

May 1, 1996

**MEMO TO: National Conference of Commissioners on Uniform State Laws
[NCCUSL]**

FROM: Rebecca C. Morgan, Reporter

**RE: Summary of Revisions to the Uniform Guardianship & Protective
Proceedings Act**

The purpose of this memo is to summarize the major changes made in the Revised Uniform Guardianship and Protective Proceedings Act as you consider it in this first reading. The impetus for the revisions to this Act came about as a result of the Task Force Report from the Senior Lawyers Division of the ABA.

The current version has divided the Act into five (5) articles. The first article is general provisions. The second article covers guardianship of minors. The third article covers guardianship of incapacitated adults. The fourth article covers conservatorship and the fifth article contains the standard-uniform-act (boiler-plate) provisions.

ARTICLE I

As in the current Act, Article I contains the standard provisions used for Articles II, III, and IV rather than having them repeated in the subsequent articles. Definitions are found in § 101 (cf., UPC § 5-103). The definitions of “guardian” and “conservator” have been revised to encompass the variety available, including emergency, limited, special, or springing guardian and limited, special, or springing conservator. There are no separate definitions of limited guardian or limited conservator. The definition of “legal representative” includes a representative payee, trustee, custodian, or agent. The definition of “incapacitated person” has been updated to recognize the threshold standard of inability to meet the basic requirements for health, safety, or self-care. Other definitions that were not used frequently have been removed from the section.

Facility of transfer, found in § 102 (UPC § 5-101), has some revisions to make clearer when transfers may be made to the person responsible for the minor. Jurisdiction and venue are now contained in Article I and can be found in §§ 104-106. Section 105 covers concurrent jurisdiction, requiring the second court to notify the original court and to confer with that court in deciding whether to take jurisdiction. Letters of office for both guardians and conservators is now found in § 108. The effect of appointment is in § 109 (See, UPC §§ 5-307 & 5-412) and § 110 covers changing or terminating an appointment of a conservator or of a guardian. (See, UPC §§ 5-212, 5-310, 5-311, and 5-414). General provisions for notice for both guardianship and conservatorship proceedings are in § 111

Reporter’s Memo to NCCUSL

RE: Revision of Uniform Guardianship and Protective Proceedings Act

May 1, 1996

Page 2

and waiver of notice is in § 112. The process for appointing a guardian ad litem for a minor or an individual in need of protection is found in § 113. Section 114 provides that any interested person can request notice, but is different from UPC § 5-104 in that it does not require the payment of a fee. The final provision, § 115, covers the case of where there are multiple written appointments or nominations and provides in that case that the most recent-in-time document controls.

ARTICLE II

Article II covers guardianship of minors. Section 202, Parental Appointment of Guardian, has been revised to include a child likely to be born. In § 204 (UPC § 5-204), the qualifier “unmarried” has been removed. Note that venue (UPC § 5-205) has been removed from Article II. In § 205 (UPC § 5-206) those entitled to notice now include any person the guardian has nominated as guardian if the minor is 14, any parental appointee whose appointment has not been prevented, and any currently acting guardian or conservator [see, § 205(b)]. Section 206 is expanded (see, UPC § 5-207) to provide for limited guardianship in § 206(b). [This was pulled from UPC § 5-209(e)] Duties and powers have been broken out into two sections, §§ 207 and 208, where in the UPC they are contained in UPC § 5-209. Section 207 is basically UPC § 5-209(a) & (b), while § 208 is basically UPC § 209(c). Throughout the act, the provisions providing for “support, care and education” have been expanded to “support, care, education, health and welfare” where appropriate. [See, e.g., § 207(a)]. Also throughout the act, “consent to medical or other care, treatment, or advice” has been changed to “consent to medical or other care, treatment or service.” (See, e.g., § 208(4)). Section 209 covers rights and immunities of a guardian. Section 209(a) is from UPC § 5-209(D). Section 209(B) provides for limited liability to the guardian. Section 210 covers termination and subsequent proceedings, and takes some language from UPC §§ 5-210 and 5-212.

