

Memorandum 2013-26

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

The Commission has been working towards approval of a tentative recommendation relating to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (“UAGPPJA”). To that end, a new draft is attached for the Commission and interested parties to consider. Also attached is the following exhibit:

Exhibit p.

- Jennifer Wilkerson, State Bar Trusts and Estates Section Executive Committee (4/11/13) 1

This memorandum briefly describes the differences between the new draft and the immediately preceding one, and then discusses two sets of issues:

- Whether to revise proposed Probate Code Section 1996 (appropriate forum) as suggested by the UAGPPJA working group of the State Bar Trusts and Estates Section (“TEXCOM”) in the attached exhibit.
- Whether it is necessary for California law to include all of the following: (i) the emergency jurisdiction provided by proposed Probate Code Section 1994(a)(1), (ii) the expeditious health care procedure provided in Probate Code Sections 3200-3212, and (iii) the temporary conservatorship procedure provided in Probate Code Sections 2250-2258.

After considering those issues and any other issues that anyone raises relating to the new draft, **the Commission will need to decide whether to approve the attached draft as a tentative recommendation (with or without revisions), to be posted to the Commission’s website and circulated for comment.** The staff is hopeful that the Commission will be able to take that step, because that will put

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). 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.

the Commission in a good position to complete its study in time to introduce legislation next year.

DIFFERENCES BETWEEN THE ATTACHED DRAFT AND THE APRIL DRAFT

The draft that the Commission considered in April was presented in Memorandum 2013-15 and the First Supplement to Memorandum 2013-15. The attached new draft differs from the April draft in the following respects:

- The new draft incorporates changes to reflect the decisions that the Commission made in April.
- The staff has made various typographical corrections and minor formatting, stylistic, and editorial changes.
- The staff has inserted references to additional sources that support or relate to points made in the draft (including a list of all UAGPPJA enactments to date).
- The new draft includes an appendix that presents the differences between UAGPPJA terminology and California terminology in tabular form.
- The staff has renumbered the provisions in Article 5 of the proposed California Conservatorship Jurisdiction Act, so that it will fit better in the existing Probate Code. We are grateful to Douglas Miller of the Administrative Office of the Courts for bringing this problem to our attention.
- The new draft proposes to correct an erroneous cross-reference in both of the existing versions of Government Code Section 70626.
- The staff made the following revision in the first sentence of proposed Probate Code Section 1851.1(f):

(f) The first time that the need for a conservatorship is challenged by any interested person or raised on the court's own motion after a transfer under Section 2002, whether in a review pursuant to this section or in a petition to terminate the conservatorship under Chapter 3 (commencing with Section 1860), the court shall presume that there is no need for a conservatorship....

We are grateful to Jennifer Wilkerson of TEXCOM for suggesting this clarification.

- The staff put brackets around the reference to “90 days” in proposed Probate Code Section 2002(f)(1), added a Note requesting input on that time period, and added a similar request for input in the preliminary part. Those steps are consistent with the ULC's treatment of the point in UAGPPJA. The reference to “90 days” in Section 302 of UAGPPJA is bracketed and the ULC's commentary says:

Because ... conservatorship law and practice will likely differ between the two states, the court in the [state accepting a transfer] must within 90 days after issuance of a final order determine whether the ... conservatorship needs to be modified to conform to the law of [that] state.... *The number "90" is placed in brackets to encourage states to coordinate this time limit with the time limits for other required filings such as ... conservatorship plans.*

UAGPPJA Art. 3 General Comment (emphasis added).

- The staff revised proposed Probate Code Section 2002(g) and the corresponding Comment to refer to the entire chapter on removal of a conservator, not just the provision specifying causes for removal (Prob. Code § 2650). This would better implement the Commission's intent to allow use of the removal process in a transferred conservatorship. See Memorandum 2012-40, pp. 6-9; Minutes (Oct. 2012), p. 4.

If anyone has a concern about one or more of the above changes, please raise the point at or before the upcoming Commission meeting.

APPROPRIATE FORUM (PROPOSED PROB. CODE § 1996; UAGPPJA § 206)

Proposed Probate Code Section 1996 (corresponding to UAGPPJA § 206) would allow a California court to decline to exercise its jurisdiction to appoint a conservator if the court determines that a court in another state is a more appropriate forum:

§ 1996. Appropriate forum [UAGPPJA § 206]

1996. (a) A court of this state having jurisdiction under Section 1993 to appoint a conservator may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(b) If a court of this state declines to exercise its jurisdiction under subdivision (a), it shall either dismiss or stay the proceeding. The court's order dismissing or staying the proceeding shall be in a record and shall expressly state that the court declines to exercise its jurisdiction because a court of another state is a more appropriate forum. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a conservator of the person, conservator of the estate, or conservator of the person and estate be filed promptly in another state.

(c) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including all of the following:

- (1) Any expressed preference of the proposed conservatee.

(2) Whether abuse, neglect, or exploitation of the proposed conservatee has occurred or is likely to occur and which state could best protect the proposed conservatee from the abuse, neglect, or exploitation.

(3) The length of time the proposed conservatee was physically present in or was a legal resident of this or another state.

(4) The distance of the proposed conservatee from the court in each state.

(5) The financial circumstances of the estate of the proposed conservatee.

(6) The nature and location of the evidence.

(7) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence.

(8) The familiarity of the court of each state with the facts and issues in the proceeding.

(9) If an appointment were made, the court's ability to monitor the conduct of the conservator.

Comment. Section 1996 is similar to Section 206 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA"). Revisions have been made to conform to California terminology for the proceedings in question. See Section 1982 & Comment (definitions); see also Section 1980 Comment. Revisions have also been made to require a court to prepare a record when it declines to exercise its jurisdiction, which expressly states that the court is taking that step. A person can present that record when seeking jurisdiction in another state.

For limitations on the scope of this chapter, see Section 1981 & Comment.

Background from Uniform Act

This section authorizes a court otherwise having jurisdiction to decline jurisdiction on the basis that a court in another state is in a better position to make a [conservatorship] determination. The effect of a declination of jurisdiction under this section is to rearrange the priorities specified in Section [1993]. A court of the home state may decline in favor of a court of a significant-connection or other state and a court in a significant-connection state may decline in favor of a court in another significant-connection or other state. The court declining jurisdiction may either dismiss or stay the proceeding. The court may also impose any condition the court considers just and proper, including the condition that a petition for the appointment of a [conservator] be filed promptly in another state.

This section is similar to Section 207 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997) except that the factors in [subdivision (c) of this section] have been adapted to address issues most commonly encountered in [conservatorship] proceedings as opposed to child custody determinations.

Under Section [1993(d)], the factors specified in [subdivision] (c) of this section are to be employed in determining whether a court of a significant-connection state may assume jurisdiction when a petition has not been filed in the [proposed conservatee's] home state or in another significant-connection state. Under Section [1997(a)(3)(B)], the court is to consider these factors in deciding whether it will retain jurisdiction when unjustifiable conduct has occurred.

[Adapted from the Uniform Law Commission's Comment to UAGPPJA § 206.]

At the April meeting, Jennifer Wilkerson explained that TEXCOM's working group on UAGPPJA had some suggested revisions of proposed Section 1996. She presented two alternative versions of the provision for the Commission to consider. See Exhibit pp. 1-2. Both of the working group's alternatives are based in part on Family Code Section 3427, which allows a California court to decline to exercise its jurisdiction to make a child custody determination "if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum."

The Commission discussed those suggested alternatives at length but did not resolve whether to make any of the revisions suggested by TEXCOM's working group. Instead, the Commission requested that the staff analyze the suggestions for the next meeting. See Draft Minutes (April 2013), pp. 6-7.

The suggested revisions of proposed Section 1996 relate to several different points:

- Whether to introduce the concept of an "inconvenient forum."
- Whether to revise the list of factors that the court is to consider.
- Whether to provide simpler means of raising the issue of "appropriate" forum than filing a conservatorship petition.

Each of those points is addressed below.

"Inconvenient Forum"

One of the two drafts submitted by TEXCOM's working group would revised proposed Section 1996 such that a California court could decline to exercise its jurisdiction only upon determining that "*it is an inconvenient forum* under the circumstances and ... a court of another state is a more appropriate forum." Exhibit p. 1 (emphasis added). The concept of an "inconvenient forum" stems from Family Code Section 3427, relating to child custody, which is the same as Section 207 of the Uniform Child Custody Jurisdiction and Enforcement Act

("UCCJEA") except in respects not relevant here. The concept of "inconvenient forum" is not used any place in UAGPPJA.

Other than pointing to Family Code Section 3427 as a model, TEXCOM's working group has not explained why California should include the concept of "inconvenient forum" in its version of UAGPPJA when it appears that no other jurisdiction has done so. The staff does not see a good reason for deviating from UAGPPJA in this way. Absent a compelling explanation, **the Commission should stick with the UAGPPJA language rather than incorporating the concept of "inconvenient forum."**

List of Factors to Consider

Subdivision (c) of proposed Section 1996 includes a list of factors for a court to consider in deciding whether to decline to exercise its jurisdiction. TEXCOM's working group proposes to revise that list as follows:

(c) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including all of the following:

- (1) Any expressed preference of the proposed conservatee.
- (2) Whether abuse, neglect, or exploitation of the proposed conservatee has occurred or is likely to occur and which state could best protect the proposed conservatee from the abuse, neglect, or exploitation.
- (3) The length of time the proposed conservatee was physically present in or was a legal resident of this or another state.
- (4) The location of the proposed conservatee's family, friends, and other persons required to be notified of the conservatorship proceeding.
- ~~(4)~~ (5) The distance of the proposed conservatee from the court in each state.
- ~~(5)~~ (6) The financial circumstances of the estate of the proposed conservatee, including the nature and location of the assets of the estate.
- ~~(6)~~ (7) The nature and location of the evidence.
- ~~(7)~~ (8) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence.
- ~~(8)~~ (9) The familiarity of the court of each state with the facts and issues in the proceeding.
- ~~(9)~~ (10) If an appointment were made, the court's ability to monitor the conduct of the conservator.

Exhibit p. 2; see also *id.* at 1.

In evaluating this suggestion, it is important to bear in mind that the list of factors in subdivision (c) is not meant to be exclusive. Rather, subdivision (c) of proposed Section 1996 and its UAGPPJA counterpart (UAGPPJA § 206) would

direct the court to “consider *all* relevant factors,” including the enumerated ones. (Emphasis added.)

The TEXCOM group’s proposal would expand the list of enumerated factors by adding “[t]he location of the proposed conservatee’s family, friends, and other persons required to be notified of the conservatorship proceeding.” That information is obviously relevant in determining where to conduct a conservatorship proceeding, because all of the people named are potential witnesses. It might therefore be helpful to add this factor to the list in subdivision (c).

However, such an addition is not essential, because subdivision (c) already directs the court to consider *all* relevant factors and the proposed new factor is unlikely to escape a court’s attention regardless of whether it is included in the list. Thus, **the staff does not have strong feelings about whether to deviate from UAGPPJA by listing “[t]he location of the proposed conservatee’s family, friends, and other persons required to be notified of the conservatorship proceeding.”** Before the Commission meets, we will check whether ULC representatives have a different view on this matter.

The TEXCOM group further proposes to provide greater specificity with regard to one of the enumerated factors. In particular, the group would require the court to consider “[t]he financial circumstances of the estate of the proposed conservatee, including the nature and location of the assets of the estate.”

When a court considers where to conduct a conservatorship of the estate, “the nature and location of the assets of the estate” are clearly relevant. But those facts are much less relevant in determining where to conduct a conservatorship of the person. In that type of proceeding, it might not always be necessary to consider “the nature and location of the assets of the estate.”

Consequently, it seems best to simply require consideration of “the financial circumstances of the estate of the proposed conservatee,” and leave it to the courts to figure out on a case-by-case basis what that should entail. In other words, **the staff recommends that the Commission stick with UAGPPJA’s language on this point.**

Means of Raising the Issue of “Appropriate” Forum

The TEXCOM working group further suggests that it should be possible to raise the issue of conservatorship jurisdiction without having to file a conservatorship proceeding. With a few refinements discussed at the April

meeting, the group's suggestion is to revise proposed Section 1996(a)-(b) as follows:

1996. (a) A court of this state having jurisdiction under Section 1993 to appoint a conservator may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum. The issue of appropriate forum may be raised upon petition of an interested party, the court's own motion, or request of another court.

(b) If a court of this state declines to exercise its jurisdiction under subdivision (a), it shall grant the petition, motion, or request and either dismiss or stay ~~the~~ any pending conservatorship proceeding....

See Exhibit p. 2.

At the April meeting, Ms. Wilkerson explained that the suggested language was based on the last sentence of Family Code Section 3427(a), relating to child custody disputes, which states: "The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court." Ms. Wilkerson also referred to a situation in which a California resident needed a conservator, his daughter brought him to her home in Nevada and tried to commence a conservatorship proceeding for him there, but the Nevada court insisted that it could not exercise jurisdiction as a significant-connection state unless California had declined jurisdiction as the home state. Consequently, the family had to commence a conservatorship proceeding in California for the sole purpose of having the California court decline to exercise its jurisdiction. The TEXCOM working group considers it unduly burdensome to have to commence a conservatorship proceeding for that purpose; they urge the Commission to allow the issue of appropriate jurisdiction to be decided on a motion or request specifically directed to that issue.

The staff finds the analogy to Family Code Section 3427(a) unpersuasive. The language in that provision is identical to the language in Section 207 of UCCJEA. In contrast, the language the TEXCOM group suggests adding to proposed Probate Code Section 1996(a) would be unique to California. Further, Family Code Section 3427 says that the issue of inconvenient forum may be raised upon *motion* of a party, whereas the TEXCOM proposal would say that the issue of appropriate forum may be raised upon *petition* of an interested party. A motion is typically brought in an existing proceeding; it does not exist on its own. In contrast, a petition is a means of commencing a separate proceeding. Thus, what

the TEXCOM group is suggesting appears to be quite different than what is already allowed in child custody proceedings.

The staff also notes that UAGPPJA provides more than one means for a court in a significant-connection state to acquire jurisdiction over a proposed conservatee who has a home state. It is not strictly necessary for the home state to decline to exercise its jurisdiction, as in the example presented by Ms. Wilkerson. Another option is to establish that (1) on the date a conservatorship petition was filed in a significant-connection state, no such petition was pending in the home state or another significant-connection state, and (2) before the court appoints a conservator, no conservatorship petition is filed in the home state, no objection to the court's jurisdiction is filed by a person required to be notified of the conservatorship petition, and the significant-connection state in question concludes that it is an appropriate forum. See UAGPPJA § 203(2)(B); proposed Prob. Code § 1993(d). Proof of those facts might be difficult in a state like California, with 58 counties and no centralized computer system for checking whether a conservatorship petition is pending somewhere in the state. But it might be possible to meet that burden in some manner because the standard of proof almost certainly would be "preponderance of the evidence" rather than "beyond a reasonable doubt."

More importantly, it might not be wise to make it easy for an interested party to seek an order in which a California court declines to exercise its jurisdiction as the proposed conservatee's home state. Entering such an order would be a serious step, because the court would in effect be forfeiting California's right to protect the proposed conservatee and enforce its conservatorship policies. That should not be done lightly. **The key question here is whether the jurisdictional issue can be effectively presented to a court without submitting a conservatorship petition.** Does the court need all of the information in such a petition, and all of the steps associated with presenting such a petition, to be able to decide the issue of jurisdiction? If not, which requirements can safely be omitted?

The staff invites the TEXCOM working group to provide input on these points. We will also consult ULC representatives about the working group's suggestion. **The staff is not yet convinced that the suggested deviation from UAGPPJA is warranted.**

COORDINATING THE EMERGENCY JURISDICTION UNDER PROPOSED PROBATE CODE
SECTION 1994 WITH OTHER EXISTING PROCEDURES

Section 204 of UAGPPJA describes several situations in which a court has “special jurisdiction” — i.e., jurisdiction that is not based on UAGPPJA’s normal three-tier jurisdictional hierarchy (home state, significant-connection state, other state). Among other things, the section allows a court lacking jurisdiction under the normal hierarchy to make a short-term appointment for an individual who is physically present in the state where the court is located. UAGPPJA § 204(a)(1). The section does not specify the procedure for making such an appointment.

At the April meeting, the Commission decided to use California’s procedure for establishing a temporary conservatorship, because the procedure for establishing a permanent conservatorship would be too slow for this purpose. See Minutes (April 2013), pp. 7-8. In the attached draft, proposed Probate Code Section 1994(a)(1) would implement that decision.

Jennifer Wilkerson queried, however, whether it is really necessary to have the emergency approach of proposed Section 1994(a)(1) in addition to two existing processes:

- The expeditious health care procedure provided in Probate Code Sections 3200-3212.
- The temporary conservatorship procedure provided in Probate Code Sections 2250-2258.

To answer that question, it is necessary to briefly describe the two existing processes.

Expeditious Health Care Procedure (Prob. Code §§ 3200-3212)

Part 7 of Division 4 of the Probate Code (Prob. Code §§ 3200-3212) is entitled “Capacity Determinations and Health Care Decisions for Adult Without Conservator.” It was enacted in 1990, on recommendation of the Law Revision Commission. See 1990 Cal. Stat. ch. 79; *Recommendation Proposing New Probate Code*, 20 Cal. L. Revision Comm’n Reports 1, 1358-61 (1989). The Commission’s Comment to Part 7 explains:

The provisions of this part afford an alternative to establishing a conservatorship of the person where there is no ongoing need for a conservatorship. The procedural rules of this part provide an expeditious means of obtaining authorization for medical treatment while safeguarding basic rights of the patient....

Similarly, Probate Code Section 3210(a) says:

(a) This part is *supplemental and alternative to* other procedures or methods for obtaining consent to health care or making health care decisions, and is permissive and cumulative for the relief to which it applies.

(Emphasis added.) The Part 7 health care procedure is thus clearly intended to complement the option of establishing a conservatorship.

Under Part 7, “a petition may be filed to determine that a patient lacks the capacity to make a health care decision concerning specified treatment for an existing or continuing condition, and further for an order authorizing a designated person to make a health care decision on behalf of the patient.” Prob. Code § 3201(b). A court may grant the petition if it determines all of the following:

(1) The existing or continuing condition of the patient’s health requires the recommended health care.

(2) If untreated, there is a probability that the condition will become life-endangering or result in a serious threat to the physical or mental health of the patient.

(3) The patient is unable to consent to the recommended health care.

Prob. Code § 3208(a).

Temporary Conservatorship (Prob. Code §§ 2250-2258)

Chapter 3 of Part 4 of Division 4 of the Probate Code (Prob. Code §§ 2250-2258) is entitled “Temporary Guardians and Conservators.” It was also enacted in 1990 on recommendation of the Law Revision Commission, in the same bill that included the expeditious health care procedure just discussed. See 1990 Cal. Stat. ch. 79; *Recommendation Proposing New Probate Code*, 20 Cal. L. Revision Comm’n Reports 1, 1274-75 (1989). The chapter provides a fairly quick procedure for obtaining a temporary guardianship or conservatorship on a showing of good cause “pending the final determination of the court upon the petition for the appointment of the guardian or conservator.” Prob. Code § 2250.

Analysis of the Need for UAGPPJA’s Emergency Jurisdictional Provision (UAGPPJA § 204(a)(1); proposed Prob. Code § 1994(a)(1))

The temporary conservatorship procedure and health care procedure described above were clearly determined by the Law Revision Commission and the Legislature to be useful complements to the normal conservatorship

procedure. The temporary conservatorship procedure provides a means of quickly establishing a conservatorship arrangement before the full conservatorship procedure can be completed. The health care procedure makes it possible for a court to designate someone to make health care decisions for a person who cannot make such decisions himself or herself, but who does not need a conservator. That could occur, for instance, when an unconscious patient is not expected to live long enough to require assistance with anything other than health care decisions. It could also occur in other situations, such as when a patient is unexpectedly unable to make decisions while hospitalized, but a full recovery is anticipated in a relatively brief amount of time.

Proposed Probate Code Section 1994(a)(1) would not add a new procedure to this mix. Rather, it would just make the temporary conservatorship procedure available when a different basis for jurisdiction exists. Instead of jurisdiction based on UAGPPJA's normal three-tier hierarchy, jurisdiction under Section 1994(a)(1) depends on the proposed conservatee's physical presence in California and the existence of an "emergency" as defined in UAGPPJA. Hence, proposed Probate Code Section 1994(a)(1) does not pose a specter of unnecessary proliferation of procedures. **The staff recommends that the Commission retain the provision in its proposal.**

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

June 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.

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SUMMARY OF TENTATIVE RECOMMENDATION

In California, a conservatorship is a proceeding in which a court appoints someone to assist an adult with personal care or financial transactions because that adult 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 highly 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. It provides a set of rules for resolving jurisdictional disputes, a streamlined process for transfer of a conservatorship, and a registration procedure to facilitate recognition of a conservatorship that was established in another state. The goal of the act is to alleviate the burdens of handling a conservatorship situation that involves more than one state.

