

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

**REPORT TO THE AMERICAN BAR ASSOCIATION
HOUSE OF DELEGATES**

RECOMMENDATION

- 1 RESOLVED, That the American Bar Association approves The Uniform Adult Guardianship
- 2 and Protective Proceedings Jurisdiction Act, promulgated by the National Conference of
- 3 Commissioners on Uniform State Laws in 2007 as an appropriate Act for those states desiring to
- 4 adopt the specific substantive law suggested therein.

REPORT

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act A Summary

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) addresses many problems relating to multiple jurisdiction, transfer, and out of state recognition. It has been endorsed by the ABA Section on Real Property, Trust and Estate Law, the National Guardianship Foundation and the National College of Probate Judges.

Due to increasing population mobility, cases involving simultaneous and conflicting jurisdiction over guardianship are increasing. Even when all parties agree, steps such as transferring a guardianship to another state can require that the parties start over from scratch in the second state. Obtaining recognition of a guardian's authority in another state in order to sell property or to arrange for a residential placement is often impossible. The UAGPPJA will, when enacted, help effectively to address these problems.

It should be noted that the Uniform Guardianship and Protective Proceedings Act (UGPPA), which was last revised in 1997 and is part of the Uniform Probate Code, is a comprehensive act addressing all aspects of guardianships and protective proceedings for both minors and adults. The UAGPPJA has a much narrower scope, dealing only with jurisdiction and related issues.

The Problem of Multiple Jurisdiction

Because the United States has more than 50 guardianship systems, problems of determining jurisdiction are frequent. Questions of which state has jurisdiction to appoint a guardian or conservator can arise between an American state and another country. But more frequently problems arise because the individual has contacts with more than one American state.

In nearly all American states, a guardian may be appointed by a court in a state in which the individual is domiciled or is physically present. In nearly all American states, a conservator may be appointed by a court in a state in which the individual is domiciled or has property. Contested cases in which courts in more than one state have jurisdiction are becoming more common. Sometimes these cases arise because the adult is physically located in a state other than the adult's domicile. Sometimes the case arises because of uncertainty as to the adult's domicile, particularly if the adult owns a vacation home in another state. There is a need for an effective mechanism for resolving multi-jurisdictional disputes.

The Problem of Transfer

Oftentimes, problems arise even absent a dispute. Even if everyone is agreed that a guardianship or conservatorship should be moved to another state, few states have streamlined procedures for transferring a guardianship or conservatorship proceeding to another state or for accepting such a transfer. In most states, all of the procedures for an original appointment must be repeated, a time consuming and expensive prospect.

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The Problem of Out-of-State Recognition

The Full Faith and Credit Clause of the US Constitution requires that court orders in one state be honored in another state. But there are exceptions to the full faith and credit doctrine, and guardianship and protective proceedings law are among them. Sometimes, guardianship or protective proceedings must be initiated in a second state because of the refusal of financial institutions, care facilities, and the courts to recognize a guardianship or protective order issued in another state.

The Proposed Uniform Law and the Child Custody Analogy

Similar problems of jurisdiction existed for many years in the US in connection with child custody determinations. If one parent lived in one state and the other parent lived in another state, frequently courts in more than one state had jurisdiction to enter custody orders. The Uniform Law Commission has approved a very successful uniform act that has effectively minimized the problem of multiple court jurisdiction in child custody matters: the Uniform Child Custody Jurisdiction Act (UCCJA), approved in 1968, succeeded by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), approved in 1997. The drafters of the UAGPPJA elected to model the jurisdictional provisions of this Act after these child custody analogues. However, the UAGPPJA applies only to adult proceedings, in part because most jurisdictional issues involving guardianships for minors are subsumed by the UCCJEA.

The Objectives and Key Concepts of the Proposed UAGPPJA

The UAGPPJA is organized into five articles. Article 1 contains definitions and provisions designed to facilitate cooperation between courts in different states. Article 2 is the heart of the Act, specifying which court has jurisdiction to appoint a guardian or conservator. Its overall objective is to locate jurisdiction in one and only one state except in cases of emergency or in situations where the individual owns property located in multiple states. Article 3 specifies a procedure for transferring a guardianship or conservatorship proceeding from one state to another. Article 4 deals with enforcement of guardianship and protective orders in other states. Article 5 contains boilerplate provisions common to all uniform acts.

