

Exploring the #FreeBritney Movement CLE

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- Since 2008 Britney Jean Spears has been subject to a California Conservatorship; sparking interest in this type of proceeding
- In California, there are two types of conservators:



1. Conservator of Person (referred to as Guardian in Colorado)
2. Conservator of Estate



What is a Conservatorship in Colorado?

- A court action where an individual is appointed to manage the financial affairs of another individual
- Must be 21 years to serve as conservator
- Parties:
 - Conservator: person appointed to manage the financial affairs of another
 - Respondent/Protected Person: individual who is subject to the conservatorship
- Priority for who serves C.R.S. § 15-14-413(1)

Legal Considerations

- Venue for Conservatorship: county where respondent resides or owns property (if not a resident of CO)
- Standard of Review: beyond a preponderance of the evidence that respondent's property will be wasted or dissipated unless managed, OR money is needed for the support, care, education, health and welfare of the respondent (or those entitle to respondent's support) and protection is desirable to provide money

Conservatorship Procedure

- 1. Petition for Appointment
- 2. Professional Evaluation/Court Visitor
- 3. Hearing
- 4. Court Order/Letters Issued
- 5. Financial Plan/Inventory
- 6. Ongoing Annual Reports

Powers of Conservator

Collect, hold, and retain assets of the estate, including assets in which the conservator has a personal interest and real property in another state, until the conservator considers that disposition of an asset should be made;

Receive additional assets to the estate;

Continue or participate in the operation of any business or other enterprise;

Acquire an undivided interest in an asset of the estate in which the conservator, in any fiduciary capacity, holds an undivided interest;

Invest assets of the estate;

Deposit money of the estate;

Acquire or dispose of an asset of the estate;

Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings;

Subdivide, develop, or dedicate land to public use, make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation or exchange or partition by giving or receiving considerations, and dedicate easements to public use without consideration;

Powers of Conservator Continued

Enter for any purpose into a lease as lessor or lessee;

Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

Grant an option involving disposition of an asset of the estate and take an option for the acquisition of any asset;

Vote a security, in person or by general or limited proxy;

Pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

Sell or exercise stock subscription or conversion rights;

Consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery;

Insure the assets of the estate against damage or loss and the conservator against liability with respect to a third person;

Powers of Conservator Continued

Borrow money, with or without security, to be repaid from the estate or otherwise and advance money for the protection of the estate or the protected person and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any assets, for which the conservator has a lien on the estate as against the protected person for advances so made;

Pay or contest any claim, settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise, and release, in whole or in part, any claim belonging to the estate to the extent the claim is uncollectible;

Pay taxes, assessments, compensation of the conservator and any guardian, and other expenses incurred in the collection, care, administration, and protection of the estate;

Allocate items of income or expense to income or principal of the estate, as provided by other law, including creation of reserves out of income for depreciation, obsolescence, or amortization or for depletion of minerals or other natural resources;

Pay any sum distributable to a protected person or individual who is in fact dependent on the protected person by paying the sum to the distributee or by paying the sum for the use of the distributee;

Prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of assets of the estate and of the conservator in the performance of fiduciary duties; and

Execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator.

Due Process

- Due Process
 - 14th Amendment
 - Procedural Protections in Colorado
 - The respondent is required to attend proceedings unless excused by the Court for good cause;
 - The respondent is entitled to present evidence and to subpoena witnesses or documents;
 - The respondent may examine and cross examine witnesses, including those that may be court-appointed, and may participate in all elements of any hearing;
 - The respondent has the right to be represented by counsel in all proceedings
 - Court-appointed counsel is not mandatory in all cases
 - If a respondent requests court appointed counsel, the Court must appoint counsel; this is not within the Court's discretion
 - This right exists even if the respondent is incapacitated; the Court may also appoint a *guardian ad litem* if the respondent is unable to communicate with their attorney
 - The right to counsel continues even after a guardianship or conservatorship has been entered and continues throughout the proceeding.;
 - Seek termination of the proceedings of modification of the protective arrangement.

Potential for Abuse in Conservatorship

- Comingling the respondent's funds with personal or other funds
- Making improper or risky investment decisions
- Self-dealing and self-interested/conflicted transactions
- Civil theft
- Other actions that would unreasonably harm the respondent, their interests, and their property
- Improper Notice of Proceedings
- Contempt
 - A conservator may violate a court order, enter into transactions for which they are not authorized, exceed their authority, etc.

Remedies

- Audit/Accounting
- Surcharge (personal liability)
- Removal from office (no longer serving as conservator)
- Contempt



Timeline of the Britney Spears Case

2007-2008 – Britney was spotted acting out of character (driving with her son not in a car seat, shaving her head, lashing out at the paparazzi, refusing to give children to biological father per custody arrangement).

2008 – Britney was put under a mental health hold at a psychiatric hospital on more than one occasion.

Jamie Spears, Britney's father, petitioned for emergency and temporary conservatorship. The Court granted this petition.

2009-2019 – The conservatorship was extended each year.

