
 - Is not solely physical in nature.
- 

How Is A Conservatorship Established?

- Requires a Petition to the Court, and a hearing, usually 60-90 days later
 - Conservatee must attend unless a doctor certifies he or she cannot attend for medical reasons
 - Can be filed shortly before the 18th birthday, or any time afterwards
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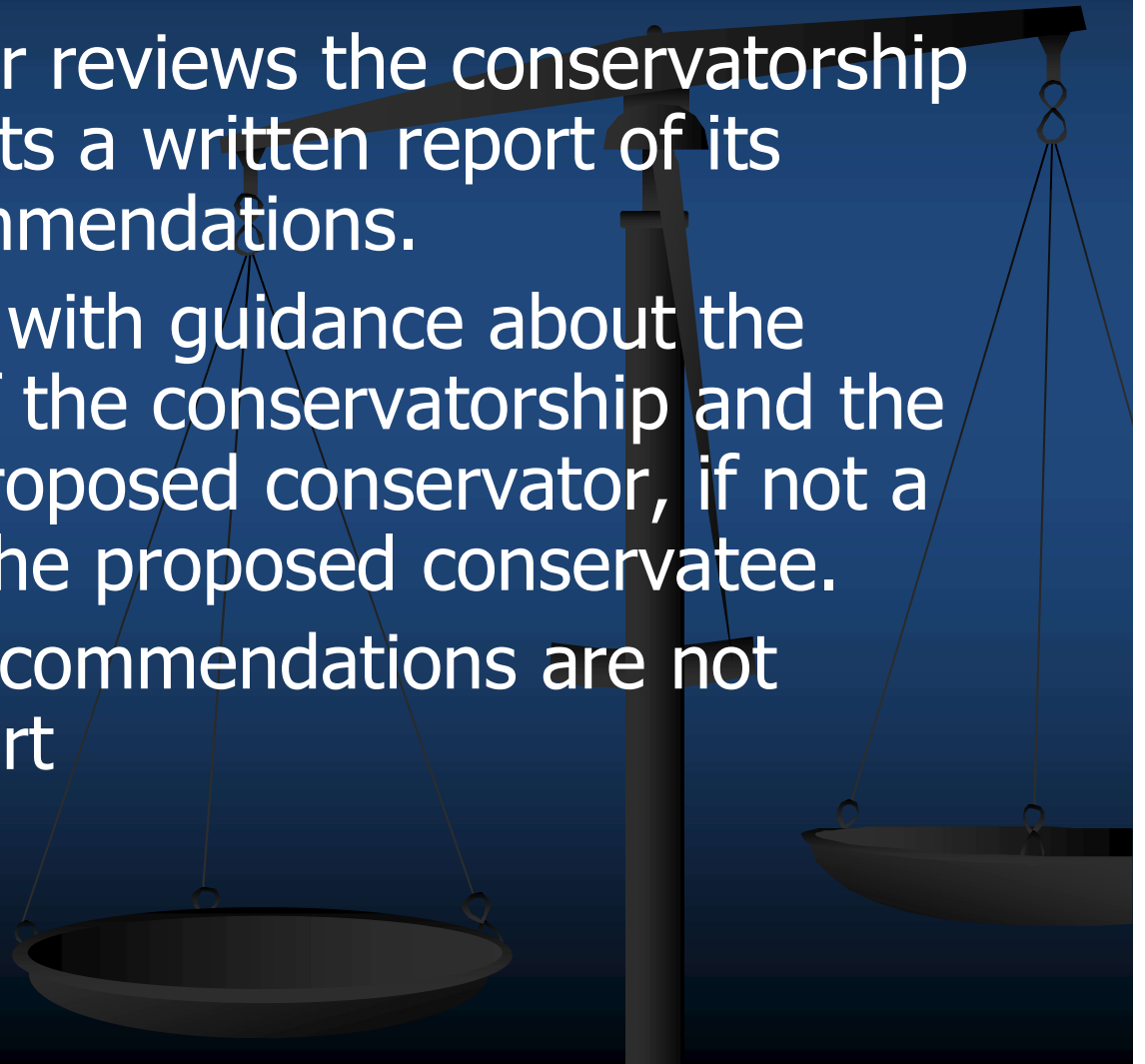
How Is A Conservatorship Established?

