

D R A F T

FOR APPROVAL

**UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE  
PROCEEDINGS JURISDICTION ACT**

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NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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MEETING IN ITS ONE-HUNDRED-AND-SIXTEENTH YEAR  
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**UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE  
PROCEEDINGS JURISDICTION ACT**

*WITH PREFATORY NOTE AND COMMENTS*

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NATIONAL CONFERENCE OF COMMISSIONERS  
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**UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS  
JURISDICTION ACT**

**TABLE OF CONTENTS**

PREFATORY NOTE ..... 1

[ARTICLE] 1  
GENERAL PROVISIONS

SECTION 101. SHORT TITLE ..... 6  
SECTION 102. DEFINITIONS ..... 6  
SECTION 103. INTERNATIONAL APPLICATION OF [ACT] ..... 9  
SECTION 104. COMMUNICATION BETWEEN COURTS ..... 10  
SECTION 105. COOPERATION BETWEEN COURTS ..... 10  
SECTION 106. TAKING TESTIMONY IN ANOTHER STATE ..... 11

[ARTICLE] 2  
JURISDICTION

SECTION 201. DEFINITION ..... 13  
SECTION 202. EXCLUSIVE BASIS ..... 13  
SECTION 203. INITIAL JURISDICTION ..... 14  
SECTION 204. SPECIAL CASES ..... 15  
SECTION 205. EXCLUSIVE AND CONTINUING JURISDICTION ..... 17  
SECTION 206. DECLINING JURISDICTION IF ANOTHER COURT IS A MORE  
APPROPRIATE FORUM ..... 17  
SECTION 207. JURISDICTION DECLINED BY REASON OF CONDUCT ..... 19  
SECTION 208. NOTICE OF PROCEEDING ..... 20  
SECTION 209. PROCEEDINGS IN MORE THAN ONE STATE ..... 21

[ARTICLE] 3  
TRANSFER OF JURISDICTION

SECTION 301. PETITION TO TRANSFER JURISDICTION TO ANOTHER STATE ..... 23  
SECTION 302. PETITION TO ACCEPT PROCEEDING TRANSFERRED FROM ANOTHER  
STATE ..... 24  
SECTION 303. FINAL ORDER IN TRANSFERRING STATE ..... 26  
SECTION 304. FINAL ORDER IN ACCEPTING STATE; JUDICIAL REVIEW ..... 26

[ARTICLE] 4  
REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

SECTION 401. REGISTRATION OF GUARDIANSHIP ORDERS ..... 27  
SECTION 402. REGISTRATION OF PROTECTIVE ORDERS ..... 27  
SECTION 403. EFFECT OF REGISTRATION ..... 28

[ARTICLE] 5  
MISCELLANEOUS PROVISIONS

SECTION 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION .....	29
SECTION 502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT .....	29
SECTION 503. REPEALS .....	29
SECTION 504. EFFECTIVE DATE .....	29

# **UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT**

## **PREFATORY NOTE**

The Uniform Guardianship and Protective Proceedings Act (UGPPA), which was last revised in 1997, is a comprehensive act addressing all aspects of guardianships and protective proceedings for both minors and adults. The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) has a much narrower scope, dealing only with jurisdiction and related issues. The UAGPPJA had its first reading at the 2006 Annual Meeting. A final reading and approval is expected at the 2007 Annual Meeting. Following approval of the UAGPPJA, conforming amendments will be made to the larger UGPPA, of which the UAGPPJA will be made a part.

### **The Problem of Differing Terminology**

States differ on terminology for the person appointed by the court to handle the personal and financial affairs of a minor or 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 wish to amend the Act to conform to local usage.

### **The Problem of Multiple Jurisdiction**

Because the US has 50 plus 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 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.

### **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, of which guardianship and protective proceedings law is one. 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. But the Uniform Law Conference has approved two uniform acts that have 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 have elected to model Article 2 and portions of Article 1 of their Act after these child custody analogues. However, the UAGPPJA applies only to adult proceedings. The UAGPPJA is limited to adults 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 proceedings 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 (Section 102)**

To determine which court has primary jurisdiction under the UAGPPJA, the key factors

are 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, means 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.

## **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 individual does not have a home state or the home state has declined jurisdiction on the basis that the significant-connection state is a more appropriate forum. 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 respondent'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 individual 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 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. Except to the extent the foreign order violates fundamental principles of human rights, Section 104 requires a court of an American state that has enacted the Act to recognize an order entered in another country to the same extent as if it were an order entered in another US state.

The Drafting Committee was assisted by numerous officially designated advisors and observers, representing an array of organizations. In addition to the American Bar Association



advisors listed above, important contributions were made by Sally Hurme of AARP, Terry W. Hammond of the National Guardianship Association, Kathleen T. Whitehead and Shirley B. Whitenack of the National Academy of Elder Law Attorneys, Catherine Anne Seal of the Colorado Bar Association, Kay Farley of the National Center for State Courts, and Robert G. Spector, the Reporter for the Joint Editorial Board on Uniform Family Law and the Reporter for the Uniform Child Custody Jurisdiction and Enforcement Act.

