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Adult Guardianship and Protective Proceedings Jurisdiction Act Summary

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) has a much narrower scope, dealing only with jurisdiction and related issues for guardianship and protective 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 incapacity and reappoint a guardian or conservator even when no conflict exists. 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 all of 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 have litigated the guardianship of a parent 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.

The Problem of Transfer

Sometimes, problems arise even when all the parties are in agreement. 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 state courts required an incoming guardian to initiate a new 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.

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.

The Proposed Uniform Law 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 after these very successful child custody laws. However, UAGPPJA applies only to adult proceedings because jurisdictional issues involving guardianships for minors are covered by the UCCJEA.

The Objectives and Key Concepts of the Proposed 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

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. (Section 201(a)(2).) 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 (Section 201(a)(3).) Factors that may be considered when deciding whether a respondent has a significant connection to a particular 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. (Section 201(b).)

States differ widely in their standard terminology for a person appointed by the court to handle another's personal and financial affairs. 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.

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:

1. *Home State:* The home state has primary jurisdiction to appoint a guardian or conservator, or to enter another protective order, a priority that continues for up to six months following a move to another state.
2. *Significant-connection State:* A significant-connection state has jurisdiction if the respondent has not had a home state within the past six months or the home state has declined jurisdiction. To facilitate appointments in the typical 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.
3. *Another State:* A court in another state has jurisdiction only if the home state and all significant-connection states have declined jurisdiction or the individual does not have a home state or a 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 respondent 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 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 considered when making this determination. Section 207 authorizes a court to decline jurisdiction or fashion another appropriate remedy if jurisdiction was acquired by 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. UAGPPJA also has provisions on communication between the courts of different states and on taking testimony in another state. (Sections 104-106.)

Transfer to Another State (Article 3)

Article 3 provides 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, the transferring court must find that the individual will move permanently to another state, that no one has objected to the transfer, that adequate arrangements have been made for the individual or the individual's property in the other state, and that the case will be accepted by the court in the new state. (Section 301(d).) To assure continuity, the court in the original state cannot dismiss the local proceeding until the order from the state court accepting the case is filed with the original court. (Section 301(f).) Unless an objection is made, the court in the accepting state must give deference to the transferring court's finding of incapacity and its selection of the guardian or conservator in order to expedite the transfer process. (Section 302(g).) However, the court of the accepting state must also determine within 90 days of the transfer whether the guardianship or conservatorship must be modified to conform to the laws of the second state. (Section 302(f).)

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. The standards were updated in 2013, and specifically endorse the provisions of UAGPPJA. (2013

National Probate Court Standards § 3.4, available at: www.ncpj.org.)

Out of State Enforcement (Article 4)

To facilitate the acceptance and enforcement of guardianship and protective orders in other states, Article 4 authorizes a guardian or conservator to register an order as a foreign judgment with any appropriate court. (Section 401.) Upon registration, the guardian or conservator may exercise all powers authorized in the order except as prohibited by the laws of the registration state. (Section 403.) The act also addresses enforcement of international orders: To the extent the foreign order does not violate fundamental principles of human rights, a U.S. state court may, in the court's discretion, recognize an order entered in another country to the same extent as if it were an order entered in another U.S. state. (Section 103.) However, the registration procedures of Article 4 do not apply to orders from foreign countries.

Conclusion

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act has been enacted in 38 jurisdictions, where it is already helping 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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