- Court investigator is appointed and will interview proposed conservatee
- Attorney is appointed for the proposed limited conservatee
- Regional Center report is required
- Proposed conservatee's opinion is sought



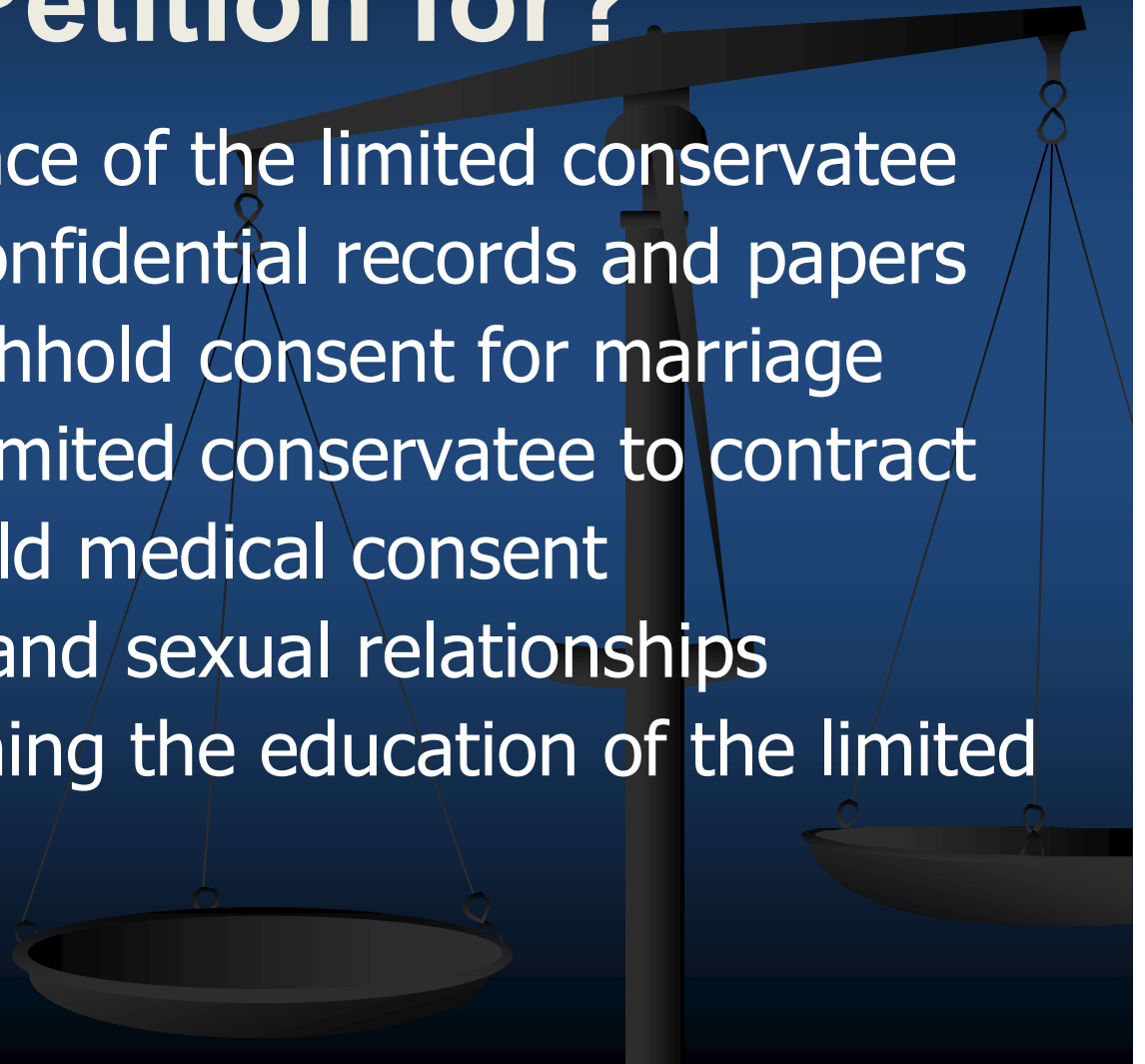
The Role of the Regional Center

- The regional center reviews the conservatorship petition and submits a written report of its findings and recommendations.
- Provides the court with guidance about the appropriateness of the conservatorship and the suitability of the proposed conservator, if not a natural parent of the proposed conservatee.
- Regional Center recommendations are not binding on the court



Powers a Limited Conservator of the Person can Petition for?

- Select the residence of the limited conservatee
- Have access to confidential records and papers
- To consent or withhold consent for marriage
- The right of the limited conservatee to contract
- To give or withhold medical consent
- To control social and sexual relationships
- Decisions concerning the education of the limited conservatee