Sections 211 and 212 are new to the Act and are not contained in the UPC. These sections provide for the creation of a springing guardianship for a minor. Section 211 covers the creation of the springing guardianship, allowing a parent in a signed and witnessed writing to appoint a springing guardian of the child, including a child likely to be born. The appointment becomes effective whenever the first of three events occurs: the parent dies, is adjudged incapacitated, or it has been determined that the parent cannot care for the child. After assuming authority, the springing guardian has to give notice to the appointing parent and any other parent of the commencement of the springing guardian’s authority as well as the appointing parent’s right of revocation of the appointment. Absent

Reporter’s Memo to NCCUSL

RE: Revision of Uniform Guardianship and Protective Proceedings Act

May 1, 1996

Page 3

an adjudication of incapacity, the springing guardian’s appointment does not supersede either parent’s parental rights.

Section 212 covers the confirmation of the springing guardian’s appointment. Within 60 days of assuming authority, the springing guardian must petition to be appointed guardian of the child, giving the required notices and including in the petition the relevant information the court would need in deciding whether to appoint the guardian. Section 212 contemplates that a limited guardianship could be ordered, especially if the appointing parent has stated any limitations on the springing guardian in the appointment document. The petition must be accompanied by a written determination from the physician that the parent is unable to care for the child. At the hearing, if the court finds the parent will not regain the ability to care for the child, the court may appoint a guardian for the minor, and it may be either the springing guardian or another person. If the court finds the parent may regain the ability to care for the minor child, then the court may confirm the springing guardianship and continue it for whatever time the court deems appropriate.

A springing guardianship would be terminated when the appointing parent regains capacity to care for the minor child and files supporting documentation with the court and provides notice to the springing guardian, when a guardian is appointed, or when either parent revokes the appointment. If the parent dies or is declared incompetent, the springing guardian, whose appointment has been confirmed, automatically becomes an Article II guardian unless the court orders to the contrary. The term “springing” has been used rather than “standby” because it is believed that “springing” more

accurately describes the concept and because “standby” has been used to cover other concepts. The drafting committee decided that the use of “standby” to cover this concept would cause confusion.

ARTICLE III

Section 301 is new, recognizing the creation of guardianship by appointment or by court order. Section 302 covers appointment of the guardian by will or other writing and incorporates much of UPC § 5-301(a)-(d). Note, however, that the time frame in § 302 is 14 days while in the UPC it is 7 days and that witnesses are not required for a spousal appointment in § 302(b), unlike UPC § 5-301(b). New is § 302(e), which provides that the appointment is not a determination of incapacity. Section 303 greatly expands the petition

Reporter’s Memo to NCCUSL

RE: Revision of Uniform Guardianship and Protective Proceedings Act

May 1, 1996

Page 4

process for appointment of a guardian, setting out the information that must be contained in the petition, the reasons for the guardianship, and whether the guardianship is limited or unlimited. Section 303 requires that the petition give the name and address of the respondent’s spouse, domestic partner or companion, and adult children, and if there is no one in those categories, then the parents and adult siblings, and if there is no one in any of those categories, then one of the respondent’s nearest adult relatives that can be found. Section 304 covers the preliminaries to the hearing, requiring that the court set a date for the hearing once the petition has been filed. Most significant are the provisions in this section. This section mandates the appointment of a visitor and greatly expands the role of the visitor (based on a Colorado Statute). The visitor has an extensive list of specific things that the visitor must tell the respondent and that the visitor must do. Confirmation of compliance with the Americans with Disabilities Act is placed on the visitor. Appointment of counsel is not mandatory unless the respondent requests, the visitor recommends, or the court determines that it is needed. The Drafting Committee felt that a mandatory appointment of a visitor would be more effective than a mandatory appointment of counsel in gathering and providing to the court the information needed for the court to rule on the petition for appointment of a guardian.

Section 305 provides that the court may order a professional evaluation, but is required to order it if demanded by the respondent. The professional evaluation has to be conducted by a professional who is qualified to evaluate the alleged impairment and the examiner is required to file a report that contains specific information. New to the Act is § 306 which provides that the visitor’s report and any other professional evaluation report are to be confidential, but available to the court, the parties, their attorneys, the visitor, and anyone else as ordered by the court.