1                   **UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS**

2                                   **JURISDICTION ACT**

3  
4                                   **[ARTICLE] 1**

5                                   **GENERAL PROVISIONS**

6                   **SECTION 101. SHORT TITLE.** This [act] may be cited as the Uniform Adult  
7 Guardianship and Protective Proceedings Jurisdiction Act.

8                                   **Comment**

9                   The title to the Act succinctly describes the Act’s scope. The Act applies only to court  
10 jurisdiction and related topics for adults for whom the appointment of a guardian or conservator  
11 or other protective order is being sought or has been entered.

12                   The drafting committee elected to limit the Act to adults for two reasons. First,  
13 jurisdictional issues concerning guardians for minors are subsumed by the Uniform Child  
14 Custody Jurisdiction and Enforcement Act. Second, while the UCCJEA does not address  
15 conservatorship and other issues involving the property of minors, all of the problems and  
16 concerns that led the Conference to appoint a drafting committee involved adults.  
17

18                   **SECTION 102. DEFINITIONS.** In this [act]:

19                   (1) “Adult” means an individual who has attained [18] years of age.

20                   (2) “Conservator” means a person appointed by the court to administer the property of an  
21 adult, including a person appointed under [insert reference to enacting state’s conservatorship or  
22 protective proceedings statute].

23                   (3) “Guardian” means a person appointed by the court to make decisions regarding the  
24 person of an adult, including a person appointed under [insert reference to enacting state’s  
25 guardianship statute].

1 (4) “Guardianship order” means an order appointing a guardian.

2 (5) “Guardianship proceeding” means a proceeding in which an order for the  
3 appointment of a guardian is sought or has been issued.

4 (6) “Home state” means the state in which the respondent was physically present for at  
5 least six consecutive months immediately before the filing of a petition for the appointment of a  
6 guardian or protective order. A period of temporary absence counts as part of the six-month  
7 period.

8 (7) “Incapacitated person” means an adult for whom a guardian has been appointed.

9 (8) “Party” means the respondent, petitioner, guardian, conservator, or any other person  
10 allowed by the court to participate in a guardianship or protective proceeding.

11 (9) “Person” means an individual, corporation, business trust, estate, trust, partnership,  
12 limited liability company, association, joint venture, government or governmental subdivision,  
13 agency, or instrumentality, public corporation, or any other legal or commercial entity.

14 (10) “Protected person” means an adult for whom a protective order has been made.

15 (11) “Protective order” means an order appointing a conservator or another court order  
16 related to management of an adult’s property.

17 (12) “Protective proceeding” means a judicial proceeding in which a protective order is  
18 sought or has been issued.

19 (13) “Record” means information that is inscribed on a tangible medium or that is stored  
20 in an electronic or other medium and is retrievable in perceivable form.

21 (14) “Respondent” means an adult for whom a protective order or the appointment of a  
22 guardian is sought.

1 (15) “Significant-connection state” means a state, other than the home state, with which a  
2 respondent has a significant connection other than mere physical presence and in which  
3 substantial evidence concerning the respondent is available, including:

4 (A) the location of the respondent’s family and others required to be notified of  
5 the guardianship or protective proceeding;

6 (B) the length of time the respondent at any time was physically present in the  
7 state and the duration of any absences;

8 (C) the location of the respondent’s property; and

9 (D) the extent to which the respondent has other ties to the state such as voting  
10 registration, filing of state or local tax returns, vehicle registration, driver’s license, social  
11 relationships, and receipt of services.

12 (16) “State” means a state of the United States, the District of Columbia, Puerto Rico, the  
13 United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular  
14 possession subject to the jurisdiction of the United States.

15 *Legislative Note: This Act adopts the terminology used in a majority of states: a “guardian” is*  
16 *appointed in a “guardianship proceeding” to make decisions regarding the person of an*  
17 *“incapacitated person;” a “conservator” is appointed in a “protective proceeding” to manage*  
18 *the property of a “protected person.”*

19  
20 *States enacting this Act that have also enacted the Uniform Guardianship and Protective*  
21 *Proceedings Act need not modify any of the defined terms. States that use different terms either*  
22 *for the title of the person appointed, the designation of the person for whom the appointment is*  
23 *made, or the descriptive term for the type of proceeding may wish to substitute their local*  
24 *terminology both in the definitions in Section 102 and throughout the Act.*

25 **Comment**

26 The definition of “adult” (paragraph (1)) would exclude an emancipated minor. The Act  
27 is not designed to supplant the local substantive law on guardianship. States whose guardianship

1 law treats emancipated minors as adults may wish to modify this definition.  
2

3 The definition of “home state” (paragraph (6)) is patterned after the definition of the same  
4 term in Section 102 of the Uniform Child Custody Jurisdiction and Enforcement Act. Unlike the  
5 definition in the UCCJEA, however, the definition in this Act clarifies that actual physical  
6 presence is necessary. The UCCJEA definition instead focuses on where the child has “lived”  
7 for the prior six months. Basing the test on where someone has “lived” may imply that the term  
8 “home state” is similar to the concept of domicile. Domicile, in an adult guardianship context, is  
9 a vague concept that can easily lead to claims of jurisdiction by courts in more than one state.  
10 Pursuant to Section 203, a court in the respondent’s home state has primary jurisdiction to  
11 appoint a guardian or enter a protective order, a jurisdiction that continues for up to six months  
12 following the respondent’s physical relocation to another state.  
13