Powers that are Restricted

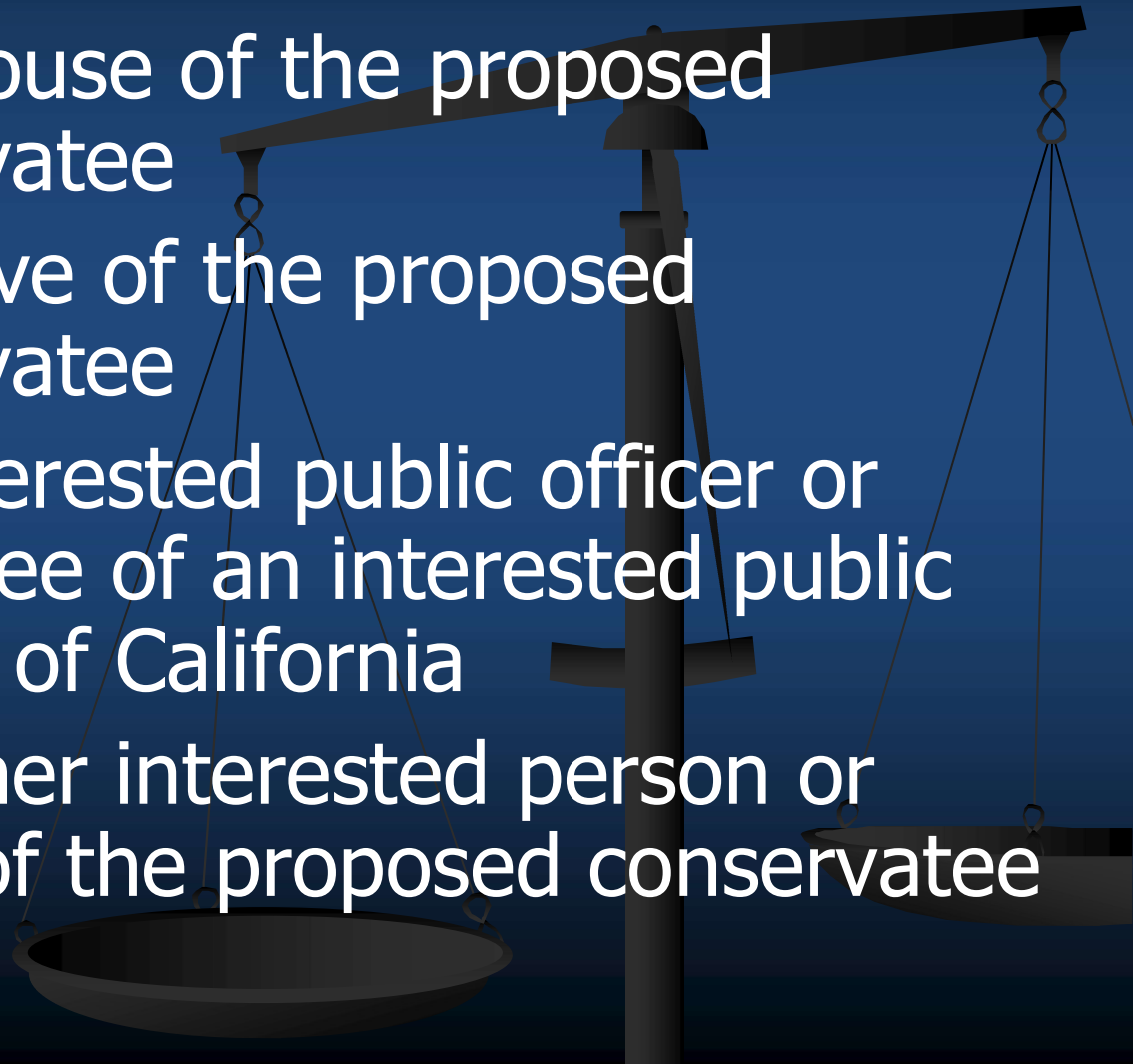


- No commitment to locked psychiatric facility, without an LPS Conservatorship
- No treatment with experimental drugs
- No electroshock treatment
- No sterilization without special court permission

Who Can Establish a Limited Conservatorship?