2012 – Britney's fiancé at the time, Jason Trawick, becomes co-conservator to manage her personal life but not financial affairs.

2019 – Jamie Spears petitions the Court to extend his conservatorship to three other states other than California.

Jamie temporarily steps down as primary conservator. Britney's care manager, Jodi Montgomery, temporarily takes over Jamie's role as conservator.

Britney stayed in a mental health facility for a month to overcome a health emergency.

2020 – Britney's brother, Bryan Spears, publicly speaks out saying that the conservatorship was needed at the beginning, but that he knows Britney wants it to end.

Britney's lawyers file an opposition to the dealing of parts of her conservatorship.

Britney's lawyers file a request to remove her father as conservator and to permanently appoint Jodi Montgomery. The court denies the request, but does allow the appointment of a co-conservator, Bessemer Trust at Britney's request.

The conservatorship is extended another year.

[2021](#) – Jamie Spears claims in court documents his powers as conservator have been limited since the appointment of the co-conservator, Bessemer Trust.

“Framing Britney Spears” comes out, causing more attention towards Britney’s conservatorship.

Britney’s lawyers ask the judge to end the conservatorship. Jamie’s father speaks out saying that every decision he has made was in Britney’s best interest.

Britney’s lawyer requests to have Jodi Montgomery appointed as permanent conservator.

Lynne Spears, Britney’s mother, demands Jamie Spears’ legal fees be repaid to Britney’s estate as she believes the fees charged to handle communication to the press violated Britney’s request for privacy. Jamie asks the court to deny the request
Britney requests to be heard in Court and makes a twenty-four-minute statement.

The court denies Britney’s request to remove Jamie Spears as his role of co-conservator of her estate. Britney’s attorney and her manager withdraw/resign.

Bessemer Trust requests to resign as co-conservator. The Court grants this request. Britney hires her own legal counsel at the permission of the court.

2021 Continued

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Britney requests that the conservatorship be terminated, calling the conservatorship a “nightmare.”

August 2021, Jamie Spears announces that he plans to step down as conservator.

September 2021, Jamie Spears filed petition with the court to terminate his appointment as conservator. The court granted the petition.

John Zabel, accountant, is named temporary conservator, at request of Britney’s counsel.

”Protective Arrangements”

(1) If a basis is established for a protective order with respect to an individual, the court, without appointing a conservator, may:

(a) Authorize, direct, or ratify any transaction necessary or desirable to achieve any arrangement for security, service, or care meeting the foreseeable needs of the protected person, including:

(I) Payment, delivery, deposit, or retention of funds or property;

(II) Sale, mortgage, lease, or other transfer of property;

(III) Purchase of an annuity;

(IV) Making a contract for life care, deposit contract, or contract for training and education; or

(V) Addition to or establishment of a suitable trust, including a trust created under the "Colorado Uniform Custodial Trust Act", article 1.5 of this title; and

(b) Authorize, direct, or ratify any other contract, trust, will, or transaction relating to the protected person's property and business affairs, including a settlement of, and distribution of settlement of, a claim, upon determining that it is in the best interest of the protected person.

(2) In deciding whether to approve a protective arrangement or other transaction under this section, the court shall consider the factors described in section 15-14-411(3).

Trends and Alternatives for Conservatorships

- Legislative Action

- Senators Elizabeth Warren and Bob Casey have called upon the Department of Health and Human Services to collect more data as it relates to protective proceedings, including their prevalence
- Proposed: Freedom and Right to Emancipate from Exploitation Act
 - If passed, permits respondent to request replacement of conservator by a fiduciary employed by the state, family member, or private agent
 - Provides funds to states to assign caseworkers to monitor signs of abuse

Trends and Alternatives for Conservatorships

- Judicial Action

- The Jenny Hatch Case 2012

- A young woman with down syndrome contested her guardianship

- Claimed her guardians (parents) prevented her from seeing friends and going to work and forced her to live in a group home

- “Supported Decision Making” the way an adult with a disability or diminished capacity has made or is making his or her own decisions by using friends, family members, professionals, and other people he or she trusts to:

- Help understand the issues and choices;

- Ask questions;

- Receive explanations in language he or she understands;

- Communicate his or her decisions to others if necessary; or

- Facilitate the exercise of decisions regarding his or her day-to-day health, safety, welfare, or financial affairs.

Advocacy

- Organizations such as *The Center for Estate Administration Reform* and *The National Association to Stop Guardianship Abuse*
- Books and Movies
 - *The Guardians*
 - *I Care a Lot*
 - Thomas Lee Wright, *The Family Guide to Preventing Elder Abuse* (2017)

The background is a complex, abstract geometric pattern. It consists of numerous interconnected lines and vertices, forming a network of polygons. The lines are colored in a variety of hues, including blue, green, yellow, orange, red, and purple, creating a vibrant, multi-colored effect. The overall appearance is that of a digital or molecular structure, possibly representing a network or a complex system. The text is centered over this background.

Thank You!

Questions?