14 The definition of “significant-connection state” (paragraph (15)), is derived from the  
15 definition of the same term in Section 102 of the Uniform Child Custody Jurisdiction and  
16 Enforcement Act except that a list of factors relevant to adult guardianship and protective  
17 proceedings have been added. For the circumstances under which a court in a significant-  
18 connection state has jurisdiction to appoint a guardian or enter a protective order, see Section  
19 203. Under Section 301(e)(1), the significant connection factors listed in the definition are to be  
20 taken into account in determining whether a conservatorship may be transferred to another state.  
21

### 22 **SECTION 103. INTERNATIONAL APPLICATION OF [ACT].**

23 (a) A court of this state shall treat a foreign country as if it were a state for the purpose of  
24 applying [Articles] 1, 2, and 3.

25 (b) Except to the extent the order violates fundamental principles of human rights, a  
26 guardianship or protective order of a foreign country made under factual circumstances in  
27 substantial conformity with the jurisdictional standards of this [act] may be registered and  
28 enforced under [Article] 4 .

### 29 **Comment**

30  
31 This section is derived from Section 105 of the Uniform Child Custody Jurisdiction and  
32 Enforcement Act. The effect of this section is to treat a foreign country as if it were an American  
33 state for purposes of communicating and cooperating with courts in different countries (reference  
34 to Article 1 in subsection (a)), in determining which court has jurisdiction to appoint a guardian  
35 or enter a protective order (reference to Article 2), and in transferring a proceeding to and from a

1 court in a foreign country (reference to Article 3). However, pursuant to subsection (b), a foreign  
2 guardianship or protective order need not be enforced if its enforcement would violate  
3 fundamental principles of human rights (reference to Article 4).  
4

5 **SECTION 104. COMMUNICATION BETWEEN COURTS.**

6 (a) A court of this state may communicate with a court in another state concerning a  
7 proceeding arising under this [act]. The court may allow the parties to participate in the  
8 communication.

9 (b) Except as otherwise provided in subsection (c), the court shall make a record of a  
10 communication under this section and promptly inform the parties of the communication and  
11 grant them access to the record.

12 (c) Courts may communicate concerning schedules, calendars, court records, and similar  
13 matters without informing the parties or making a record.

14 **Comment**

15  
16 This section is similar to Section 110 of the Uniform Child Custody Jurisdiction and  
17 Enforcement Act  
18

19 **SECTION 105. COOPERATION BETWEEN COURTS.**

20 (a) In a guardianship or protective proceeding in this state, a court of this state may  
21 request the appropriate court of another state to:

22 (1) hold an evidentiary hearing;

23 (2) order a person in that state to produce or give evidence pursuant to procedures  
24 of that state;

25 (3) order that an evaluation or assessment be made of the respondent, or order any

1 appropriate investigation of a person involved in a proceeding;

2 (4) forward to the court of this state a certified copy of the transcript or other  
3 record of a hearing under paragraph (1) or any other proceeding, any evidence otherwise  
4 presented under paragraph (2), and any evaluation or assessment prepared in compliance with the  
5 request under paragraph (3);

6 (5) issue any other order necessary to assure the appearance of a person necessary  
7 to make a determination, including the respondent or the incapacitated or protected person; and

8 (6) issue an order authorizing the release of medical, financial, criminal, or other  
9 relevant information in that state, including protected health information as defined in 45 Code of  
10 Federal Regulations Section 164.504 [, as amended].

11 (b) If a court of another state in which a guardianship or protective proceeding is pending  
12 requests assistance of the kind provided in subsection (a), a court of this state has jurisdiction for  
13 the limited purpose of granting the request or making reasonable efforts to comply with the  
14 request.

15 **Comment**

16  
17 This section is based on Section 112 of the Uniform Child Custody Jurisdiction and  
18 Enforcement Act, although modified to address release of protected health information and with  
19 the addition of subsection (b), which clarifies that a court has jurisdiction to respond to requests  
20 for assistance from courts in other states even though it might otherwise not have jurisdiction  
21 over the particular guardianship or protective proceeding.  
22

23 **SECTION 106. TAKING TESTIMONY IN ANOTHER STATE.**

24 (a) In a guardianship or protective proceeding, in addition to other procedures that may  
25 be available, testimony of witnesses who are located in another state may be offered by

1 deposition or other means allowable in this state for testimony taken in another state. The court  
2 on its own motion may order that the testimony of a witness be taken in another state and may  
3 prescribe the manner in which and the terms upon which the testimony is to be taken.

4 (b) In a guardianship or protective proceeding, a court in this state may permit a witness  
5 located in another state to be deposed or to testify by telephone or audiovisual or other electronic  
6 means. A court of this state shall cooperate with courts of other states in designating an  
7 appropriate location for the deposition or testimony.

8 [(c) Documentary evidence transmitted from another state to a court of this state by  
9 technological means that do not produce an original writing may not be excluded from evidence  
10 on an objection based on the means of transmission.]