- The spouse of the proposed conservatee
- A relative of the proposed conservatee
- Any interested public officer or employee of an interested public agency of California
- Any other interested person or friend of the proposed conservatee

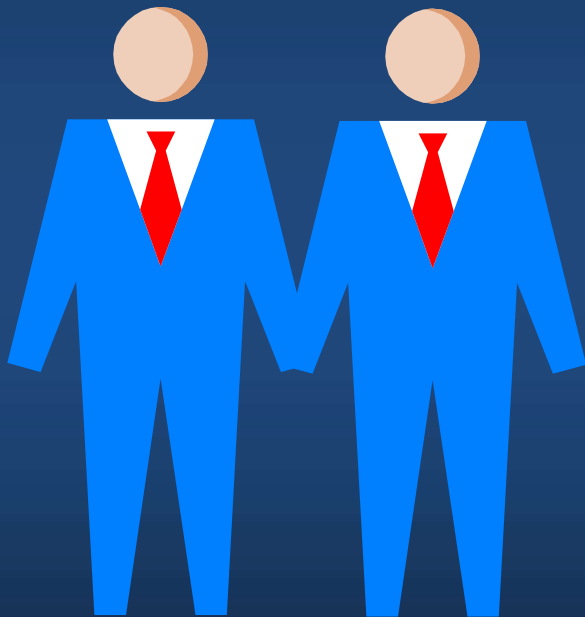


Who Should be Conservator?

