

## First Supplement to Memorandum 2013-15

**Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act  
(Draft Tentative Recommendation)**

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Attached is a draft of a preliminary part (narrative discussion) to go with the proposed legislation presented in Memorandum 2013-15. Commissioners and other interested persons should review the draft and consider whether it could be improved in any way.

After the April meeting, the staff will revise the preliminary part to reflect decisions made at that meeting. The staff might also make other improvements of the draft as appear warranted. If we do so, we will note those changes when presenting the next draft.

Respectfully submitted,

Barbara Gaal  
Chief Deputy Counsel

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Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

# CALIFORNIA LAW REVISION COMMISSION

**STAFF DRAFT**

TENTATIVE RECOMMENDATION

## Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

April 2013

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN xxxx.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

California Law Revision Commission  
4000 Middlefield Road, Room D-2  
Palo Alto, CA 94303-4739  
650-494-1335  
<commission@clrc.ca.gov>

## SUMMARY OF TENTATIVE RECOMMENDATION

In California, a conservatorship is a proceeding in which a court appoints someone to assist another individual with personal care or financial transactions because that individual lacks the ability to handle those matters without assistance. These types of court proceedings are becoming common across the United States, because the population of the country is aging.

At the same time, the population is becoming increasingly mobile. Individuals frequently move from one state to another, own property or conduct transactions in more than one state, and spend time in multiple locations.

Due to these developments, a number of problems relating to conservatorships are occurring:

- Jurisdictional disputes.
- Issues relating to transferring a conservatorship from one state to another.
- Requests for recognition of a conservatorship that was established in another state.

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (“UAGPPJA”) was approved by the Uniform Law Commission in 2007 to address these problems. Since then, the uniform act has been enacted in many states. California has not yet done so, however, because UAGPPJA uses different terminology than California and requires some adjustments to be workable in California.

The Law Revision Commission has been studying UAGPPJA to determine whether and, if so, in what form, the uniform act should be enacted in California. Based on the work it has done thus far, the Commission tentatively recommends that UAGPPJA be enacted in California, with a number of modifications to protect California policies and ensure that the act works smoothly in this state.

This recommendation was prepared pursuant to Resolution Chapter 108 of the Statutes of 2012.

## UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

1 The Uniform Law Commission (“ULC”)<sup>1</sup> approved the Uniform Adult  
2 Guardianship and Protective Proceedings Jurisdiction Act (“UAGPPJA”) in 2007.<sup>2</sup>  
3 The scope of this uniform act is relatively narrow; it focuses only on jurisdiction  
4 and related issues in court proceedings involving adults who require assistance  
5 with personal care, property administration, or both.<sup>3</sup> Nonetheless, the legislation  
6 is likely to have a big impact, because the proportion of elderly adults in this  
7 country is rapidly growing, while the whole population is becoming increasingly  
8 mobile, frequently moving and conducting transactions across state lines.<sup>4</sup>  
9 Since the ULC approved UAGPPJA, numerous states have enacted it.<sup>5</sup>  
10 California has not yet done so. Rather than seeking immediate introduction of  
11 legislation to implement this act, the California Commission on Uniform State

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1. The Uniform Law Commission, also known as the National Conference of Commissioners on Uniform State Laws, is an unincorporated association comprised of each state’s Commission on Uniform Laws, as well as such commissions from the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. The state uniform law commissioners come together as the Uniform Law Commission to study and review state law to determine which areas of the law should be uniform. The ULC promotes the principle of uniformity by drafting and proposing statutes in areas of the law where uniformity between the states is deemed desirable. As the ULC puts it, the organization “provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.” (From the ULC website, <[www.uniformlaws.org](http://www.uniformlaws.org)>.)

2. The final act, earlier versions of the act, and various materials relating to the act are available from the ULC website, <[www.uniformlaws.org](http://www.uniformlaws.org)>. The final act can be found at the following url:

<[www.uniformlaws.org/shared/docs/adult\\_guardianship/uagppja\\_final\\_07.pdf](http://www.uniformlaws.org/shared/docs/adult_guardianship/uagppja_final_07.pdf)>

3. Another uniform act, the Uniform Guardianship and Protective Proceedings Act (“UGPPA”) comprehensively addresses all aspects of court proceedings that involve an adult or child who requires assistance with personal care, property administration, or both. UGPPA has only been adopted in a few states, and California is not one of them.

Still another uniform act, the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”) served as a model in drafting UAGPPJA. UCCJEA has been enacted in almost every state (including California) and has effectively minimized the problem of multiple court jurisdiction in child custody matters.

Further information about UGPPA and UCCJEA is available from the ULC website, <[www.uniformlaws.org](http://www.uniformlaws.org)>.

4. See discussion of “The Impetus for UAGPPJA” *infra*.

5. UAGPPJA has been enacted by the District of Columbia, Puerto Rico, and 35 states: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming. [The staff will insert citations when time permits.]

1 Laws<sup>6</sup> requested that the California Law Revision Commission undertake a study  
2 of it.<sup>7</sup> Such a study was needed, because UAGPPJA uses different terminology  
3 than California law on the same topic,<sup>8</sup> and it was readily apparent that some  
4 adjustments would be necessary to make the uniform act workable in California  
5 and coordinate it with California law and policy in this area.

6 The Law Revision Commission has held a series of public meetings on the topic  
7 and has received considerable stakeholder input. Based on the work it has done  
8 thus far, the Commission tentatively recommends that California enact UAGPPJA,  
9 with various modifications as presented and described in this tentative  
10 recommendation.

11 The purpose of this tentative recommendation is to broadly solicit public  
12 comment on the Commission’s tentative conclusions. The Commission will often  
13 substantially revise a proposal in response to comment it receives. Consequently,  
14 it is just as important to express support for the tentative recommendation, or  
15 aspects of it, as it is to urge the Commission to make revisions or abandon the  
16 proposal. Written comments may be in any form and may be submitted by email  
17 or traditional mail delivery. **To be most helpful, comments should be submitted**  
18 **by \_\_\_\_\_.**

19 The discussion below begins by describing the factors that led the ULC to  
20 develop UAGPPJA. The tentative recommendation then examines each article of  
21 the uniform act, explaining its content and what modifications should be made for  
22 enactment in California.

### 23 **The Impetus for UAGPPJA**

24 A confluence of factors led to the development of UAGPPJA. Demographically,  
25 the population of the United States is aging.<sup>9</sup> Approximately 40.3 million residents  
26 were age 65 or older in 2010, more than in any previous census.<sup>10</sup> Adults in that  
27 age bracket also comprised a larger percentage of the total population than in the

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6. The California Commission on Uniform State Laws represents California on the ULC. See Gov’t Code §§ 10270-10282.

7. See Letter from D. Boyer-Vine to B. Hebert (Nov. 2, 2009) (attached to Commission Staff Memorandum 2010-39 (available from the Commission, [www.clrc.ca.gov](http://www.clrc.ca.gov))). One of the Law Revision Commission’s duties is to “[r]eceive and consider proposed changes in the law recommended by ... the National Conference of Commissioners on Uniform State Laws ....” Gov’t Code § 8289.

8. See discussion of “Definitions” *infra*.

9. See United States Census Bureau, *The Older Population: 2010* (Nov. 2011), p. 1, available at [www.census.gov](http://www.census.gov).

10. *Id.* at 1, 3.

1 past.<sup>11</sup> That trend is expected to continue as the baby boom generation becomes  
2 elderly.<sup>12</sup>

3 As the number of elderly adults increases, the need for geriatric care is also  
4 increasing.<sup>13</sup> About 1.3 million adults age 65 or older were in skilled nursing  
5 facilities in 2010.<sup>14</sup> Alarming, a recent study suggests that the number of patients  
6 with Alzheimer’s disease will triple by 2050.<sup>15</sup>

7 A corollary trend is that many individuals with health problems (both elderly  
8 and younger ones) will need to have a court appoint a family member, friend, or  
9 other person to help manage the individual’s personal care or financial situation.  
10 Statistics regarding the number of such court proceedings are not easy to obtain,  
11 but there were an estimated 400,000 of them in the country in 1987, and the  
12 number is probably much higher today.<sup>16</sup> Different states have different rules for  
13 such proceedings,<sup>17</sup> and even different terminology.<sup>18</sup>

14 Those differences can be problematic, because the population of the country is  
15 not only aging but is also becoming increasingly mobile. Extended families are  
16 dispersed across the country, people often move for work or other reasons, and  
17 many of the adults who need a court-appointed assistant have homes, property, or  
18 other ties in more than one state.<sup>19</sup> Due to this increasing mobility, three main  
19 types of problems are becoming more frequent in the court proceedings described  
20 above:

- 21 • Jurisdictional issues.
- 22 • Transfer issues.
- 23 • Interstate recognition issues.