11 **Comment**

12 This section is similar to Section 111 of the Uniform Child Custody Jurisdiction and  
13 Enforcement Act. Enacting jurisdictions that no longer have a best evidence rule should delete  
14 subsection (c).  
15



1 [ARTICLE] 2

2 JURISDICTION

3 SECTION 201. DEFINITION. In this [article], “emergency” means circumstances that  
4 likely will result in substantial harm to a respondent’s health, safety, or welfare, and in which the  
5 appointment of a guardian is necessary because no other person has authority to or is willing to  
6 act on the respondent’s behalf.

7 Comment

8  
9 “Emergency” is defined here because the term is used only in Article 2. The definition is  
10 taken from the emergency guardianship provision of the Uniform Guardianship and Protective  
11 Proceedings Jurisdiction Act, Section 312.

12  
13 Pursuant to Section 204, a court has jurisdiction to appoint a guardian in an emergency  
14 for a period of up to 90 days even though it does not otherwise have jurisdiction. However, the  
15 emergency appointment is subject to the direction of the court in the respondent’s home state,  
16 which may direct that the emergency proceeding be dismissed.

17  
18 Appointing a guardian in an emergency when a court does not otherwise have jurisdiction  
19 should be an unusual event. Although most states have emergency guardianship statutes, not all  
20 states do, and in those states that do have such statutes, there is great variation on whether and  
21 how an emergency is defined. To provide some uniformity on when a court acquires emergency  
22 jurisdiction, the drafters of this Act concluded that adding a definition of emergency was  
23 essential. The definition does not preclude an enacting jurisdiction from appointing a guardian  
24 under an emergency guardianship statute with a different or broader test of emergency if the court  
25 has jurisdiction under some other basis.

26  
27 SECTION 202. EXCLUSIVE BASIS. This [article] provides the exclusive  
28 jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an  
29 adult.

30 Comment

31  
32 Similar to Section 201 of the Uniform Child Custody Jurisdiction and Enforcement Act,  
33 which provides that the UCCJEA is the exclusive basis for determining jurisdiction to issue a

1 child custody order, this Act provides the exclusive jurisdictional basis for determining  
2 jurisdiction to appoint a guardian or enter a protective order for an adult. This exclusive basis  
3 applies regardless of the extent of the respondent's contacts with other states. An enacting  
4 jurisdiction will therefore need to repeal any existing provisions addressing jurisdiction. The  
5 drafters concluded that limiting the Act to "interstate" cases was unworkable. Such cases are  
6 hard to define, but even if they could be defined, overlaying this Act onto a state's existing  
7 jurisdictional rules would leave too many gaps and inconsistencies. In addition, if the particular  
8 case is truly local, the local court will likely have jurisdiction under both this Act and under prior  
9 law.  
10

11 **SECTION 203. INITIAL JURISDICTION.** In addition to the limited or special  
12 jurisdiction under Section 204, a court of this state has jurisdiction to appoint a guardian or issue  
13 a protective order for a respondent if:

14 (1) this state is the respondent's home state on the date a petition for the appointment of  
15 a guardian or protective order is filed, or was the home state of the respondent within six months  
16 before the date the petition is filed;

17 (2) this state is a significant-connection state and:

18 (A) the respondent does not have a home state or a court of the home state has  
19 declined to exercise jurisdiction under Section 206 because this state is a more appropriate  
20 forum; or

21 (B) a petition for the appointment of a guardian or protective order has not been  
22 filed in the respondent's home state or another significant-connection state, an objection to the  
23 jurisdiction of the court in this state has not been filed, and the court in this state concludes that it  
24 is an appropriate forum under the factors set forth in Section 206; or

25 (3) this state is neither the home state nor a significant-connection state but the home  
26 state and all significant-connection states have declined to exercise jurisdiction under Section

1 206 because this state is the more appropriate forum, or the respondent does not have a home  
2 state or significant-connection state.

3 **Comment**  
4

5 Similar to the Uniform Child Custody Jurisdiction and Enforcement Act, this Act creates  
6 a three-level priority for determining which state has jurisdiction to appoint a guardian or issue a  
7 protective order; the home state (defined in Section 102(6)), followed by a significant-connection  
8 state (defined in Section 102(15)), followed by other jurisdictions.  
9

10 The home state has primary jurisdiction to appoint a guardian or conservator or enter  
11 another protective order, a priority that continues for up to six months following a move to  
12 another state. A significant-connection state has jurisdiction if the individual does not have a  
13 home state or the home state has declined jurisdiction on the basis that the significant-connection  
14 state is a more appropriate forum. To facilitate appointments in the average case where  
15 jurisdiction is not in dispute, a significant-connection state also has jurisdiction if no proceeding  
16 has been commenced in the respondent's home state or another significant-connection state, no  
17 objection to the court's jurisdiction has been filed, and the court concludes that it is a more  
18 appropriate forum than the court in another state. A court in another state has jurisdiction if the  
19 home state and all significant-connection states have declined jurisdiction or the individual does  
20 not have a home state or significant-connection state.  
21

22 This section is the principal provision for determining whether a particular court has  
23 jurisdiction to appoint a guardian or issue a protective order, but it is not the only provision. A  
24 court that does not have jurisdiction under this section may have jurisdiction under the limited  
25 circumstances stated in Section 204.  
26

27 **SECTION 204. SPECIAL CASES.**

28 (a) A court of this state lacking jurisdiction under Section 203 has jurisdiction to do any  
29 of the following:

30 (1) appoint a guardian in an emergency for a term not exceeding [90] days for a  
31 respondent who is physically located in this state;

32 (2) issue a protective order with respect to real or tangible personal property  
33 located in this state;

1 (3) appoint a guardian or conservator for an incapacitated or protected person for  
2 whom a provisional order to transfer the proceeding from another state has been issued as  
3 provided in Section 301.