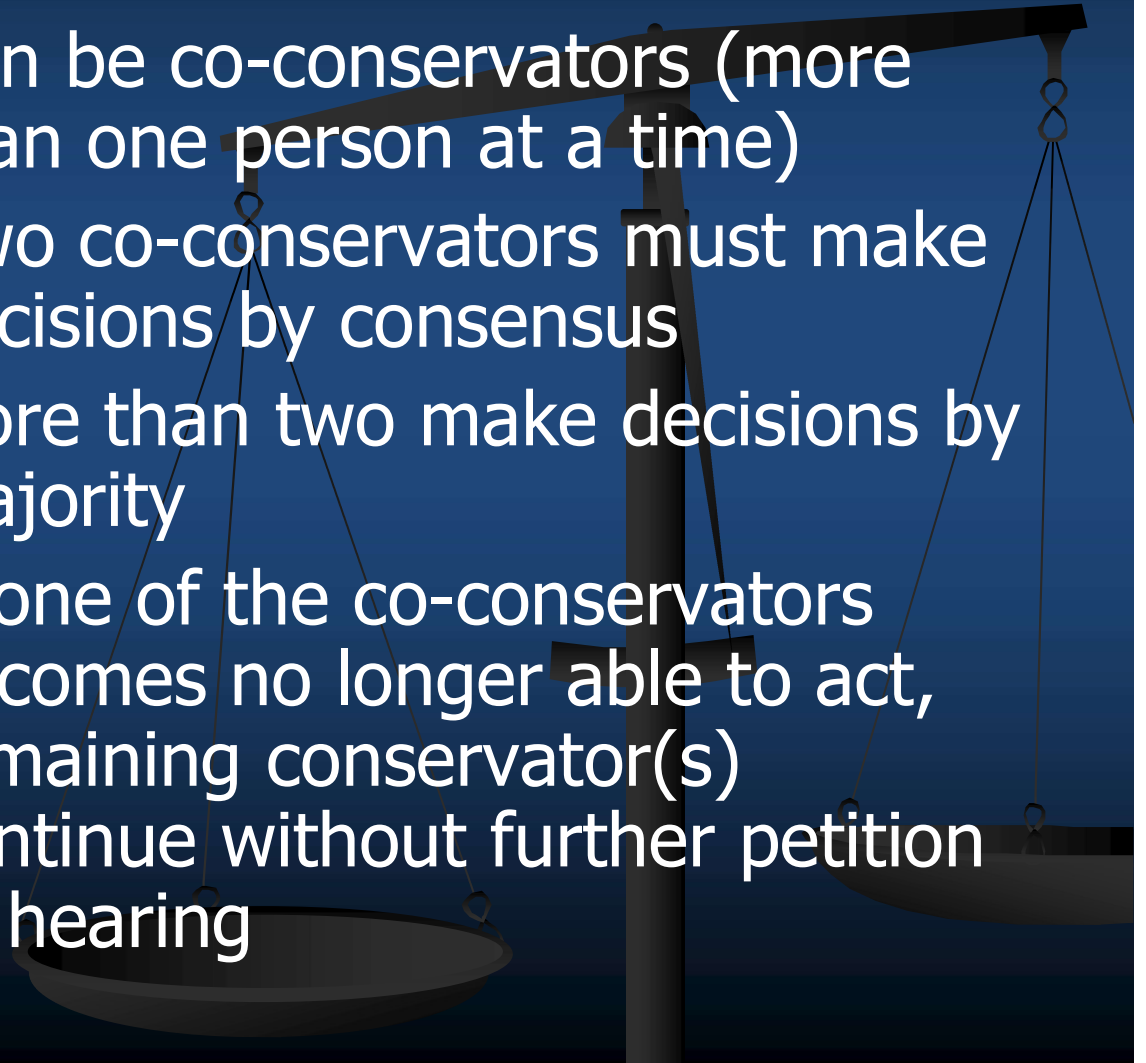
- Someone who lives nearby
- Someone the conservatee likes and trusts
- Someone with mature judgment and experience
- Can be parent(s), sibling(s), another relative, or a professional conservator
- Public Guardian is available if there is no one else



Co-Conservators?