A large majority of states have enacted UAGPPJA, including all three of California’s neighbors (Arizona, Oregon, and Nevada). California has not yet done so, however, because the uniform act 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 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”)¹ approved the Uniform Adult
2 Guardianship and Protective Proceedings Jurisdiction Act (“UAGPPJA”) in 2007.²
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.³ 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 highly mobile,
8 frequently moving and conducting transactions across state lines.⁴

9 Since the ULC approved UAGPPJA, numerous states have enacted it.⁵
10 California has not yet done so. Rather than seeking immediate introduction of

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.” See ULC, *About the ULC*, <http://www.uniformlaws.org/Narrative.aspx?title=About%20the%20ULC>.

2. The final act, earlier versions of the act, and various materials relating to the act are available at the ULC website. See ULC, *Adult Guardianship and Protective Proceedings Jurisdiction Act*, <http://www.uniformlaws.org/Act.aspx?title=Adult%20Guardianship%20and%20Protective%20Proceedings%20Jurisdiction%20Act>. The final act can be found at:

http://www.uniformlaws.org/shared/docs/adult_guardianship/uagppja_final_07.pdf

3. Another uniform act, the Uniform Guardianship and Protective Proceedings Act (“UGPPA”) addresses all aspects of court proceedings that involve an adult or child who requires assistance with personal care, property administration, or both. Only a few states have enacted UGPPA, and California is not one of them. See ULC, *Guardianship and Protective Proceedings Act*, <http://www.uniformlaws.org/Act.aspx?title=Guardianship%20and%20Protective%20Proceedings%20Act>.

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 cases. See ULC, *Child Custody Jurisdiction and Enforcement Act*, <http://www.uniformlaws.org/Act.aspx?title=Child%20Custody%20Jurisdiction%20and%20Enforcement%20Act>; see also UAGPPJA Prefatory Note, p. 2.

Further information about UGPPA and UCCJEA is available at the ULC website, <http://www.uniformlaws.org>.

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

5. UAGPPJA has been enacted by the District of Columbia (D.C. Code §§ 21-2401.01 to 21-2405.03), Puerto Rico (Act 296 of 2012 (effective Oct. 5, 2012)), and 35 states: Alabama (Ala. Code §§ 26-2B-101 to 26-2B-503), Alaska (Alaska Stat. §§ 13.27.010 to 13.27.495), Arizona (Ariz. Rev. Stat. Ann. §§ 14-12101 to 14-12503), Arkansas (Ark. Code §§ 28-74-101 to 28-74-505), Colorado (Colo. Rev. Stat. §§ 15-14.5-101

1 legislation to implement this act, the California Commission on Uniform State
2 Laws⁶ requested that the California Law Revision Commission undertake a study
3 of it.⁷ Such a study was needed, because UAGPPJA uses different terminology
4 than California law on the same topic,⁸ and it was readily apparent that some
5 adjustments would be necessary to make the uniform act workable in California
6 and coordinate it with California law and policy in this area.

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

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

to 15-14.5-503), Connecticut (Conn. Gen. Stat. §§ 45a-667 to 45a-667v), Delaware (Del. Code Ann. tit. 12, §§ 39A-101 to 39A-402), Hawaii (Haw. Rev. Stat. §§ 551G-1 to 551G-42), Idaho (Idaho Code Ann. §§ 15-13-101 to 15-13-504), Illinois (755 Ill. Comp. Stat. 8/101 to 8/505), Indiana (Ind. Code §§ 29-3.5-1-1 to 29-3.5-5-3), Iowa (Iowa Code §§ 633.700 to 633.722), Kentucky (Ky. Rev. Stat. Ann. §§ 387.810 to 387.854), Maine (Me. Rev. Stat. tit. 18A, §§ 5-511 to 5-554), Maryland (Md. Code Ann. §§ 13.5-101 to 13.5-501), Minnesota (Minn. Stat. §§ 524.5-601 to 524.5-903), Missouri (Mo. Rev. Stat. §§ 475.501 to 475.555), Montana (Mont. Code Ann. §§ 72-5-601 to 72-5-638), Nebraska (Neb. Rev. Stat. §§ 30-3901 to 30-3923), Nevada (Nev. Rev. Stat. §§ 159.1991 to 159.2029), New Mexico (N.M. Stat. Ann. §§ 45-5A-101 to 45-5A-502), North Dakota (N.D. Cent. Code §§ 28-35-01 to 28-35-20), Ohio (Ohio Rev. Code Ann. §§ 2112.01 to 2112.43), Oklahoma (Okla. Stat. Ann. tit. 30, §§ 3-301 to 3-322), Oregon (Or. Rev. Stat. Ann. §§ 125.800 to 125.852), Pennsylvania (20 Pa. Cons. Stat. §§ 5901 to 5992), South Carolina (S.C. Code Ann. §§ 62-5-700 to 62-5-716), South Dakota (S.D. Codified Laws §§ 29A-5A-101 to 29A-5A-503), Tennessee (Tenn. Code Ann. §§ 34-8-101 to 34-8-503), Utah (Utah Code Ann. §§ 75-5b-101 to 75-5b-503), Vermont (Vt. Stat. Ann. tit. 14, §§ 3151 to 3193), Virginia (Va. Code Ann. §§ 64.2-2100 to 64.2-2120), Washington (Wash. Rev. Code §§ 11.90.010 to 11.90.470), West Virginia (W. Va. Code Ann. §§ 44C-1-1 to 44C-5-3), and Wyoming (Wyo. Stat. Ann. §§ 3-8-101 to 3-8-502 (effective July 1, 2013)).

California and the following states that have not yet enacted UAGPPJA: Florida, Georgia, Kansas, Louisiana, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Rhode Island, Texas, and Wisconsin.

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 CLRC Staff Memorandum 2010-39 (available from the Commission, <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*.

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

5 **The Impetus for UAGPPJA**

6 A confluence of factors led to the development of UAGPPJA. Demographically,
7 the population of the United States is aging.⁹ Approximately 40.3 million residents
8 were age 65 or older in 2010, more than in any previous census.¹⁰ Adults in that
9 age bracket also comprised a larger percentage of the total population than in the
10 past.¹¹ That trend is expected to continue as the baby boom generation becomes
11 elderly.¹²

12 As the number of elderly adults increases, the need for geriatric care is also
13 increasing.¹³ About 1.3 million adults age 65 or older were in skilled nursing
14 facilities in 2010.¹⁴ Alarming, a recent study suggests that the number of patients
15 with Alzheimer’s disease will triple by 2050.¹⁵

16 A corollary trend is that many individuals with health problems (both elderly
17 and younger ones) will need to have a court appoint a family member, friend, or
18 other person to help manage the individual’s personal care or financial situation.¹⁶

9. See United States Census Bureau, *The Older Population: 2010* (Nov. 2011), p. 1, available at <http://www.census.gov/prod/cen2010/briefs/c2010br-09.pdf>.

10. *Id.* at 1, 3.

11. *Id.* at 3.

12. See, e.g., Administration on Aging, *Aging Statistics*, available at http://www.aoa.gov/Aging_Statistics (“By 2030, there will be about 72.1 million older persons, more than twice their number in 2000”); M. Toossi, *Labor Force Projections to 2020: A More Slowly Growing Workforce*, in *Monthly Labor Review* (Jan. 2012), p. 45, available at <http://www.bls.gov/opub/mlr/2012/01/art3full.pdf> (“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., Healthy People, *2020 Topics and Objectives*, available at <http://www.healthypeople.gov/2020/topicsobjectives2020/overview.aspx?topicid=31>; United States Census Bureau, *supra* note 9, at p. 18.

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 http://www.cbsnews.com/8301-204_162-57568046/alzheimers-rates-expected-to-triple-by-2050-because-of-aging-baby-boomers (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); see also Alzheimer’s Ass’n, *2013 Alzheimer’s Disease Facts & Figures*, available at http://www.alz.org/alzheimers_disease_facts_and_figures.asp#quickFacts (“By 2050, the number of people age 65 and older with Alzheimer’s disease may nearly triple, from 5 million to a projected 13.8 million, barring the development of medical breakthroughs to prevent, slow or stop the disease.”).

16. See Center for Elders and the Courts, *Adult Guardianship Court Data and Issues: Results from an Online Survey* (March 2, 2010), p. 4, available at http://www.guardianship.org/reports/Guardianship_Survey_Report.pdf.

1 Statistics regarding the number of such court proceedings are not easy to obtain,
2 but there were an estimated 400,000 of them in the country in 1987, and the
3 number is probably much higher today.¹⁷ Different states have different rules for
4 such proceedings,¹⁸ and even different terminology.¹⁹

5 Those differences can be problematic, because the population of the country is
6 not only aging but is also highly mobile. Extended families are dispersed across
7 the country, people often move for work or other reasons, and many of the adults
8 who need a court-appointed assistant have homes, property, or other ties in more
9 than one state.²⁰ Due to this mobility, three main types of problems are frequent in
10 the court proceedings described above:

- 11 • Jurisdictional issues.
- 12 • Transfer issues.
- 13 • Interstate recognition issues.

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

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

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

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

25 **Short Title**

26 Section 101 of UAGPPJA says that the legislation may be cited as “the Uniform
27 Adult Guardianship and Protective Proceedings Jurisdiction Act.” That short title
28 could cause confusion in California, because the Probate Code uses different

17. Alzheimer’s Ass’n, *Adult Guardianship Jurisdiction Case Statement*, available at <http://www.uniformlaws.org/Shared/Docs/Alzheimers%20Assoc%20Support%20Letter.pdf>; see also Center for Elders and the Courts, *supra* note 16, at 8 (describing difficulties in obtaining data); *id.* at 13 (reporting that California had 5,089 “adult guardianship” filings and a total caseload of 39.909 in 2008); E. Wood, American Bar Ass’n Comm’n on Law & Aging *for the Nat’l Center on Elder Abuse, State-Level Adult Guardianship Data: An Exploratory Survey* (Aug. 2006), available at <http://www.ncea.aoa.gov/Resources/Publication/docs/GuardianshipData.pdf> (describing difficulties in obtaining data).

18. See, e.g., UAGPPJA Prefatory Note, p. 1 (“the United States has 50 plus guardianship systems”).

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

20. See Alzheimer’s Ass’n Case Statement, *supra* note 17; see also Center for Elders and the Courts, *supra* note 16, at 17.

1 terminology. The term “conservatorship” applies to the types of proceedings
2 covered by UAGPPJA, and the term “guardianship” applies only to proceedings
3 relating to minors.²¹

4 To prevent confusion, the Commission tentatively recommends a different short
5 title: “the California Conservatorship Jurisdiction Act.”²² The legislation should
6 also state, however, that it is intended to be a modified version of the Uniform
7 Adult Guardianship and Protective Proceedings Jurisdiction Act.²³ That will alert
8 people that the legislation is based on a uniform act.

9 *Limitations on Scope*

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

12 *Minors.* UAGPPJA applies to judicial proceedings in which a party asks the
13 court to appoint someone to “make decisions regarding the person of an adult” or
14 to “administer the property of an adult.”²⁴ The act’s definition of “adult” excludes
15 an emancipated minor,²⁵ but the ULC recognizes and accepts that a state may wish
16 to modify that definition if it treats an emancipated minor as an “adult” for the
17 purpose of the types of proceedings covered by the act.²⁶

18 Under California law, a minor who is or was married is treated as an adult for
19 some but not all of the types of proceedings covered by UAGPPJA.²⁷ Because
20 other states may treat such a minor differently and even California does not treat
21 such a minor as an adult for all of the proceedings covered by UAGPPJA, it seems
22 simplest to completely exclude minors from California’s version of the act.

23 Due to its definition of “adult,” UAGPPJA is already consistent with that
24 approach. To underscore the limitation, however, the Commission tentatively
25 recommends inclusion of a provision expressly stating that the California
26 Conservatorship Jurisdiction Act does not apply to a minor, regardless of whether
27 the minor is or was married.²⁸ The same provision should also state that the act
28 does not apply to any proceeding in which a person is appointed to provide

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

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

23. See *id*.

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

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

26. See UAGPPJA § 102 Comment.

27. 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).

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

1 personal care or property administration for a minor.²⁹ Those steps will eliminate
2 any ambiguity about whether the act applies to a minor who qualifies as an adult
3 for some legal purposes.

4 *Proceedings Involving Involuntary Mental Health Treatment.* The provision
5 expressly excluding all minors should also expressly state another limitation on
6 the scope of the act. California has a variety of civil commitment schemes, in
7 which a court may involuntarily commit a person to a mental health facility or
8 appoint someone who can authorize an involuntary commitment or other
9 involuntary mental health treatment of another person.³⁰ According to the ULC,
10 UAGPPJA is not intended to apply to such judicial proceedings.³¹ Yet that
11 limitation is not expressly stated in the uniform act.

12 The lack of such a statement could cause confusion in California, because the
13 term “conservatorship” is used for some of the California proceedings that involve
14 involuntary mental health treatment (for example, a Lanterman-Petris-Short
15 conservatorship)³², as well as for judicial proceedings that do not involve such
16 treatment (for example, a Probate Code conservatorship).³³ Applying UAGPPJA’s
17 streamlined procedures to court proceedings that involve involuntary mental
18 health treatment would raise significant constitutional issues, because such
19 proceedings severely impinge on personal liberties and are thus subject to
20 numerous, stringent constitutional constraints.³⁴ The Commission tentatively

29. See *id.*

30. 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).

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

32. Welf. & Inst. Code §§ 5000-5550; see also Health & Safety Code §§ 416-416.23 (Director of Developmental Services as conservator for developmentally disabled adult); *In re Violet C.*, 213 Cal. App. 3d 86, 261 Cal. Rptr. 470 (1989) (Director of Developmental Services acting as conservator for developmentally disabled adult may seek civil commitment of that adult under specified circumstances and may delegate that authority to regional center); *North Bay Regional Center v. Sherry S.*, 207 Cal. App. 3d 449, 256 Cal. Rptr. 129 (1989) (same).

33. Prob. Code § 1801(a)-(c).

34. Some of the constitutional constraints on involuntary mental health treatment are based on the federal Constitution as interpreted by the United States Supreme Court. See, e.g., *Kansas v. Hendricks*, 521 U.S. 346 (1997); *Addington v. Texas*, 441 U.S. 418 (1979). Those constraints are of relatively little concern with regard to UAGPPJA’s streamlined transfer process, because every state must comply with them.

Other constitutional constraints on involuntary mental health treatment are based on the California Constitution, or on the federal constitution as interpreted by a California court in a context that the United States Supreme Court has not specifically addressed. See, e.g., *People v. Wilkinson*, 185 Cal. App. 4th 543, 100 Cal. Rptr. 3d 776 (2010); *People v. Fisher*, 172 Cal. App. 4th 1006, 91 Cal. Rptr. 3d 609 (2009);

1 recommends that the Legislature expressly exclude those proceedings from the
2 scope of the California Conservatorship Jurisdiction Act.³⁵

3 *Adults with Developmental Disabilities.* Finally, a carefully-tailored limitation
4 should apply with respect to an adult with a developmental disability. In
5 California, an adult with a developmental disability is entitled to be evaluated by a
6 regional center and to receive a broad range of services pursuant to an
7 individualized plan.³⁶ The intent is to “enable persons with developmental
8 disabilities to approximate the pattern of everyday living available to people
9 without disabilities of the same age.”³⁷ To further that intent, California provides a
10 variety of conservatorship possibilities for an adult with a developmental
11 disability, including the option of a limited conservatorship in which the adult
12 retains all legal and civil rights except those which the court designates as legal
13 disabilities and specifically grants to the limited conservator.³⁸

14 Due to those special opportunities for an adult with a developmental disability, it
15 would be ill-advised to apply UAGPPJA’s streamlined transfer procedure³⁹ to such
16 an adult. Instead, the Commission tentatively recommends making the transfer

Conservatorship of Roulet, 23 Cal. 3d 219, 235, 616 P.2d 836, 167 Cal. Rptr. 854 (1980). Because California courts have found a variety of constitutional protections with regard to involuntary mental health treatment that are not the established “law of the land” (i.e., federal law, as definitively interpreted by the United States Supreme Court), the concept of transferring an out-of-state proceeding involving such treatment to California under UAGPPJA would pose serious problems.

A California court could not constitutionally permit such a transfer and allow involuntary mental health treatment to occur in California unless it was satisfied that the out-of-state proceeding complied with all of the constitutional constraints applicable here, both substantive and procedural. Assessing whether that was true would be burdensome on the court and the litigants, and might involve costly and protracted disputes over which rights are statutory as opposed to constitutional and whether a particular out-of-state procedure was equivalent to one constitutionally required in California. A cleaner approach would be to make UAGPPJA inapplicable and require parties to litigate the need for involuntary mental health treatment from scratch in California, in accordance with California law.

For further discussion of this matter, see CLRC 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.

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

36. 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”).

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

38. 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 adult); Welf. & Inst. Code §§ 6500-6513 (judicial commitment of person with developmental disability who is dangerous to others or to self).

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

1 procedure (but not UAGPPJA’s registration procedure)⁴⁰ expressly inapplicable to
2 an adult with a developmental disability, and to any proceeding in which a person
3 is appointed to provide personal care or property administration for an adult with a
4 developmental disability.⁴¹

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

17 *Definitions*

18 Section 102 of UAGPPJA defines various terms that are used in the uniform act.
19 Those definitions raise two key issues: (1) the problem of different and conflicting
20 terminology and (2) the appropriateness of applying UAGPPJA to specified non-
21 state entities.

22 *The Problem of Different and Conflicting Terminology.* Unfortunately,
23 California uses very different and sometimes conflicting terminology for many of
24 the concepts defined in UAGPPJA. A table summarizing the situation is presented
25 in Appendix A.

26 In short, UAGPPJA defines a “guardian” as “a person appointed by the court to
27 make decisions regarding the person of an adult ...”⁴² In California, however, a
28 “guardian” may only be appointed for a minor.⁴³ The term “conservator of the
29 person” is comparable to what UAGPPJA denominates a “guardian.” In what is
30 known as a “Probate Code conservatorship” (sometimes referred to as a “general

40. Under UAGPPJA’s registration procedure, it would be possible for a court-appointee 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 Law Revision Commission tentatively recommends 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.

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

42. UAGPPJA § 102(3).

43. See Prob. Code §§ 1500-1501.

1 conservatorship”), a California court may, with certain exceptions, appoint a
2 “conservator of the person” for “a person who is unable to provide properly for his
3 or her personal needs for physical health, food, clothing, or shelter”⁴⁴

4 Under UAGPPJA, the term “conservator” refers to “a person appointed by the
5 court to administer the property of an adult”⁴⁵ In California, the comparable
6 term is a “conservator of the estate.” In a Probate Code conservatorship, a
7 California court may, with certain exceptions, appoint a “conservator of the estate”
8 for “a person who is substantially unable to manage his or her own financial
9 resources or to resist fraud or undue influence”⁴⁶

10 California also expressly recognizes that a single person may serve as both
11 “conservator of the person” and “conservator of the estate.”⁴⁷ Such a person may
12 be referred to as a “conservator of the person and estate.”⁴⁸ *Id.* In contrast,
13 UAGPPJA does not include a special term for a person who acts in both roles (i.e.,
14 a person who is both a “guardian” and a “conservator” as defined in UAGPPJA).

15 A further complication is the terminology used to refer to the types of
16 proceedings in which such appointments are made. Under UAGPPJA, a
17 “guardianship proceeding” is “a judicial proceeding in which an order for the
18 appointment of a guardian is sought or has been issued.”⁴⁹ A “protective order” is
19 “an order appointing a conservator or other order related to management of an
20 adult’s property.”⁵⁰ A “protective proceeding” is “a judicial proceeding in which a
21 protective order is sought or has been issued.”⁵¹ The term “conservatorship” is not
22 defined, although it is used in a few places in UAGPPJA, apparently to refer to a
23 proceeding in which a UAGPPJA “conservator” is appointed.⁵²

24 In California, the term “guardianship proceeding” is reserved for proceedings
25 relating to minors, which are not addressed by UAGPPJA. Under California law,
26 the term “conservatorship proceeding” encompasses both a proceeding to appoint
27 a “conservator of the person” and a proceeding to appoint a “conservator of the
28 estate,” as well as a proceeding to appoint a “conservator of the person and estate.”
29 Moreover, the term “protective proceeding” is used far more inclusively than
30 under UAGPPJA. Instead of being limited to proceedings that involve

44. Prob. Code § 1801(a).

45. UAGPPJA § 102(2).

46. Prob. Code § 1801(b).

47. Prob. Code § 1801(c).

48. *Id.*

49. UAGPPJA § 102(5).

50. UAGPPJA § 102(10).

51. UAGPPJA § 102(11).

52. 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).

1 management of property, the term seems to encompass all “conservatorship
2 proceedings” and “guardianship proceedings,” as well as some types of similar
3 proceedings.⁵³

4 Due to these terminology differences, it would be confusing to enact UAGPPJA
5 in California as is. Rather, the Commission tentatively recommends revising the
6 act to use California terminology throughout.⁵⁴ That would make the act consistent
7 with the remainder of the Probate Code and with California case law, minimizing
8 the possibility of confusion.

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

21 *Treatment of Specified Non-State Entities.* UAGPPJA’s definition of “state”
22 includes the fifty states and several non-state entities: “the District of Columbia,
23 Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe,
24 or any territory or insular possession subject to the jurisdiction of the United
25 States.”⁵⁵ If California were to enact UAGPPJA with that definition, California
26 courts applying the act would be required to treat a proceeding from one of the
27 enumerated non-state entities the same way as a proceeding from a state. For
28 example, parties could use UAGPPJA’s streamlined transfer process to transfer a
29 proceeding from one of those non-state entities to California, or vice versa.