Under § 307, the proposed guardian is required to attend the hearing on the petition and the respondent may be present and may take part in the proceeding [incorporates part of UPC § 5-303(c)] Any references to jury trials have been removed. Others may be granted permission to participate [See, UPC § 5-303(d)].

Notice is covered in § 308, and personal service on the respondent is both required and jurisdictional. Service on all others listed in the petition is required but failure to do so is not jurisdictional. The notice must inform the respondent of the right to be physically present and to participate in the hearing, as well as include a description of the nature, purpose and consequences of the appointment of a guardian. Once a guardian is

Reporter's Memo to NCCUSL
RE: Revision of Uniform Guardianship and Protective Proceedings Act
May 1, 1996
Page 5

appointed, notices on petitions have to be given to the ward, guardian and any other person as directed by the court, along with notices of filing of the guardian's report. (cf., UPC § 5-304).

Section 309 sets out priorities for guardians and differs from the UPC. Rather than giving a qualified person the right to be appointed guardian, any qualified person is entitled to be considered in a set order of priority. The Act gives preference first to a guardian, a nominee of the respondent, and an agent appointed by the respondent under a health care power of attorney, before turning to the spouse or a relative of the respondent. A owner, operator or employee of a facility where the respondent is receiving care is not eligible to be appointed as guardian absent a blood, marital or adoptive relationship to the respondent. (See generally, UPC § 5-305).

Section 310 covers the findings and order of appointment of the guardian. The court has to make specific findings including the finding that there is no "lesser restrictive alternative" that will meet the respondent's needs. The court also can convert the petition for appointment of a guardian to that for appointment of a conservator. The concept of limited guardianship is emphasized in this section. (See generally, UPC § 5-306).

Sections 311 and 312 cover emergency and temporary guardians, breaking them into two separate sections, where in the UPC both are covered in UPC § 5-308. An emergency guardian can only be appointed when the court makes specific findings, including that the following of normal procedures for appointment of a guardian will result in an immediate and significant harm to the respondent's health and safety and no one else is authorized to act for the respondent. The time limit for the authority of the emergency guardian is limited to 30 days and the emergency guardian has only those powers given in the court order. Appointment of an attorney in an emergency proceeding is mandatory. A without-notice appointment can be made only if the court finds, based on affidavit or other sworn testimony, that the respondent would be immediately and substantially harmed before the hearing on the appointment of an emergency guardian could be substantially harmed before the hearing on the appointment of an emergency guardian could be held. In the case of a without-notice appointment, the respondent must be given notice within 48 hours and a hearing on the appointment must be held within 5 days of the appointment. Appointment, whether with or without notice, is not a determination of the respondent's incapacity. The court can remove the emergency guardian at any time and also determines the reports to be required. The provision of the Act apply to emergency guardians.

Reporter's Memo to NCCUSL
RE: Revision of Uniform Guardianship and Protective Proceedings Act
May 1, 1996
Page 6

A temporary guardian can be appointed with or without notice when the court finds that the guardian is not performing duties effectively and the ward's welfare requires immediate action. A temporary guardian's authority is limited to six months. If a without-notice appointment is made, the court must promptly notify the ward of the appointment. The temporary guardian succeeds to the powers of the prior guardian absent court order to the contrary and the authority of the prior guardian is suspended as long as the temporary guardian has the authority. The temporary guardian can be removed by the court at any time and makes whatever reports are required by the court. The provisions of this Act apply to the temporary guardian.

Powers and duties of a guardian have been split into two separate sections, §§ 313 and 314, and greatly expanded (cf., UPC § 5-309). Section 313 recognizes again the concept of limited guardianship and requires the guardian to consider the ward's desires and personal values. The guardian is required to become personally acquainted with the ward, take care of the ward's property, apply the ward's money to the ward's current needs for support, care education, health and welfare, and conserve excess money, but if a conservator has been appointed, then the guardian pays the money to be conserved to the conservator.