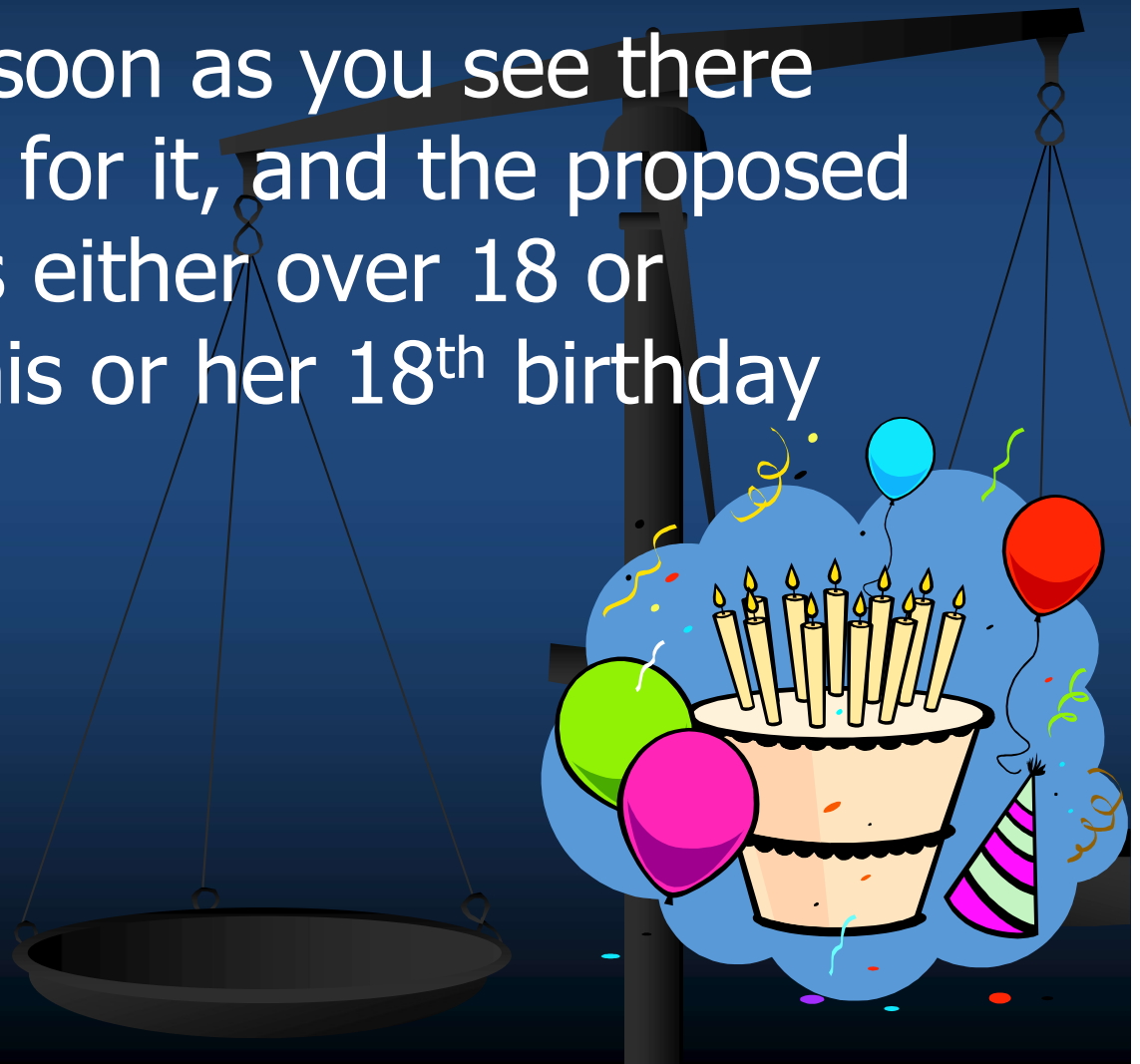


- Can be co-conservators (more than one person at a time)
- Two co-conservators must make decisions by consensus
- More than two make decisions by majority
- If one of the co-conservators becomes no longer able to act, remaining conservator(s) continue without further petition or hearing



When to Apply

- May apply as soon as you see there will be a need for it, and the proposed conservatee is either over 18 or approaching his or her 18th birthday