30 It is therefore necessary to consider the manner in which those entities conduct
31 the types of proceedings governed by UAGPPJA. The District of Columbia is
32 subject to federal due process protections,⁵⁶ as are Puerto Rico,⁵⁷ the U.S. Virgin

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

54. See proposed Prob. Code § 1982 *infra*; see also proposed Prob. Code §§ 1980-2024 & Comments *infra*.

55. UAGPPJA § 102(14). This is a standard ULC definition, used in many of the acts approved by the ULC.

56. *District of Columbia v. John R. Thompson Co.*, 346 U.S. 100, 104 (1953); *Wright v. Davidson*, 181 U.S. 371, 384 (1901).

57. See 48 U.S.C. §§ 731c, 731d; *Fornaris v. Ridge Tool Co.*, 423 F.3d 563, 566-67 (1st Cir. 1970), *rev’d on other grounds*, 400 U.S. 41 (1970); *Mora v. Mejias*, 206 F.2d 377, 382 (1st Cir. 1953); see also P.R. Const. art. II, § 7 (due process requirement of Puerto Rico Constitution).

1 Islands,⁵⁸ Guam,⁵⁹ and the Commonwealth of the Northern Mariana Islands.⁶⁰
2 American Samoa, the only other inhabited territory or insular possession subject to
3 the jurisdiction of the United States, appears to offer analogous due process
4 protections through its own constitution.⁶¹ It therefore appears appropriate to apply
5 UAGPPJA to proceedings from these U.S.-affiliated entities, affording the same
6 comity as would be accorded to an actual state.

7 The situation for federally recognized Indian tribes is similar but somewhat
8 more complicated. While federally recognized Indian tribes are not directly
9 subject to the due process protections in the federal constitution, Congress has
10 acted to legislatively extend due process protections to the tribes.⁶² Generally, the
11 conception of due process applicable to tribes differs from federal and state due
12 process in that Congress sought to balance individual protections with continued
13 tribal self-determination.⁶³ Due process rights cannot be asserted against tribes in
14 federal court due to sovereign immunity, so remedies must be sought in individual
15 tribal courts and those courts are not bound to follow federal case law on due
16 process.⁶⁴ Limited data suggests, however, that tribal courts are no less protective
17 of individual rights than federal courts.⁶⁵

18 The California Tribal Court/State Court Forum⁶⁶ and the Probate and Mental
19 Health Advisory Committee of the Judicial Council are jointly studying
20 recognition of tribal court judgments and orders in proceedings that would, if
21 conducted in a California court, be brought in the Probate Division. Their joint
22 study includes examination of UAGPPJA.

58. See 48 U.S.C. § 1561.

59. See 48 U.S.C. § 1421(e), (u).

60. Covenant to Establish a Commonwealth of Northern Mariana Islands in Political Union with the United States of America § 501(a); see also CNMI Const. art. I, § 5 (due process requirement of CNMI Constitution).

61. See Am. Samoa Const. art. I, § 2; *Ferstle v. Am. Samoa Gov't*, 7 Am. Samoa 2d 26, 48-51 (Trial Div. 1988), available at http://www.asbar.org/index.php?option=com_content&view=article&id=875:ferstle-v-american-samoa-govt&catid=56&Itemid=254; *Craddick v. Territorial Registrar*, 1 Am. Samoa 2d 10, 12 (App. Div. 1980), available at http://www.asbar.org/index.php?option=com_content&view=article&id=641:1asr2d10&catid=50:1asr2d&Itemid=254.

62. See 25 U.S.C. § 1302(a)(8).

63. Freitag, Note, *Putting Martinez to the Test: Tribal Court Disposition of Due Process*, 72 Ind. L.J. 831, 838 (1997); see also *Johnson v. Mashantucket Pequot Gaming Enterprise*, No. 2 Mash 273 (1998).

64. See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58-59 (1978).

65. See, e.g., *108 Employees of the Crow Tribe of Indians v. Crow Tribe of Indians*, 2001 Crow 10, ¶ 20 (2001); McCarthy, *Civil Rights in Tribal Courts: The Indian Bill of Rights at Thirty Years*, 34 Idaho L. Rev. 465, 489 (1998); Freitag, *supra* note 63, at 864.

66. The California Tribal Court/State Court Forum is a coalition consisting of tribal court judges, state court judges, the Chairs of certain Judicial Council advisory committees, the director of Native American Affairs for the State Attorney General's Office, and the Tribal Advisor to Governor Brown. See Judicial Council, *California Tribal Court/State Court Forum Roster (As of May 16, 2013)*, available at <http://www.courts.ca.gov/documents/Roster-TribalStateCourtMembers.pdf>.

1 In light of that ongoing work, the Commission defers decision on whether
2 California’s version of UAGPPJA should include a federally recognized Indian
3 tribe in the definition of “state.” The Commission plans to revisit that question
4 later, after receiving input from the joint study. **Comments on the issue are**
5 **especially encouraged.**

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

7 In addition to the provisions discussed above, Article 1 of UAGPPJA contains a
8 provision regarding application of the proposed legislation to a court proceeding in
9 another country,⁶⁷ provisions facilitating communication and cooperation between
10 courts of different states,⁶⁸ and a provision on taking testimony in another state.⁶⁹
11 Aside from revisions to conform to California terminology, the Commission does
12 not recommend any changes relating to those provisions.⁷⁰

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

14 Article 2 of UAGPPJA addresses the problem of determining the proper
15 jurisdiction of a proceeding in which a court appoints someone to assist another
16 person with personal care or property management. Jurisdictional issues arise
17 often, because individuals frequently have contacts with more than one state.⁷¹ For
18 example, an individual might own property in several states, or might spend part
19 of the year living in one state and part of the year living in another state. If such an
20 individual appears to need a court-appointed assistant, it is important to have an
21 effective mechanism for resolving which state has jurisdiction to evaluate the need
22 for an appointment, select an assistant if needed, and supervise the proceeding
23 afterwards. Article 2 of UAGPPJA is intended to provide such a mechanism.⁷²

24 In general, UAGPPJA would establish a three-tier hierarchy for determining
25 jurisdiction.⁷³ At the top of the hierarchy is the “home state,” which is determined
26 by examining where the individual was physically present for a six-month period
27 preceding the filing of the petition for appointment of an assistant.⁷⁴ The home

67. UAGPPJA § 103.

68. UAGPPJA §§ 104, 105.

69. UAGPPJA § 106.

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

71. UAGPPJA Prefatory Note, p. 1.

72. *Id.*

73. UAGPPJA Prefatory Note, p. 3.

74. 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*.

1 state has primary jurisdiction to make an appointment.⁷⁵ Next in the hierarchy is a
2 “significant-connection” state,⁷⁶ which is defined as a state, other than the home
3 state, with which the individual has a significant connection aside from mere
4 physical presence and in which significant evidence concerning the individual is
5 available.⁷⁷ Finally, a court from a state that is neither the home state nor a
6 significant-connection state may exercise jurisdiction in certain limited
7 circumstances.⁷⁸

8 The details of UAGPPJA’s jurisdictional scheme, including exceptions to the
9 general rules described above, are explained at length in UAGPPJA.⁷⁹ It is not
10 necessary to reiterate all of those details here. UAGPPJA’s jurisdictional scheme
11 is reasonable because it is based on the strength of an individual’s ties to a
12 jurisdiction.⁸⁰ Eliminating jurisdictional uncertainties through a uniform approach
13 would be a major step forward. The Commission therefore recommends that the
14 Legislature enact UAGPPJA’s jurisdictional rules with very few revisions.

15 The proposed legislation would conform those rules to California terminology,
16 drafting practices, and notice procedure.⁸¹ In addition, the proposed legislation
17 would refine the treatment of the following matters:

18 *Exclusive Basis for Jurisdiction.* Section 202 of UAGPPJA states that the act’s
19 jurisdictional rules “provid[e] the exclusive jurisdictional basis” for a court to
20 appoint a person to assist an adult with personal care or property administration.
21 The apparent intent is to make clear that UAGPPJA’s jurisdictional rules are the
22 only basis for determining which state has jurisdiction of a proceeding to make
23 such an appointment.⁸² If the provision was enacted in California, those
24 jurisdictional rules would apply regardless of whether a party is invoking the
25 transfer procedures of UAGPPJA or is seeking to establish a new conservatorship
26 in California.⁸³

75. See UAGPPJA § 203(1) & Comment; proposed Prob. Code § 1993(a) & Comment *infra*; see also UAGPPJA Art. 2 General Comment; UAGPPJA Prefatory Note, p. 3.

76. See UAGPPJA § 203(2) & Comment; proposed Prob. Code § 1993(b)-(d) & Comment *infra*; see also UAGPPJA Art. 2 General Comment; UAGPPJA Prefatory Note, pp. 3-4.

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

78. See UAGPPJA § 203(3) & Comment; proposed Prob. Code § 1993(e) & Comment; see also UAGPPJA Art. 2 General Comment; UAGPPJA Prefatory Note, pp. 3-4.

79. See UAGPPJA §§ 201-209 & Comments; UAGPPJA Art. 2 General Comment; UAGPPJA Prefatory Note, pp. 2-4.

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

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

82. See UAGPPJA Art. 2 General Comment (“The jurisdictional rules in Article 2 will determine which state’s courts may appoint a ... conservator ...”).

83. See *id.* (“Article 2 is applicable even if all of the [proposed conservatee’s] significant contacts are in-state.”); see also UAGPPJA § 202 Comment; UAGPPJA § 503 Legislative Note.

1 Because UAGPPJA’s jurisdictional provisions would have this impact, it would
2 be helpful to include a “signpost provision” in Chapter 4 (“Jurisdiction and
3 Venue”) of Part 4 (“Provisions Common to Guardianship and Conservatorship”)
4 of Division 4 of the Probate Code.⁸⁴ That step would serve to alert people to the
5 existence of those jurisdictional provisions, which might otherwise be overlooked
6 when a conservatorship is being initiated in, rather than transferred to, California.

7 The Commission also recommends revising the language of UAGPPJA Section
8 202 to clarify its scope. From the ULC’s discussion of this provision, it is evident
9 that the provision is only intended to address which state has jurisdiction, not other
10 jurisdictional issues like whether an appellate court may make such an
11 appointment.⁸⁵ The Commission proposes to make this point more clear.⁸⁶

12 *Declining to Exercise Jurisdiction.* In a number of places, UAGPPJA refers to a
13 court that “declines to exercise jurisdiction” because another state is “a more
14 appropriate forum.”⁸⁷ For example, the second clause of Section 203(2)(A) would
15 give jurisdiction to a court in a significant-connection state if a court in the home
16 state has declined to exercise jurisdiction because the significant-connection state
17 is a more appropriate forum.⁸⁸ Similarly, Section 203(3) would give jurisdiction to
18 a court in a peripheral state (a state that is neither the home state, a significant-
19 connection state, nor a place with special jurisdiction under Section 204) if that is
20 constitutionally permissible and the home state plus all significant-connection
21 states have declined to exercise jurisdiction because the peripheral state is a more
22 appropriate forum.⁸⁹

23 If those rules were enacted in California, a California court would sometimes
24 have to determine whether a court in another state had “declined to exercise

84. See proposed amendment of Prob. Code § 2200.

85. See UAGPPJA Art. 2 General Comment; UAGPPJA § 202 Comment; UAGPPJA § 503 Legislative Note.

86. See proposed Prob. Code § 1992 *infra*.

87. See UAGPPJA §§ 203(2)(A) & (3), 206(a) & (b).

88. Notably, this UAGPPJA provision *does not* require a court in a significant-connection state to find that every other significant-connection state has “declined to exercise jurisdiction because this state is a more appropriate forum.” Requiring such a finding would be unduly burdensome; depending on how many states are involved, it could be very costly for parties to have to initiate a conservatorship proceeding in each significant-connection state (plus the home state, if any) and obtain a court order declining to exercise jurisdiction from all but one of those states. Instead, it would be enough to initiate a conservatorship proceeding in the home state, obtain a court order from that state declining to exercise jurisdiction, and then seek jurisdiction in the significant-connection state that seems most appropriate based on the factors identified in Section 206(c) of UAGPPJA (corresponding to proposed Prob. Code § 1996(c) *infra*). If that state is a poor choice, the court could decline to exercise jurisdiction and may impose any condition the court considers just and proper, including the condition that a conservatorship proceeding be promptly filed in another state. See UAGPPJA § 206(b) (corresponding to proposed Prob. Code § 1996(b) *infra*).

89. This situation is not likely to occur often. The extreme result (assertion of jurisdiction by a state that has only tenuous ties to the proposed conservatee) justifies the burdens inherent in establishing that the home state and all significant-connection states have declined to exercise jurisdiction.

1 jurisdiction” because California is “a more appropriate forum.” Likewise, a court
2 in another UAGPPJA state will sometimes have to determine whether a California
3 court has “declined to exercise jurisdiction” because the other state is “a more
4 appropriate forum.”

5 Under UAGPPJA, when a court “declines to exercise jurisdiction” because
6 another state is “a more appropriate forum,” it must “either dismiss or stay the
7 proceeding.”⁹⁰ The uniform act thus contemplates that the court will take an
8 affirmative step, the issuance of a dismissal or stay order. But the act is silent on
9 whether the court’s order must expressly state that the court is declining to
10 exercise jurisdiction because another state is a more appropriate forum.⁹¹

11 To facilitate application of the jurisdictional rules, the proposed legislation
12 would:

- 13 (1) Revise UAGPPJA Section 203(2)(A) and (3) to make clear that they apply
14 only when a court in another state has *expressly* declined jurisdiction on the
15 ground that California is a more appropriate forum.⁹²
- 16 (2) Revise UAGPPJA Section 206 to make clear that when a California court
17 declines to exercise jurisdiction because a court in another state is a more
18 appropriate forum, the California court must do so *expressly in a record*.⁹³

19 By requiring courts to be clear about the bases for their actions, these revisions
20 would help other courts determine whether they have jurisdiction.

21 *Emergency jurisdiction.* Section 204 of UAGPPJA describes several situations
22 in which a court has “special jurisdiction” (i.e., jurisdiction that is not based on
23 UAGPPJA’s normal three-tier jurisdictional hierarchy⁹⁴). Among other things, the
24 section allows a court lacking jurisdiction under the normal hierarchy to make a
25 short-term appointment in an “emergency”⁹⁵ for an individual who is physically

90. UAGPPJA § 206(b).

91. See *id.*

92. See proposed Section 1993(c), (e) & Comment *infra*.

93. See proposed Section 1996(b) & Comment *infra*.

94. Section 203 of UAGPPJA (corresponding to proposed Prob. Code § 1993 *infra*) establishes the normal three-tier jurisdictional hierarchy. Section 204, governing “special jurisdiction,” applies only when a court is “lacking jurisdiction under Section 203(1) through (3)” and other specified conditions are met.

95. Section 201(1) of UAGPPJA defines “emergency” as “a circumstance that likely will result in substantial harm to a respondent’s health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent’s behalf.” Aside from revisions to conform to California terminology, the Commission proposes to use the same definition in the proposed law. See proposed Prob. Code § 1991(a)(1) & Comment *infra*.

The UAGPPJA definition “does not preclude an enacting jurisdiction from appointing a [conservator] under an emergency [conservatorship] statute with a different or broader test of emergency if the court otherwise has jurisdiction to make an appointment” under UAGPPJA’s normal three-tier jurisdictional hierarchy. UAGPPJA § 204 Comment. In other words, California’s temporary conservatorship procedure (Prob. Code §§ 2250-2258), including its “good cause” requirement, would continue to be available

1 present in the state.⁹⁶ The provision does not specify the procedure for making
2 such an appointment.

3 California’s procedure for establishing a permanent conservatorship would be
4 too slow for use in an emergency situation.⁹⁷ Accordingly, when jurisdiction is
5 based on the rule providing special jurisdiction in an emergency, the proposed law
6 would require use of California’s procedure for establishing a temporary
7 conservatorship.⁹⁸

8 **Transfer (Article 3 of UAGPPJA)**

9 Article 3 of UAGPPJA addresses the problem of transfer: how to move what is
10 known in California as a conservatorship from one state to another when such a
11 move becomes necessary.⁹⁹ That problem can arise, for example, when the
12 conservator or the conservator’s spouse accepts a new job in a different state and
13 the family needs to bring the conservatee along to the new state. Alternatively,
14 family circumstances might change, necessitating replacement of the existing
15 conservator with a family member who lives in another state. Or it might be
16 necessary to move a conservatee to a nursing or medical facility in a different
17 state, particularly if the conservatee resides near a state border or requires
18 specialized care.¹⁰⁰

19 Before UAGPPJA, in most states it was necessary to re-establish a
20 conservatorship from scratch when such a move occurred.¹⁰¹ In other words, the
21 whole process of creating a conservatorship had to be repeated: filing a
22 conservatorship petition, proving that the proposed conservatee lacked capacity to
23 handle personal care or financial matters, choosing a conservator, and going
24 through all of the other steps in the conservatorship process.

25 Such relitigation is costly, time-consuming, and stressful, draining resources of
26 conservatees, their families, and the judicial system.¹⁰² Those burdens can be

whenever California has jurisdiction as the proposed conservatee’s “home state” or jurisdiction otherwise exists under proposed Probate Code Section 1993(a)-(e) (corresponding to UAGPPJA § 203(1)-(3)).

96. See UAGPPJA § 204(a)(1).

97. See, e.g., Prob. Code §§ 1822(a) (notice of time and place of hearing on conservatorship petition shall be given “[a]t least 15 days before the hearing on the petition”), 1824 (citation and copy of conservatorship petition “shall be served on the proposed conservatee at least 15 days before the hearing”), 1826 (court investigator shall prepare report addressing numerous matters and shall submit that report to court “in writing, at least five days before the hearing”).

98. See proposed Prob. Code § 1994(a)(1) & Comment *infra*. Because the basis for jurisdiction would be tenuous and the need for a California conservator might be fleeting, filing an accompanying petition for appointment of a permanent conservator would be optional rather than mandatory. See proposed amendment to Prob. Code § 2250 & Comment *infra*.

99. See UAGPPJA Prefatory Note, p. 1.

100. See Alzheimer’s Ass’n Case Statement, *supra* note 17.

101. UAGPPJA Art. 3 General Comment; UAGPPJA Prefatory Note, p. 1.

102. *Id.*

1 particularly difficult for families that are already stretched thin, struggling to
2 provide personal care and financial management for a needy relative, while also
3 handling their own affairs.

4 In drafting Article 2 of UAGPPJA, the ULC sought to provide a streamlined
5 transfer process, so that it would not be necessary to fully relitigate such a
6 proceeding when a move occurred.¹⁰³ That transfer process involves a number of
7 steps, as described below.

8 *Transfer Procedure Under UAGPPJA*

9 Although UAGPPJA uses the term “transfer,” what actually occurs is
10 technically not transfer of a proceeding from one state to another. Rather, the
11 process involves termination of an existing proceeding in one state and
12 commencement of a new proceeding in another state, in an expedited and
13 coordinated manner. The term “transfer” is just a shorthand way to refer to this
14 process.¹⁰⁴

15 A “transfer” under UAGPPJA requires the issuance of four court orders: a
16 provisional order granting the transfer, a provisional order accepting the transfer, a
17 final order confirming the transfer, and a final order accepting the transfer. A
18 hearing is held only if the transferring court or the accepting court deems it
19 necessary, or if one is requested by a person entitled to notice of the transfer
20 proceeding.¹⁰⁵

21 To begin the transfer process, a court-appointed assistant must file a transfer
22 petition in the court currently supervising the proceeding.¹⁰⁶ That court must issue
23 an order provisionally granting the transfer if it is satisfied that the other state will
24 accept the transfer and the court makes certain findings regarding the proposed
25 move.¹⁰⁷ The required findings differ slightly depending on whether the
26 proceeding involves personal care or financial assistance.¹⁰⁸

27 After the transferring court provisionally grants the transfer, the court-appointed
28 assistant must file a petition in a court of the other state, asking it to accept the
29 transfer.¹⁰⁹ That court must issue a provisional order accepting the transfer unless:
30 (1) the assistant is ineligible for appointment in the accepting state or (2) someone

103. *Id.*

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

105. See UAGPPJA §§ 301(c), 302(c).

106. UAGPPJA § 301(a).

107. UAGPPJA § 301(d), (e).

108. See UAGPPJA § 301(d).

109. UAGPPJA § 302(a).

1 objects to the transfer and establishes that the transfer would be contrary to the
2 interests of the person receiving assistance.¹¹⁰

3 On receipt of the provisional order accepting the transfer and whatever
4 documents are normally required to terminate a proceeding of this type, the
5 transferring court must issue a final order confirming the transfer and terminating
6 its proceeding.¹¹¹ The transferring court’s final order is then provided to the
7 accepting court, which must issue a final order accepting the transfer and
8 appointing the petitioner to provide assistance in the accepting state.¹¹² To
9 expedite the transfer process, the court in the accepting state must give deference
10 to the transferring court’s determination of capacity and selection of the person to
11 provide assistance.¹¹³

12 Because the applicable law and practice are likely to differ in the two states,
13 within ninety days after issuing its final order accepting the transfer, the accepting
14 court must determine whether the proceeding needs to be modified to conform to
15 the law of that state.¹¹⁴ The ninety day requirement is not inflexible; a state may
16 coordinate the conformity determination with other time limits applicable to the
17 proceeding. The conformity determination is the last step in the transfer process.