Key Definitions and Terminology (Section 102)

To determine which court has primary jurisdiction under the UAGPPJA, the key task is to determine the individual's "home state" and "significant-connection state." A "home state" is the state in which the individual was physically present for at least six consecutive months immediately before the commencement of the guardianship or protective proceeding (Section 102(6)). A "significant-connection state," which is a potentially broader concept, is the state in which the individual has a significant connection other than mere physical presence, and where substantial evidence concerning the individual is available (Section 102(15)). Factors that may be considered in deciding whether a particular respondent has a significant connection include:

- The location of the respondent's family and others required to be notified of the guardianship or protective proceeding;
- The length of time the respondent was at any time physically present in the state and the duration of any absences;
- The location of the respondent's property; and

- The extent to which the respondent has other ties to the state such as voting registration, filing of state or local tax returns, vehicle registration, driver's license, social relationships, and receipt of services.

States differ on terminology for the person appointed by the court to handle the personal and financial affairs of an incapacitated adult. Under the UGPPA and in a majority of American states, a “guardian” is appointed to make decisions regarding the person of an “incapacitated person.” A “conservator” is appointed in a “protective proceeding” to manage the property of a “protected person.” But in many states, only a “guardian” is appointed, either a guardian of the person or guardian of the estate, and in a few states, the terms guardian and conservator are used but with different meanings. The UAGPPJA adopts the terminology as used in the UGPPA. States employing different terms or the same terms but with different meanings may amend the Act to conform to local usage.

Jurisdiction (Article 2)

Section 203 is the principal provision governing jurisdiction, creating a three-level priority; the home state, followed by a significant-connection state, followed by other jurisdictions:

- *Home State:* The home state has primary jurisdiction to appoint a guardian or conservator or enter another protective order, a priority that continues for up to six months following a move to another state.
- *Significant-connection State:* A significant-connection state has jurisdiction if: The protected person has not had a home state within the past six month or the home states has declined jurisdiction. To facilitate appointments in the average case where jurisdiction is not in dispute, a significant-connection state also has jurisdiction if no proceeding has been commenced in the protected person's home state or another significant-connection state, no objection to the court's jurisdiction has been filed, and the court concludes that it is a more appropriate forum than the court in another state.
- *Another State:* A court in another state has jurisdiction if the home state and all significant-connection states have declined jurisdiction or the protected person does not have a home state or significant-connection state.

Section 204 addresses special cases. Regardless of whether it has jurisdiction under the general principles stated in Section 203, a court in the state where the individual is currently physically present has jurisdiction to appoint a guardian in an emergency, and a court in a state where an individual's real or tangible personal property is located has jurisdiction to appoint a conservator or issue another protective order with respect to that property. In addition, a court not otherwise having jurisdiction under Section 203 has jurisdiction to consider a petition to accept the transfer of an already existing guardianship or conservatorship from another state.

The remainder of Article 2 elaborates on these core concepts. Section 205 provides that once a court has jurisdiction, this jurisdiction continues until the proceeding is terminated or transferred. Section 206 authorizes a court to decline jurisdiction if it determines that the court of

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another state is a more appropriate forum, and specifies the factors to be taken into account in making this determination. Section 207 authorizes a court to decline jurisdiction or fashion another appropriate remedy if jurisdiction was acquired because of unjustifiable conduct. Section 208 prescribes special notice requirements if a proceeding is brought in a state other than the respondent's home state. Section 209 specifies a procedure for resolving jurisdictional issues if petitions are pending in more than one state. The UAGPPJA also includes provisions regarding communication between courts in different states and taking testimony in another state (Sections 104-106).

Transfer to Another State (Article 3)

Article 3 specifies a procedure for transferring a guardianship or conservatorship to another state. To make the transfer, court orders are necessary both from the court transferring the case and from the court accepting the case. Generally, to transfer the case, the transferring court must find that the individual will move permanently to another state, that adequate arrangements have been made for the individual or the individual's property in the other state, and that the court is satisfied the case will be accepted by the court in the new state. To assure continuity, the court in the original state cannot dismiss the local proceeding until the order from the other state accepting the case is filed with the original court. To expedite the transfer process, the court in the accepting state must give deference to the transferring court's finding of incapacity and selection of the guardian or conservator. Much of Article 3 is based on the pioneering work of the National Probate Court Standards, a 1993 joint project of the National College of Probate Judges and the National Center for State Courts.