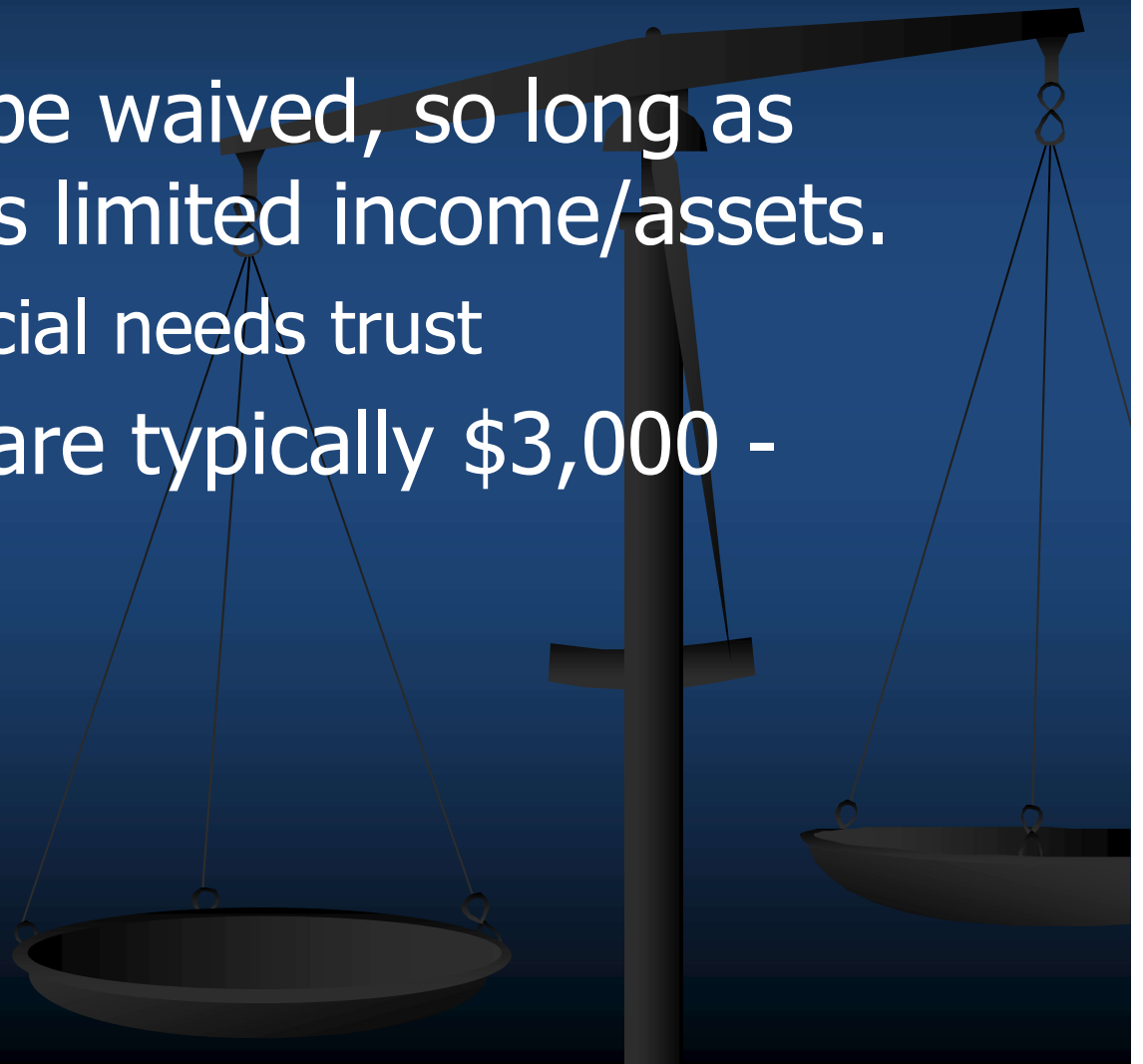
Three Stages of Conservatorship Process

- Preparing & Filing Petition
- Preparing for Court Hearing
- Post-Hearing Tasks



Fees

- Court fees will be waived, so long as conservatee has limited income/assets.
 - No funded special needs trust
- Attorneys fees are typically \$3,000 - \$4,000.



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