18 Because UAGPPJA’s transfer process would reduce the monetary, emotional,
19 and other costs of relocating a proceeding, the Commission tentatively
20 recommends the concept for enactment in California. To protect the state’s
21 policies and effectively implement the concept, however, the Commission
22 suggests several modifications of UAGPPJA’s transfer provisions. A few of those
23 modifications relate to transfer of a California conservatorship to another state;
24 most of the modifications relate to acceptance of a similar proceeding from
25 another state. Each set of proposed modifications is discussed in order below.

26 ***Transfer of a California Conservatorship to Another State***

27 Section 301 of UAGPPJA specifies the process for transferring a proceeding to
28 another state. If that section was enacted in California, a California court would
29 not have to provisionally approve a transfer to another state unless it found that
30 plans for care of the conservatee in the other state were “reasonable and
31 sufficient,”¹¹⁵ or, in a conservatorship of the estate, that adequate arrangements
32 would be made for management of the conservatee’s property.¹¹⁶ In those
33 circumstances, a California court could in good conscience relinquish control over

110. UAGPPJA § 302(d).

111. UAGPPJA § 301(f).

112. UAGPPJA § 302(e).

113. UAGPPJA § 302(g); UAGPPJA Prefatory Note, p. 4.

114. UAGPPJA § 302(f).

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

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

1 the conservatee and entrust the conservatee or the conservatee’s property to the
2 supervision of the accepting court. Upon transfer, the situation would be
3 comparable to that of any other conservatee beyond California’s jurisdictional
4 reach: California would lack a basis for intervening and would have to respect the
5 policy determinations and other decisions of its sister state.

6 During the transfer process, however, the California court would still have
7 responsibility for supervising the care of the conservatee. To eliminate any doubt
8 that the conservator is bound by California law throughout the transfer process, the
9 Commission recommends making that point explicit in the provision governing
10 the conservator’s oath.¹¹⁷

11 The Commission further recommends the following modifications of UAGPPJA
12 Section 301:

- 13 • Revisions to conform to California terminology.¹¹⁸
- 14 • Revisions to conform to California practice, under which a party is required
15 to give notice *of a hearing* on a motion or petition, not just notice of a
16 petition.¹¹⁹
- 17 • Revisions to require a hearing on every transfer petition.¹²⁰ This would
18 afford interested persons a relatively easy means to voice objections; they
19 would not have to bear the burden of figuring out how to request a hearing.
20 If there are no objections to a transfer petition, the court could place the
21 matter on the consent calendar.
- 22 • Revisions of the procedure that applies if a person objects to a transfer. To
23 prevent a transfer, UAGPPJA would require the objector to establish that the
24 transfer would be contrary to the interests of the subject of the
25 proceeding.¹²¹ If an objector failed to meet that burden, the transfer would
26 go forward. In contrast, the Commission suggests that a transfer should only
27 be permitted if the court affirmatively determines that the transfer would not
28 be contrary to the interests of the conservatee.¹²²
- 29 • Revisions to make clear what requirements apply to a proceeding that
30 involves both personal care and property management (what is known in
31 California as a conservatorship of the person and estate).¹²³

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

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

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

120. 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).

121. See UAGPPJA § 301(d)(2), (e)(2).

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

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

1 *Transfer of Another State’s Conservatorship to California*

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

5 *Expressly Requiring Compliance with California Law Upon Transfer.* If Section
6 302 of UAGPPJA was enacted in California, a California court would have to
7 accept the transfer of a proceeding from another state upon satisfaction of the
8 procedural requirements described above. That raises an important question: After
9 the transfer, would the transferred proceeding continue to be governed by the laws
10 of the state in which it was established, or would it be governed by California law?
11 In other words, would the California court have to apply the policies and
12 procedures of another state, or would it be free to follow California’s own policies
13 and procedures? There are many distinctions between California conservatorship
14 law and comparable law in other states, so providing clear guidance on this point
15 is critical.

16 UAGPPJA does not say so expressly, but it is fairly obvious that the ULC
17 intended for a transferred proceeding to be governed by the law of the state to
18 which it was transferred.¹²⁴ ULC representatives have confirmed as much.¹²⁵
19 Application of California law also appears to be the only sensible solution:
20 Otherwise similarly situated California conservatees would be subject to disparity
21 in treatment depending on where a conservatorship originated, and California
22 courts would have to learn and apply the rules of numerous other jurisdictions on a
23 daily basis.

24 Because this is such an important matter, the Commission recommends that it be
25 stated expressly in the statutory provision on accepting a transfer. Specifically, the
26 Commission proposes to include a statement that “[w]hen a transfer to this state
27 becomes effective, the conservatorship is subject to the law of this state and shall
28 thereafter be treated as a conservatorship under the law of this state.”¹²⁶

29 That rule will help to ensure that California policies are protected. For example,
30 California has detailed requirements for placing a conservatee with dementia in a
31 secured perimeter residential care facility for dementia patients,¹²⁷ and for
32 authorizing the administration of psychotropic medications to such a
33 conservatee.¹²⁸ Under the Commission’s proposed approach, it would be clear that

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

125. See CLRC 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).

126. See proposed Prob. Code § 2002(e)(3) & Comment *infra*. This concept may be conveniently referred to as the “When in Rome” principle.

127. See Prob. Code § 2356.5.

128. See *id.*

1 a conservator would have to satisfy those requirements before taking those steps in
2 California.

3 *Expressly Preventing a Court Appointee from Taking Action in California Until*
4 *the Transfer is Complete and Becomes Effective.* For similar reasons, the
5 Commission also recommends a second statutory clarification: Making clear that a
6 court-appointed assistant may not take action in California pursuant to a transfer
7 petition unless and until a California court issues a final order accepting the
8 transfer and the court and conservator have completed the same series of steps that
9 must be taken when a conservatorship originates in California.¹²⁹ In particular, the
10 necessary steps are:

- 11 (1) The conservator must take an oath to perform the duties of the position
12 according to law.¹³⁰
- 13 (2) The court must set the bond and the conservator must file the required bond,
14 if any.¹³¹
- 15 (3) The court must provide the conservator with the same informational
16 materials that a new conservator receives when a conservatorship originates
17 in California.¹³²
- 18 (4) The conservator must acknowledge receipt of the required informational
19 materials.¹³³
- 20 (5) The clerk of the court must issue the letters of conservatorship.¹³⁴

21 This approach would help ensure that the conservator of a transferred proceeding
22 is alerted to California’s conservatorship rules before being able to take action in
23 California, the conservator is aware of the need to comply with those rules, and the
24 policies underlying those rules are protected.

25 *Allowing But Not Mandating Full Reevaluation of Capacity and the Choice of*
26 *the Appointee Pursuant to California Law.* Section 302 of UAGPPJA provides
27 that “[i]n granting a petition under this section, the court *shall recognize a ...*
28 *conservatorship order from the other state, including the determination of the*
29 *[conservatee’s] incapacity and the appointment of the ... conservator.”*¹³⁵ The key

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

130. See proposed Prob. Code § 2002(e)(2)(A) *infra*; see also Prob. Code § 2300(a) (oath of guardian or conservator).

131. See proposed Prob. Code § 2002(e)(2)(B) *infra*; see also Prob. Code §§ 2300, 2320-2335 (bond of guardian or conservator).

132. See proposed Prob. Code § 2002(e)(1) & (2)(C) *infra*; see also Prob. Code §§ 1830(c) (information notice of rights of conservators), 1835 (informational materials for conservator).

133. See proposed Prob. Code § 2002(e)(2)(D) *infra*; see also proposed amendment to Prob. Code § 1834 *infra* (conservator’s acknowledgment of receipt).

134. See proposed Prob. Code § 2002(e)(2)(E) *infra*; see also Prob. Code §§ 2310-2313 (letters of conservatorship).

135. 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.”¹³⁶

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 judgment¹³⁷ 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.¹³⁸

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.¹³⁹ In neighboring states (Arizona, Nevada, and Oregon), the
18 rules regarding determination of capacity are not as fully developed.¹⁴⁰ 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.¹⁴¹ By requiring a California

136. UAGPPJA Art. 3 General Comment.

137. 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.

138. 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.

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

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

141. 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 embarrassing¹⁴² for that individual and costly because it requires input from
9 medical professionals¹⁴³ and might entail a jury trial.¹⁴⁴ UAGPPJA seeks to
10 minimize those concerns.

11 The Commission therefore proposes a middle ground. Full relitigation of
12 capacity and the choice of conservator would not be required in every case
13 transferred to California. But such relitigation would be *allowed if requested in the*
14 *normal manner that those issues can be revisited in any California*
15 *conservatorship*: (1) by filing a petition for termination of the conservatorship, if
16 the intent is to show that the conservatee has sufficient capacity to handle his or
17 her own affairs without assistance,¹⁴⁵ or (2) by filing a petition to remove the
18 conservator, if the intent is to obtain a new conservator in accordance with
19 California law.¹⁴⁶ In other words, the issues of capacity and choice of conservator
20 could be relitigated under California law if someone wanted to raise them.

21 Further, the first time that capacity is relitigated in California after a transfer, the
22 relitigation process should be comparable to the process that would have been
23 used if the conservatorship had originated in California. Accordingly, the
24 Commission proposes to require the court to rebuttably presume that there is no
25 need for a conservatorship.¹⁴⁷

26 Likewise, if a person seeks removal of the conservator of a transferred
27 proceeding, the choice of conservator should be reevaluated in the same manner as
28 if a conservator was being chosen for a proceeding that originated in California.
29 The Commission therefore recommends that the statute governing removal of a
30 conservator be amended to permit removal of a transferred conservator if that
31 person “would not have been appointed in this state despite being eligible to serve
32 under the law of this state.”¹⁴⁸

142. See, e.g., James E. Spar & Asenath LaRue, *Clinical Manual of Geriatric Psychiatry* 362 (2006) (“The process of appointment of a ... conservator is often demeaning and embarrassing to the conservatee.”).

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

144. See Prob. Code §§ 1452, 1823(b)(7), 1827; see also Prob. Code § 1827 Comment.

145. See Prob. Code §§ 1861-1863; proposed Prob. Code § 2002(g) & Comment *infra*.

146. See Prob. Code §§ 2650-2655; proposed Prob. Code § 2002(g) & Comment *infra*.

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

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

1 As a further means of protecting California conservatorship policies in the
2 transfer process, the Commission recommends that the court be required to
3 appoint a court investigator when it issues a final order accepting a transfer.¹⁴⁹
4 The court investigator would be required to promptly conduct an investigation
5 similar to the one that occurs when a new conservatorship is established in
6 California.¹⁵⁰ 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.¹⁵¹ 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.¹⁵² In addition, the investigator would have to make specific findings
12 concerning the conservatee's capacity.¹⁵³

13 The court would review the investigator's report at the same time that it
14 determines whether the conservatorship conforms to California law.¹⁵⁴ The
15 Commission tentatively recommends that the court conduct those inquiries within
16 ninety days after the court issues its final order accepting the transfer (the same
17 time period specified in Section 302(f) of UAGPPJA). **Input on the proper time
18 period to use would be particularly helpful.**

19 When the court conducts the review, it would be authorized to take appropriate
20 action in response to the court investigator's report.¹⁵⁵ The court could also modify
21 the conservator's powers as necessary to conform to California law.¹⁵⁶ The review
22 process would thus provide an opportunity to protect California's conservatorship
23 policies, including its policies on determination of capacity and choice of the
24 conservator.¹⁵⁷

149. See proposed Prob. Code § 2002(e)(4) & Comment *infra*. It does not seem advisable to require the court investigation earlier in the transfer process, because it may be difficult and unduly expensive to obtain information about the conservatorship while the conservatee, the conservator, or both are located in another state.

150. 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. In either situation, it might sometimes be possible to save costs by using some of the materials that were generated while the case was pending in the other state.

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

152. 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).

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

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

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

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

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

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

- 3 • Revisions to conform to California terminology.¹⁵⁸
- 4 • Revisions to reflect and facilitate compliance with limitations on the scope
5 of the proposed legislation.¹⁵⁹
- 6 • Revisions to conform to California practice, under which a party is required
7 to give notice *of a hearing* on a motion or petition, not just notice of a
8 petition.¹⁶⁰
- 9 • Revisions to require a hearing on every transfer petition, for the same
10 reasons previously expressed. As before, if there are no objections to a
11 transfer petition, the court could place the matter on the consent calendar.¹⁶¹
- 12 • Revisions of the procedure that applies if a person objects to a transfer. To
13 prevent a transfer, UAGPPJA would require the objector to establish that the
14 transfer would be contrary to the interests of the subject of the proceeding. If
15 an objector failed to meet that burden, the transfer would go forward. In
16 contrast, the Commission suggests that a transfer should only be permitted if
17 the court affirmatively determines that the transfer would not be contrary to
18 the interests of the conservatee.¹⁶²
- 19 • Revisions to differentiate between (1) a conservator who is ineligible, *under*
20 *the law of the transferring state*, to serve in California, and (2) a conservator
21 who is ineligible, *under California law*, to serve in California.¹⁶³

22 With all of the modifications discussed above, the Commission tentatively
23 recommends that the Legislature enact UAGPPJA's transfer procedure in
24 California.

25 **Registration and Recognition (Article 4 of UAGPPJA)**

26 Article 4 of UAGPPJA addresses the problem of interstate recognition.¹⁶⁴ The
27 discussion below describes that problem and UAGPPJA's approach to it, and then
28 explores the implications of the UAGPPJA approach for California.

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

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

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

161. See proposed Prob. Code § 2002(c) & Comment *infra*; see also *supra* note 120 & accompanying text.

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

163. 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*.

1 ***The Problem and UAGPPJA’s Solution***

2 Sometimes a person appointed to assist an individual with limited capacity has
3 to take action in a state other than the one in which the court made the
4 appointment. For example, it might be necessary to obtain medical care for the
5 individual with limited capacity while that individual is traveling in another state
6 or living near a state border with a medical facility located on the other side.¹⁶⁵
7 Alternatively, a conservator might need to sell or maintain property located in a
8 different state, such as a vacation home belonging to the conservatee.¹⁶⁶ There are
9 also various other reasons why a court-appointed assistant might need to take steps
10 in a different jurisdiction.¹⁶⁷

11 In these types of situations, the court appointee sometimes encounters resistance
12 from an individual or entity in the other state. For example, a care facility in the
13 other state might question the appointee’s authority to act on behalf of the person
14 with limited capacity.¹⁶⁸ Due to this sort of refusal, it is sometimes necessary to
15 seek a second court appointment in the other state, but that is a difficult burden for
16 many families to bear.¹⁶⁹

17 Article 4 of UAGPPJA is designed to avoid this problem by facilitating
18 enforcement of a court appointment that was made in another state.¹⁷⁰ The key
19 concept of the article is registration.¹⁷¹ By following a relatively simple procedure,
20 a court appointee may register the appointment in another state, and may thereafter
21 exercise in that state all of the powers authorized in the order of appointment,
22 *except as prohibited under the laws of that state.*¹⁷² In other words, when taking
23 action in the state where the appointment is registered, the court appointee *must*
24 *comply with the laws of that state.*

25 ***Implications for California***

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

164. See UAGPPJA §§ 401-402; UAGPPJA Art. 4 General Comment; UAGPPJA Prefatory Note, p. 2, 5.

165. See generally Alzheimer’s Ass’n Case Statement, *supra* note 17.

166. See generally *id.*

167. 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.

168. UAGPPJA Art. 4 General Comment.

169. See *id.*; see also UAGPPJA Prefatory Note, p 2.

170. See UAGPPJA Art. 4 General Comment.

171. *Id.*

172. See UAGPPJA §§ 401-403.

1 Such an obligation already appears to exist by virtue of the conservator’s oath.
2 Nonetheless, the Commission proposes to underscore the point by amending the
3 provision that requires the oath. Specifically, the Commission recommends that
4 the provision be amended to expressly require a California conservator “to comply
5 with the law of this state, as well as other applicable law, at all times, *in any*
6 *location within or without the state.*”¹⁷³

7 If California decides to enact UAGPPJA, however, a different scenario could
8 also occur: A conservatorship (or comparable proceeding by another name) could
9 be registered in California pursuant to the UAGPPJA procedure, and the out-of-
10 state appointee could then take action in California. Again, that prospect does not
11 appear to be problematic, at least in most circumstances. As explained above, a
12 court appointee acting pursuant to a UAGPPJA registration must comply with the
13 law of the state of registration.¹⁷⁴ Accordingly, if an out-of-state appointment was
14 registered in California, the appointee would have to comply with California law
15 while taking action in California, and thus would not pose any threat to California
16 policies.

17 It is possible, however, that someone might try to use the registration process as
18 a means of avoiding the more complicated and costly transfer process when
19 relocating a conservatee to California. UAGPPJA does not seem to preclude use of
20 the registration procedure in those circumstances.

21 The Commission believes, however, that if a conservator-conservatee
22 relationship is relocated to California, it should be officially transferred to
23 California and subjected to the safeguards of the transfer process. For that reason,
24 the registration of an out-of-state conservatorship in California should only be
25 effective while the conservatee resides in another jurisdiction. If the conservatee
26 moves to California, the conservator should no longer be able to take action in
27 California pursuant to the registration, and should have to seek a transfer of the
28 court proceeding to California. The Commission tentatively proposes to modify
29 UAGPPJA’s registration procedure to achieve that result.¹⁷⁵

30 The Commission also recommends a few other modifications of UAGPPJA’s
31 registration procedure:

- 32 • Revisions to conform to California terminology.¹⁷⁶
- 33 • Revisions to clarify the procedure for filing the registration documents in a
34 California court.¹⁷⁷

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

174. See *supra* note 171 & accompanying text.

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

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

177. 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-

- 1 • Revisions to reflect that the court that originally made an appointment may
2 not be the one currently supervising the proceeding.¹⁷⁸
- 3 • Addition of a provision that expressly permits and governs registration of a
4 court appointment that involves both personal care and property
5 management.¹⁷⁹
- 6 • Revisions to make clear that registration in a single county is sufficient; it is
7 not necessary to register in every county in which the court appointee
8 wishes to act.¹⁸⁰
- 9 • Addition of a “safe harbor” provision, under which a person who relies in
10 good faith on a UAGPPJA registration would be protected from liability in
11 specified circumstances.¹⁸¹
- 12 • Addition of a provision authorizing recordation of UAGPPJA registration
13 documents.¹⁸²

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

19 **Miscellaneous Provisions (Article 5 of UAGPPJA)**

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

- 23 • Section 501 of UAGPPJA is a standard ULC provision directing courts to
24 consider the need to promote uniformity of the law when applying and
25 construing the act. To emphasize the importance of respecting a
26 conservatee’s constitutional rights in applying and construing the act, the
27 Commission recommends modifying this provision to refer to those rights,
28 as well as the need to promote uniformity.¹⁸³
- 29 • Section 505 of UAGPPJA would specify the “effective date” of the
30 proposed legislation. In California, it is important to differentiate between
31 the “effective date” and the “operative date” of legislation. The “effective

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).

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

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

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

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

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

183. See proposed Prob. Code § 2021 & Comment *infra*. Connecticut has already modified UAGPPJA Section 501 in this manner. See 2012 Conn. Pub. Act No. 12-22, § 22.

1 date” is when the legislation officially becomes part of the law of the
2 state.¹⁸⁴ The “operative date” is when the legislation actually starts to
3 operate in the state.¹⁸⁵ The Commission recommends that UAGPPJA have a
4 one-year delayed operative date if it is enacted in California. The one year
5 delay in operation of the statute would afford time for the Judicial Council
6 to prepare court rules and forms necessary for smooth implementation of the
7 legislation.¹⁸⁶ The Commission further recommends enactment of a
8 provision directing the Judicial Council to prepare such rules and forms
9 before the specified operative date.¹⁸⁷

10 **Need for the Proposed Reform**

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

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

19 **The Commission urges interested persons to express their views on this**
20 **matter by providing written comments to the Commission or participating in**
21 **discussion of this study at a Commission meeting. Such comments will be**
22 **invaluable in refining the Commission’s proposal to effectively serve the**
23 **citizens of California.**

184. In general, the effective date of a California statute enacted during a regular session of the Legislature is January 1 of the year following its enactment. See Cal. Const. art. IV, § 8(c)(1); Gov’t Code § 9600(a). “The ‘enactment is a law on its effective date only in the sense that it cannot be changed except by the legislative process; the rights of individuals under its provisions are not substantially affected until the provision operates as law.’” *People v. Palomar*, 171 Cal. App. 3d 131, 134, 214 Cal. Rptr. 785 (1985).

185. Usually the operative date is the same as the effective date. *People v. Henderson*, 107 Cal. App. 3d 475, 488, 166 Cal. Rptr. 20 (1980). In some instances, the Legislature exercises its discretion to specify a different operative date. See, e.g., *Preston v. State Bd. of Equalization*, 25 Cal. 4th 197, 223-24, 19 P.3d 1148, 105 Cal. Rptr. 2d 407 (2001); *Cline v. Lewis*, 175 Cal. 315, 318, 165 P. 915 (1917); *Johnson v. Alexis*, 153 Cal. App. 3d 33, 40, 199 Cal. Rptr. 909 (1984). That step is appropriate in this context.