The guardian has certain powers, that may be exercised, as set out in § 314. These powers include to: receive money under certain circumstances; take custody of the ward; bring a support action; consent to medical treatment; consent to the ward's marriage; and if appropriate, delegate certain decision-making responsibilities to the ward. Section 315 contains rights and immunities of the guardian and contains the liability language of UPC § 5-309. Section 315(b) covers compensation for the guardian and § 315(c) prohibits a guardian from revoking a power of attorney for health care without prior order of the court. The health-care decision made by the agent prevails over that of the guardian, absent a court order to the contrary. Section 315(d) prohibits a guardian from committing a ward to a mental health institution and § 315(e) allows the guardian to move the ward outside the state if the court expressly authorizes the move.

Section 316 sets out the requirements of the guardian to report to the court with the first report occurring 60 days after appointment and then at least annually thereafter. The report must include information about the ward's physical, mental, and social condition, living arrangements, services provided to the ward, a summary of the guardian's visits, plans for future care and recommendations regarding continuation of the guardianship. The court can appoint a visitor and must establish a monitoring system that includes filing

Reporter's Memo to NCCUSL

RE: Revision of Uniform Guardianship and Protective Proceedings Act

May 1, 1996

Page 7

and review of the annual reports.

Section 317 covers termination and modification of a guardianship. The guardianship terminates either on the ward's death or court order. The court can terminate the guardianship if the ward is no longer in need of one. Modification may occur when the powers are insufficient or over broad or the ward's capacity has changed. Termination requires that the court follow the same procedures which apply to a petition for appointment of a guardian. If the petition for termination shows a prima facie case for termination, the court must enter an order terminating absent proof by the guardian that continuation of the guardianship is in the ward's best interest.

ARTICLE IV

Section 401 provides for the appointment of either a limited or unlimited conservator for a minor or for a person who is either unable to manage her/his property due to an impairment, or the property will be wasted or dissipated. A significant change is in § 401(2)(I), providing a new definition of impairment based upon an impairment in the decision-making ability or ability to receive or evaluate information, in addition to an absentee, as opposed to the grounds used in UPC § 401(c).

Section 402 is substantially unchanged from UPC § 5-402.

Section 403 expands the information required to be contained in the petition for appointment of a

conservator (cf., UPC § 5-404). Note that the petition must describe the nature and the extent of the impairment of the respondent to receive and evaluate information if the petition alleges that impairment, and if the respondent is alleged to be an absentee, the petition must contain a statement of the relevant circumstances. Rather than just containing the name and address of the nearest relative known [cf., UPC § 5-404(b)], now the petition must give the name and address of the respondent's spouse, domestic partner or companion and adult children, or if none, then the parents and adult siblings, or if none, at least one of the nearest adult relatives who can be found. Additionally, the petition must include the name and address of the person responsible for the respondent's care and custody, of the legal representative, and why a conservator is needed, as well as a general statement about the property, including its estimated value and other information, and information about the proposed conservator, why that person should be selected, whether the conservatorship is unlimited or limited, and, if unlimited,

Reporter's Memo to NCCUSL

RE: Revision of Uniform Guardianship and Protective Proceedings Act

May 1, 1996

Page 8

why limited would be inappropriate, or if limited, the powers to be granted, etc.

Personal service of the petition and notice of hearing is required for the respondent, unless the respondent's whereabouts are unknown or personal service is otherwise impossible. In such a case, substituted service is provided. Failure to serve the respondent is jurisdictional. The petitioner is required to give notice of the hearing to all others listed in the petition, but failure to give the notice is not jurisdictional. The notice must inform the respondent of the right to be present, the respondent's rights at the hearing, and a description of the nature, purpose and consequences of the appointment of the conservator. Once a conservator is appointed, the protected person if at least 14 years of age and not an absentee, the conservator, and any other person ordered by the court, must be given notice of the hearing, of any petitions filed, and also be given notice of the filing of the inventory, accounting, or conservatorship plan, along with the copy of the petition or other document. (This is an extensive rewrite of UPC § 5-405).