24 These problems prompted the ULC to begin studying ways to alleviate them.

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11. *Id.* at 3.

12. See, e.g., M. Toossi, *Labor Force Projections to 2020: A More Slowly Growing Workforce*, in *Monthly Labor Review* (Jan. 2012), p. 45 (“In 2020, the 55-years-and-older age group will total 97.8 million, composing 28.7 percent of the 2020 resident population, compared with 24.7 percent in 2010.”).

13. See, e.g., United States Census Bureau, *supra* note 9, at p. 18; Wikipedia, *Aging in the American workforce*, at <[http://en.wikipedia.org/wiki/Aging\\_in\\_the\\_American\\_workforce](http://en.wikipedia.org/wiki/Aging_in_the_American_workforce)>.

14. United States Census Bureau, *supra* note 9, at p. 18.

15. See R. Jaslow, *Alzheimer’s Rates Expected to Triple by 2050 Because of Aging Baby Boomers*, CBS News (Feb. 6, 2013), available at <[www.kktv.com](http://www.kktv.com)> (referring to study conducted by J. Weuve of the Rush Institute for Healthy Aging in Chicago, which was published online in *Neurology* on Feb. 6, 2013).

16. Alzheimer’s Ass’n, *Adult Guardianship Jurisdiction Case Statement*, available from the ULC website, <[www.uniformlaws.org](http://www.uniformlaws.org)>.

17. See, e.g., UAGPPJA Prefatory Note (“the United States has 50 plus guardianship systems”).

18. See discussion of “Definitions” *infra*.

19. See Alzheimer’s Ass’n, *Adult Guardianship Jurisdiction Case Statement*, available from the ULC website, <[www.uniformlaws.org](http://www.uniformlaws.org)>.

1 The result of that study is UAGPPJA, a uniform act proposed for enactment in  
2 all fifty states. The act consists of five articles, the first of which is comprised of  
3 general, introductory provisions. The next three articles address the problem areas  
4 identified above: jurisdiction, transfer, and interstate recognition. The last article  
5 consists of miscellaneous provisions.

6 **General Provisions (Article 1 of UAGPPJA)**

7 Article 1 of UAGPPJA includes a short title, a set of definitions, and a few other  
8 preliminary provisions. The Commission tentatively recommends that California  
9 enact each of those provisions, with certain modifications, as well as a provision  
10 limiting the scope of the proposed legislation.

11 **Short Title**

12 Section 101 of UAGPPJA says that the legislation may be cited as “the Uniform  
13 Adult Guardianship and Protective Proceedings Jurisdiction Act.” That short title  
14 could cause confusion in California, because the Probate Code uses different  
15 terminology. The term “conservatorship” applies to the types of proceedings  
16 covered by UAGPPJA, and the term “guardianship” applies only to proceedings  
17 relating to minors.<sup>20</sup>

18 To prevent confusion, the Commission tentatively recommends a different short  
19 title: “the California Conservatorship Jurisdiction Act.”<sup>21</sup> The legislation should  
20 also state, however, that it is intended to be a modified version of the Uniform  
21 Adult Guardianship and Protective Proceedings Jurisdiction Act.<sup>22</sup> That will alert  
22 people that the legislation is based on a uniform act.

23 **Limitations on Scope**

24 The Commission tentatively recommends adding a provision that would state  
25 several limitations on the scope of the proposed legislation.

26 *Minors.* UAGPPJA applies to judicial proceedings in which a party asks the  
27 court to appoint someone to “make decisions regarding the person of an adult” or  
28 to “administer the property of an adult.”<sup>23</sup> The act’s definition of “adult” excludes  
29 an emancipated minor,<sup>24</sup> but the ULC recognizes and accepts that a state may wish  
30 to modify that definition if it treats an emancipated minor as an “adult” for the  
31 purpose of the types of proceedings covered by the act.<sup>25</sup>

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20. See discussion of “Definitions” *infra*.

21. See proposed Prob. Code § 1981 *infra*.

22. See *id*.

23. See generally UAGPPJA § 102 (defining “conservator,” “guardian,” “guardianship proceeding” & “protective proceeding”).

24. See UAGPPJA § 102(1) (defining “adult”).

25. See UAGPPJA § 102 Comment.

1 Under California law, a minor who is or was married is treated as an adult for  
2 some but not all of the types of proceedings covered by UAGPPJA.<sup>26</sup> Because  
3 other states may treat such a minor differently and even California does not treat  
4 such a minor as an adult for all of the proceedings covered by UAGPPJA, it seems  
5 simplest to completely exclude minors from California’s version of the act.

6 Due to its definition of “adult,” UAGPPJA is already consistent with that  
7 approach. To underscore the limitation, however, the Commission tentatively  
8 recommends inclusion of a provision expressly stating that the California  
9 Conservatorship Jurisdiction Act does not apply to a minor, regardless of whether  
10 the minor is or was married.<sup>27</sup> The same provision should also state that the act  
11 does not apply to any proceeding in which a person is appointed to provide  
12 personal care or property administration for a minor.<sup>28</sup> Those steps will eliminate  
13 any ambiguity about whether the act applies to a minor who qualifies as an adult  
14 for some legal purposes.

15 *Proceedings Involving Involuntary Mental Health Treatment.* The provision  
16 expressly excluding all minors should also expressly state another limitation on  
17 the scope of the act. California has a variety of civil commitment schemes, in  
18 which a court may involuntarily commit a person to a mental health facility or  
19 appoint someone who can authorize an involuntary commitment or other  
20 involuntary mental health treatment of another person.<sup>29</sup> According to the ULC,  
21 UAGPPJA is not intended to apply to such judicial proceedings.<sup>30</sup> Yet that  
22 limitation is not expressly stated in the uniform act.

23 The lack of such a statement could cause confusion in California, because the  
24 term “conservatorship” is used for some of the California proceedings that involve  
25 involuntary mental health treatment (for example, a Lanterman-Petris-Short  
26 conservatorship)<sup>31</sup>, as well as for judicial proceedings that do not involve such

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26. See, e.g., Prob. Code §§ 1515 & Comment (guardian of estate may be appointed for minor who is married or has had marriage dissolved, but not guardian of person), 1800.3 & Comment (conservator of person may be appointed for minor who is married or has had marriage dissolved, but not conservator of estate), 1860 & Comment (dissolution of minor’s marriage does not terminate conservatorship of person established for that minor).

27. See proposed Prob. Code § 1981 & Comment *infra*.

28. See *id*.

29. See Penal Code §§ 1026-1027 (civil commitment of person found not guilty by reason of insanity), 1367-1376 (civil commitment of person found incompetent to stand trial), 2960-2981 (civil commitment of a mentally disordered offender); Welf. & Inst. Code §§ 1800-1803 (civil commitment of person who would otherwise be discharged from the Youth Authority), 3050-3555 (civil commitment of narcotics addict), 3100-3111 (same), 5000-5550 (conservatorship under Lanterman-Petris-Short Act), 6500-6513 (civil commitment of person with a developmental disability who is dangerous to others or to self), 6600-6609.3 (civil commitment of sexually violent predator).

30. See Second Supplement to Commission Staff Memorandum 2012-50, Exhibit p. 2 (Comments of Eric Fish, Senior Legislative Counsel & Legal Counsel for ULC).

