



THE UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

- A Summary -

Article 5 of the Uniform Probate Code addresses all aspects of guardianships and protective proceedings for both minors and adults. In contrast, the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (“UAGPPJA,” which is also UPC Article 5A) has a much narrower scope, dealing only with jurisdiction and related issues for guardianship and conservatorship proceedings, and only for adults who need protection.

Due to the increased mobility of our population, cases involving simultaneous and conflicting jurisdiction over guardianships are also increasing. Transferring a guardianship to another state can require the parties to initiate a duplicative court proceeding in the second state to re-determine legal incapacity and reappoint a guardian or conservator even when there is no dispute about the terms of the existing guardianship. Obtaining recognition of an out-of-state guardian’s authority to sell property or to arrange for a residential placement can be costly, difficult, or impossible. UAGPPJA addresses these problems.

The Problem of Multiple Jurisdictions. Because the United States has 50 plus guardianship systems, jurisdictional disputes are relatively common. “Snowbirds” who own homes in more than one state are particularly vulnerable, as are senior citizens who have adult children living in multiple states. Similar conflicts can arise between a U.S. state and a foreign country.

Although state statutes vary somewhat, a guardian may generally be appointed by the court of a state in which the respondent is domiciled or is physically present. Similarly, a conservator may generally be appointed by the court of a state in which the respondent is domiciled or owns property. Conflicts can arise when the respondent is physically located in a state other than the respondent’s domicile, or when the domicile is uncertain. In some particularly troubling cases, adult children competing for control over the same parent have litigated the guardianship in the courts of two states for years without a resolution – at great cost to the parent’s estate. UAGPPJA provides an effective mechanism for resolving this type of multi-jurisdictional dispute at an early stage.

The Problem of Transfer. Sometimes, multi-state problems arise even when jurisdiction is not under dispute. For example, a guardian’s job change may require moving the protected adult to another state. Before UAGPPJA, few states had a streamlined procedure for interstate transfers of guardianship or conservatorship orders, or for accepting such a transfer. Instead, most states required an incoming guardian to initiate a new court proceeding to determine the need for a guardian or conservator, and to determine who should be appointed – a time consuming and potentially expensive prospect for families that already bear the financial and emotional strain of caring for a protected adult. UAGPPJA provides an abbreviated transfer process while still requiring notice to all interested parties and an opportunity to object to the transfer and request court review.

The Problem of Out-of-State Recognition. The Full Faith and Credit Clause of the U.S. Constitution requires the courts of every state to honor court orders issued in another state. But there are exceptions to the full faith and credit doctrine, including one for guardianship and conservatorship orders. Before UAGPPJA, a guardian might have found it necessary to initiate a second court proceeding simply to satisfy a financial institution, a care facility, or a county recorder who refused to recognize an out-of-state guardianship or protective order. UAGPPJA allows guardians to register an out-of-state order with a local court clerk to provide authorization to act on behalf of the protected adult in another state.

UAGPPJA and the Child Custody Analogy. Similar jurisdictional problems existed for many years in connection with child custody determinations. If one parent lived in State A and the other parent lived in State B, formerly the

courts of both states had jurisdiction to enter custody orders. The Uniform Law Commission helped to eliminate the problem of multiple court jurisdiction in child custody matters through the widespread adoption of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which is now the law in 49 states, the District of Columbia, and the U.S. Virgin Islands. The drafters of UAGPPJA elected to model some portions of the act on these very successful child custody laws.

The Objectives and Key Concepts of UAGPPJA. UAGPPJA is organized into five articles: Article 1 contains definitions and procedures to facilitate cooperation between the courts of different states. Article 2 is the heart of the act, providing a set of rules to determine which court has jurisdiction to appoint a guardian or conservator. The objective is to locate jurisdiction in one and only one state, except when an emergency exists or in situations where the individual owns property in multiple states. Article 3 provides a procedure for transferring guardianship or conservatorship proceedings from one state to another when the protected adult changes domicile. Article 4 deals with registration and enforcement of out-of-state guardianship and protective orders. Finally, Article 5 contains boilerplate provisions common to all uniform acts.

Key Terminology. States differ widely in their terminology for this area of the law. Under the Uniform Probate Code and in a majority of states, a “guardian” is appointed in a “guardianship proceeding” to make decisions regarding the *person* of a minor or an “incapacitated” adult; a “conservator” is appointed in a “protective proceeding” to manage the *property* of a “protected person.” But in many states, only the term “guardian” is used, and the appointee is designated as either a “guardian of the person” or a “guardian of the estate.” In a few states, the terms guardian and conservator are both used but are given different meanings. UAGPPJA adopts the terminology used in the Uniform Probate Code, but states using other terminology may amend the act to conform to local usage.

To determine which court has primary jurisdiction under UAGPPJA, the key factors are the individual’s “home state” and any “significant-connection states.” A “home state” is the state in which the individual was physically present (including any periods of temporary absence) for at least six consecutive months immediately before the commencement of the guardianship or protective proceeding, or if none, the state where the respondent was last physically present for six consecutive months. A “significant-connection state” is a state where the individual has a significant connection other than mere physical presence, and where substantial evidence concerning the individual is available. Factors that may be considered when deciding whether a respondent has a significant connection to a state 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 absence;
- 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.

Conclusion. The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act has been widely enacted and is already helping most state courts to resolve guardianship issues involving original jurisdiction, registration, transfer, and out-of-state enforcement. The act provides procedures that help to simplify and considerably reduce the cost of interstate guardianships and protective proceedings. UAGPPJA should be enacted as soon as possible in the remaining U.S. jurisdictions.

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