Section 405 covers the original petition and preliminaries to the hearing. Section 405(a) basically tracks UPC § 5-406(a). Section 405(b) deviates substantially from the UPC counterpart. The court is required to appoint a visitor for the respondent if the petition alleges an impairment in the respondent's ability to receive and evaluate information or to communicate decisions. The visitor has a number of specified duties, including responsibility for confirming compliance with Americans-With-Disabilities protections. The visitor must personally meet the respondent and tell the respondent, in a manner which the respondent can understand, what is going on and the implications if a conservator is appointed. This will require the visitor to communicate with the respondent in the respondent's primary language, if the respondent does not speak English. The visitor also must tell the respondent about the respondent's rights, including the right to court-appointed counsel if requested. The visitor also must interview the petitioner and the proposed conservator and then file a report which includes recommendations about appointment of counsel, the appropriateness of the conservatorship, whether there are less restrictive alternatives, whether the conservatorship should be limited and the powers to be granted, information about the proposed conservator and a recommendation about whether a professional evaluation or further evaluation is necessary. The court is required to appoint counsel for the respondent in one of three situations: the respondent requests the appointment, the visitor recommends the appointment, or the court determines that the respondent needs representation. The court also has the power to make protective orders while the petition is pending.

Reporter's Memo to NCCUSL

RE: Revision of Uniform Guardianship and Protective Proceedings Act
May 1, 1996
Page 9

The Drafting Committee decided to require mandatory appointment of a visitor and optional appointment of an attorney for the same reasons set out in the comparable Article III provision. The visitor would be better able to provide more information to the court in the court's decision regarding the appointment of a conservator or entry of other protective order.

Section 406 is new and provides that the visitor's report and any professional evaluation are confidential, but available to the court, the parties, the visitor, the attorneys, and to anyone else the court so orders after a showing of need has been made.

Section 407 requires that the proposed conservator attend the hearing and incorporates from UPC § 5-406(d) the respondent's right to present evidence, cross examine witnesses, etc. All references to jury trials have been removed. A person may be allowed to participate in the proceeding if the court determines that the best interest of the respondent will be served. [See, UPC § 5-406(e)].

Section 408 furthers the concept of limited conservatorship in that it requires the court to make the least restrictive order consistent with its findings and conferring on the conservator only those powers needed, including orders that encourage the protected person's maximum self-reliance and independence. The conservator is required to mail a copy of the order of appointment along with a statement about the right to seek termination or modification to the protected person within 14 days of appointment. The appointment of a conservator is not a determination of incapacity.

Sections 409 and 410 are changed substantially from the UPC counterparts. Section 409 gives the court or conservator the same powers over the estate and business affairs of the minor which are necessary for the minor's or the minor's immediate family's best interest. For a protected person for reasons other than age, the court has all the powers that the protected person could exercise if present and not under a protective proceeding. Section 410 sets out a list of powers that a conservator does **not** have without court approval, including the right to make gifts except as otherwise provided in Article IV or the power to make, amend, or revoke the protected person's will. Section 410(b) reinforces the focus on the protected person by requiring that the court consider the decision the protected person would make along with other facts, in deciding to exercise or approve the conservator's exercise of the powers set out in § 410(a). Section 410(c) prohibits a conservator's revocation or amendment of the protected person's durable power of attorney without the court's prior authorization. If the durable power of attorney is in

Reporter's Memo to NCCUSL

RE: Revision of Uniform Guardianship and Protective Proceedings Act
May 1, 1996
Page 10

effect and if the court has not revoked it, the agent's decision prevails over that of the conservator.

Section 411, dealing with protective arrangements and single transactions, basically tracks the UPC § 5-408 version, except that protective arrangements do not include "payment, delivery, deposit or retention of funds or property," but do include a trust created under the Uniform Custodial Trust Act. Subsections 411(c) and (d) are separate subsections while contained in only one subsection in UPC § 5-408(c).

Section 412 covers who can be appointed conservator and priorities. This section is quite similar to the guardianship counterpart and recognizes in priority an appointed conservator, guardian, or fiduciary, a nominee, and an agent, before recognizing the preference of a spouse (or spousal

nominee), adult child, parent (or parental nominee), or an individual with whom the respondent has resided for more than six months. Again, the owner, operator, or employee of a facility in which the respondent receives care cannot be appointed, absent a blood, marital, or adoptive arrangement.

Section 413, Bond, is substantially the same as its UPC § 5-410 counterpart.

