

## MEMO

To: Uniform Law Commissioners  
From: David English and Nina Kohn  
Re: Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act  
Date: June 20, 2017

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The Drafting Committee was charged with revising the Uniform Guardianship and Protective Proceedings Act (UGPAA) in order to implement some of the recommendations of the Third National Guardianship Summit (NGS) and otherwise to update the Act.

This memo highlights the overarching themes of the resulting revised Act, now titled the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act.

Protection for individuals subject to guardianship or conservatorship, including improved monitoring of appointees. As recent media coverage of exploitation by guardians and conservators suggests, there is significant concern about ensuring the accountability of guardians and conservators. The Drafting Committee worked to find a balance between enhancing protections for individuals subject to guardianship and conservatorship, and not making the processes overly cumbersome or expensive. One innovation in the revised Act is to allow the court to identify people who will be given notice of certain key changes or suspect actions, and who can therefore serve as an extra set of eyes and ears (Section 310, Section 411). Other revisions include a provision that makes bond a default option for conservators (Section 416), provisions that clarify relevant factors in setting fees for guardians and conservators (Section 120), and a provision that provides an avenue for interested individuals who reasonably believe that a guardian or conservator is breaching fiduciary duties to file a grievance with the court (Section 127).

Better guidance for appointees. The revised Act seeks to provide greater guidance to appointees, many of whom are laypeople. Revisions include a clearer decision-making standard (Section 209, Section 313, Section 414), and clarity as to the role of prior appointees including appointed health care agents or attorneys-in-fact who, absent a court order to the contrary, retain their authority even after a guardianship or conservatorship has been put in place (Section 315, Section 414).

Enhanced procedural rights for respondents. One key concern facing the Drafting Committee is that guardianships and conservatorships are over-used and over-broad. The Committee has worked to strike a balance between the need to provide meaningful procedural rights for individuals alleged to need a guardian or conservator, and the need not to make the process for appointing a guardian or conservator overly complex or expensive. Key revisions include a narrower exception to the general rule that the respondent must be present at the hearing (Section 307, Section 408), a requirement that explicit findings be made before certain fundamental rights are removed (Section 310), and the elimination of provisions that would have allowed appointment of a guardian for an adult by will or writing without prior judicial approval.

Enhanced procedural rights for individuals subject to guardianship and conservatorship. The Drafting Committee focused attention on the rights of individuals subject to guardianship and conservatorship, including their right and ability to seek termination or modification of the appointment, or removal of a guardian. Key revisions related to these concerns include a provision that the court provide the individual notice of key rights (Section 311, Section 412), updated provisions for attorney representation of individuals subject to guardianship and conservatorship (Section 318, Section 319, Section 430, Section 431), a limitation on the guardian or conservator's ability to charge fees to oppose the individual's efforts to alter the appointment (Section 120), and additional triggers for reconsideration of an appointment (Section 318, Section 319, Section 430, Section 431).

Facilitation and encouragement of less restrictive alternatives. A central aim of the Drafting Committee's work has been to facilitate and encourage the use of less restrictive alternatives, including technological and decision-making support and single-issue court orders instead of guardianship and conservatorship. To this end, the revised Act provides that neither guardianship nor conservatorship is appropriate if the individual's needs can be met with technological assistance or decision-making support (Section 301, Section 401). It also includes a new Article that provides for protective orders instead of guardianship or conservatorship (Article 5); the 1997 version, by contrast, only provided for such an order in lieu of conservatorship.

Visitation and communication with third parties. In recent years, some family members of individuals subject to guardianship have raised concerns that guardians have unreasonably restricted the ability of individuals subject to guardianship to receive visitors and communicate with others, and family advocates have encouraged legislative responses to address this concern. The revised Act includes a variety of provisions addressing this concern. These include a limitation on a guardian's ability to curtail communications, visits, or interactions between the individual subject to guardianship and third parties (Section 310) and a requirement that the guardian give priority to residential settings that allow the individual to interact with those important to the individual (Section 314). Along similar vein, it establishes a default that the adult children and spouse/domestic partner of an individual subject to guardianship or conservatorship are entitled to notice of the death or significant change in the individual's condition (Section 310, Section 414).

Modernized provisions related to property management. The Drafting Committee updated numerous provisions in Article 4 related to property management. In these provisions, the Drafting Committee looked to the Uniform Prudent Investor Act and the Uniform Trust Code, among other sources of guidance.

Modernized provisions related to minors. While the Committee's focus has largely been on adults, the Committee is also concerned with updating provisions related to guardianship for minors. To this end, consistent with modern trends in the law, the revised Act provides for greater involvement of the minor in decisions involving them. The age of involvement for a minor has been lowered from 14 to 12, the decision-making standard for guardians now calls on them to consider the minor's view (Section 209), and an attorney must be appointed for the

minor in certain situations (Section 204). The revised Act also provides greater due process protections for parents of minors, taking into account the Supreme Court's ruling in *Troxel v. Granville*, 530 U.S. 57 (2000), which post-dates the 1997 Act. These protections include a requirement that the court give weight to a parent's view when determining whether to appoint a conservator (Section 401).

Improved compliance with limited guardianship and conservatorship requirements. The Drafting Committee has recognized that, despite the best efforts of previous Committees, there is a lack of compliance with the 1997 Act's requirement that limited guardianships and conservatorships be used where they would meet the respondent's needs. In order to facilitate compliance with this direction, the Drafting Committee has included forms in Article 6 that make it easier for petitioners to seek limited orders, and easier for courts to craft limited orders. In addition, the revised Act requires petitioners seeking a full guardianship or conservatorship to do more to justify that approach (Section 302, Section 402).

Updated language. The terms "ward," "incapacitated person," and "disabled person" are increasingly seen as demeaning and offensive and were rejected by the NGS. The Committee has worked to find alternatives to this language. After much discussion, the Committee arrived at a decision to use the terms "minor subject to guardianship," "adult subject to guardianship," "minor subject to conservatorship," "adult subject to conservatorship," "individual subject to guardianship," and "individual subject to conservatorship."

Person-centered planning. A key theme of the NGS recommendations was the need to infuse person-centered planning into guardianship and conservatorship. The Drafting Committee has worked to do so. For example, included as part of these revisions is a new requirement for a guardian's plan (Section 316), and provisions to facilitate court monitoring of compliance with guardian's and conservator's plans (e.g., Section 317, Section 423).

Title of Act. The Act is retitled to reduce confusion. One source of confusion was that the old title did not use the term "conservatorship" despite the fact that provisions related to conservatorship constitute a major portion of the Act. Another source of confusion was the use of the term "protective proceedings." The term was confusing because it was used to refer to both conservatorships and single transaction orders instead of conservatorship, but not to guardianships. The term was also confusing because it is often associated with proceedings in domestic violence and elder abuse cases, which are not covered in the Act. In addition, the new title's use of the words "other protective arrangements" reflects the addition of a new article, Article 5, which governs protective arrangements instead of guardianship and conservatorship. The previous Act only provided for such arrangements instead of conservatorship.