31. Welf. & Inst. Code §§ 5000-5550.

1 treatment (for example, a Probate Code conservatorship).<sup>32</sup> Applying UAGPPJA’s  
2 streamlined procedures to court proceedings that involve involuntary mental  
3 health treatment would raise significant constitutional issues, because such  
4 proceedings severely impinge on personal liberties and are thus subject to  
5 numerous, stringent constitutional constraints.<sup>33</sup> The Commission tentatively  
6 recommends that the Legislature expressly exclude those proceedings from the  
7 scope of the California Conservatorship Jurisdiction Act.<sup>34</sup>

8 *Adults with Developmental Disabilities.* Finally, a carefully-tailored limitation  
9 should apply with respect to an adult with a developmental disability. In  
10 California, an adult with a developmental disability is entitled to be evaluated by a  
11 regional center and to receive a broad range of services pursuant to an  
12 individualized plan.<sup>35</sup> The intent is to “enable persons with developmental  
13 disabilities to approximate the pattern of everyday living available to people  
14 without disabilities of the same age.”<sup>36</sup> To further that intent, California provides a  
15 variety of conservatorship possibilities for an adult with a developmental  
16 disability, including the option of a limited conservatorship in which the adult  
17 retains all legal and civil rights except those which the court designates as legal  
18 disabilities and specifically grants to the limited conservator.<sup>37</sup>

19 Due to those special opportunities for an adult with a developmental disability, it  
20 would be ill-advised to apply UAGPPJA’s streamlined transfer procedure<sup>38</sup> to such  
21 an adult. Instead, the Commission tentatively recommends making the transfer  
22 procedure (but not UAGPPJA’s registration procedure)<sup>39</sup> expressly inapplicable to

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32. Prob. Code § 1801(a)-(c).

33. See Commission Staff Memorandum 2012-51 (Dec. 10, 2012), pp. 5-27 & cases cited therein. Conservatorships that do not involve involuntary mental health treatment are also subject to some constitutional constraints, but those constraints are less numerous and stringent than the ones applicable to involuntary mental health treatment. See *id.* at 28-32. They can be effectively addressed without precluding application of UAGPPJA. See *id.* at 32-33.

34. See proposed Prob. Code § 1981(b) & Comment *infra*.

35. See Welf. & Inst. Code § 4646; see also *Sanchez v. Johnson*, 416 F.3d 1051, 1064-68 (9th Cir. 2001). The intent is to “enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age.” Welf. & Inst. Code § 4501; see also Welf. & Inst. Code §§ 4500-4868 (“Services for the Developmentally Disabled”).

36. Welf. & Inst. Code § 4501; see also Welf. & Inst. Code §§ 4500-4868 (“Services for the Developmentally Disabled”).

37. Section 1801(d); *cf.* Section 1801(a)-(c) (regular Probate Code conservatorship); Health & Safety Code §§ 416-416.23 (Director of Developmental Services as conservator for developmentally disabled person); Welf. & Inst. Code §§ 6500-6513 (judicial commitment of person with developmental disability who is dangerous to others or to self).

38. See discussion of “Transfer (Article 3 of UAGPPJA)” *infra*.

39. Under UAGPPJA’s registration procedure, it would be possible for a court-appointed to register an out-of-state proceeding in California, and then exercise certain powers within California. See discussion of “Registration and Recognition (Article 4 of UAGPPJA)” *infra*. The Commission tentatively recommends

1 an adult with a developmental disability, and to any proceeding in which a person  
2 is appointed to provide personal care or property administration for an adult with a  
3 developmental disability.<sup>40</sup>

4 That would mean that when such an adult is relocated to California from another  
5 state, it will be necessary to commence a new conservatorship proceeding in a  
6 California court, as under existing law. Although that might be more costly than  
7 using the transfer procedure, it would help ensure that the adult receives the  
8 benefit of California’s procedures for such adults, and full recognition of the rights  
9 to which the adult is entitled under California law. Likewise, if an adult with a  
10 developmental disability is relocated from California to another state, that state  
11 will have to evaluate the adult’s needs and the available resources using its normal  
12 processes, not an abbreviated transfer procedure. Again, the burdens of initiating a  
13 new proceeding appear less compelling than the importance of assuring that the  
14 developmentally disabled adult receives a careful evaluation and the full benefit of  
15 any special programs for such an adult.

16 **Definitions**

17 Section 102 of UAGPPJA defines various terms that are used in the uniform act.  
18 Unfortunately, California uses very different and sometimes conflicting  
19 terminology for many of the same matters.

20 Under UAGPPJA, a “guardian” is “a person appointed by the court to make  
21 decisions regarding the *person* of an *adult* ....”<sup>41</sup> In California, a “guardian” may  
22 only be appointed for a minor.<sup>42</sup> The term “conservator of the person” is  
23 comparable to what UAGPPJA denominates a “guardian.” In what is known as a  
24 “Probate Code conservatorship” (sometimes referred to as a “general  
25 conservatorship”), a California court may, with certain exceptions, appoint a  
26 “conservator of the person” for “a person who is unable to provide properly for his  
27 or her personal needs for physical health, food, clothing, or shelter ....”<sup>43</sup>

28 Under UAGPPJA, the term “conservator” refers to “a person appointed by the  
29 court to administer the *property* of an *adult* ....”<sup>44</sup> In California, the comparable  
30 term is a “conservator of the estate.” In a Probate Code conservatorship, a  
31 California court may, with certain exceptions, appoint a “conservator of the estate”

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that such a registration only be effective as long as the person with limited capacity resides in another jurisdiction. See proposed Prob. Code § 2014 *infra*.

If the Legislature follows that approach, then registration in a California court would confer powers only with respect to an adult with a developmental disability who resides outside the state. Consequently, that person probably will not be in a position to participate in California’s programs for adults with developmental disabilities, and there is no need to preclude application of the registration procedure.

40. See proposed Prob. Code § 1981(c) & Comment *infra*.

41. UAGPPJA § 102(3) (emphasis added).

42. See Prob. Code §§ 1500-1501.

43. Prob. Code § 1801(a).

44. UAGPPJA § 102(2) (emphasis added).

1 for “a person who is substantially unable to manage his or her own financial  
2 resources or to resist fraud or undue influence ....”<sup>45</sup>

3 California also expressly recognizes that a single person may serve as both  
4 “conservator of the person” and “conservator of the estate.”<sup>46</sup> Such a person may  
5 be referred to as a “conservator of the person and estate.”<sup>47</sup> *Id.* In contrast,  
6 UAGPPJA does not include a special term for a person who acts in both roles (i.e.,  
7 a person who is both a “guardian” and a “conservator” as defined in UAGPPJA).

8 A further complication is the terminology used to refer to the types of  
9 proceedings in which such appointments are made. Under UAGPPJA, a  
10 “guardianship proceeding” is “a judicial proceeding in which an order for the  
11 appointment of a guardian is sought or has been issued.”<sup>48</sup> A “protective order” is  
12 “an order appointing a conservator or other order related to management of an  
13 adult’s property.”<sup>49</sup> A “protective proceeding” is “a judicial proceeding in which a  
14 protective order is sought or has been issued.”<sup>50</sup> The term “conservatorship” is not  
15 defined, although it is used in a few places in UAGPPJA, apparently to refer to a  
16 proceeding in which a UAGPPJA “conservator” is appointed.<sup>51</sup>

17 In California, the term “guardianship proceeding” is reserved for proceedings  
18 relating to minors, which are not addressed by UAGPPJA. Under California law,  
19 the term “conservatorship proceeding” encompasses both a proceeding to appoint  
20 a “conservator of the person” and a proceeding to appoint a “conservator of the  
21 estate,” as well as a proceeding to appoint a “conservator of the person and estate.”  
22 Moreover, the term “protective proceeding” is used far more inclusively than  
23 under UAGPPJA. Instead of being limited to proceedings that involve  
24 management of property, the term seems to encompass all “conservatorship  
25 proceedings” and “guardianship proceedings,” as well as some types of similar  
26 proceedings.<sup>52</sup>

27 Due to these terminology differences, it would be confusing to enact UAGPPJA  
28 in California as is. Rather, the Commission tentatively recommends revising the  
29 act to use California terminology throughout.<sup>53</sup> That would make the act consistent

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45. Prob. Code § 1801(b).