4 (b) If a petition for the appointment of a guardian in an emergency is brought in this state  
5 and this state is not the respondent's home state, the court shall dismiss the proceeding at the  
6 direction of the court in the respondent's home state, whether dismissal is requested before or  
7 after the emergency appointment.

### 8 **Comment**

9 This section lists the special circumstances whereby a court without jurisdiction under the  
10 general rule of Section 203 has jurisdiction to appoint a guardian or issue a protective order.  
11 The three circumstances are (1) the appointment of a guardian in an emergency for a term not  
12 exceeding 90 days for a respondent who is physically located in this state; (2) the issuance of a  
13 protective order for a respondent who owns real or tangible personal property located in this  
14 state; and (3) the grant of jurisdiction to consider a petition requesting the transfer of a  
15 guardianship or conservatorship proceeding from another state.

16  
17 When an emergency arises, action must often be taken on the spot in the place where the  
18 respondent happens to be physically located at the time. This jurisdiction may not necessarily be  
19 the respondent's home state or even a significant-connection state. Subsection (a)(1) assures that  
20 the court where the respondent happens to be physically located at the time has jurisdiction to  
21 appoint a guardian in an emergency but only for a limited period of 90 days. The time limit is  
22 placed in brackets to signal that enacting states may substitute the time period under their  
23 existing emergency guardianship procedures. As provided in subsection (b), the emergency  
24 jurisdiction is also subject to the authority of the court in the respondent's home state to dismiss  
25 the proceeding. For the definition of "emergency," see Section 201.

26  
27 Subsection (a)(2) grants a court jurisdiction to issue a protective order with respect to  
28 property located in the state even though the court does not otherwise have jurisdiction to make  
29 an appointment. Subsection (a)(2), however, uses the more specific reference to real and tangible  
30 personal property located in the state rather than a general reference to property located in the  
31 state to counteract the tendency of courts, in at least some states, to grant jurisdiction for the  
32 issuance of protective orders based on the incidental location of intangible personal property,  
33 such as a bank account.

34  
35 Subsection (a)(3) is closely related to and is necessary for the effectiveness of Article 3,

1 which addresses transfer of a guardianship or conservatorship to another state. A “Catch-22”  
2 arises frequently in such cases. The court in the transferring state will not allow the incapacitated  
3 or protected person to move and will not terminate the case until the court in the transferee state  
4 has accepted the matter. But the court in the transferee state will not accept the case until the  
5 incapacitated or protected person has physically moved and presumably become a resident of the  
6 transferee state. Subsection (a)(3), which grants the court in the transferee state limited  
7 jurisdiction to consider a petition requesting transfer of a proceeding from another state, should  
8 unlock the stalemate.  
9

10 **SECTION 205. EXCLUSIVE AND CONTINUING JURISDICTION.** Except as  
11 otherwise provided in Section 204, a court that has appointed a guardian or issued a protective  
12 order consistent with this [act] has exclusive and continuing jurisdiction over the proceeding  
13 until it is terminated by the court or the appointment or order expires by its own terms.

14 **Comment**

15 While this Act relies heavily on the Uniform Child Custody Jurisdiction and Enforcement  
16 Act for many basic concepts, the identity is not absolute. Section 203 of the UCCJEA addresses  
17 the jurisdiction of the court to modify a custody determination made in another state. Nothing  
18 comparable is found under this Act. Under this Act, a guardianship or protective order may be  
19 modified only upon request to the court that issued the order, which retains exclusive and  
20 continuing jurisdiction over the proceeding. But this exclusive jurisdiction rule is subject to an  
21 important exception. As provided in Section 204(b), the jurisdiction of a court in a state other  
22 than the home state to appoint a guardian in an emergency is subject to the right of a court in the  
23 home state to direct that the proceeding be dismissed.  
24

25 **SECTION 206. DECLINING JURISDICTION IF ANOTHER COURT IS A**  
26 **MORE APPROPRIATE FORUM.**

27 (a) A court of this state having jurisdiction under Section 203 to appoint a guardian or  
28 issue a protective order may decline to exercise its jurisdiction if it determines at any time that a  
29 court of another state is a more appropriate forum.

30 (b) If a court of this state declines jurisdiction over a guardianship or protective

1 proceeding under subsection (a), it shall either dismiss the proceeding or stay the proceeding.

2 The court may impose any other condition the court considers just and proper, including the  
3 condition that a petition for the appointment of a guardian or protective order be promptly filed  
4 in another state.