186. See the uncodified provision in the proposed legislation *infra*; see also proposed Prob. Code § 2024 *infra* (transitional provision).

187. See proposed Prob. Code § 2023 & Comment *infra*.

APPENDIX A

The following table summarizes the differences between UAGPPJA terminology and California terminology for the types of situations addressed in UAGPPJA:

<i>Concept</i>	<i>UAGPPJA term</i>	<i>California term</i>
Person appointed to assist an adult with personal care	“guardian” (UAGPPJA § 102(3))	“conservator of the person” (Prob. Code § 1801(a)) The UAGPPJA term (“guardian”) is potentially confusing because in California a “guardian” may only be appointed for a minor
Person appointed to assist an adult with financial matters	“conservator” (UAGPPJA § 102(2))	“conservator of the estate” (Prob. Code § 1801(b)) The UAGPPJA term (“conservator”) is potentially confusing because in California a “conservator” could be responsible for personal care, financial matters, or both
Person appointed to assist an adult with personal care and financial matters	none	“conservator of the person and estate” (Prob. Code § 1801(c)) UAGPPJA does not provide a term for an appointee with dual responsibilities, although this is a commonly occurring situation

<i>Concept</i>	<i>UAGPPJA term</i>	<i>California term</i>
Judicial proceeding in which court appoints someone to assist an adult with personal care	“guardianship proceeding” (UAGPPJA § 102(5))	“conservatorship of the person” The UAGPPJA term (“guardianship”) is potentially confusing because in California a “guardianship” may only be established for a minor
Judicial proceeding in which court appoints someone to assist an adult with financial matters	UAGPPJA uses the term “conservatorship” to refer to this type of proceeding, but it does not include a definition of that term	“conservatorship of the estate” The UAGPPJA term (“conservatorship”) is potentially confusing because in California a “conservatorship” could involve assistance with personal care, instead of or in addition to assistance with financial matters
Judicial proceeding in which court appoints someone to assist an adult with personal care and financial matters	None	“conservatorship of the person and estate” UAGPPJA does not provide a term for this type of proceeding, although it is a commonly occurring situation

<i>Concept</i>	<i>UAGPPJA term</i>	<i>California term</i>
Judicial order relating to management of an adult’s finances	“protective order” (UAGPPJA § 102(10))	None California does not have a term specifically for a judicial order relating to management of an adult’s finances. The UAGPPJA term (“protective order”) is potentially confusing because in California a “protective order” could protect an adult’s personal safety, instead of or in addition to an adult’s financial security. See, e.g., Code Civ. Proc. §§ 527.8-527.9.
Judicial proceeding in which court issues order relating to management of an adult’s finances	“protective proceeding” (UAGPPJA § 102(11))	None California does not have a term specifically for a judicial proceeding in which the court issues an order relating to management of an adult’s finances. The UAGPPJA term (“protective proceeding”) is potentially confusing because in California that term is used much more broadly

<i>Concept</i>	<i>UAGPPJA term</i>	<i>California term</i>
<p>Adult for whom a court has appointed someone to provide assistance with personal care</p>	<p>“incapacitated person” (UAGPPJA § 102(6))</p>	<p>“conservatee”</p> <p>The UAGPPJA term (“incapacitated person”) is not used in Division 4 of the Probate Code (Guardianship, Conservatorship, and Other Protective Proceedings), perhaps because a ward or conservatee is not necessarily “incapacitated” for all purposes. The California term (“conservatee”) encompasses an adult receiving assistance with financial matters, as well as an adult receiving assistance with personal care. In contrast, UAGPPJA does not define “conservatee,” but its definition of “conservator” suggests that “conservatee” for purposes of UAGPPJA encompasses only an adult receiving assistance with financial matters, not an adult receiving assistance with personal care</p>

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PROPOSED LEGISLATION

1 **Prob. Code §§ 1980-2024 (added). Interstate Jurisdiction, Transfer, and Recognition:**
2 **California Conservatorship Jurisdiction Act**

3 SEC. _____. Chapter 8 (commencing with Section 1980) is added to Part 3 of
4 Division 4 of the Probate Code, to read:

5 CHAPTER 8. INTERSTATE JURISDICTION, TRANSFER, AND
6 RECOGNITION: CALIFORNIA CONSERVATORSHIP JURISDICTION ACT

7 **Comment.** The Uniform Law Commission approved the Uniform Adult Guardianship and
8 Protective Proceedings Jurisdiction Act (“UAGPPJA”) in 2007. This chapter contains the
9 California version of that Act, which may be referred to as the California Conservatorship
10 Jurisdiction Act. See Section 1980 & Comment. Many provisions in this chapter are the same as
11 or are drawn from UAGPPJA. In Comments to sections in this chapter, a reference to the
12 “uniform act” or “UAGPPJA” means the official text of the uniform act approved by the Uniform
13 Law Commission. Variations from the official text of the uniform act are noted in the Comments
14 to sections in this chapter.

15 Article 1. General Provisions

16 **Background from Uniform Act**

17 Article 1 contains definitions and general provisions used throughout the Act. Definitions
18 applicable only to Article 2 are found in Section [1991]. Section [1980] is the title, Section [1982]
19 contains the definitions, and Sections [1983-1986] the general provisions. Section [1983]
20 provides that a court of an enacting state may treat a foreign country as a state for the purpose of
21 applying all portions of the Act other than Article 4.... Section [1984] addresses communication
22 between courts, Section [1985] requests by a court to a court in another state for assistance, and
23 Section [1986] the taking of testimony in other states. These Article 1 provisions relating to court
24 communication and assistance are essential tools to assure the effectiveness of the provisions of
25 Article 2 determining jurisdiction and in facilitating transfer of a proceeding to another state as
26 authorized in Article 3.

27 [Adapted from the Uniform Law Commission’s General Comment to Article 1 of UAGPPJA.]

28 **§ 1980. Short title [UAGPPJA § 101]**

29 1980. (a) By enacting this chapter, it is the Legislature’s intent to enact a
30 modified version of the Uniform Adult Guardianship and Protective Proceedings
31 Jurisdiction Act.

32 (b) This chapter may be cited as the “California Conservatorship Jurisdiction
33 Act.”

34 **Comment.** Section 1980 is similar to Section 101 of the Uniform Adult Guardianship and
35 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). The section provides a shorthand
36 means of referring to the content of this chapter.

37 Due to differences between California terminology and that of the Uniform Law Commission,
38 the short title provided in the uniform act (“Uniform Adult Guardianship and Protective
39 Proceedings Jurisdiction Act”) could cause confusion within this state. See Sections 1500-1502
40 (“guardian” may only be nominated for minor, not for adult); see also Sections 1301, 4126 &

1 4672 (using term “protective proceeding” differently than in uniform act); Cal. R. Ct. 7.51(d),
2 10.478(a) & 10.776(a) (same); Welf. & Inst. Code § 15703 (same). The alternative title provided
3 in this section (“California Conservatorship Jurisdiction Act”) is consistent with California
4 terminology for the types of proceedings covered by UAGPPJA.

5 For guidance on interpretation of a uniform act enacted in this state, see Section 2(b) (“A
6 provision of this code, insofar as it is the same in substance as a provision of a uniform act, shall
7 be so construed as to effectuate the general purpose to make uniform the law in those states which
8 enact that provision.”); see also Section 2021 (uniformity of application and construction of
9 California Conservatorship Jurisdiction Act).

10 **Background from Uniform Act**

11 The title to the Act succinctly describes the Act’s scope. The Act applies only to court
12 jurisdiction and related topics for adults for whom the appointment of a [conservator] is being
13 sought or has been issued.

14 The drafting committee elected to limit the Act to adults for two reasons. First, jurisdictional
15 issues concerning guardians for minors are subsumed by the Uniform Child Custody Jurisdiction
16 and Enforcement Act (1997). Second, while the UCCJEA does not address ... issues involving
17 the property of minors, all of the problems and concerns that led the Uniform Law Commission to
18 appoint a drafting committee involved adults.

19 [Adapted from the Uniform Law Commission’s Comment to UAGPPJA § 101.]

20 **§ 1981. Limitations on scope of chapter**

21 1981. (a)(1) This chapter does not apply to a minor, regardless of whether the
22 minor is or was married.

23 (2) This chapter does not apply to any proceeding in which a person is appointed
24 to provide personal care or property administration for a minor, including, but not
25 limited to, a guardianship under Part 2 (commencing with Section 1500).

26 (b) This chapter does not apply to any proceeding in which a person is
27 involuntarily committed to a mental health facility or subjected to other
28 involuntary mental health care, including, but not limited to, any of the following
29 proceedings or any proceeding that is similar in substance:

30 (1) A proceeding under Sections 1026 to 1027, inclusive, of the Penal Code.

31 (2) A proceeding under Chapter 6 (commencing with Section 1367) of Title 10
32 of Part 2 of the Penal Code.

33 (3) A proceeding under Article 4 (commencing with Section 2960) of Chapter 7
34 of Title 1 of Part 3 of the Penal Code.

35 (4) A proceeding under Article 6 (commencing with Section 1800) of Chapter 1
36 of Division 2.5 of the Welfare and Institutions Code.

37 (5) A proceeding under Article 2 (commencing with Section 3050) of Chapter 1
38 of Division 3 of the Welfare and Institutions Code.

39 (6) A proceeding under Article 3 (commencing with Section 3100) of Chapter 1
40 of Division 3 of the Welfare and Institutions Code.

41 (7) A proceeding under Part 1 (commencing with Section 5000) of Division 5 of
42 the Welfare and Institutions Code, which is also known as the Lanterman-Petris-
43 Short Act.

44 (8) A proceeding under Article 2 (commencing with Section 6500) of Chapter 2
45 of Part 2 of Division 6 of the Welfare and Institutions Code.

1 (9) A proceeding under Article 4 (commencing with Section 6600) of Chapter 2
2 of Part 2 of Division 6 of the Welfare and Institutions Code.

3 (c) Article 3 (commencing with Section 2001) does not apply to an adult with a
4 developmental disability, or to any proceeding in which a person is appointed to
5 provide personal care or property administration for an adult with a developmental
6 disability, including, but not limited to, the following types of proceedings:

7 (1) A proceeding under Article 7.5 (commencing with Section 416) of Chapter 2
8 of Part 1 of Division 1 of the Health and Safety Code.

9 (2) A limited conservatorship under subdivision (d) of Section 1801.

10 (3) A proceeding under Section 4825 of the Welfare and Institutions Code.

11 (4) A proceeding under Article 2 (commencing with Section 6500) of Chapter 2
12 of Part 2 of Division 6 of the Welfare and Institutions Code.

13 **Comment.** Section 1981 restricts the scope of this chapter.

14 Paragraph (1) of subdivision (a) makes explicit that this chapter does not apply to a minor,
15 even if the minor is married or has had a marriage dissolved. Paragraph (2) states a corollary rule:
16 The chapter does not apply to any proceeding in which a person is appointed to provide personal
17 care or property administration for a minor. Those limitations are consistent with the scope of the
18 Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”).
19 See UAGPPJA § 102(1) (defining “adult” as “an individual who has attained [18] years of age”).
20 The uniform act does, however, recognize that some states may wish to modify that scope
21 because their conservatorship law encompasses certain minors. See UAGPPJA § 102 Comment.
22 Under California law, a minor who is or was married is treated as an adult for some but not all
23 purposes. See, e.g., Sections 1515 & Comment (guardian of estate may be appointed for minor
24 who is married or has had marriage dissolved, but not guardian of person), 1800.3 & Comment
25 (conservator of person may be appointed for minor who is married or has had marriage dissolved,
26 but not conservator of estate), 1860 & Comment (dissolution of minor’s marriage does not
27 terminate conservatorship of person established for that minor). Different treatment of such
28 minors may apply in other states. To prevent confusion and avoid complications that might arise
29 due to differential treatment of such minors across state lines, they are expressly excluded from
30 the scope of this chapter and the chapter is strictly limited to adults. For definitions consistent
31 with this limitation, see Section 1982 (defining “adult,” “conservatee” & other terms).

32 Subdivision (b) makes clear that this chapter is inapplicable to any proceeding in which an
33 individual is involuntarily committed to a mental health facility or subjected to other involuntary
34 mental health care. This encompasses, but is not limited to, a conservatorship under the
35 Lanterman-Petris-Short Act (Welf. & Inst. Code §§ 5000-5550), a civil commitment of a person
36 found not guilty by reason of insanity (Penal Code §§ 1026-1027), a civil commitment of a
37 person found incompetent to stand trial (Penal Code §§ 1367-1376), a civil commitment of a
38 mentally disordered offender (Penal Code §§ 2960-2981), a civil commitment of a person who
39 would otherwise be discharged from the Youth Authority (Welf. & Inst. Code §§ 1800-1803), a
40 civil commitment of a narcotics addict (Welf. & Inst. Code §§ 3050-3555, 3100-3111), a civil
41 commitment of a person with a developmental disability who is dangerous to others or to self
42 (Welf. & Inst. Code §§ 6500-6513), and a civil commitment of a sexually violent predator (Welf.
43 & Inst. Code §§ 6600-6609.3).

44 Authority to involuntarily commit a person in California, or to subject a person to other
45 involuntary mental health treatment here, cannot be obtained merely by transferring an out-of-
46 state conservatorship pursuant to Article 3, or by registering an out-of-state conservatorship
47 pursuant to Article 4. To obtain such authority, it is necessary to follow the procedures provided
48 by California law.

49 Subdivision (c) makes clear that the transfer procedure provided in Article 3 of this chapter
50 (Sections 2001-2002) does not apply to an adult with a developmental disability. Consistent with

1 that rule, subdivision (c) also states that the transfer procedure is inapplicable to several types of
2 proceedings specifically designed for such an adult.

3 Under California law, an adult with a developmental disability is entitled to be evaluated by a
4 regional center and to receive a broad range of services pursuant to an individualized plan. See
5 Welf. & Inst. Code § 4646; see also *Sanchez v. Johnson*, 416 F.3d 1051, 1064-68 (9th Cir. 2001).
6 The intent is to “enable persons with developmental disabilities to approximate the pattern of
7 everyday living available to people without disabilities of the same age.” Welf. & Inst. Code §
8 4501; see also Welf. & Inst. Code §§ 4500-4868 (“Services for the Developmentally Disabled”).
9 To further that intent, California provides a variety of conservatorship possibilities for an adult
10 with a developmental disability, including the option of a limited conservatorship in which the
11 adult “retain[s] all legal and civil rights except those which by court order have been designated
12 as legal disabilities and have been specifically granted to the limited conservator.” Section
13 1801(d); *cf.* Section 1801(a)-(c) (regular Probate Code conservatorship); Health & Safety Code
14 §§ 416-416.23 (Director of Developmental Services as conservator for developmentally disabled
15 person); Welf. & Inst. Code §§ 6500-6513 (judicial commitment of person with developmental
16 disability who is dangerous to others or to self).

17 By precluding use of Article 3’s streamlined transfer procedure, subdivision (c) serves to
18 ensure that when an adult with a developmental disability is relocated to California, that adult will
19 receive the benefit of California’s procedures for such adults, and full recognition of the rights to
20 which the adult is entitled under California law. Likewise, subdivision (c) helps assure that when
21 such an adult is relocated from California to another jurisdiction, that jurisdiction will have to
22 evaluate the adult’s needs and the available resources using its normal processes, not an
23 abbreviated transfer procedure.

24 **Note.** For the reasons stated in the Comment, proposed Section 1981(c) would make
25 UAGPPJA’s streamlined transfer procedure (Article 3) inapplicable to a conservatorship of an
26 adult with a developmental disability. The remainder of UAGPPJA — the general provisions
27 (Article 1), the jurisdictional rules (Article 2), the registration procedure (Article 4), and the
28 miscellaneous provisions (Article 5) — would apply to such a conservatorship.

29 The Law Revision Commission seeks comment on any aspect of proposed Section 1981, but
30 would especially appreciate input on the proposed treatment of an adult with a developmental
31 disability. Is the proposed approach sound? Why or why not? If not, what alternative approach
32 would be preferable?

33 **§ 1982. Definitions [UAGPPJA § 102]**

34 1982. In this chapter:

35 (a) “Adult” means an individual who has attained 18 years of age.

36 (b) “Conservatee” means an adult for whom a conservator of the estate, a
37 conservator of the person, or a conservator of the person and estate has been
38 appointed.

39 (c) “Conservator” means a person appointed by the court to serve as a
40 conservator of the estate, a conservator of the person, or a conservator of the
41 person and estate.

42 (d) “Conservator of the estate” means a person appointed by the court to
43 administer the property of an adult, including, but not limited to, a person
44 appointed for that purpose under subdivision (b) of Section 1801.

45 (e) “Conservator of the person” means a person appointed by the court to make
46 decisions regarding the person of an adult, including, but not limited to, a person
47 appointed for that purpose under subdivision (a) of Section 1801.

1 (f) “Conservator of the person and estate” means a person appointed by the court
2 to make decisions regarding the person of an adult and to administer the property
3 of that adult, including, but not limited to, a person appointed for those purposes
4 under subdivision (c) of Section 1801.

5 (g) “Conservatorship order” means an order appointing a conservator of the
6 estate, a conservator of the person, or a conservator of the person and estate in a
7 conservatorship proceeding.

8 (h) “Conservatorship proceeding” means a judicial proceeding in which an order
9 for the appointment of a conservator of the estate, a conservator of the person, or a
10 conservator of the person and estate is sought or has been issued.

11 (i) “Party” means the conservatee, proposed conservatee, petitioner, conservator,
12 proposed conservator, or any other person allowed by the court to participate in a
13 conservatorship proceeding.

14 (j) “Person” means an individual, corporation, business trust, estate, trust,
15 partnership, limited liability company, association, joint venture, public
16 corporation, government or governmental subdivision, agency, or instrumentality,
17 or any other legal or commercial entity.

18 (k) “Proposed conservatee” means an adult for whom a conservatorship order is
19 sought.

20 (l) “Record” means information that is inscribed on a tangible medium or that is
21 stored in an electronic or other medium and is retrievable in perceivable form.

22 (m) Notwithstanding Section 74, “State” means a state of the United States, the
23 District of Columbia, Puerto Rico, the United States Virgin Islands, [a federally
24 recognized Indian tribe], or any territory or insular possession subject to the
25 jurisdiction of the United States.

26 **Comment.** Section 1982 defines terms used in this chapter. To prevent confusion, the
27 definitions generally conform to usage elsewhere in this code and throughout this state, instead of
28 the conflicting usage employed by the Uniform Law Commission in the Uniform Adult
29 Guardianship and Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”).

30 Subdivision (a) (defining “adult”) is the same as Section 102(1) of UAGPPJA. This chapter
31 only applies to a conservatorship for an adult. The chapter does not apply to a minor, even if the
32 minor is married or has had a marriage dissolved. See Section 1981(a) & Comment (scope of
33 chapter).

34 Subdivision (b) (defining “conservatee”) is similar to Section 102(6) & (9) of UAGPPJA
35 (defining “incapacitated person” and “protected person”).

36 Subdivision (c) (defining “conservator”) is included for drafting convenience.

37 Subdivision (d) (defining “conservator of the estate”) is similar to Section 102(2) of UAGPPJA
38 (defining “conservator”). See Section 1801(b) (standard for appointment of conservator of estate).

39 Subdivision (e) (defining “conservator of the person”) is similar to Section 102(3) of
40 UAGPPJA (defining “guardian”). See Section 1801(a) (standard for appointment of conservator
41 of person).

42 Subdivision (f) (defining “conservator of the person and estate”) is included for the sake of
43 completeness. See Section 1801(c) (standard for appointment of conservator of person and
44 estate).

45 Subdivision (g) (defining “conservatorship order”) is similar to Section 102(4) & (10) of
46 UAGPPJA (defining “guardianship order” and “protective order”).

1 Subdivision (h) (defining “conservatorship proceeding”) is similar to Section 102(5) & (11) of
2 UAGPPJA (defining “guardianship proceeding” and “protective proceeding”).

3 Subdivision (i) (defining “party”) is similar to Section 102(7) of UAGPPJA (defining “party”).

4 Subdivision (j) (defining “person”) is similar to Section 102(8) of UAGPPJA (defining
5 “person”). See also Section 56 (“person”).

6 Subdivision (k) (defining “proposed conservatee”) is similar to Section 102(13) of UAGPPJA
7 (defining “respondent”).

8 Subdivision (l) (defining “record”) is the same as Section 102(12) of UAGPPJA.

9 Subdivision (m) (defining “State”) is the same as Section 102(14) of UAGPPJA.

10 **Background from Uniform Act**

11 Section [1982] is not the sole definitional section in the Act. Section [1991] contains
12 definitions of important terms used only in Article 2. These are the definitions of “emergency”
13 [Section [1991(a)(1)], “home state” [Section 1991(a)(2)], and “significant-connection state”
14 [Section 1991(a)(3)].

15 [Adapted from the Uniform Law Commission’s Comment to UAGPPJA § 102.]