46. Prob. Code § 1801(c).

47. *Id.*

48. UAGPPJA § 102(5).

49. UAGPPJA § 102(10).

50. UAGPPJA § 102(11).

51. See UAGPPJA § 102 Comment (explaining that “protective proceeding” is broader than “conservatorship” because “protective proceeding” encompasses proceeding in which party seeks property management order without appointment of conservator).

52. See Prob. Code §§ 1301, 4126, 4672; Cal. R. Ct. 7.51(d), 10.478(a), 10.776(a).

53. See proposed Prob. Code § 1982 *infra*; see also proposed Prob. Code §§ 1980-2114 & Comments *infra*.

1 with the remainder of the Probate Code and with California case law, minimizing  
2 the possibility of confusion.

3 Under the recommended approach, a nonresident using California’s version of  
4 UAGPPJA will need to learn California terminology. That will require some  
5 effort, but a nonresident would have to do that anyway to handle a proceeding that  
6 is transferred to, registered in, or initiated in California. Conversely, a Californian  
7 referring to UAGPPJA as enacted in another state will need to learn the  
8 terminology used in that enactment, instead of working with the same terminology  
9 as the California enactment. Again, however, this is a routine burden when  
10 referring to the law of another jurisdiction, whether for purposes of taking action  
11 in that jurisdiction or just invoking a decision from that jurisdiction to persuade a  
12 California court. The detriments of conforming UAGPPJA to California  
13 terminology are thus minor; the Commission is convinced that the benefits of  
14 using consistent terminology throughout the Probate Code will far outweigh them.

15 ***Other Provisions in Article 1 of UAGPPJA***

16 In addition to the provisions discussed above, Article 1 of UAGPPJA contains a  
17 provision regarding application of the proposed legislation to a court proceeding in  
18 another country,<sup>54</sup> provisions facilitating communication and cooperation between  
19 courts of different states,<sup>55</sup> and a provision on taking testimony in another state.<sup>56</sup>  
20 Aside from revisions to conform to California terminology, the Commission does  
21 not recommend any changes relating to those provisions.<sup>57</sup>

22 **Jurisdiction (Article 2 of UAGPPJA)**

23 Article 2 of UAGPPJA addresses the problem of determining the proper  
24 jurisdiction of a proceeding in which a court appoints someone to assist another  
25 person with personal care or property management. Jurisdictional issues arise  
26 often, because individuals frequently have contacts with more than one state.<sup>58</sup> For  
27 example, an individual might own property in several states, or might spend part  
28 of the year living in one state and part of the year living in another state. If such an  
29 individual appears to need a court-appointed assistant, it is important to have an  
30 effective mechanism for resolving which state has jurisdiction to evaluate the need  
31 for an appointment, select an assistant if needed, and supervise the proceeding  
32 afterwards. Article 2 of UAGPPJA is intended to provide such a mechanism.<sup>59</sup>

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54. UAGPPJA § 103.

55. UAGPPJA §§ 104, 105.

56. UAGPPJA § 106.

57. See proposed Prob. Code §§ 1983-1986 *infra*.

58. UAGPPJA Prefatory Note.

59. *Id.*

1 In general, UAGPPJA would establish a three-tier hierarchy for determining  
2 jurisdiction.<sup>60</sup> At the top of the hierarchy is the “home state,” which is determined  
3 by examining where the individual was physically present for a six-month period  
4 preceding the filing of the petition for appointment of an assistant.<sup>61</sup> The home  
5 state has primary jurisdiction to make an appointment.<sup>62</sup> Next in the hierarchy is a  
6 “significant-connection” state,<sup>63</sup> which is defined as a state, other than the home  
7 state, with which the individual has a significant connection aside from mere  
8 physical presence and in which significant evidence concerning the individual is  
9 available.<sup>64</sup> Finally, a court from a state that is neither the home state nor a  
10 significant-connection state may exercise jurisdiction in certain limited  
11 circumstances.<sup>65</sup>

12 Further details regarding UAGPPJA’s jurisdictional scheme, including  
13 exceptions to the general rules described above, are explained at length in  
14 UAGPPJA.<sup>66</sup> It is not necessary to reiterate those details here. UAGPPJA’s  
15 jurisdictional scheme is reasonable because it is based on the strength of an  
16 individual’s ties to a jurisdiction.<sup>67</sup> Eliminating jurisdictional uncertainties through  
17 a uniform approach would be a major step forward. The Commission therefore  
18 recommends that the Legislature enact UAGPPJA’s jurisdictional rules essentially  
19 without change. The proposed legislation would merely conform the UAGPPJA  
20 provisions to California terminology and drafting practices and make a couple of  
21 minor clarifications.<sup>68</sup>

## 22 **Transfer (Article 3 of UAGPPJA)**

23 Article 3 of UAGPPJA addresses the problem of transfer: how to move what is  
24 known in California as a conservatorship from one state to another when such a

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60. UAGPPJA Prefatory Note.

61. The “home state” is the state in which the individual was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a court proceeding for appointment of an assistant; or, if none, the state in which the individual was physically present, including any period of temporary absence, for at least six consecutive months ending within six months before the filing of the court proceeding. See UAGPPJA § 201(2); proposed Prob. Code § 1991(a)(2) *infra*.

62. See UAGPPJA § 203(1) & Comment; proposed Prob. Code § 1993(a) & Comment *infra*; see also UAGPPJA Art. 2 General Comment; UAGPPJA Prefatory Note.

63. See UAGPPJA § 203(2) & Comment; proposed Prob. Code § 1993(b)-(d) & Comment *infra*; see also UAGPPJA Art. 2 General Comment; UAGPPJA Prefatory Note.

64. See UAGPPJA § 201(3); proposed Prob. Code § 1991(a)(3) *infra*.

65. See UAGPPJA § 203(3) & Comment; proposed Prob. Code § 1993(e) & Comment; see also UAGPPJA Art. 2 General Comment; UAGPPJA Prefatory Note.

66. See UAGPPJA §§ 201-209 & Comments; UAGPPJA Art. 2 General Comment; UAGPPJA Prefatory Note.

67. See generally *Internat’l Shoe Co. v. Washington*, 326 U.S. 310 (1945).

68. See proposed Prob. Code §§ 1991-1999 & Comments *infra*.

1 move becomes necessary.<sup>69</sup> That problem can arise, for example, when the  
2 conservator or the conservator’s spouse accepts a new job in a different state and  
3 the family needs to bring the conservatee along to the new state. Alternatively,  
4 family circumstances might change, necessitating replacement of the existing  
5 conservator with a family member who lives in another state. Or it might be  
6 necessary to move a conservatee to a nursing or medical facility in a different  
7 state, particularly if the conservatee resides near a state border or requires  
8 specialized care.<sup>70</sup>

9 Before UAGPPJA, in most states it was necessary to re-establish a  
10 conservatorship from scratch when such a move occurred.<sup>71</sup> In other words, the  
11 whole process of creating a conservatorship had to be repeated: filing a  
12 conservatorship petition, proving that the proposed conservatee lacked capacity to  
13 handle personal care or financial matters, choosing a conservator, and going  
14 through all of the other steps in the conservatorship process.

15 Such relitigation is costly, time-consuming, and stressful, draining resources of  
16 conservatees, their families, and the judicial system.<sup>72</sup> Those burdens can be  
17 particularly difficult for families that are already stretched thin, struggling to  
18 provide personal care and financial management for a needy relative, while also  
19 handling their own affairs.

20 In drafting Article 2 of UAGPPJA, the ULC sought to provide a streamlined  
21 transfer process, so that it would not be necessary to fully relitigate such a  
22 proceeding when a move occurred.<sup>73</sup> That transfer process involves a number of  
23 steps, as described below.