5 (c) In determining whether it is an appropriate forum, the court shall consider all relevant  
6 factors, including:

7 (1) any expressed preference of the respondent;

8 (2) whether abuse, neglect, or exploitation of the respondent has occurred or is  
9 likely to occur and which state could best protect the respondent from the abuse, neglect, or  
10 exploitation;

11 (3) the length of time the respondent was physically located in or was a legal  
12 resident of this or another state;

13 (4) the distance of respondent from the court in each state;

14 (5) the financial circumstances of the respondent's estate;

15 (6) the nature and location of the evidence;

16 (7) the ability of the court in each state to decide the issue expeditiously and the  
17 procedures necessary to present evidence;

18 (8) the familiarity of the court of each state with the facts and issues in the  
19 proceeding; and

20 (9) if an appointment were made, the court's ability to monitor the conduct of the  
21 guardian or conservator.

22 **Comment**

1 This section is similar to Section 207 of the Uniform Child Custody Jurisdiction and  
2 Enforcement Act except that the factors in subsection (c) have been modified to address issues  
3 most commonly encountered in adult guardianship and protective proceedings as opposed to  
4 child custody determinations.  
5

6 **SECTION 207. JURISDICTION DECLINED BY REASON OF CONDUCT.**

7 (a) If at any time a court of this state determines that it acquired jurisdiction to appoint a  
8 guardian or issue a protective order because of unjustifiable conduct, the court may:

9 (1) decline to exercise jurisdiction;

10 (2) exercise jurisdiction for the limited purpose of fashioning an appropriate  
11 remedy to ensure the health, safety, and welfare of the respondent or the protection of the  
12 respondent's property or prevent a repetition of the unjustifiable conduct, including staying the  
13 proceeding until a petition for the appointment of a guardian or protective order is filed in a court  
14 of another state having jurisdiction; or

15 (3) continue to exercise jurisdiction after considering:

16 (A) the extent to which the respondent and all persons required to be  
17 notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

18 (B) whether it is a more appropriate forum than the court of any other  
19 state under the factors set forth in Section 206(c); and

20 (C) whether the court of any other state would have jurisdiction under  
21 factual circumstances in substantial conformity with the jurisdictional standards of Section 203.

22 (b) If a court of this state determines that it acquired jurisdiction to appoint a guardian or  
23 issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable  
24 conduct, it may assess against that party necessary and reasonable expenses, including attorney's

1 fees, investigative fees, court costs, communication expenses, expenses for witnesses, and travel  
2 expenses. The court may not assess fees, costs, or expenses of any kind against this state or a  
3 governmental subdivision, agency, or instrumentality of this state unless authorized by law other  
4 than this [act].

5 **Comment**

6  
7 This section is similar to the Section 208 of the Uniform Child Custody Jurisdiction and  
8 Enforcement Act. Like the UCCJEA, this section does not attempt to define “unjustifiable  
9 conduct,” concluding that this issue is best left to the courts.

10  
11 Subsection (a) gives the court authority to fashion an appropriate remedy no matter who  
12 committed the unjustifiable conduct. However, pursuant to subsection (b), a court may assess  
13 costs and expenses only if the unjustifiable conduct was committed by a party seeking to invoke  
14 the court’s jurisdiction.  
15

16 **SECTION 208. NOTICE OF PROCEEDING.** If a petition for the appointment of a  
17 guardian or issuance of a protective order is brought in this state and this state is not the  
18 respondent’s home state, in addition to complying with the notice requirements of this state,  
19 notice of the proceeding must be given to those persons who would be entitled to notice of the  
20 petition if the proceeding were brought in the respondent’s home state. The notice must be given  
21 in the same manner as notice is given in this state.

22 **Comment**

23 While this Act tries not to interfere with a state’s underlying substantive law on  
24 guardianship and protective proceedings, the issue of notice is fundamental. Under this section,  
25 when a proceeding is brought other than in the respondent’s home state, the petitioner must give  
26 notice in the method provided under local law not only to those entitled to notice under local law  
27 but also to the persons required to be notified were the proceeding brought in the respondent’s  
28 home state. Frequently, the respective lists of persons to be notified will be the same. But where  
29 the lists are different, notice under this section will assure that someone with a right to assert that  
30 the home state has a primary right to jurisdiction will have the opportunity to make that assertion.  
31





1 [ARTICLE] 3

2 TRANSFER OF JURISDICTION

3 General Comment

4 While this Article consists of four sections, they are all part of one integrated procedure.  
5 Article 3 authorizes a guardian or conservator to petition the court to transfer the proceeding to a  
6 court in another state. Sometimes, such a transfer may be appropriate because the incapacitated  
7 person or protected person has moved or has been placed in a facility in another state, making it  
8 impossible for the original court to adequately monitor the proceeding. Sometimes a transfer  
9 may be appropriate because the guardian or conservator has moved, although a move by the  
10 fiduciary is oftentimes accompanied by a move by the incapacitated or protected person. Article  
11 3 authorizes a transfer of a guardianship, a conservatorship, or both. There is no requirement that  
12 both categories of proceeding be administered in the same state.  
13