Section 414, Terms and requirements of bond, is substantially the same as its UPC § 5-411 counterpart.

Section 415 covers compensation and expenses of the visitor, attorney, guardian, conservator, physician or attorney whose services resulted in a protective or other beneficial order. Compensation is to be paid from the estate, must be reasonable, and can be paid without court order, but in such case, if the court later determines the compensation was excessive, the amount determined to be excessive must be repaid to the estate. The attorney is to be paid from the protected person's estate unless the protected person is found to be indigent, and then counsel will be paid from the county's general fund. This is an expansion over the UPC § 5-413 counterpart.

Section 416 allows the protected person, as well as any person interested in the protected person's welfare, to file a petition seeking bond, an accounting, distribution, removal of the conservator, modification of the appointment or powers, or other relief.

Section 417 covers the conservator's general duties, again incorporating the concept of limited guardianship, encouraging the protected person's participation, actions and

Reporter's Memo to NCCUSL

RE: Revision of Uniform Guardianship and Protective Proceedings Act

May 1, 1996

Page 11

regaining the ability to manage for himself/herself. The conservator has to observe a certain standard of care and take into consideration any estate plan of the protected person.

Section 418 requires the conservator to prepare an inventory of the estate and create a plan, based on the protected person's needs, for administering, expending, and distributing the assets of the estate as well as steps to take to enable the protected person to manage her/his property. It is an expansion of the UPC § 5-417.

Section 419 provides for an accounting, what must be contained in an accounting, and the review of accounts by a visitor or whatever system is established by the court. This is an expansion of the UPC § 5-418 counterpart.

Section 420 covers Title by Appointment. Although § 420(a) is substantially similar to UPC § 5-419(a), subsections 420(b) and (c) are new and provide that letters of conservatorship are evidence of vesting title and can be filed or recorded to give record notice.

Section 421 provides that the Protected Person's interest is non-transferable and incorporates provisions of UPC § 5-419(b) and (c). Subsections 421(c) and (d) are new. If the protected person or a transferee of the protected person attempts transfer or assignment, to a person who has no knowledge of the conservatorship, who acquires the property or an interest in it for value and in good faith, the transfer is effective to protect the purchaser or lender.

Section 422 covers sale, encumbrance, or other transaction involving conflict of interests and is very similar to UPC § 5-421 with the deletion or addition of a few words.

Section 423 protects persons dealing with conservators and is the substantial equivalent to its UPC § 5-422 counterpart with the exception of the addition of the phrase “to persons assisting or dealing with a conservator” in § 423(b).

Section 424 contains a laundry list of powers of the conservator and includes not only the powers set out in the section, but any additional powers conferred by state law. A court order is not required to exercise the powers, unless the court has ordered to the contrary. The powers are similar to those provided in UPC § 5-423.

Section 425 sets out the principles to be followed by the conservator in making **Reporter’s Memo to NCCUSL**

RE: Revision of Uniform Guardianship and Protective Proceedings Act

May 1, 1996

Page 12

distribution. The conservator must consider recommendations about the appropriate standard made by the guardian or parent (if the protected person is a minor). The conservator cannot be surcharged for money paid to persons furnishing services such as support, education and care, to the protected person or a dependent pursuant to the parent’s or guardian’s recommendation, unless the conservator knows the parent or guardian, gets personal financial benefit, or when the recommendations are not in the protected person’s best interest. When making distributions, the conservator shall consider the size of the estate, how long the protective arrangement may last, the chance the protected person will be able to manage his/her own affairs, the protected person’s and dependents standard of living, and other money or sources used for support. The conservator can reimburse others for expenses the conservator might have made or pay an advance for services to be rendered. The conservator can make charitable gifts that the protected person might have made if the estate is ample and the amounts do not exceed in total in any year 20% of the estate’s income [See, UPC §§ 5-424(a) and (b)]

Section 426 deals with terminating distributions. Once a minor becomes of age or is emancipated, after paying claims and expenses, the conservator must turn over the remaining money and property to the formerly protected person. The conservator then has 30 days to petition for an order of discharge or file a notice of distribution and closure of the estate. If the protected person is an adult when the impairment ceases, the conservator pays all claims and expenses and turns over the remainder to the formerly protected person. The conservator then has 30 days to petition for discharge and for confirmation of termination. If the conservator distributes without an order allowing a final account, the previously unsettled liabilities have not been adjudicated. [cf., UPC § 5-424(c) & (d)].