#### 24 ***Transfer Procedure Under UAGPPJA***

25 Although UAGPPJA uses the term “transfer,” what actually occurs is  
26 technically not transfer of a proceeding from one state to another. Rather, the  
27 process involves termination of an existing proceeding in one state and  
28 commencement of a new proceeding in another state, in an expedited and  
29 coordinated manner. The term “transfer” is just a shorthand way to refer to this  
30 process.<sup>74</sup>

31 A “transfer” under UAGPPJA requires the issuance of four court orders: a  
32 provisional order granting the transfer, a provisional order accepting the transfer, a  
33 final order confirming the transfer, and a final order accepting the transfer. A

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69. See UAGPPJA Prefatory Note.

70. See Alzheimer’s Ass’n, *Adult Guardianship Jurisdiction Case Statement*, available from the ULC website, <[www.uniformlaws.org](http://www.uniformlaws.org)>.

71. UAGPPJA Art. 3 General Comment; UAGPPJA Prefatory Note.

72. *Id.*

73. *Id.*

74. Commission Staff Memorandum 2011-31 (Aug. 4, 2011), Exhibit p. 3 (Comments of Prof. English, reporter for UAGPPJA).

1 hearing is held only if the transferring court or the accepting court deems it  
2 necessary, or if one is requested by a person entitled to notice of the transfer  
3 proceeding.<sup>75</sup>

4 To begin the transfer process, a court-appointed assistant must file a transfer  
5 petition in the court currently supervising the proceeding.<sup>76</sup> That court must issue  
6 an order provisionally granting the transfer if it is satisfied that the other state will  
7 accept the transfer and the court makes certain findings regarding the proposed  
8 move.<sup>77</sup> The required findings differ slightly depending on whether the proceeding  
9 involves personal care or financial assistance.<sup>78</sup>

10 After the transferring court provisionally grants the transfer, the court-appointed  
11 assistant must file a petition in a court of the other state, asking it to accept the  
12 transfer.<sup>79</sup> That court must issue a provisional order accepting the transfer unless:  
13 (1) the assistant is ineligible for appointment in the accepting state or (2) someone  
14 objects to the transfer and establishes that the transfer would be contrary to the  
15 interests of the person receiving assistance.<sup>80</sup>

16 On receipt of the provisional order accepting the transfer and whatever  
17 documents are normally required to terminate a proceeding of this type, the  
18 transferring court must issue a final order confirming the transfer and terminating  
19 its proceeding.<sup>81</sup> The transferring court's final order is then provided to the  
20 accepting court, which must issue a final order accepting the transfer and  
21 appointing the petitioner to provide assistance in the accepting state.<sup>82</sup> To expedite  
22 the transfer process, the court in the accepting state must give deference to the  
23 transferring court's determination of capacity and selection of the person to  
24 provide assistance.<sup>83</sup>

25 Because the applicable law and practice are likely to differ in the two states,  
26 within ninety days after issuing its final order accepting the transfer, the accepting  
27 court must determine whether the proceeding needs to be modified to conform to  
28 the law of that state.<sup>84</sup> The ninety day requirement is not inflexible; a state may  
29 coordinate the conformity determination with other time limits applicable to the  
30 proceeding. The conformity determination is the last step in the transfer process.

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75. See UAGPPJA §§ 301(c), 302(c).

76. UAGPPJA § 301(a).

77. UAGPPJA § 301(d), (e).

78. See UAGPPJA § 301(d).

79. UAGPPJA § 302(a).

80. UAGPPJA § 302(d).

81. UAGPPJA § 301(f).

82. UAGPPJA § 302(e).

83. UAGPPJA § 302(g); UAGPPJA Prefatory Note.

84. UAGPPJA § 302(f).

1 Because UAGPPJA’s transfer process would reduce the monetary, emotional,  
2 and other costs of relocating a proceeding, the Commission tentatively  
3 recommends the concept for enactment in California. To protect the state’s  
4 policies and effectively implement the concept, however, the Commission  
5 suggests several modifications of UAGPPJA’s transfer provisions. A few of those  
6 modifications relate to transfer of a California conservatorship to another state;  
7 most of the modifications relate to acceptance of a similar proceeding from  
8 another state. Each set of proposed modifications is discussed in order below.

9 *Transfer of a California Conservatorship to Another State*

10 Section 301 of UAGPPJA specifies the process for transferring a proceeding to  
11 another state. If that section was enacted in California, a California court would  
12 not have to provisionally approve a transfer to another state unless it found that  
13 plans for care of the conservatee in the other state were “reasonable and  
14 sufficient,”<sup>85</sup> or, in a conservatorship of the estate, that adequate arrangements  
15 would be made for management of the conservatee’s property.<sup>86</sup> In those  
16 circumstances, a California court could in good conscience relinquish control over  
17 the conservatee and entrust the conservatee or the conservatee’s property to the  
18 supervision of the accepting court. Upon transfer, the situation would be  
19 comparable to that of any other conservatee beyond California’s jurisdictional  
20 reach: California would lack a basis for intervening and would have to respect the  
21 policy determinations and other decisions of its sister state.

22 During the transfer process, however, the California court would still have  
23 responsibility for supervising the care of the conservatee. To eliminate any doubt  
24 that the conservator is bound by California law throughout the transfer process, the  
25 Commission recommends making that point explicit in the provision governing  
26 the conservator’s oath.<sup>87</sup>

27 The Commission further recommends the following modifications of UAGPPJA  
28 Section 301:

- 29
- 30 • Revisions to conform to California terminology.<sup>88</sup>
  - 31 • Revisions to conform to California practice, under which a party is required  
32 to give notice *of a hearing* on a motion or petition, not just notice of a  
33 petition.<sup>89</sup>
  - 34 • Revisions to require a hearing on every transfer petition.<sup>90</sup> This would afford  
interested persons a relatively easy means to voice objections; they would

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85. UAGPPJA § 301(d)(3). Other requirements must also be met. See UAGPPJA § 301(d)(1)-(2).

86. UAGPPJA § 301(e)(3). Other requirements must also be met. See UAGPPJA § 301(e)(1)-(2).

87. See proposed amendment to Prob. Code § 2300 *infra*.

88. See proposed Prob. Code § 2001 & Comment *infra*.

89. See proposed Prob. Code § 2001(b) & Comment *infra*.

1 not have to bear the burden of figuring out how to request a hearing. If there  
2 are no objections to a transfer petition, the court could place the matter on  
3 the consent calendar.

- 4 • Revisions of the procedure that applies if a person objects to a transfer. To  
5 prevent a transfer, UAGPPJA would require the objector to establish that the  
6 transfer would be contrary to the interests of the subject of the proceeding.<sup>91</sup>  
7 If an objector failed to meet that burden, the transfer would go forward. In  
8 contrast, the Commission suggests that a transfer should only be permitted if  
9 the court affirmatively determines that the transfer would not be contrary to  
10 the interests of the conservatee.<sup>92</sup>
- 11 • Revisions to make clear what requirements apply to a proceeding that  
12 involves both personal care and property management (what is known in  
13 California as a conservatorship of the person and estate).<sup>93</sup>

#### 14 *Transfer of Another State's Conservatorship to California*

15 Section 302 of UAGPPJA specifies the process for accepting a proceeding from  
16 another state. The Commission tentatively recommends a number of revisions to  
17 make that provision suitable for enactment in California.

18 *Expressly Requiring Compliance with California Law Upon Transfer.* If Section  
19 302 of UAGPPJA was enacted in California, a California court would have to  
20 accept the transfer of a proceeding from another state upon satisfaction of the  
21 procedural requirements described above. That raises an important question: After  
22 the transfer, would the transferred proceeding continue to be governed by the laws  
23 of the state in which it was established, or would it be governed by California law?  
24 In other words, would the California court have to apply the policies and  
25 procedures of another state, or would it be free to follow California's own policies  
26 and procedures? There are many distinctions between California conservatorship  
27 law and comparable law in other states, so providing clear guidance on this point  
28 is critical.

29 UAGPPJA does not say so expressly, but it is fairly obvious that the ULC  
30 intended for a transferred proceeding to be governed by the law of the state to  
31 which it was transferred.<sup>94</sup> ULC representatives have confirmed as much.<sup>95</sup>

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90. See proposed Prob. Code § 2001(c) & Comment *infra*. A similar requirement applies when a conservator seeks to establish an out-of-state residence for a conservatee without petitioning for a transfer of the conservatorship. See Prob. Code § 2353(c); Cal. R. Ct. 7.1063(f).