14 A transfer begins with the filing of a petition by the guardian or conservator as provided  
15 in Section 301. Notice of this petition must be given to the persons who would be entitled to  
16 notice were the petition a petition for an original appointment. A hearing on the petition is  
17 required only if requested. Assuming the court in the transferring state is satisfied that the  
18 grounds for transfer stated in subsections (d) [guardianship] or (e) [conservatorship] have been  
19 adequately met, one of which is that the court in the other state will likely accept the case, the  
20 court shall issue a provisional order approving the transfer. The transferring court will not issue  
21 a final order dismissing the case until, as provided in Section 303, it receives a copy of the  
22 provisional order from the accepting court accepting the transferred proceeding.  
23

24 Following issuance of the provisional order by the transferring court, a petition must be  
25 filed in the accepting court as provided in Section 302. Notice of that petition must be given to  
26 those who would be entitled to notice of an original petition for appointment in both the  
27 transferring state and in the accepting state. A hearing must be held only if requested. The court  
28 is to issue a provisional order accepting the case unless it is established that the transfer would be  
29 contrary to the incapacitated or protected person’s interests. The term “interests” as opposed to  
30 “best interests” was chosen because of the strong autonomy values in modern guardianship law.  
31

32 The final steps are largely ministerial. Pursuant to Section 303, the provisional order  
33 from the accepting court must be filed in the transferring court. The transferring court will then  
34 issue a final order terminating the proceeding, subject to local requirements such as filing of a  
35 final report or account and the release of any bond. Pursuant to Section 304, the final order  
36 terminating the proceeding in the transferring court must then be filed in the accepting court,  
37 which will then convert its provisional order accepting the case into a final order appointing the  
38 petitioning guardian or conservator as guardian or conservator in the accepting state.  
39

40 The transfer procedure in this Article responds to numerous problems that have arisen in

1 connection with attempted transfers under the existing law of most states. Sometimes a court  
2 will dismiss a case on the assumption a proceeding will be brought in another state, but such  
3 proceeding is never filed. Sometimes a court will refuse to dismiss a case until the court in the  
4 other state accepts the matter, but the court in the other state refuses to entertain a petition until  
5 the already existing proceeding has been terminated. Oftentimes the court will conclude that it is  
6 without jurisdiction to make an appointment until the respondent is physically present in the  
7 state, a problem which Section 204 addresses by granting a court special jurisdiction to entertain  
8 a petition to accept a proceeding from another state. But the most serious problem under current  
9 law is the need to prove the case in the second state from scratch, including proving up the  
10 respondent's incapacity and the choice of guardian or conservator. Article 3 eliminates this  
11 problem. Section 302(e) requires that the court accepting the case must recognize a guardianship  
12 or conservatorship order from the other state, including the determination of the incapacitated or  
13 protected person's incapacity and the appointment of the guardian or conservator, if otherwise  
14 eligible to act in the accepting state.  
15

16 **SECTION 301. PETITION TO TRANSFER JURISDICTION TO ANOTHER**  
17 **STATE.**

18 (a) Following the appointment of a guardian or conservator, the guardian or conservator  
19 may petition the court to transfer the guardianship or conservatorship to another state.

20 (b) Notice of the petition to transfer a guardianship or conservatorship under subsection  
21 (a) must be given to those persons that would be entitled to notice of a petition in this state for  
22 the appointment of a guardian or conservator.

23 (c) On the court's own motion or on request of the incapacitated or protected person, or  
24 another interested person, the court shall hold a hearing on a petition filed pursuant to subsection  
25 (a).

26 (d) The court shall issue a provisional order granting a petition to transfer a guardianship  
27 if the court finds that:

28 (1) the incapacitated person is physically located in or is reasonably expected to  
29 move permanently to the other state;

1 (2) an objection to the transfer has not been made or, if an objection has been  
2 made, the objector has not established that the transfer would be contrary to the interests of the  
3 incapacitated person;

4 (3) the court is satisfied that plans for care and services for the incapacitated  
5 person in the other state are reasonable and sufficient; and

6 (4) the court is satisfied that the guardianship will be accepted by the court to  
7 which the proceeding will be transferred.

8 (e) The court shall issue a provisional order granting a petition to transfer a  
9 conservatorship if the court finds that:

10 (1) the protected person is physically located in or is reasonably expected to move  
11 permanently to the other state, or the protected person has a significant connection to the other  
12 state considering the factors set forth in Section 103(15);

13 (2) an objection to the transfer has not been made or, if an objection has been  
14 made, the objector has not established that the transfer would be contrary to the interests of the  
15 protected person;

16 (3) the court is satisfied that adequate arrangements will be made for management  
17 of the protected person's property; and

18 (4) the court is satisfied that the conservatorship will be accepted by the court to  
19 which the proceeding will be transferred.

20 **SECTION 302. PETITION TO ACCEPT PROCEEDING TRANSFERRED FROM**  
21 **ANOTHER STATE.**

22 (a) Upon issuance of a provisional order in another state to transfer a guardianship or

1 conservatorship to this state under procedures similar to those in Section 301, the guardian or  
2 conservator shall petition the court in this state to accept the guardianship or conservatorship.  
3 The petition must include a certified copy of the other state's provisional order.

4 (b) Notice of a petition under subsection (a) to accept a guardianship or conservatorship  
5 from another state must be given to those persons that would be entitled to notice if the petition  
6 were a petition for the appointment of a guardian or issuance of a protective order in both the  
7 transferring state and this state. The notice must be given in the same manner as notice is given  
8 in this state.