16 **Note.** The Law Revision Commission seeks comment on any aspect of proposed Section
17 1982, but would especially appreciate input on whether to include a federally recognized Indian
18 tribe in the definition of “State” and, if not, what alternative treatment would be appropriate.

19 The Commission is aware of Senate Bill 406 (Evans), which would enact the Tribal Court Civil
20 Judgment Act. The Commission is also aware that the California Tribal Court/State Court Forum
21 and the Probate and Mental Health Advisory Committee of the Judicial Council are jointly
22 studying recognition of tribal judgments and orders in proceedings that would, if conducted in a
23 California court, be brought in the Probate Division.

24 The Commission’s tentative inclination is to postpone decision on whether to include a
25 federally recognized Indian tribe in the definition of “State.” Once the fate of SB 406 is decided
26 and the joint study is complete (or at least well underway), it might be easier to decide how to
27 proceed on this point.

28 In addition, the Commission has tentatively decided that the UAGPPJA legislation should have
29 a delayed operative date, to allow the Judicial Council to develop rules and forms. See the
30 proposed uncodified section and accompanying Comment below. It might be possible to resolve
31 and address the tribal issues during the transitional year, after UAGPPJA is enacted but before it
32 becomes operative.

33 For these reasons, the reference to “a federally recognized Indian tribe” is shown in brackets in
34 proposed Section 1982(m). The Commission encourages comments on these matters.

35 **§ 1983. International application of chapter [UAGPPJA § 103]**

36 1983. A court of this state may treat a foreign country as if it were a state for the
37 purpose of applying this article and Articles 2, 3, and 5.

38 **Comment.** Section 1983 is the same as Section 103 of the Uniform Adult Guardianship and
39 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”).

40 **Background from Uniform Act**

41 This section addresses application of the Act to [conservatorship orders] issued in other
42 countries. A foreign order is not enforceable pursuant to the registration procedures of Article 4,
43 but a court in this country may otherwise apply this Act to a foreign proceeding if the foreign
44 country were an American state. Consequently, a court may conclude that the court in the foreign
45 country has jurisdiction because it constitutes the [proposed conservatee’s] “home state” or
46 “significant-connection state” and may therefore decline to exercise jurisdiction on the ground
47 that the court of the foreign country has a higher priority under Section [1993]. Or the court may
48 treat the foreign country as if it were a state of the United States for purposes of applying the
49 transfer provisions of Article 3.

1 This section addresses similar issues to but differs in result from Section 105 of the Uniform
2 Child Custody Jurisdiction and Enforcement Act (1997). Under the UCCJEA, the United States
3 court must honor a custody order issued by the court of a foreign country if the order was issued
4 under factual circumstances in substantial conformity with the jurisdictional standards of the
5 UCCJEA. Only if the child custody law violates fundamental principles of human rights is
6 enforcement excused. Because [conservatorship] regimes vary so greatly around the world,
7 particularly in civil law countries, it was concluded that under this Act a more flexible approach
8 was needed. Under this Act, a court may but is not required to recognize the foreign order.

9 The fact that a [conservatorship] order of a foreign country cannot be enforced pursuant to the
10 registration procedures of Article 4 does not preclude enforcement by the court under some other
11 provision or rule of law.

12 [Adapted from the Uniform Law Commission’s Comment to UAGPPJA § 103.]

13 **§ 1984. Communication between courts [UAGPPJA § 104]**

14 1984. (a) A court of this state may communicate with a court in another state
15 concerning a proceeding arising under this chapter. The court may allow the
16 parties to participate in the communication. Except as otherwise provided in
17 subdivision (b), the court shall make a record of the communication. The record
18 may be limited to the fact that the communication occurred.

19 (b) Courts may communicate concerning schedules, calendars, court records,
20 and other administrative matters without making a record.

21 **Comment.** Section 1984 is the same as Section 104 of the Uniform Adult Guardianship and
22 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). For another provision on
23 communication between courts, see Fam. Code § 3410 (communication between courts regarding
24 child custody jurisdiction), which is similar to Section 110 of the Uniform Child Custody
25 Jurisdiction and Enforcement Act (1997). See also Section 2204 (communication between courts
26 regarding venue of guardianship and child custody or visitation matters); Cal. R. Ct. 7.1014
27 (same).

28 Although this section authorizes communication between courts, it does not authorize ex parte
29 communication between a party (or attorney for a party) and a court. For guidance on ex parte
30 communication, see Section 1051 and Rule 7.10 of the California Rules of Court.

31 **Background from Uniform Act**

32 This section emphasizes the importance of communications among courts with an interest in a
33 particular matter. Most commonly, this would include communication between courts of different
34 states to resolve an issue of which court has jurisdiction to proceed under Article 2. It would also
35 include communication between courts of different states to facilitate the transfer of a ...
36 conservatorship to a different state under Article 3. Communication can occur in a variety of
37 ways, including by electronic means. This section does not prescribe the use of any particular
38 means of communication.

39 The court may authorize the parties to participate in the communication. But the Act does not
40 mandate participation or require that the court give the parties notice of any communication.
41 Communication between courts is often difficult to schedule and participation by the parties may
42 be impractical. Phone calls or electronic communications often have to be made after-hours or
43 whenever the schedules of judges allow. When issuing a jurisdictional or transfer order, the court
44 should set forth the extent to which a communication with another court may have been a factor
45 in the decision.

46

47 This section does not prescribe the extent of the record that the court must make, leaving that
48 issue to the court. A record might include notes or transcripts of a court reporter who listened to a
49 conference call between the courts, an electronic recording of a telephone call, a memorandum

1 summarizing a conversation, and email communications. No record need be made of relatively
2 inconsequential matters such as scheduling, calendars, and court records.

3 Section 110 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997) addresses
4 similar issues as this section but is more detailed. As is the case with several other provisions of
5 this Act, the drafters of this Act concluded that the more varied circumstances of
6 [conservatorship] proceedings suggested a greater need for flexibility.

7 [Adapted from the Uniform Law Commission’s Comment to UAGPPJA § 104.]

8 **Note.** The Law Revision Commission seeks comment on any aspect of proposed Section
9 1984, but would especially appreciate input on whether a court should charge any fees for the
10 court services described in that section, and, if so, what fees to charge.

11 In seeking this input, the Commission notes that proposed Section 1984 is similar to Family
12 Code Section 3410, which governs communications between courts in matters arising under the
13 Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”). Comments describing
14 experience under that section would be particularly helpful. Are any fees charged for court
15 communications under that section? If a court makes a record of a communication under that
16 section, is the record filed? If so, what is the filing fee, if any? Do the answers to these questions
17 depend on whether a proceeding is pending before the court?

18 **§ 1985. Cooperation between courts [UAGPPJA § 105]**

19 1985. (a) In a conservatorship proceeding in this state, a court of this state may
20 request the appropriate court of another state to do any of the following:

21 (1) Hold an evidentiary hearing.

22 (2) Order a person in that state to produce evidence or give testimony pursuant
23 to procedures of that state.

24 (3) Order that an evaluation or assessment be made of the proposed conservatee.

25 (4) Order any appropriate investigation of a person involved in a proceeding.

26 (5) Forward to the court of this state a certified copy of the transcript or other
27 record of a hearing under paragraph (1) or any other proceeding, any evidence
28 otherwise produced under paragraph (2), and any evaluation or assessment
29 prepared in compliance with an order under paragraph (3) or (4).

30 (6) Issue any order necessary to assure the appearance in the proceeding of a
31 person whose presence is necessary for the court to make a determination,
32 including the conservatee or the proposed conservatee.

33 (7) Issue an order authorizing the release of medical, financial, criminal, or other
34 relevant information in that state, including protected health information as
35 defined in Section 160.103 of Title 45 of the Code of Federal Regulations.

36 (b) If a court of another state in which a conservatorship proceeding is pending
37 requests assistance of the kind provided in subdivision (a), a court of this state has
38 jurisdiction for the limited purpose of granting the request or making reasonable
39 efforts to comply with the request.

40 **Comment.** Section 1985 is similar to Section 105 of the Uniform Adult Guardianship and
41 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to
42 conform to California terminology for the proceedings in question. See Section 1982 & Comment
43 (definitions); see also Section 1980 Comment. For limitations on the scope of this chapter, see
44 Section 1981 & Comment. For another provision on cooperation between courts, see Fam. Code
45 § 3412 (cooperation between courts regarding child custody jurisdiction), which is similar to
46 Section 112 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997).


1 **Background from Uniform Act**

2 [Subdivision (a)] of this section is similar to Section 112(a) of the Uniform Child Custody
3 Jurisdiction and Enforcement Act (1997), although modified to address issues of concern in
4 [conservatorship] proceedings and with the addition of [paragraph (a)(7)], which addresses the
5 release of health information protected under HIPAA. [Subdivision (b)], which clarifies that a
6 court has jurisdiction to respond to requests for assistance from courts in other states even though
7 it might otherwise not have jurisdiction over the proceeding, is not found in although probably
8 implicit in the UCCJEA.

9 Court cooperation is essential to the success of this Act. This section is designed to facilitate
10 such court cooperation. It provides mechanisms for courts to cooperate with each other in order to
11 decide cases in an efficient manner without causing undue expense to the parties. Courts may
12 request assistance from courts of other states and may assist courts of other states. Typically, such
13 assistance will be requested to resolve a jurisdictional issue arising under Article 2 or an issue
14 concerning a transfer proceeding under Article 3.

15 This section does not address assessment of costs and expenses, leaving that issue to local law.
16 Should a court have acquired jurisdiction because of a party’s unjustifiable conduct, Section
17 [1997(b)] authorizes the court to assess against the party all costs and expenses, including
18 attorney’s fees.

19 [Adapted from the Uniform Law Commission’s Comment to UAGPPJA § 105.]

20  **Note.** The Law Revision Commission seeks comment on any aspect of proposed Section
21 1985, but would especially appreciate input on whether a court should charge any fees for court
22 services provided under subdivision (b), and, if so, what fees to charge.

23 In seeking this input, the Commission notes that proposed Section 1985 is similar to Family
24 Code Section 3412, which governs cooperation between courts in matters arising under the
25 UCCJEA. Subdivision (c) of that provision states that “[t]ravel and other necessary and
26 reasonable expenses incurred under subdivisions (a) and (b) may be assessed against the parties
27 according to the law of this state.” How does that rule work in practice? Should similar language
28 be included in proposed Section 1985? Should the Commission take other steps to clarify what
29 fees to charge or how to allocate expenses?

30 **§ 1986. Taking testimony in another state [UAGPPJA § 106]**

31 1986. (a) In a conservatorship proceeding, in addition to other procedures that
32 may be available, testimony of a witness who is located in another state may be
33 offered by deposition or other means allowable in this state for testimony taken in
34 another state. The court on its own motion may order that the testimony of a
35 witness be taken in another state and may prescribe the manner in which and the
36 terms upon which the testimony is to be taken.

37 (b) In a conservatorship proceeding, a court in this state may permit a witness
38 located in another state to be deposed or to testify by telephone or audiovisual or
39 other electronic means. A court of this state shall cooperate with the court of the
40 other state in designating an appropriate location for the deposition or testimony.

41 **Comment.** Section 1986 is similar to Section 106(a)-(b) of the Uniform Adult Guardianship
42 and Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to
43 conform to California terminology for the proceedings in question. See Section 1982 & Comment
44 (definitions); see also Section 1980 Comment. For limitations on the scope of this chapter, see
45 Section 1981 & Comment. For a child custody provision like Section 1986, see Fam. Code §
46 3411 (evidence from another state in child custody case), which is similar to Section 111 of the
47 Uniform Child Custody Jurisdiction and Enforcement Act (1997).

48 For further guidance on taking a deposition in another state for purposes of a proceeding
49 pending in this state, see Code Civ. Proc. § 2026.010; Gov’t Code § 70626. For further guidance

1 on telephone depositions, see Code Civ. Proc. § 2025.310. For further guidance on audio or video
2 recording of a deposition, see Code Civ. Proc. §§ 2020.310(c), 2025.220(a), 2025.330(c),
3 2025.340, 2025.510(f), 2025.530, 2025.560. For the admissibility of secondary evidence
4 (including secondary evidence of a deposition), see Evid. Code §§ 1520-1523 (proof of content of
5 writing). For guidance on taking a deposition in this state for purposes of a proceeding pending in
6 another state, see Code Civ. Proc. §§ 2029.100-2029.900 (Interstate and International Depositions
7 and Discovery Act); Gov't Code § 70626; *Deposition in Out-of-State Litigation*, 37 Cal. L.
8 Revision Comm'n Reports 99 (2007).

9 **Background from Uniform Act**

10 This section is similar to Section 111 of the Uniform Child Custody Jurisdiction and
11 Enforcement Act (1997). That section was in turn derived from Section 316 of the Uniform
12 Interstate Family Support Act (1992) and the much earlier and now otherwise obsolete Uniform
13 Interstate and International Procedure Act (1962).

14 This section is designed to fill the vacuum that often exists in cases involving an adult with
15 interstate contacts when much of the essential information about the individual is located in
16 another state.

17 [Subdivision (a)] empowers the court to initiate the gathering of out-of-state evidence,
18 including depositions, written interrogatories and other discovery devices. The authority granted
19 to the court in no way precludes the gathering of out-of-state evidence by a party, including the
20 taking of depositions out-of-state.

21 [Subdivision (b) clarifies] that modern modes of communication are permissible for the taking
22 of depositions and receipt of documents into evidence....

23 This section is consistent with and complementary to the Uniform Interstate Depositions and
24 Discovery Act (2007), which specifies the procedure for taking depositions in other states.

25 [Adapted from the Uniform Law Commission's Comment to UAGPPJA § 106.]

26 **Article 2. Jurisdiction**

27 **Background from Uniform Act**

28 The jurisdictional rules in Article 2 will determine which state's courts may appoint a ...
29 conservator. Section [1991] contains definitions of "emergency," "home state," and "significant
30 connection-state," terms used only in Article 2 that are key to understanding the jurisdictional
31 rules under the Act. Section [1992] provides that Article 2 is the exclusive jurisdictional basis for
32 a court of the enacting state to appoint a [conservator]. Consequently, Article 2 is applicable even
33 if all of the [proposed conservatee's] significant contacts are in-state. Section [1993] is the
34 principal provision governing jurisdiction, creating a three-level priority; the home state, followed
35 by a significant-connection state, followed by other jurisdictions. But there are circumstances
36 under Section [1993] where a significant-connection state may have jurisdiction even if the
37 [proposed conservatee] also has a home state, or a state that is neither a home or significant-
38 connection state may be able to assume jurisdiction even though the particular [proposed
39 conservatee] has both a home state and one or more significant-connection states. One of these
40 situations is if a state declines to exercise jurisdiction under Section [1996] because a court of that
41 state concludes that a court of another state is a more appropriate forum. Another is Section
42 [1997], which authorizes a court to decline jurisdiction or fashion another appropriate remedy if
43 jurisdiction was acquired because of unjustifiable conduct. Section [1995] provides that once an
44 appointment is made or order issued, the court's jurisdiction continues until the proceeding is
45 terminated or the appointment order expires by its own terms.

46 Section [1994] addresses special cases. Regardless of whether it has jurisdiction under the
47 general principles stated in Section [1993], a court in the state where the individual is currently
48 physically present has jurisdiction to appoint a [conservator of the person] in an emergency, and a
49 court in a state where an individual's real or tangible personal property is located has jurisdiction
50 to appoint a [conservator of the estate]. In addition, a court not otherwise having jurisdiction

1 under Section [1993] has jurisdiction to consider a petition to accept the transfer of an already
2 existing ... conservatorship from another state as provided in Article 3.

3 The remainder of Article 2 address[es] procedural issues. Section [1998] prescribes additional
4 notice requirements if a proceeding is brought in a state other than the [proposed conservatee's]
5 home state. Section [1999] specifies a procedure for resolving jurisdictional issues if petitions are
6 pending in more than one state.

7 [Adapted from the Uniform Law Commission's General Comment to Article 2 of UAGPPJA.]

8 **§ 1991. Definitions and significant connection factors [UAGPPJA § 201]**

9 1991. (a) In this article:

10 (1) "Emergency" means a circumstance that likely will result in substantial harm
11 to a proposed conservatee's health, safety, or welfare, and for which the
12 appointment of a conservator of the person is necessary because no other person
13 has authority and is willing to act on behalf of the proposed conservatee.

14 (2) "Home state" means the state in which the proposed conservatee was
15 physically present, including any period of temporary absence, for at least six
16 consecutive months immediately before the filing of a petition for a
17 conservatorship order, or, if none, the state in which the proposed conservatee was
18 physically present, including any period of temporary absence, for at least six
19 consecutive months ending within the six months prior to the filing of the petition.

20 (3) "Significant-connection state" means a state, other than the home state, with
21 which a proposed conservatee has a significant connection other than mere
22 physical presence and in which substantial evidence concerning the proposed
23 conservatee is available.

24 (b) In determining under Section 1993 and subdivision (e) of Section 2001
25 whether a proposed conservatee has a significant connection with a particular
26 state, the court shall consider all of the following:

27 (1) The location of the proposed conservatee's family and other persons required
28 to be notified of the conservatorship proceeding.

29 (2) The length of time the proposed conservatee at any time was physically
30 present in the state and the duration of any absence.

31 (3) The location of the proposed conservatee's property.

32 (4) The extent to which the proposed conservatee has ties to the state such as
33 voting registration, state or local tax return filing, vehicle registration, driver's
34 license, social relationship, and receipt of services.

35 **Comment.** Subdivision (a) of Section 1991 is similar to Section 201(a) of the Uniform Adult
36 Guardianship and Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA"). Revisions have
37 been made to conform to California terminology for the proceedings in question. See Section
38 1982 & Comment (definitions); see also Section 1980 Comment.

39 Subdivision (b) is similar to Section 201(b) of UAGPPJA. Revisions have been made to
40 conform to California terminology for the proceedings in question. See Section 1982 & Comment
41 (definitions); see also Section 1980 Comment.

42 For limitations on the scope of this chapter, see Section 1981 & Comment.

43 **Background from Uniform Act**

44 The terms "emergency," "home state," and "significant-connection state" are defined in this
45 section and not in Section [1982] because they are used only in Article 2.

1 The definition of “emergency” [paragraph (a)(1)] is taken from the emergency guardianship
2 provision of the Uniform Guardianship and Protective Proceedings Act (1997), Section 312.

3 Pursuant to Section [1994], a court has jurisdiction to appoint a [temporary conservator] in an
4 emergency for a [limited] period ... even though it does not otherwise have jurisdiction.
5 However, the emergency appointment is subject to the direction of the court in the [proposed
6 conservatee’s] home state. Pursuant to Section [1994(b)], the emergency proceeding must be
7 dismissed at the request of the court in the [proposed conservatee’s] home state.

8 Appointing a [conservator of the person] in an emergency should be an unusual event.
9 Although most states have emergency [conservatorship] statutes, not all states do, and in those
10 states that do have such statutes, there is great variation on whether and how an emergency is
11 defined. To provide some uniformity on when a court acquires emergency jurisdiction, the
12 drafters of this Act concluded that adding a definition of emergency was essential. The definition
13 does not preclude an enacting jurisdiction from appointing a [conservator] under an emergency
14 [conservatorship] statute with a different or broader test of emergency if the court otherwise has
15 jurisdiction to make an appointment under Section [1993].

16 Pursuant to Section [1993], a court in the [proposed conservatee’s] home state has primary
17 jurisdiction to appoint a [conservator]. A court in a significant-connection state has jurisdiction if
18 the [proposed conservatee] does not have a home state and in other circumstances specified in
19 Section [1993]. The definitions of “home state” and “significant-connection state” are therefore
20 important to an understanding of the Act.

21 The definition of “home state” [paragraph (a)(2)] is derived from but differs in a couple of
22 respects from the definition of the same term in Section 102 of the Uniform Child Custody
23 Jurisdiction and Enforcement Act (1997). First, unlike the definition in the UCCJEA, the
24 definition in this Act clarifies that actual physical presence is necessary. The UCCJEA definition
25 instead focuses on where the child has “lived” for the prior six months. Basing the test on where
26 someone has “lived” may imply that the term “home state” is similar to the concept of domicile.
27 Domicile, in [a conservatorship] context, is a vague concept that can easily lead to claims of
28 jurisdiction by courts in more than one state. Second, under the UCCJEA, home state jurisdiction
29 continues for six months following physical removal from the state and the state has ceased to be
30 the actual home. Under this Act, the six-month tail is incorporated directly into the definition of
31 home state. The place where the [proposed conservatee] was last physically present for six
32 months continues as the home state for six months following physical removal from the state.
33 This modification of the UCCJEA definition eliminates the need to refer to the six-month tail
34 each time home state jurisdiction is mentioned in the Act.

35 The definition of “significant-connection state” [paragraph (a)(3)] is similar to Section
36 201(a)(2) of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). However,
37 [subdivision (b)] of this Section adds a list of factors relevant to [conservatorship] proceedings to
38 aid the court in deciding whether a particular place is a significant-connection state. Under
39 Section [2001(e)(1)], the significant connection factors listed in the definition are to be taken into
40 account in determining whether a conservatorship may be transferred to another state.

41 [Adapted from the Uniform Law Commission’s Comment to UAGPPJA § 201.]