91. See UAGPPJA § 301(d)(2), (e)(2).

92. See proposed Prob. Code § 2001(d), (e) & Comment *infra*.

93. See proposed Prob. Code § 2001(f) & Comment *infra*.

94. See, e.g., UAGPPJA § 302(f) (directing accepting court to determine whether proceeding needs to be modified to conform to law of accepting state).

95. See Commission Staff Memorandum 2011-31 (Aug. 4, 2011), Exhibit pp. 3 (Comments of Prof. English, reporter for UAGPPJA), 4 (Comments of E. Fish, Senior Legislative Counsel & Legal Counsel for ULC).

1 Application of California law also appears to be the only sensible solution:  
2 Otherwise similarly situated California conservatees would be subject to disparity  
3 in treatment depending on where a conservatorship originated, and California  
4 courts would have to learn and apply the rules of numerous other jurisdictions on a  
5 daily basis.

6 Because this is such an important matter, the Commission recommends that it be  
7 stated expressly in the statutory provision on accepting a transfer. Specifically, the  
8 Commission proposes to include a statement that “[w]hen a transfer to this state  
9 becomes effective, the conservatorship is subject to the law of this state and shall  
10 thereafter be treated as a conservatorship under the law of this state.”<sup>96</sup>

11 That rule will help to ensure that California policies are protected. For example,  
12 California has detailed requirements for placing a conservatee with dementia in a  
13 secured perimeter residential care facility for dementia patients,<sup>97</sup> and for  
14 authorizing the administration of psychotropic medications to such a  
15 conservatee.<sup>98</sup> Under the Commission’s proposed approach, it would be clear that  
16 a conservator would have to satisfy those requirements before taking those steps in  
17 California.

18 *Expressly Preventing a Court Appointee from Taking Action in California Until*  
19 *the Transfer is Complete and Becomes Effective.* For similar reasons, the  
20 Commission also recommends a second statutory clarification: Making clear that a  
21 court-appointed assistant may not take action in California pursuant to a transfer  
22 petition unless and until a California court issues a final order accepting the  
23 transfer and the transfer becomes effective.<sup>99</sup> In conjunction with issuance of the  
24 final order accepting the transfer, the court would be required to provide the  
25 conservator with the same informational materials that a new conservator receives  
26 when a conservatorship is established in California.<sup>100</sup> In this way, the conservator  
27 of a transferred proceeding would be alerted to California’s conservatorship rules  
28 before being able to take action in California, and the policies underlying those  
29 rules would be protected.

30 *Allowing But Not Mandating Full Reevaluation of Capacity and the Choice of*  
31 *the Appointee Pursuant to California Law.* Section 302 of UAGPPJA provides  
32 that “[i]n granting a petition under this section, the court *shall recognize a ...*  
33 *conservatorship order from the other state, including the determination of the*  
34 *[conservatee’s] incapacity and the appointment of the ... conservator.”*<sup>101</sup> The key

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96. See proposed Prob. Code § 2002(e)(3) & Comment *infra*.

97. See Prob. Code § 2356.5.

98. See *id.*

99. See proposed Prob. Code § 2002(e)(2) & Comment *infra*.

100. See proposed Prob. Code § 2002(e)(1) (requiring compliance with Prob. Code § 1835) & Comment *infra*; see also proposed amendment to Prob. Code § 1834 *infra*.

101. UAGPPJA § 302(g) (emphasis added).

1 purpose of that requirement is to eliminate the burden of having to “prove the case  
2 in the second state from scratch, including proving the respondent’s incapacity and  
3 the choice of ... conservator.”<sup>102</sup>

4 Although that is an important objective, the Commission has serious  
5 reservations about requiring a California court to accept another state’s ruling on  
6 capacity or choice of conservator without qualification. Because the UAGPPJA  
7 process would not be a true transfer, the constitutional requirement to give full  
8 faith and credit to a sister state judgment<sup>103</sup> would not seem to apply. Further, the  
9 United States Supreme Court is likely to treat a conservatorship order in the same  
10 manner as a child custody order, concluding that because the order is subject to  
11 modification in the state that issued it, the order is also subject to modification in a  
12 sister state.<sup>104</sup>

13 Most importantly, California’s policies and procedures regarding determination  
14 of capacity and selection of a conservator differ from those in other states. For  
15 example, California has enacted the Due Process in Competence Determinations  
16 Act, which establishes detailed and demanding rules and procedures for assessing  
17 a person’s capacity.<sup>105</sup> In neighboring states (Arizona, Nevada, and Oregon), the  
18 rules regarding determination of capacity are not as fully developed.<sup>106</sup> Similarly,  
19 California’s rules governing selection of a conservator differ in various respects  
20 from those in neighboring states, and those rules reflect policy choices such as  
21 how much weight to give to the conservatee’s preference and how to rank a  
22 domestic partner in comparison to other relatives.<sup>107</sup> By requiring a California

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102. UAGPPJA Art. 3 General Comment.

103. The federal constitution requires each state to give full faith and credit to judgments entered in other states. U.S. Const. art. IV, § 1; see also 28 U.S.C. § 1738.

104. The United States Supreme Court has not resolved how the full faith and credit requirement applies to what is known in California as a conservatorship proceeding. The Court has, however, rendered several pertinent decisions in the analogous context of child custody.

Those decisions point out that a child custody order is usually subject to modification as required by the best interests of the child. Because the order is subject to modification in the state that issued it, the order is also subject to modification in a sister state. See *Thompson v. Thompson*, 484 U.S. 174, 180 (1988) (recounting history of Court’s decisions); *Ford v. Ford*, 371 U.S. 187 (1962) (full faith and credit doctrine did not compel South Carolina court to adhere to modifiable Virginia judgment; South Carolina court could assess best interests of child and act accordingly); *Kovacs v. Brewer*, 356 U.S. 604, 607 (sister state has at least as much leeway to disregard judgment, qualify it, or depart from it as state that rendered judgment); *Halvey v. Halvey*, 330 U.S. 610, 614 (1947) (“a judgment has no constitutional claim to a more conclusive or final effect in the State of the forum than it has in the State where rendered.”).

A similar result would seem to follow in the conservatorship context, because a conservatorship typically remains modifiable to further the best interests of the conservatee. See generally *In re Guardianship & Conservatorship of Frederick J. Miller*, 5 Kan. App. 2d 246, 253, 616 P.2d 287 (Kan. Ct. App. 1980), *citing* Paulsen & Best, *Guardians and the Conflict of Laws*, 45 Iowa L. Rev. 212, 223 (1960); *Restatement (Second) of Conflict of Laws* § 79, Comment d.

105. See Prob. Code §§ 810-813, 1801, 1881, 3201, 3204, 3208.

106. See Commission Staff Memorandum 2011-31 (Aug. 4, 2011), pp. 17-37 & authorities cited therein.

107. See *id.* at 37-54 & authorities cited therein.

1 court to accept another state’s determination of capacity or selection of appointee,  
2 Section 302 of UAGPPJA threatens to impinge on California’s policy preferences  
3 regarding those matters.

4 On the other hand, however, requiring full relitigation of capacity and the choice  
5 of conservator in each case transferred to California would defeat the very purpose  
6 of UAGPPJA’s transfer process: making relocation of this type of court  
7 proceeding less burdensome. In particular, assessing an individual’s capacity can  
8 be demeaning for that individual and costly because it requires input from medical  
9 professionals. UAGPPJA seeks to minimize those concerns.

10 The Commission therefore proposes a middle ground. Full relitigation of  
11 capacity and the choice of conservator would not be required in every case  
12 transferred to California. But such relitigation would be *allowed if requested in the*  
13 *normal manner that those issues can be revisited in any California*  
14 *conservatorship*: (1) by filing a petition for termination of the conservatorship, if  
15 the intent is to show that the conservatee has sufficient capacity to handle his or  
16 her own affairs without assistance, or (2) by filing a petition to remove the  
17 conservator, if the intent is to obtain a new conservator in accordance with  
18 California law.<sup>108</sup> In other words, the issues of capacity and choice of conservator  
19 could be relitigated under California law if someone wanted to raise them.