Section 427 provides that when the protected person dies, the conservator delivers to the court the will, notifies the personal representative and retains the estate for delivery to the appointed personal representative. If 40 days have passed and no personal representative has been appointed and an application or petition for appointment has not been filed, then the conservator can apply to act as personal representative in order to administer and distribute the estate. After notice, if there is no objection, the court can grant the conservator’s application and modify the letters accordingly. [See UPC § 5-424(e)].

Section 428 covers claims against the protected person. It is the substantial equivalent of UPC § 5-427 with some minor modifications.

Reporter’s Memo to NCCUSL

RE: Revision of Uniform Guardianship and Protective Proceedings Act

May 1, 1996

Section 429 covers personal liability of the conservator and is the substantial equivalent of UPC § 5-428.

Section 430 covers termination of proceedings. Termination occurs when the protected person dies, the minor for whom the conservatorship was created becomes of age, or the court orders termination. A petition to terminate may be filed by the protected person, the conservator, or another interested in the protected person's welfare. Termination does not affect a conservator's liability for prior acts or obligation to account for funds and assets. Before ordering termination, the court must follow the same procedures that apply to the petition for appointment. If the court is presented with prima facie evidence for termination, the court orders termination, unless the conservator can prove that the continuation is in the protected person's best interest. Once terminated, the title of the estate assets passes to the formerly protected person or that person's successors. The termination order must provide for expenses of administration and direct the conservator to execute appropriate instruments to evidence transfer. (See UPC § 5-429).

Section 431 covers payment of debt and delivery of property to a foreign conservator. It is a rewritten version of UPC § 5-430.

Section 432 covers foreign conservators. It is the counterpart to UPC § 5-431.

Sections 433 and 434 are new and cover the creation and commencement of "springing conservatorships." These two sections track the two sections in Article II authorizing the creation of springing guardians. The springing conservator must petition within 15 days of assuming authority for appointment as full legal conservator. This is a shorter time frame than that provided to the springing guardian. The shorter time frame recognizes that institutions might be reluctant to deal with a conservator without the imprimatur of court approval.

ARTICLE V

Article V contains the standard uniform act provisions relating to title, uniformity, supplementary general provisions, severability, construction against implied repeal, effective date, and repeal. The provisions are not discussed in this memo.

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May
Fifteenth
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MEMO TO: ~~Commissions~~
National Conference of ~~Commissions~~ on Uniform State Laws

FROM: ~~Tamj~~ ~~ars~~

Chair, Drafting Committee

RE: Revised Uniform Guardianship & Protective Proceedings Act

I am attaching the Reporter's Memorandum giving some brief comments regarding the Revision of the Uniform Guardianship and Protective Proceedings Act. Dean Rebecca Morgan, of Seton University Law School, is our Reporter. In preparing for this first reading of the proposed revisions to the Act, I believe that the Reporter's comments will be more helpful to you in understanding the proposed revisions than any comments I might make briefly.

I will make a couple of comments that I hope will be helpful to you in understanding this Revised Act. First, the basic premise, I think, is slightly different in this Revision from the original UPCA. The original Act was based on the concept of making the court accessible to incapacitated persons (both minors and incapacitated adults) wherever that individual might be and then relying on the court to devise the necessary protections which might be needed. This Revision seems to assume a need for more "protection" for incapacitated individuals and therefore this Revision tends to require more "protective directions" and formality for the court.

Second, this Revision introduces the concepts of a "Springing Guardian" (referred to in some jurisdictions as a "Standby Guardian") and a "Springing Conservator." These concepts may be compared to the Springing Durable Power of Attorney, but with the difference that the appointment will be made by someone other than the incapacitated individual. This new concept is a policy question and one on which the Drafting Committee desires acceptance and guidance from the Commissioners as a whole.

TLJ :rs