9 (c) On the court's own motion or on request of the incapacitated or protected person, or  
10 another interested person, the court shall hold a hearing on a petition filed pursuant to subsection  
11 (a) to accept a guardianship or conservatorship from another state.

12 (d) The court shall issue a provisional order approving a petition filed under subsection  
13 (a) unless an objection is made and the objector establishes that transfer of the proceeding would  
14 be contrary to the interests of the incapacitated or protected person.

15 (e) In approving a petition under this section, the court shall recognize a guardianship or  
16 conservatorship order from the other state, including the determination of the incapacitated or  
17 protected person's incapacity and the appointment of the guardian or conservator, if eligible to  
18 act in this state.

19 (f) The denial of a petition filed under subsection (a) to accept a guardianship or  
20 conservatorship from another state does not affect the ability of a guardian or conservator  
21 appointed by a court in another state to seek appointment as guardian of the incapacitated person  
22 or conservator of the protected person under [insert statutory references for the regular

1 appointment of guardian or conservator].

2           **SECTION 303. FINAL ORDER IN TRANSFERRING STATE.** Upon receipt from  
3 the court of the other state of a provisional order issued under Section 302 to accept a  
4 guardianship or conservatorship transferred under Section 301 and the filing of the documents  
5 required in this state to terminate a guardianship or conservatorship, the court shall issue an order  
6 confirming the transfer of the proceeding to the other state and terminating the guardianship or  
7 conservatorship in this state.

8           **SECTION 304. FINAL ORDER IN ACCEPTING STATE; JUDICIAL REVIEW.**

9           (a) Upon receipt of an order issued under Section 303 confirming the transfer of a  
10 guardianship or conservatorship proceeding to this state and terminating the guardianship or  
11 conservatorship in the transferring state, the court shall issue a final order appointing the  
12 guardian or conservator as guardian or conservator in this state.

13           (b) Within [90] days after issuance of a final order accepting a guardianship or  
14 conservatorship transferred from another state, the court shall determine whether the  
15 guardianship or conservatorship need be modified to conform to the law of this state.

1 [ARTICLE] 4

2 REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

3 General Comment

4 This Article is designed to facilitate the enforcement of guardianship and protective  
5 orders in other states. While some states have expedited procedures for sales of real estate by  
6 conservators appointed in other states, few or no states have enacted statutes dealing with  
7 enforcement of guardianship orders, such as when a care facility questions the authority of a  
8 guardian appointed in another state. Sometimes, these sorts of refusals necessitate that the  
9 proceeding be transferred to the other state or that an entirely new petition be filed, problems that  
10 could often be avoided if guardianship and protective orders were entitled to recognition in other  
11 states.

12  
13 This Article provides for such recognition. The key concept is registration. Section 401  
14 provides for registration of guardianship orders, and Section 402 for registration of protective  
15 orders. Following registration of the order in the appropriate county of the other state, and after  
16 giving notice to the appointing court of the intent to register the order in the other state, Section  
17 403 authorizes the guardian or conservator to thereafter exercise all powers authorized in the  
18 order of appointment except those that might be prohibited under the laws of the registering state.  
19

20 SECTION 401. REGISTRATION OF GUARDIANSHIP ORDERS. If a guardian  
21 has not been appointed in this state and a petition for the appointment of a guardian is not  
22 pending in this state, a guardian appointed in another state, after giving notice to the appointing  
23 court of an intent to register, may register the guardianship order in this state by filing as a  
24 foreign judgment in a court in any appropriate [county] of this state certified copies of the order  
25 and letters of office.

26 SECTION 402. REGISTRATION OF PROTECTIVE ORDERS. If a conservator  
27 has not been appointed in this state and a petition for a protective order is not pending in this  
28 state, a conservator appointed in another state, after giving notice to the appointing court of an  
29 intent to register, may register the protective order in this state by filing as a foreign judgment in

1 a court of this state, in any [county] in which property belonging to the protected person is  
2 located, certified copies of the order and letters of office and of any bond.

3 **SECTION 403. EFFECT OF REGISTRATION.**

4 (a) Upon registration of a guardianship or protective order from another state, the  
5 guardian or conservator may exercise in this state all powers authorized in the order of  
6 appointment except as prohibited under the laws of this state, including maintaining actions and  
7 proceedings in this state subject to any conditions otherwise imposed upon nonresident parties.

8 (b) A court of this state may grant any relief available under this [act] and other law of  
9 this state to enforce a registered order.



1 [ARTICLE] 5

2 MISCELLANEOUS PROVISIONS

3 SECTION 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In  
4 applying and construing this uniform act, consideration must be given to the need to promote  
5 uniformity of the law with respect to its subject matter among states that enact it.

6 SECTION 502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL  
7 AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal  
8 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq.,  
9 but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or  
10 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15  
11 U.S.C. Section 7003(b).

12 SECTION 503. REPEALS. The following acts and parts of acts are hereby repealed:

- 13 (1) .....
- 14 (2) .....
- 15 (3) .....

16 SECTION 504. EFFECTIVE DATE. This [act] takes effect .....