42 **§ 1992. Exclusive basis [UAGPPJA § 202]**

43 1992. For a conservatorship proceeding governed by this article, this article
44 provides the exclusive basis for determining whether the courts of this state, as
45 opposed to the courts of another state, have jurisdiction to appoint a conservator of
46 the person, a conservator of the estate, or a conservator of the person and estate.

47 **Comment.** Section 1992 is similar to Section 202 of the Uniform Adult Guardianship and
48 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to:

- 49 (1) Conform to California terminology for the proceedings in question. See Section 1982
50 & Comment (definitions); see also Section 1980 Comment.

- 1 (2) Make clear that this article only focuses on which state’s courts have jurisdiction to
2 appoint a conservator. The article does not address other jurisdictional issues, such as
3 whether an appellate court may make such an appointment.

4 For limitations on the scope of this chapter, see Section 1981 & Comment.

5 **Background from Uniform Act**

6 Similar to Section 201(b) of the Uniform Child Custody Jurisdiction and Enforcement Act
7 (1997), which provides that the UCCJEA is the exclusive basis for determining jurisdiction to
8 issue a child custody order, this section provides that this article is the exclusive jurisdictional
9 basis for determining jurisdiction to appoint a [conservator]. An enacting jurisdiction will
10 therefore need to repeal any existing provisions addressing jurisdiction in [conservatorship
11 proceedings]. The drafters of this Act concluded that limiting the Act to “interstate” cases was
12 unworkable. Such cases are hard to define, but even if they could be defined, overlaying this Act
13 onto a state’s existing jurisdictional rules would leave too many gaps and inconsistencies. In
14 addition, if the particular case is truly local, the local court would likely have jurisdiction under
15 both this Act as well as under prior law.

16 [Adapted from the Uniform Law Commission’s Comment to UAGPPJA § 202.]

17 **§ 1993. Jurisdiction [UAGPPJA § 203]**

18 1993. (a) A court of this state has jurisdiction to appoint a conservator for a
19 proposed conservatee if this state is the proposed conservatee’s home state.

20 (b) A court of this state has jurisdiction to appoint a conservator for a proposed
21 conservatee if, on the date the petition is filed, this state is a significant-connection
22 state and the respondent does not have a home state.

23 (c) A court of this state has jurisdiction to appoint a conservator for a proposed
24 conservatee if, on the date the petition is filed, this state is a significant-connection
25 state and a court of the proposed conservatee’s home state has expressly declined
26 to exercise jurisdiction because this state is a more appropriate forum.

27 (d) A court of this state has jurisdiction to appoint a conservator for a proposed
28 conservatee if both of the following conditions are satisfied:

29 (1) On the date the petition is filed, this state is a significant-connection state,
30 the proposed conservatee has a home state, and a conservatorship petition is not
31 pending in a court of the home state or another significant-connection state.

32 (2) Before the court makes the appointment, no conservatorship petition is filed
33 in the proposed conservatee’s home state, no objection to the court’s jurisdiction is
34 filed by a person required to be notified of the proceeding, and the court in this
35 state concludes that it is an appropriate forum under the factors set forth in Section
36 1996.

37 (e) A court of this state has jurisdiction to appoint a conservator for a proposed
38 conservatee if all of the following conditions are satisfied:

39 (1) This state does not have jurisdiction under subdivision (a), (b), (c), or (d).

40 (2) The proposed conservatee’s home state and all significant-connection states
41 have expressly declined to exercise jurisdiction because this state is the more
42 appropriate forum.

43 (3) Jurisdiction in this state is consistent with the constitutions of this state and
44 the United States.

1 (f) A court of this state has jurisdiction to appoint a conservator for a proposed
2 conservatee if the requirements for special jurisdiction under Section 1994 are
3 met.

4 **Comment.** Section 1993 is similar to Section 203 of the Uniform Adult Guardianship and
5 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to
6 follow local drafting practices and conform to California terminology for the proceedings in
7 question. See Section 1982 & Comment (definitions); see also Section 1980 Comment.

8 Subdivision (a), relating to jurisdiction in the proposed conservatee’s home state, corresponds
9 to Section 203(1) of UAGPPJA.

10 Subdivisions (b) and (c), relating to jurisdiction in a significant-connection state, correspond to
11 Section 203(2)(A) of UAGPPJA. Revisions have been made to emphasize that a court may not be
12 deemed to have “declined jurisdiction” unless the court has expressly taken that step.

13 Subdivision (d), providing another basis for jurisdiction in a significant-connection state,
14 corresponds to Section 203(2)(B) of UAGPPJA.

15 Subdivision (e), relating to jurisdiction in a state that is neither the home state nor a significant-
16 connection state, corresponds to Section 203(3) of UAGPPJA. Revisions have been made to
17 emphasize that a court may not be deemed to have “declined jurisdiction” unless the court has
18 expressly taken that step.

19 Subdivision (f), relating to special jurisdiction, corresponds to Section 203(4) of UAGPPJA.

20 See Section 1991(a) (defining “home state” & “significant-connection state”). For limitations
21 on the scope of this chapter, see Section 1981 & Comment.

22 **Background from Uniform Act**

23 Similar to the Uniform Child [Custody] Jurisdiction and Enforcement Act (1997), this Act
24 creates a three-level priority for determining which state has jurisdiction to appoint a
25 [conservator]; the home state (defined in Section [1991(a)(2)]), followed by a significant-
26 connection state (defined in Section [1991(a)(3)]), followed by other jurisdictions. The principal
27 objective of this section is to eliminate the possibility of dual appointments or orders except for
28 the special circumstances specified in Section [1994].

29 While this section is the principal provision for determining whether a particular court has
30 jurisdiction to appoint a [conservator], it is not the only provision. As indicated in the cross-
31 reference in Section [1993(f)], a court that does not otherwise have jurisdiction under Section
32 [1993] may have jurisdiction under the special circumstances specified in Section [1994].

33 Pursuant to Section [1993(a)], the home state has primary jurisdiction to appoint a ...
34 conservator This jurisdiction terminates if the state ceases to be the home state, if a court of
35 the home state declines to exercise jurisdiction under Section [1996] on the basis that another
36 state is a more appropriate forum, or, as provided in Section [1995], a court of another state has
37 appointed a [conservator] consistent with this Act. The standards by which a home state that has
38 enacted the Act may decline jurisdiction on the basis that another state is a more appropriate
39 forum are specified in Section [1996]. Should the home state not have enacted the Act, Section
40 [1993(a)] does not require that the declination meet the standards of Section [1996].

41 Once a petition is filed in a court of the [proposed conservatee’s] home state, that state does not
42 cease to be the [proposed conservatee’s] home state upon the passage of time even though it may
43 be many months before an appointment is made or order issued and during that period the
44 [proposed conservatee] is physically located [elsewhere]. Only upon dismissal of the petition can
45 the court cease to be the home state due to the passage of time. Under the definition of “home
46 state,” the six-month physical presence requirement is fulfilled or not on the date the petition is
47 filed. See Section [1991(a)(2)].

48 A significant-connection state has jurisdiction under [these] possible bases: Section [1993(b),
49 (c), and (d)]. Under Section [1993(b)], a significant-connection state has jurisdiction if the
50 individual does not have a home state [Under Section 1993(c), a significant-connection state

1 has jurisdiction] if the home state has declined jurisdiction on the basis that the significant-
2 connection state is a more appropriate forum.

3 Section [1993(d)] is designed to facilitate consideration of cases where jurisdiction is not in
4 dispute. Section [1993(d)] allows a court in a significant-connection state to exercise jurisdiction
5 even though the [proposed conservatee] has a home state and the home state has not declined
6 jurisdiction. The significant-connection state may assume jurisdiction under these circumstances,
7 however, only in situations where the parties are not in disagreement concerning which court
8 should hear the case. Jurisdiction may not be exercised by a significant-connection state under
9 Section [1993(d)] if (1) a petition has already been filed and is still pending in the home state or
10 other significant-connection state; or (2) prior to making the appointment . . . , a petition is filed in
11 the [proposed conservatee's] home state or an objection to the court's jurisdiction is filed by a
12 person required to be notified of the proceeding. Additionally, the court in the significant-
13 connection state must conclude that it is an appropriate forum applying the factors listed in
14 Section [1996].

15 There is nothing comparable to Section [1993(d)] in the Uniform Child Custody Jurisdiction
16 and Enforcement Act (1997). Under Section 201 of the UCCJEA a court in a significant-
17 connection state acquires jurisdiction only if the child does not have a home state or the court of
18 that state has declined jurisdiction. The drafters of this Act concluded that cases involving adults
19 differed sufficiently from child custody matters that a different rule is appropriate for adult
20 proceedings in situations where jurisdiction is uncontested.

21 Pursuant to Section [1993(e)], a court in a state that is neither the home state or a significant-
22 connection state has jurisdiction if the home state and all significant-connection states have
23 declined jurisdiction or the [proposed conservatee] does not have a home state or significant-
24 connection state. The state must have some connection with the proceeding, however. As Section
25 [1993(e)] clarifies, jurisdiction in the state must be consistent with the state and United States
26 constitutions.

27 [Adapted from the Uniform Law Commission's Comment to UAGPPJA § 203.]

28 **§ 1994. Special jurisdiction [UAGPPJA § 204]**

29 1994. (a) A court of this state lacking jurisdiction under subdivisions (a) to (e),
30 inclusive, of Section 1993 has special jurisdiction to do any of the following:

31 (1) Appoint a temporary conservator of the person in an emergency for a
32 proposed conservatee who is physically present in this state. In making an
33 appointment under this paragraph, a court shall follow the procedures specified in
34 Chapter 3 (commencing with Section 2250) of Part 4. The temporary
35 conservatorship shall terminate in accordance with Section 2257.

36 (2) Appoint a conservator of the estate with respect to real or tangible personal
37 property located in this state.

38 (3) Appoint a conservator of the person, conservator of the estate, or conservator
39 of the person and estate for a proposed conservatee for whom a provisional order
40 to transfer a proceeding from another state has been issued under procedures
41 similar to Section 2001.

42 (b) If a petition for the appointment of a conservator of the person in an
43 emergency is brought in this state and this state was not the home state of the
44 proposed conservatee on the date the petition was filed, the court shall dismiss the
45 proceeding at the request of the court of the home state, if any, whether dismissal

1 is requested before or after the emergency appointment of a temporary conservator
2 of the person.

3 **Comment.** Section 1994 is similar to Section 204 of the Uniform Adult Guardianship and
4 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to
5 conform to California terminology for the proceedings in question. See Section 1982 & Comment
6 (definitions); see also Section 1980 Comment. Revisions have also been made to specify the
7 procedure for making an emergency appointment under paragraph (a)(1).

8 See Section 1991(a) (defining “emergency” & “home state”). For limitations on the scope of
9 this chapter, see Section 1981 & Comment.

10 **Background from Uniform Act**

11 This section lists the special circumstances where a court without jurisdiction under the general
12 rule of Section [1993] has jurisdiction for limited purposes. The three purposes are (1) the
13 appointment of a [conservator of the person] in an emergency for a [limited] term ... for a
14 [proposed conservatee] who is physically located in the state ([paragraph] (a)(1)); (2) the
15 [appointment of a conservator of the estate] for a [proposed conservatee] who owns an interest in
16 real or tangible personal property located in the state ([paragraph] (a)(2)); and (3) the grant of
17 jurisdiction to consider a petition requesting the transfer of a ... conservatorship proceeding from
18 another state ([paragraph] (a)(3)). If the court has jurisdiction under Section [1993], reference to
19 Section [1994] is unnecessary. The general jurisdiction granted under Section [1993] includes
20 within it all of the special circumstances specified in this section.

21 When an emergency arises, action must often be taken on the spot in the place where the
22 [proposed conservatee] happens to be physically located at the time. This place may not
23 necessarily be located in the [proposed conservatee’s] home state or even a significant-connection
24 state. [Paragraph] (a)(1) assures that the court where the [proposed conservatee] happens to be
25 physically located at the time has jurisdiction to appoint a [conservator of the person] in an
26 emergency but only for a limited period As provided in [paragraph] (b), the emergency
27 jurisdiction is also subject to the authority of the court in the [proposed conservatee’s] home state
28 to request that the emergency proceeding be dismissed. The theory here is that the emergency
29 appointment in the temporary location should not be converted into a de facto permanent
30 appointment through repeated temporary appointments.

31 “Emergency” is specifically defined in Section [1991(a)(1)]. Because of the great variation
32 among the states on how an emergency is defined and its important role in conferring jurisdiction,
33 the drafters of this Act concluded that adding a uniform definition of emergency was essential.
34 The definition does not preclude an enacting jurisdiction from appointing a guardian under an
35 emergency [conservatorship] statute with a different or broader test of emergency if the court
36 otherwise has jurisdiction to make an appointment under Section [1993].

37 [Paragraph] (a)(2) grants a court jurisdiction to [appoint a conservator of the estate] with
38 respect to real and tangible personal property located in the state even though the court does not
39 otherwise have jurisdiction. Such orders are most commonly issued when a conservator has been
40 appointed but the [conservatee] owns real property located in another state. The drafters
41 specifically rejected using a general reference to any property located in the state because of the
42 tendency of some courts to issue protective orders with respect to intangible personal property
43 such as a bank account where the technical situs of the asset may have little relationship to the
44 protected person.

45 [Paragraph] (a)(3) is closely related to and is necessary for the effectiveness of Article 3, which
46 addresses transfer of a ... conservatorship to another state. A “Catch-22” arises frequently in such
47 cases. The court in the transferring state will not allow the [conservatee] to move and will not
48 terminate the case until the court in the transferee state has accepted the matter. But the court in
49 the transferee state will not accept the case until the [conservatee] has physically moved and
50 presumably become a resident of the transferee state. [Paragraph] (a)(3), which grants the court in

1 the transferee state limited jurisdiction to consider a petition requesting transfer of a proceeding
2 [from] another state, is intended to unlock the stalemate.

3 Not included in this section but a provision also conferring special jurisdiction on the court is
4 Section [1985(b)], which grants the court jurisdiction to respond to a request for assistance from a
5 court of another state.

6 [Adapted from the Uniform Law Commission’s Comment to UAGPPJA § 204.]

7 **§ 1995. Exclusive and continuing jurisdiction [UAGPPJA § 205]**

8 1995. Except as otherwise provided in Section 1994, a court that has appointed a
9 conservator consistent with this chapter has exclusive and continuing jurisdiction
10 over the proceeding until it is terminated by the court or the appointment expires
11 by its own terms.

12 **Comment.** Section 1995 is similar to Section 205 of the Uniform Adult Guardianship and
13 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to
14 conform to California terminology for the proceedings in question. See Section 1982 & Comment
15 (definitions); see also Section 1980 Comment.

16 For limitations on the scope of this chapter, see Section 1981 & Comment.

17 **Background from Uniform Act**

18 While this Act relies heavily on the Uniform Child [Custody] Jurisdiction and Enforcement
19 Act (1997) for many basic concepts, the identity is not absolute. Section 202 of the UCCJEA
20 specifies a variety of circumstances whereby a court can lose jurisdiction based on loss of
21 physical presence by the child and others, loss of a significant connection, or unavailability of
22 substantial evidence. Section 203 of the UCCJEA addresses the jurisdiction of the court to
23 modify a custody determination made in another state. Nothing comparable to either UCCJEA
24 section is found in this Act. Under this Act, a [conservatorship] may be modified only upon
25 request to the court that made the appointment ..., which retains exclusive and continuing
26 jurisdiction over the proceeding. Unlike child custody matters, [conservatorships] are ordinarily
27 subject to continuing court supervision. Allowing the court’s jurisdiction to terminate other than
28 by its own order would open the possibility of competing ... conservatorship appointments in
29 different states for the same person at the same time, the problem under current law that
30 enactment of this Act is designed to avoid. Should the [conservatee] and others with an interest in
31 the proceeding relocate to a different state, the appropriate remedy is to seek transfer of the
32 proceeding to the other state as provided in Article 3.

33 The exclusive and continuing jurisdiction conferred by this section only applies to
34 [conservatorship] orders made ... under Section [1993]. Orders made under the special
35 jurisdiction conferred by Section [1994] are not exclusive. And as provided in Section [1994(b)],
36 the jurisdiction of a court in a state other than the home state to appoint a [conservator] in an
37 emergency is subject to the right of a court in the home state to request that the proceeding be
38 dismissed and any appointment terminated.

39 Article 3 authorizes a ... conservator to petition to transfer the proceeding to another state.
40 Upon the conclusion of the transfer, the court in the accepting state will appoint the ...
41 conservator as ... conservator in the accepting state and the court in the transferring estate will
42 terminate the local proceeding, whereupon the jurisdiction of the transferring court terminates and
43 the court in the accepting state acquires exclusive and continuing jurisdiction as provided in
44 Section [1995].

45 [Adapted from the Uniform Law Commission’s Comment to UAGPPJA § 205.]

1 § 1996. Appropriate forum [UAGPPJA § 206]

2 1996. (a) A court of this state having jurisdiction under Section 1993 to appoint
3 a conservator may decline to exercise its jurisdiction if it determines at any time
4 that a court of another state is a more appropriate forum.

5 (b) If a court of this state declines to exercise its jurisdiction under subdivision
6 (a), it shall either dismiss or stay the proceeding. The court's order dismissing or
7 staying the proceeding shall be in a record and shall expressly state that the court
8 declines to exercise its jurisdiction because a court of another state is a more
9 appropriate forum. The court may impose any condition the court considers just
10 and proper, including the condition that a petition for the appointment of a
11 conservator of the person, conservator of the estate, or conservator of the person
12 and estate be filed promptly in another state.

13 (c) In determining whether it is an appropriate forum, the court shall consider all
14 relevant factors, including all of the following:

15 (1) Any expressed preference of the proposed conservatee.

16 (2) Whether abuse, neglect, or exploitation of the proposed conservatee has
17 occurred or is likely to occur and which state could best protect the proposed
18 conservatee from the abuse, neglect, or exploitation.

19 (3) The length of time the proposed conservatee was physically present in or
20 was a legal resident of this or another state.

21 (4) The distance of the proposed conservatee from the court in each state.

22 (5) The financial circumstances of the estate of the proposed conservatee.

23 (6) The nature and location of the evidence.

24 (7) The ability of the court in each state to decide the issue expeditiously and the
25 procedures necessary to present evidence.

26 (8) The familiarity of the court of each state with the facts and issues in the
27 proceeding.

28 (9) If an appointment were made, the court's ability to monitor the conduct of
29 the conservator.

30 **Comment.** Section 1996 is similar to Section 206 of the Uniform Adult Guardianship and
31 Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA"). Revisions have been made to
32 conform to California terminology for the proceedings in question. See Section 1982 & Comment
33 (definitions); see also Section 1980 Comment. Revisions have also been made to require a court
34 to prepare a record when it declines to exercise its jurisdiction, which expressly states that the
35 court is taking that step. A person can present that record when seeking jurisdiction in another
36 state.

37 For limitations on the scope of this chapter, see Section 1981 & Comment.

38 **Background from Uniform Act**

39 This section authorizes a court otherwise having jurisdiction to decline jurisdiction on the basis
40 that a court in another state is in a better position to make a [conservatorship] determination. The
41 effect of a declination of jurisdiction under this section is to rearrange the priorities specified in
42 Section [1993]. A court of the home state may decline in favor of a court of a significant-
43 connection or other state and a court in a significant-connection state may decline in favor of a
44 court in another significant-connection or other state. The court declining jurisdiction may either
45 dismiss or stay the proceeding. The court may also impose any condition the court considers just

1 and proper, including the condition that a petition for the appointment of a [conservator] be filed
2 promptly in another state.

3 This section is similar to Section 207 of the Uniform Child Custody Jurisdiction and
4 Enforcement Act (1997) except that the factors in [subdivision (c) of this section] have been
5 adapted to address issues most commonly encountered in [conservatorship] proceedings as
6 opposed to child custody determinations.

7 Under Section [1993(d)], the factors specified in [subdivision] (c) of this section are to be
8 employed in determining whether a court of a significant-connection state may assume
9 jurisdiction when a petition has not been filed in the [proposed conservatee's] home state or in
10 another significant-connection state. Under Section [1997(a)(3)(B)], the court is to consider these
11 factors in deciding whether it will retain jurisdiction when unjustifiable conduct has occurred.

12 [Adapted from the Uniform Law Commission's Comment to UAGPPJA § 206.]

13 **§ 1997. Jurisdiction declined by reason of conduct [UAGPPJA § 207]**

14 1997. (a) If at any time a court of this state determines that it acquired
15 jurisdiction to appoint a conservator because of unjustifiable conduct, the court
16 may do any of the following:

17 (1) Decline to exercise jurisdiction.

18 (2) Exercise jurisdiction for the limited purpose of fashioning an appropriate
19 remedy to ensure the health, safety, and welfare of the conservatee or proposed
20 conservatee or the protection of the property of the conservatee or proposed
21 conservatee or to prevent a repetition of the unjustifiable conduct, including
22 staying the proceeding until a petition for the appointment of a conservator of the
23 person, conservator of the estate, or conservator of the person and estate is filed in
24 a court of another state having jurisdiction.

25 (3) Continue to exercise jurisdiction after considering all of the following:

26 (A) The extent to which the conservatee or proposed conservatee and all persons
27 required to be notified of the proceedings have acquiesced in the exercise of the
28 court's jurisdiction.