Out of State Enforcement (Article 4)

To facilitate enforcement of guardianship and protective orders in other states, Article 4 authorizes a guardian or conservator to register these orders in other states. Upon registration, the guardian or conservator may exercise all powers authorized in the order except as prohibited by the laws of the registration state. The Act also addresses enforcement of international orders. To the extent the foreign order violates fundamental principles of human rights, Section 103 permits a court of an American state that has enacted the Act to disregard an order entered in another country to the same extent as if it were an order entered in another US state.

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act will help to resolve many guardianship issues such as original jurisdiction, registration, transfer, and out of state enforcement. It provides procedures that will help to considerably reduce the cost of guardianship and protective proceeding cases from state to state. It is appropriate for enactment in every jurisdiction.

The work of the Drafting Committee is available at www.nccusl.org, the website of the Conference. The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act can be found at: http://www.law.upenn.edu/bll/archives/ulc/ugijaea/2007_final.htm

Respectfully submitted,

Martha Lee Walters
President
National Conference of Commissioners
On Uniform State Laws
February 2008

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GENERAL INFORMATION FORM

To Be Appended to Reports with Recommendations
(Please refer to instructions for completing this form.)

Submitting Entity: National Conference of Commissioners on Uniform State Laws

Submitted by: Michael Kerr, Legislative Director

1. Summary of Recommendation(s).

The National Conference of Commissioners on Uniform State Laws requests approval of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, by the ABA House of Delegates. The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007), was approved by the National Conference in 2007.

2. Approval by Submitting Entity.

The National Conference of Commissioners on Uniform State Laws approved it in July, 2007.

3. Has this or a similar recommendation been submitted to the House or Board previously?

The UAGPPA builds on the work of the Uniform Guardianship and Protective Proceedings Act (approved by the House as 98A116 in 1998) and the Uniform Child Custody Jurisdiction and Enforcement Act, (approved by the House as 98M101B in 1998).

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

None Known

5. What urgency exists which requires action at this meeting of the House

Not Applicable

6. Status of Legislation. (If applicable.)

None. The Act has not been introduced in any state legislature as of 11-01-2007

7. Cost to the Association. (Both direct and indirect costs.)

Not applicable.

8. Disclosure of Interest. (If applicable.)

None.

9. Referrals

Pursuant to the agreement between the NCCUSL and the ABA, all members of the House of Delegates and Chairs of all ABA entities were advised of the drafting project and those that expressed interest were provided with tentative drafts, as well as the final Act and Report. The work of the Drafting Committee is available at www.nccusl.org, the website of the Conference.

The ABA Advisor was Larry Craddock. The ABA Section Advisor from the Real Property, Probate, and Trust Law Section was Karen E. Boxx. The ABA Section Advisor from the ABA Commission on Law & Aging was Erica F. Wood.

10. Contact Person (Prior to the meeting.)

John A. Sebert, Executive Director, National Conference of Commissioners on Uniform State Laws, 111 North Wabash, Suite 1010, Chicago, IL. 60602, 312/915-0195.
Michael R. Kerr, Legislative Director, National Conference of Commissioners on Uniform State Laws, 111 North Wabash, Suite 1010, Chicago, IL. 60602, 312/915-0195.

11. Contact Person. (Who will present the report to the House.)

Martha Lee Walters, President, National Conference of Commissioners on Uniform State Laws, Oregon Supreme Court, 1163 State St., Salem, OR. 97301.
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EXECUTIVE SUMMARY

1. Summary of the Recommendation

That the ABA approves the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act addresses, as “an appropriate Act for those States desiring to adopt the substantive law suggested therein.”

2. Summary of the issue which the recommendation addresses

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) addresses the issue of jurisdiction over adult guardianships, conservatorships & other protective proceedings, providing a mechanism for resolving multi-state jurisdictional disputes. The goal is that only one state will have jurisdiction at any one time.

3. Please explain how the proposed policy position will address the issue.

The Uniform Act provides appropriate rules for the objective as stated in (2) above.

4. Summary of any minority views or opposition which have been identified

The NCCUSL is not aware of any minority views or opposition to the Uniform Act.