20 Further, the first time that capacity is relitigated in California after a transfer, the  
21 relitigation process should be comparable to the process that would have been  
22 used if the conservatorship had originated in California. Accordingly, the  
23 Commission proposes to require the court to rebuttably presume that there is no  
24 need for a conservatorship.<sup>109</sup>

25 Likewise, if a person seeks removal of the conservator of a transferred  
26 proceeding, the choice of conservator should be reevaluated in the same manner as  
27 if a conservator was being chosen for a proceeding that originated in California.  
28 The Commission therefore recommends that the statute governing removal of a  
29 conservator be amended to permit removal of a transferred conservator if that  
30 person “would not have been appointed in this state despite being eligible to serve  
31 under the law of this state.”<sup>110</sup>

32 As a further means of protecting California conservatorship policies during the  
33 transfer process, the Commission proposes a bifurcated review system. Before  
34 provisionally granting a petition to transfer a proceeding to California, a California  
35 court would have to conduct a preliminary investigation, sufficient to enable the  
36 court to determine whether the requirements for provisionally granting the petition  
37 are met.<sup>111</sup> The scope of this initial investigation would be limited because it may

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108. See proposed Prob. Code § 2002(g) & Comment *infra*.

109. See proposed Prob. Code § 1851.1(f) & Comment *infra*.

110. See proposed amendment to Prob. Code § 2650 & Comment *infra*.

111. See proposed Prob. Code § 2002(c)(2) & Comment *infra*.

1 be difficult to obtain information about the conservatorship while the conservatee,  
2 the conservator, or both are located in another state.

3 A more extensive investigation would be required after the California court  
4 issues a final order accepting the transfer.<sup>112</sup> This second investigation would be  
5 similar to the one that occurs when a new conservatorship is established in  
6 California.<sup>113</sup> Among other things, the court investigator would have to determine  
7 whether the conservatee objects to the conservator or prefers another person to act  
8 as conservator.<sup>114</sup> The investigator would also have to interview the conservator,  
9 the conservatee, and the conservatee's spouse or domestic partner (if any) to  
10 determine whether the conservator is acting in the best interests of the  
11 conservatee.<sup>115</sup> In addition, the investigator would have to make specific findings  
12 concerning the conservatee's capacity.<sup>116</sup>

13 The court would review the investigator's report at the same time that it  
14 determines whether the conservatorship conforms to California law.<sup>117</sup> At that  
15 time, it would be authorized to take appropriate action in response to the court  
16 investigator's report.<sup>118</sup> It could also modify the conservator's powers as necessary  
17 to conform to California law.<sup>119</sup> This review process would thus provide an  
18 opportunity to protect California's conservatorship policies, including its policies  
19 on determination of capacity and choice of the conservator.<sup>120</sup>

20 *Other Modifications.* The Commission also recommends some other  
21 modifications of UAGPPJA Section 302:

- 22 • Revisions to conform to California terminology.<sup>121</sup>
- 23 • Revisions to reflect and facilitate compliance with limitations on the scope  
24 of the proposed legislation.<sup>122</sup>

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112. See proposed Prob. Code § 2002(e)(4) & Comment *infra*. In conducting this investigation, it might be possible to save costs by using some materials that were generated while the proceeding was pending in the other state.

113. See proposed Prob. Code § 1851.1 & Comment *infra*. This investigation would not impose any new costs on the state. Under existing law, a comparable court investigation has to be conducted when a conservatorship (or comparable proceeding by another name) is relocated to California and has to be re-established from scratch. See Prob. Code § 1826.

114. See proposed Prob. Code § 1851.1(b)(5) *infra*.

115. See proposed Prob. Code § 1851.1(b)(1) *infra* (requiring compliance with Prob. Code § 1851); see also proposed Prob. Code § 1851.1(b)(2)-(3) *infra* (requiring interviews of conservator and spouse or domestic partner).

116. See proposed Prob. Code § 1851.1(b)(13)-(14) *infra*.

117. See proposed Prob. Code § 2002(f)(2) & Comment *infra*.

118. See proposed Prob. Code § 1851.1(c) *infra*.

119. See proposed Prob. Code § 2002(f)(1) *infra*.

120. This review would also trigger the schedule for periodic court review of the conservatorship. See proposed Prob. Code § 1851.1(e) *infra*.

121. See proposed Prob. Code § 2002 & Comment *infra*.

- 1 • Revisions to conform to California practice, under which a party is required  
2 to give notice *of a hearing* on a motion or petition, not just notice of a  
3 petition.<sup>123</sup>
- 4 • Revisions to require a hearing on every transfer petition, for the same  
5 reasons previously expressed. As before, if there are no objections to a  
6 transfer petition, the court could place the matter on the consent calendar.<sup>124</sup>
- 7 • Revisions of the procedure that applies if a person objects to a transfer. To  
8 prevent a transfer, UAGPPJA would require the objector to establish that the  
9 transfer would be contrary to the interests of the subject of the proceeding. If  
10 an objector failed to meet that burden, the transfer would go forward. In  
11 contrast, the Commission suggests that a transfer should only be permitted if  
12 the court affirmatively determines that the transfer would not be contrary to  
13 the interests of the conservatee.<sup>125</sup>
- 14 • Revisions to differentiate between (1) a conservator who is ineligible, *under*  
15 *the law of the transferring state*, to serve in California, and (2) a conservator  
16 who is ineligible, *under California law*, to serve in California.<sup>126</sup>

17 With all of the modifications discussed above, the Commission tentatively  
18 recommends that the Legislature enact UAGPPJA's transfer procedure in  
19 California.

#### 20 **Registration and Recognition (Article 4 of UAGPPJA)**

21 Article 4 of UAGPPJA addresses the problem of interstate recognition.<sup>127</sup> The  
22 discussion below describes that problem and UAGPPJA's approach to it, and then  
23 explores the implications of the UAGPPJA approach for California.

#### 24 ***The Problem and UAGPPJA's Solution***

25 Sometimes a person appointed to assist an individual with limited capacity has  
26 to take action in a state other than the one in which the court made the  
27 appointment. For example, it might be necessary to obtain medical care for the  
28 individual with limited capacity while that individual is traveling in another state

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122. See proposed Prob. Code § 2002(a)(3), (d)(4) & Comment *infra*.

123. See proposed Prob. Code § 2002(b) & Comment *infra*.

124. See proposed Prob. Code § 2002(c)(1) & Comment *infra*; see also *supra* note 90 & accompanying text.

125. See proposed Prob. Code § 2002(d)(1) & Comment *infra*.

126. If the existing conservator was ineligible, *under the law of the transferring state*, to serve in California, the California court could not provisionally approve the transfer. See proposed Prob. Code § 2002(d)(2) & Comment *infra*. The court supervising the proceeding in the transferring state would have to replace the conservator before transferring the proceeding. *Id.*

In contrast, if the existing conservator was ineligible, *under California law*, to serve in California, the California court could provisionally approve the transfer, so long as the transfer petition identifies a replacement who is willing and eligible to serve in California. See proposed Prob. Code § 2002(d)(3) & Comment *infra*.

