



HOW THE UNIFORM GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE ARRANGEMENTS ACT COMBATS ELDER ABUSE

The Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA), which was approved in July 2017 is a comprehensive revision of previous uniform laws on guardianship. A major objective of the Act is to better protect adults under guardianship from possible abuse and exploitation, including abuse or exploitation by those entrusted as their guardians. Consistent with this objective, the UGCOPA provides for stronger and more effective forms of oversight and enforcement than exist under current law in most states.

UGCOPAA includes reforms in the following areas:

- **Notice.** UGCOPAA expands the list of persons who must be notified of a petition for appointment of a guardian or conservator. UGCOPAA requires that the court, when appointing a guardian, specify the persons who must receive notice of key events or conditions that could affect the well-being of the person under guardianship or conservatorship. Unless the court specifically orders otherwise, the spouse and adult children of an adult subject to guardianship or conservatorship are entitled to this notice. The individuals receiving this notice can act as extra sets of eyes and ears for the court and bring any problems to the court's attention at an early stage.
- **Guardianship Plan.** UGCOPAA requires that guardians and conservators file within sixty days after appointment a comprehensive plan with the court on how they plan to meet the needs of the person subject to guardianship or conservatorship. Plans must be updated at least annually. In writing the plan, the guardian and conservator must consider both the individual's needs as well as the individual's preferences, values, and prior directions. These plans establish a set of legally enforceable expectations to which guardians and conservators can be held accountable.
- **Duties and Standard for Decision-Making.** Under UGCOPAA, guardians and conservators must promote the self-determination of the individual and encourage the individual to participate in decisions to the fullest extent possible. When making decisions, a guardian or conservator must make the decision that the adult would make if able unless doing so would cause the adult harm. This includes decisions about the adult's residence and association with other persons.
- **Appointment Procedures.** A petition for appointment for a guardian or conservator under UGCOPAA must state in detail the reasons why guardianship or conservatorship is needed and why a less-restrictive alternative is insufficient. UGCOPAA includes sample forms that ensure that a complete needs analysis is done.

- **Limited Powers.** Under UGCOPAA, court approval is required for a guardian or conservator to restrict visitation with a family member or friend for more than seven days, to sell the primary residence of a person subject to guardianship, or to make changes to the individual's estate plan.
- **Less-Restrictive Alternatives.** Article 5 of UGCOPAA includes a non-exhaustive list of less-restrictive alternatives that the court may order instead of guardianship or conservatorship. Use of a less restrictive alternative will often satisfy the individual's need for assistance without taking away the individual's legal rights. Alternatives that the court might order include approval of a contract for admission to a facility, the purchase of an annuity, an application for government benefits, or establishment of an appropriate trust. These alternative arrangements can also reduce the time and cost associated with a full guardianship or conservatorship because long-term monitoring and reporting will generally be unnecessary.
- **Restrictions on Fees.** UGCOPAA seeks to reign in unnecessary and unreasonable fees. It provides clear guidance to courts on what factors should be considered in determining the reasonableness of fees sought by a guardian or conservator, requires disclosure of anticipated fees in the guardian's or conservator's plan, and restricts the ability of guardians and conservators to charge fees for opposing removal, or opposing modification or termination of the guardianship or conservatorship.

UGCOPAA was drafted to implement recommendations from the Third National Guardian Summit, a 2011 conference that brought together many organizations concerned about guardianship and guardianship abuse. The committee that drafted the UGCOPAA worked in close consultation with a broad range of participants representing various constituencies, including many of those involved in the Summit. National organizations providing significant input included AARP, the American Bar Association, The ARC, the American College of Trust and Estate Counsel, the National Academy of Elder Law Attorneys, the National Association to Stop Guardianship Abuse, the National College of Probate Judges, the National Center for State Courts, the National Disability Rights Network, and the National Guardianship Association.

The widespread enactment of UGCOPAA by the states will help to bring about the reforms necessary to curb guardianship abuse.

For further information about UGCOPAA, please contact ULC Chief Counsel Benjamin Orzeske at 312-450-6621 or borzeske@uniformlaws.org.