

Column Title: *LaCROIX IN BRIEF*  
By Attorney Bob LaCroix  
January Article Title: *A TIME FOR ANGELS*

Wouldn't it be nice to know that you really do have your own guardian angel... someone appointed to look out for you, and the things that are important to you, at times when it gets tough to look out for yourself?

Well, it may surprise you to know that even our sometimes Scrooge-like judicial system -- in its own way -- believes in guardian angels. Intrigued? Then please read on.

Before we begin, I would like to remind you that topics discussed in this column are for informational purposes only. My objective is to provide you with a cost-free, no-obligation forum to gain some basic knowledge about issues that are important to you. This column does not take the place of a legal consultation or any legal advice given to you by your attorney.

For starters, let me clarify that this month's column is not to be a creative twist on the "Miracle on 34<sup>th</sup> Street" theme, in which the Court judiciously acknowledges the existence of, in this case, angels. Instead, we will pursue the somewhat less romantic, but highly important, topic of legal guardianships and conservatorships.

At one time, guardians could be appointed for both minors and adults. However, in early 1981, it was determined that guardians would be appointed only to minors, and that "conservators" would be appointed to adults. (I guess we could lovingly -- and, please, just between us! -- call these appointees our "conservator angels".)

Under current law, a conservator may be appointed for any person who is unable to properly provide for his or her own needs (such as food, clothing, and shelter) or to manage his or her own financial resources. There are three general types of conservatorships.

Our first type of conservatorship is a "conservator of the person". As the name implies, this means that a conservator would be appointed to care for your personal needs. A conservator of the person may have an "unlimited conservatorship" or a "limited conservatorship".

An unlimited conservatorship of the person allows the conservator to make all decisions, even including the withholding of life support. Though a doctor's disapproval of withholding life support would override the conservator's decision, the conservator would still have the right to transfer your care to a different doctor. Judicial supervision of the unlimited conservator's decision would be limited to review of whether the choice was made "in good faith based upon medical advice".

A limited conservatorship of the person provides for your general care, custody and "control", but is subject to greater oversight by the Court than if the conservator's authority were unlimited.

Our second type of conservatorship is a "conservator of the estate". This type of conservator would be appointed if you somehow became "substantially unable" to manage your own financial resources or to "resist fraud or undue influence".

A conservator of the estate assumes general control of your assets and takes responsibility for your support, maintenance, debts, and expenses.

The conservator's handling of your financial affairs is subject to supervision by the Court.

Please be aware that you as a "conservatee" (the person for whom the conservator is appointed) may have both a conservator of the person and a conservator of the estate, should the need arise. In such cases of "dual conservatorships", the same conservator would generally serve in both roles. It is important to keep in mind, however, that banks and trust companies can only serve as conservators of the estate.

Finally, our third type of conservatorship is relatively rare and deals with the involuntary commitment of developmentally or gravely disabled persons to appropriate institutions for around-the-clock treatment.

The law very clearly addresses the ways in which potential conservators may be considered for appointment. Logically, the greatest preference is given to the wishes of the person who will be the conservatee.

In fact, if you -- as a person with sufficient capacity to form and express an intelligent preference -- nominate a person to act as your conservator, that person **MUST** be appointed to serve in that role, unless the Court discovers a reason, unbeknownst to you, that the appointment would not be in your best interest.

Your nomination of your chosen conservator is made in a petition for appointment of conservatorship or in a separate written document signed before or after the petition is filed. I recommend that you have your written nomination witnessed with an "attestation clause", as would be used in most wills.

Next preference for nomination of a conservator -- second only to your own choice -- would go to your spouse or relative. The rules of preference for appointment of a conservator, if you do not make a choice at all or if the choice you make is not in your best interest, are as follows: 1) Your spouse or your spouse's nominee; 2) Your adult child or your adult child's nominee; 3) Your parent or your parent's nominee; 4) Your sibling or your sibling's nominee.

Nominations for conservatorship by your spouse, adult child, parent or sibling can be made in writing in the petition for conservatorship or orally at the hearing on the petition. The nomination may be made before or after the petition is actually filed and, importantly, will remain in effect even if the person who makes the nomination dies or becomes incapacitated.

Last preference for nomination of a conservator would go to any entity eligible under the probate code, such as a professional fiduciary.

Understandably, this final preference is usually the least appealing to conservatees. Rarely do people want strangers running their affairs. For this reason, it is essential that you and your spouse plan ahead in selecting a conservator for yourselves and your possessions. Afterall, we never know when there may come a time for angels.

---

*Bob LaCroix is an attorney who has served San Diego County since 1979. To request a topic for a future edition of LaCROIX IN BRIEF, write to Bob in care of this newspaper. If you would like to participate in one of Bob's low-cost legal workshops, or if you need to discuss a legal matter in private, feel free to call Bob's office at 223-2527.*