127. See UAGPPJA §§ 401-402; UAGPPJA Art. 4 General Comment; UAGPPJA Prefatory Note.

1 or living near a state border with a medical facility located on the other side.<sup>128</sup>  
2 Alternatively, a conservator might need to sell or maintain property located in a  
3 different state, such as a vacation home belonging to the conservatee.<sup>129</sup> There are  
4 also various other reasons why a court-appointed assistant might need to take steps  
5 in a different jurisdiction.<sup>130</sup>

6 In these types of situations, the court appointee sometimes encounters resistance  
7 from an individual or entity in the other state. For example, a care facility in the  
8 other state might question the appointee's authority to act on behalf of the person  
9 with limited capacity.<sup>131</sup> Due to this sort of refusal, it is sometimes necessary to  
10 seek a second court appointment in the other state, but that is a difficult burden for  
11 many families to bear.<sup>132</sup>

12 Article 4 of UAGPPJA is designed to avoid this problem by facilitating  
13 enforcement of a court appointment that was made in another state.<sup>133</sup> The key  
14 concept of the article is registration.<sup>134</sup> By following a relatively simple procedure,  
15 a court appointee may register the appointment in another state, and may thereafter  
16 exercise in that state all of the powers authorized in the order of appointment,  
17 *except as prohibited under the laws of that state.*<sup>135</sup> In other words, when taking  
18 action in the state where the appointment is registered, the court appointee *must*  
19 *comply with the laws of that state.*

#### 20 *Implications for California*

21 Because many states have already enacted UAGPPJA, it is now possible for a  
22 California conservator to register the conservatorship in a UAGPPJA state and  
23 take action pursuant to the registration. That does not seem problematic, as long as  
24 the conservator complies with California law while acting in the other state (as  
25 well as complying with the law of the other state).

26 Such an obligation already appears to exist by virtue of the conservator's oath.  
27 Nonetheless, the Commission proposes to underscore the point by amending the  
28 provision that requires the oath. Specifically, the Commission recommends that  
29 the provision be amended to expressly require a California conservator "to comply

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128. See generally Alzheimer's Ass'n, *Adult Guardianship Jurisdiction Case Statement*, available from the ULC website, <[www.uniformlaws.org](http://www.uniformlaws.org)>.

129. See generally *id.*

130. To give just one more example, a conservatee might have a creditor located in another state and the conservator might have to negotiate an agreement with that creditor or make payments to that creditor.

131. UAGPPJA Art. 4 General Comment.

132. See *id.*; see also UAGPPJA Prefatory Note.

133. See UAGPPJA Art. 4 General Comment.

134. *Id.*

135. See UAGPPJA §§ 401-403.

1 with the law of this state, as well as other applicable law, at all times, *in any*  
2 *location within or without the state.*<sup>136</sup>

3 If California decides to enact UAGPPJA, however, a different scenario could  
4 also occur: A conservatorship (or comparable proceeding by another name) could  
5 be registered in California pursuant to the UAGPPJA procedure, and the out-of-  
6 state appointee could then take action in California. Again, that prospect does not  
7 appear to be problematic, at least in most circumstances. As explained above, a  
8 court appointee acting pursuant to a UAGPPJA registration must comply with the  
9 law of the state of registration.<sup>137</sup> Accordingly, if an out-of-state appointment was  
10 registered in California, the appointee would have to comply with California law  
11 while taking action in California, and thus would not pose any threat to California  
12 policies.

13 It is possible, however, that someone might try to use the registration process as  
14 a means of avoiding the more complicated transfer process when relocating a  
15 proceeding to California. UAGPPJA does not seem to preclude use of the  
16 registration procedure in those circumstances.

17 The Commission believes, however, that if a conservator-conservatee  
18 relationship is relocated to California, it should be officially transferred to  
19 California and subjected to the safeguards of the transfer process. For that reason,  
20 the registration of an out-of-state conservatorship in California should only be  
21 effective while the conservatee resides in another jurisdiction. If the conservatee  
22 moves to California, the conservator should no longer be able to take action in  
23 California pursuant to the registration, and should have to seek a transfer of the  
24 court proceeding to California. The Commission tentatively proposes to modify  
25 UAGPPJA's registration procedure to achieve that result.<sup>138</sup>

26 The Commission also recommends a few other modifications of UAGPPJA's  
27 registration procedure:

- 28 • Revisions to conform to California terminology.<sup>139</sup>
- 29 • Revisions to clarify the procedure for filing the registration documents in a  
30 California court.<sup>140</sup>
- 31 • Revisions to reflect that the court that originally made an appointment may  
32 not be the one currently supervising the proceeding.<sup>141</sup>

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136. Proposed amendment to Prob. Code § 2300 *infra* (emphasis added).

137. See *supra* note 135 & accompanying text.

138. See proposed Prob. Code § 2014 & Comment *infra*.

139. See proposed Prob. Code § 2011-2012 & Comments *infra*.

140. See proposed Prob. Code § 2011-2012 & Comments *infra*. The corresponding UAGPPJA provisions require the registration documents to be “fil[ed] as a foreign judgment.” See UAGPPJA §§ 401-402. That reference could cause confusion in California, because California is one of only two states that have not enacted the Revised Uniform Enforcement of Foreign Judgments Act (1964).

141. See proposed Prob. Code §§ 2011-2012 & Comments *infra*.

- 1 • Addition of a provision that expressly permits and governs registration of a  
2 court appointment that involves both personal care and property  
3 management.<sup>142</sup>
- 4 • Revisions to make clear that registration in a single county is sufficient; it is  
5 not necessary to register in every county in which the court appointee  
6 wishes to act.<sup>143</sup>
- 7 • Addition of a “safe harbor” provision, under which a person who relies in  
8 good faith on a UAGPPJA registration would be protected from liability in  
9 specified circumstances.<sup>144</sup>
- 10 • Addition of a provision authorizing recordation of UAGPPJA registration  
11 documents.<sup>145</sup>

12 With the various revisions discussed above, the Commission tentatively  
13 recommends that California enact UAGPPJA’s registration procedure. That would  
14 spare many American families and the California courts from having to establish  
15 conservatorships in California when the much simpler registration process would  
16 suffice.

#### 17 **Miscellaneous Provisions (Article 5 of UAGPPJA)**

18 Article 5 of UAGPPJA consists of a few miscellaneous provisions, which appear  
19 appropriate for enactment in California. Only some brief comments about that  
20 article are necessary here:

- 21 • Section 501 of UAGPPJA is a standard ULC provision directing courts to  
22 consider the need to promote uniformity of the law when applying and  
23 construing the act. To emphasize the importance of respecting a  
24 conservatee’s constitutional rights in applying and construing the act, the  
25 Commission recommends modifying this provision to refer to those rights,  
26 as well as the need to promote uniformity.<sup>146</sup>
- 27 • Section 505 of UAGPPJA would specify the “effective date” of the  
28 proposed legislation. In California, it is important to differentiate between  
29 the “effective date” and the “operative date” of legislation. The “effective  
30 date” is when the legislation officially becomes part of the law of the state.  
31 The “operative date” is when the legislation actually starts to operate in the  
32 state. The Commission recommends that UAGPPJA have a one-year  
33 delayed operative date if it is enacted in California. The one year delay in  
34 operation of the statute would afford time for the Judicial Council to prepare  
35 court rules and forms necessary for smooth implementation of the

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142. See proposed Prob. Code § 2013 & Comment *infra*.

143. See proposed Prob. Code § 2014 & Comment *infra*.

144. See proposed Prob. Code § 2015 & Comment *infra*.

145. See proposed Prob. Code § 2016 & Comment *infra*.

146. See proposed Prob. Code § 2111 & Comment *infra*. Connecticut has already modified UAGPPJA Section 501 in this manner. See 2012 Conn. Pub. Act No. 12-22, § 22.

1           legislation.<sup>147</sup> The Commission further recommends enactment of a  
2           provision directing the Judicial Council to prepare such rules and forms  
3           before the specified operative date.<sup>148</sup>

4   **Need for the Proposed Reform**

5       Many families across the United States are struggling to assist an adult family  
6       member who is unable to attend to his or her own needs. UAGPPJA is intended to  
7       streamline court proceedings relating to such adults, and thus alleviate the burdens  
8       on these families, as well as on the courts that are supervising such proceedings.

9       As explained above, some modifications of UAGPPJA appear necessary to  
10      make it suitable for enactment in California. With those modifications, the  
11      Commission tentatively recommends that the Legislature enact UAGPPJA and  
12      thereby make its benefits available in California.

13      **The Commission urges interested persons to express their views on this**  
14      **matter by providing written comments to the Commission. Such comments**  
15      **will be invaluable in refining the Commission’s proposal to effectively serve**  
16      **the citizens of California.**

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147. See the uncodified provision in the proposed legislation *infra*; see also proposed Prob. Code § 2114 *infra* (transitional provision).

148. See proposed Prob. Code § 2113 & Comment *infra*.