29 (B) Whether it is a more appropriate forum than the court of any other state
30 under the factors set forth in subdivision (c) of Section 1996.

31 (C) Whether the court of any other state would have jurisdiction under factual
32 circumstances in substantial conformity with the jurisdictional standards of
33 Section 1993.

34 (b) If a court of this state determines that it acquired jurisdiction to appoint a
35 conservator because a party seeking to invoke its jurisdiction engaged in
36 unjustifiable conduct, it may assess against that party necessary and reasonable
37 expenses, including attorney's fees, investigative fees, court costs, communication
38 expenses, witness fees and expenses, and travel expenses. The court may not
39 assess fees, costs, or expenses of any kind against this state or a governmental
40 subdivision, agency, or instrumentality of this state unless authorized by law other
41 than this chapter.

42 **Comment.** Section 1997 is similar to Section 207 of the Uniform Adult Guardianship and
43 Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA"). Revisions have been made to
44 conform to California terminology for the proceedings in question. See Section 1982 & Comment
45 (definitions); see also Section 1980 Comment.

1 For limitations on the scope of this chapter, see Section 1981 & Comment.

2 **Background from Uniform Act**

3 This section is similar to ... Section 208 of the Uniform Child Custody Jurisdiction and
4 Enforcement Act (1997). Like the UCCJEA, this Act does not attempt to define “unjustifiable
5 conduct,” concluding that this issue is best left to the courts. However, a common example could
6 include the unauthorized removal of an adult to another state, with that state acquiring emergency
7 jurisdiction under Section [1994] immediately upon the move and home state jurisdiction under
8 Section [1993] six months following the move if a [conservatorship petition] is not filed during
9 the interim in the soon-to-be former home state. Although child custody cases frequently raise
10 different issues than [conservatorships], the element of unauthorized removal is encountered in
11 both types of proceedings. For the caselaw on unjustifiable conduct under the predecessor
12 Uniform Child Custody Jurisdiction Act (1968), see David Carl Minneman, *Parties’ Misconduct
13 as Grounds for Declining Jurisdiction Under § 8 of the Uniform Child Custody Jurisdiction Act
14 (UCCJA)*, 16 A.L.R. 5th 650 (1993).

15 [Subdivision] (a) gives the court authority to fashion an appropriate remedy when it has
16 acquired jurisdiction because of unjustifiable conduct. The court may decline to exercise
17 jurisdiction; exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to
18 ensure the health, safety, and welfare of the [conservatee or proposed conservatee] or the
19 protection of the ... property [of the conservatee or proposed conservatee] or [to] prevent a
20 repetition of the unjustifiable conduct; or continue to exercise jurisdiction after considering
21 several specified factors. Under [subdivision] (a), the unjustifiable conduct need not have been
22 committed by a party.

23 [Subdivision] (b) authorizes a court to assess costs and expenses, including attorney’s fees,
24 against a party whose unjustifiable conduct caused the court to acquire jurisdiction. [Subdivision]
25 (b) applies only if the unjustifiable conduct was committed by a party and allows for costs and
26 expenses to be assessed only against that party. Similar to Section 208 of the UCCJEA, the court
27 may not assess fees, costs, or expenses of any kind against this state or a governmental
28 subdivision, agency, or instrumentality of the state unless authorized by other law.

29 [Adapted from the Uniform Law Commission’s Comment to UAGPPJA § 207.]

30 **§ 1998. Notice of proceeding [UAGPPJA § 208]**

31 1998. If a petition for the appointment of a conservator of the person,
32 conservator of the estate, or conservator of the person and estate is brought in this
33 state and this state was not the home state of the proposed conservatee on the date
34 the petition was filed, in addition to complying with the notice requirements of this
35 state, notice of the petition or of a hearing on the petition must be given to those
36 persons who would be entitled to notice of the petition or of a hearing on the
37 petition if a proceeding were brought in the home state of the proposed
38 conservatee. The notice must be given in the same manner as notice is required to
39 be given in this state.

40 **Comment.** Section 1998 is similar to Section 208 of the Uniform Adult Guardianship and
41 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to
42 conform to California terminology for the proceedings in question. See Section 1982 & Comment
43 (definitions); see also Section 1980 Comment. Revisions have also been made to reflect that some
44 states require notice of a hearing on a petition, as opposed to notice of a petition.

45 See Section 1991(a) (defining “home state”). For limitations on the scope of this chapter, see
46 Section 1981 & Comment.

47 **Background from Uniform Act**

48 While this Act tries not to interfere with a state’s underlying substantive law on
49 [conservatorship] proceedings, the issue of notice is fundamental. Under this section, when a

1 proceeding is brought other than in the [proposed conservatee’s] home state, the petitioner must
2 give notice in the method provided under local law not only to those entitled to notice under local
3 law but also to the persons required to be notified were the proceeding brought in the [proposed
4 conservatee’s] home state. Frequently, the respective lists of persons to be notified will be the
5 same. But where the lists are different, notice under this section will assure that someone with a
6 right to assert that the home state has a primary right to jurisdiction will have the opportunity to
7 make that assertion.

8 [Adapted from the Uniform Law Commission’s Comment to UAGPPJA § 208.]

9 **§ 1999. Proceedings in more than one state [UAGPPJA § 209]**

10 1999. Except for a petition for the appointment of a conservator under paragraph
11 (1) or paragraph (2) of subdivision (a) of Section 1994, if a petition for the
12 appointment of a conservator is filed in this state and in another state and neither
13 petition has been dismissed or withdrawn, the following rules apply:

14 (a) If the court in this state has jurisdiction under Section 1993, it may proceed
15 with the case unless a court in another state acquires jurisdiction under provisions
16 similar to Section 1993 before the appointment.

17 (b) If the court in this state does not have jurisdiction under Section 1993,
18 whether at the time the petition is filed or at any time before the appointment, the
19 court shall stay the proceeding and communicate with the court in the other state.
20 If the court in the other state has jurisdiction, the court in this state shall dismiss
21 the petition unless the court in the other state determines that the court in this state
22 is a more appropriate forum.

23 **Comment.** Section 1999 is similar to Section 209 of the Uniform Adult Guardianship and
24 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to
25 conform to California terminology for the proceedings in question. See Section 1982 & Comment
26 (definitions); see also Section 1980 Comment. For limitations on the scope of this chapter, see
27 Section 1981 & Comment.

28 **Background from Uniform Act**

29 Similar to Section 206 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997),
30 this section addresses the issue of which court has the right to proceed when proceedings for the
31 same [proposed conservatee] are brought in more than one state. The provisions of this section,
32 however, have been tailored to the needs of [conservatorship] proceedings and the particular
33 jurisdictional provisions of this Act. Emergency [conservatorship] appointments [Section
34 1994(a)(1)] and [conservatorships] with respect to property in other states [Section 1994(a)(2)]
35 are excluded from this section because the need for dual appointments is frequent in these cases;
36 for example, a petition will be brought in the [proposed conservatee’s] home state but emergency
37 action will be necessary in the place where the [proposed conservatee] is temporarily located, or a
38 petition for the appointment of a [conservator of the estate] will be brought in the [proposed
39 conservatee’s] home state but real estate located in some other state needs to be brought under
40 management.

41 Under the Act only one court in which a petition is pending will have jurisdiction under
42 Section [1993]. If a petition is brought in the [proposed conservatee’s] home state, that court has
43 jurisdiction over that of any significant-connection or other state. If the petition is first brought in
44 a significant-connection state, that jurisdiction will be lost if a petition is later brought in the
45 home state prior to an appointment Jurisdiction will also be lost in the significant-connection
46 state if the [proposed conservatee] has a home state and an objection is filed in the significant-
47 connection state that jurisdiction is properly in the home state. If petitions are brought in two
48 significant-connection states, the first state has a right to proceed over that of the second state,

1 and if a petition is brought in any other state, any claim to jurisdiction of that state is subordinate
2 to that of the home state and all significant-connection states.

3 Under this section, if the court has jurisdiction under Section [1993], it has the right to proceed
4 unless a court of another state acquires jurisdiction prior to the first court making an appointment
5 If the court does not have jurisdiction under Section [1993], it must defer to the court with
6 jurisdiction unless that court determines that the court in this state is the more appropriate forum
7 and it thereby acquires jurisdiction. While the rules are straightforward, factual issues can arise as
8 to which state is the home state or significant-connection state. Consequently, while under
9 Section [1993] there will almost always be a court having jurisdiction to proceed, reliance on the
10 communication, court cooperation, and evidence gathering provisions of Sections [1984-1986]
11 will sometimes be necessary to determine which court that might be.

12 [Adapted from the Uniform Law Commission’s Comment to UAGPPJA § 209.]

13 Article 3. Transfer of Conservatorship

14 Background from Uniform Act

15 While this article consists of two separate sections, they are part of one integrated procedure.
16 Article 3 authorizes a ... conservator to petition the court to transfer the ... conservatorship
17 proceeding to a court of another state. Such a transfer is often appropriate when the [conservatee]
18 has moved or has been placed in a facility in another state, making it impossible for the original
19 court to adequately monitor the proceeding. Article 3 authorizes a transfer of a [conservatorship
20 of the person, a conservatorship of the estate], or both. There is no requirement that both
21 categories of proceeding be administered in the same state.

22 Section [2001] addresses procedures in the transferring state. Section [2002] addresses
23 procedures in the accepting state.

24 A transfer begins with the filing of a petition by the conservator as provided in Section
25 [2001(a)].... Assuming the court in the transferring state is satisfied that the grounds for transfer
26 stated in Section [2001(d) (conservatorship of the person)] or [2001(e) (conservatorship of the
27 estate)] have been met, one of which is that the court is satisfied that the court in the other state
28 will accept the case, the court must issue a provisional order approving the transfer. The
29 transferring court will not issue a final order dismissing the case until, as provided in Section
30 [2001(f)], it receives a copy of the provisional order from the accepting court accepting the
31 transferred proceeding.

32 Following issuance of the provisional order by the transferring court, a petition must be filed in
33 the accepting court as provided in Section [2002(a)].... The court [may not issue] a provisional
34 order accepting the case [if] it is established that the transfer would be contrary to the ...
35 conservatee’s interests Section [2002(d)]. The term “interests” as opposed to “best interests”
36 was chosen because of the strong autonomy values in modern [conservatorship] law. Should the
37 court decline the transfer petition, it may consider a separately brought petition for the
38 appointment of a [conservator] only if the court has a basis for jurisdiction under Sections [1993
39 or 1994] other than by reason of the provisional order of transfer. Section [2002(h)].

40 Pursuant to Section [2001(f)], the provisional order from the accepting court must be filed
41 in the transferring court. The transferring court will then issue a final order terminating the
42 proceeding, subject to local requirements such as filing of a final report or account and the release
43 of any bond. Pursuant to Section [2002(e)], the final order terminating the proceeding in the
44 transferring court must then be filed in the accepting court, which will then convert its provisional
45 order accepting the case into a final order appointing the petitioning ... conservator as ...
46 conservator in the accepting state.

47 Because ... conservatorship law and practice will likely differ between the two states, the court
48 in the accepting state must within 90 days after issuance of a final order determine whether the ...
49 conservatorship needs to be modified to conform to the law of the accepting state. Section
50 [2002(f)]. The number “90” is placed in brackets to encourage states to coordinate this time limit
51 with the time limits for other required filings such as ... conservatorship plans. This initial period

1 in the accepting state is also an appropriate time to change the ... conservator if there is a more
2 appropriate person to act as ... conservator in the accepting state. The drafters specifically did not
3 try to design the procedures in Article 3 for the difficult problems that can arise in connection
4 with a transfer when the ... conservator is ineligible to act in the second state, a circumstance that
5 can occur when a financial institution is acting as [conservator of the estate] or a government
6 agency is acting as [conservator of the person]. Rather, the procedures in Article 3 are designed
7 for the typical case where the ... conservator is legally eligible to act in the second state. Should
8 that particular ... conservator not be the best person to act in the accepting state, a change of ...
9 conservator can be initiated once the transfer has been secured.

10 The transfer procedure in this article responds to numerous problems that have arisen in
11 connection with attempted transfers under the existing law of most states. Sometimes a court will
12 dismiss a case on the assumption a proceeding will be brought in another state, but such
13 proceeding is never filed. Sometimes a court will refuse to dismiss a case until the court in the
14 other state accepts the matter, but the court in the other state refuses to consider the petition until
15 the already existing ... conservatorship has been terminated. Oftentimes the court will conclude
16 that it is without jurisdiction to make an appointment until the [conservatee] is physically present
17 in the state, a problem which Section [1994(a)(3)] addresses by granting a court special
18 jurisdiction to consider a petition to accept a proceeding from another state. But the most serious
19 problem is the need to prove the case in the second state from scratch, including proving the
20 [conservatee's] incapacity and the choice of ... conservator. Article 3 eliminates this problem....

21 [Adapted from the Uniform Law Commission's General Comment to Article 3 of UAGPPJA.]

22 **§ 2001. Transfer of conservatorship to another state [UAGPPJA § 301]**

23 2001. (a) A conservator appointed in this state may petition the court to transfer
24 the conservatorship to another state.

25 (b) Notice of a hearing on a petition under subdivision (a) must be given to the
26 persons that would be entitled to notice of a hearing on a petition in this state for
27 the appointment of a conservator.

28 (c) The court shall hold a hearing on a petition filed pursuant to subdivision (a).

29 (d) The court shall issue an order provisionally granting a petition to transfer a
30 conservatorship of the person, and shall direct the conservator of the person to
31 petition for a conservatorship of the person in the other state, if the court is
32 satisfied that the conservatorship of the person will be accepted by the court in the
33 other state and the court finds all of the following:

34 (1) The conservatee is physically present in or is reasonably expected to move
35 permanently to the other state.

36 (2) An objection to the transfer has not been made or, if an objection has been
37 made, the court determines that the transfer would not be contrary to the interests
38 of the conservatee.

39 (3) Plans for care and services for the conservatee in the other state are
40 reasonable and sufficient.

41 (e) The court shall issue a provisional order granting a petition to transfer a
42 conservatorship of the estate, and shall direct the conservator of the estate to
43 petition for a conservatorship of the estate in the other state, if the court is satisfied
44 that the conservatorship will be accepted by the court of the other state and the
45 court finds all of the following:

1 (1) The conservatee is physically present in or is reasonably expected to move
2 permanently to the other state, or the conservatee has a significant connection to
3 the other state considering the factors in subdivision (b) of Section 1991.

4 (2) An objection to the transfer has not been made or, if an objection has been
5 made, the court determines that the transfer would not be contrary to the interests
6 of the conservatee.

7 (3) Adequate arrangements will be made for management of the conservatee’s
8 property.

9 (f) The court shall issue a provisional order granting a petition to transfer a
10 conservatorship of the person and estate, and shall direct the conservator to
11 petition for a similar conservatorship in the other state, if the requirements of
12 subdivision (d) and the requirements of subdivision (e) are both satisfied.

13 (g) The court shall issue a final order confirming the transfer and terminating the
14 conservatorship upon its receipt of both of the following:

15 (1) A provisional order accepting the proceeding from the court to which the
16 proceeding is to be transferred which is issued under provisions similar to Section
17 2002.

18 (2) The documents required to terminate a conservatorship in this state,
19 including, but not limited to, any required accounting.

20 **Comment.** Section 2001 is similar to Section 301 of the Uniform Adult Guardianship and
21 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to
22 conform to California terminology for the proceedings in question. See Section 1982 & Comment
23 (definitions); see also Section 1980 Comment. For limitations on the scope of this chapter, see
24 Section 1981 & Comment. For guidance regarding the fee for filing a petition under this section,
25 see Gov’t Code § 70655.

26 Subdivision (a) corresponds to Section 301(a) of UAGPPJA.

27 Subdivision (b) corresponds to Section 301(b) of UAGPPJA. Revisions have been made to
28 conform to California practice, under which a party is required to give notice *of a hearing* on a
29 motion or petition, not just notice *of a petition*.

30 Subdivision (c) corresponds to Section 301(c) of UAGPPJA, but a hearing under subdivision
31 (c) is mandatory in every case. If there is no opposition to a transfer petition, the court may place
32 the matter on the consent calendar. A similar requirement applies when a conservator seeks to
33 establish an out-of-state residence for a conservatee without petitioning for a transfer of the
34 conservatorship. See Section 2253(c); Cal. R. Ct. 7.1063(f).

35 Subdivision (d) corresponds to Section 301(d) of UAGPPJA, but modifies the procedure that
36 applies if a person objects to transfer of a conservatorship of the person. In that circumstance, the
37 objector does not bear the burden of establishing that the transfer would be contrary to the
38 interests of the conservatee. Rather, the requirement of paragraph (d)(2) is satisfied only if the
39 court determines that the transfer would not be contrary to the interests of the conservatee.

40 Subdivision (e) corresponds to Section 301(e) of UAGPPJA, but modifies the procedure that
41 applies if a person objects to transfer of a conservatorship of the estate. In that circumstance, the
42 objector does not bear the burden of establishing that the transfer would be contrary to the
43 interests of the conservatee. Rather, the requirement of paragraph (e)(2) is satisfied only if the
44 court determines that the transfer would not be contrary to the interests of the conservatee.

45 Subdivision (f) provides guidance on the transfer requirements applicable to a conservatorship
46 of the person and estate.

47 Subdivision (g) corresponds to Section 301(f) of UAGPPJA. If a conservatorship is transferred
48 from California to another state, the conservator must continue to comply with California law

1 until the court issues a final order confirming the transfer and terminating the conservatorship.
2 See Section 2300 (oath & bond).

3 **Note.** Under Section 301(d)(2) of UAGPPJA, if a person objects to a transfer, the court must
4 find that “*the objector has not established* that the transfer would be contrary to the interests of
5 the incapacitated person” (Emphasis added.) Section 301(e)(2) of UAGPPJA is similar.

6 In contrast, proposed Section 2001(d)(2) would require the court to determine that the transfer
7 would not be contrary to the interests of the conservatee. Proposed Section 2001(e)(2) is similar.

8 The Commission seeks comment on any aspect of proposed Section 2001, but would especially
9 appreciate input on which standard it should use in paragraphs (d)(2) and (e)(2).

10 **§ 2002. Accepting conservatorship transferred from another state [UAGPPJA § 302]**

11 2002. (a)(1) To confirm transfer of a conservatorship transferred to this state
12 under provisions similar to Section 2001, the conservator must petition the court in
13 this state to accept the conservatorship.

14 (2) The petition must include a certified copy of the other state’s provisional
15 order of transfer.

16 (3) On the first page of the petition, the petitioner must state that the
17 conservatorship is eligible for transfer and does not fall within the limitations of
18 Section 1981.

19 (b) Notice of a hearing on a petition under subdivision (a) must be given to those
20 persons that would be entitled to notice if the petition were a petition for the
21 appointment of a conservator in both the transferring state and this state. The
22 notice must be given in the same manner as notice is required to be given in this
23 state.

24 (c) The court shall hold a hearing on a petition filed pursuant to subdivision (a).

25 (d) The court shall issue an order provisionally granting a petition filed under
26 subdivision (a) unless any of the following occurs:

27 (1) An objection is made and the court determines that transfer of the proceeding
28 would be contrary to the interests of the conservatee.

29 (2) The court determines that, under the law of the transferring state, the
30 conservator is ineligible for appointment in this state.

31 (3) The court determines that, under the law of this state, the conservator is
32 ineligible for appointment in this state, and the transfer petition does not identify a
33 replacement who is willing and eligible to serve in this state.

34 (4) The court determines that this chapter is inapplicable under Section 1981.

35 (e)(1) The court shall issue a final order accepting the proceeding and appointing
36 the conservator as a conservator of the person, a conservator of the estate, or a
37 conservator of the person and estate in this state upon its receipt from the court
38 from which the proceeding is being transferred of a final order issued under
39 provisions similar to Section 2001 transferring the proceeding to this state. In
40 appointing a conservator under this paragraph, the court shall comply with Section
41 1830.

42 (2) A transfer to this state does not become effective unless and until the court
43 issues a final order under paragraph (1). A conservator may not take action in this

1 state pursuant to a transfer petition unless and until the transfer becomes effective
2 and all of the following steps have occurred:

3 (A) The conservator has taken an oath in accordance with Section 2300.

4 (B) The conservator has filed the required bond, if any.

5 (C) The court has provided the information required by Section 1835 to the
6 conservator.

7 (D) The conservator has filed an acknowledgment of receipt as required by
8 Section 1834.

9 (E) The clerk of the court has issued the letters of conservatorship.

10 (3) When a transfer to this state becomes effective, the conservatorship is
11 subject to the law of this state and shall thereafter be treated as a conservatorship
12 under the law of this state.

13 (4) When it issues a final order under paragraph (1), the court shall appoint a
14 court investigator under Section 1454, who shall promptly commence an
15 investigation under Section 1851.1.

16 (f)(1) Not later than [90] days after issuance of a final order accepting transfer of
17 a conservatorship, the court shall determine whether the conservatorship needs to
18 be modified to conform to the law of this state. The court may take any step
19 necessary to achieve compliance with the law of this state, including, but not
20 limited to, striking or modifying any conservator powers that are not permitted
21 under the law of this state.

22 (2) At the same time that it makes the determination required by paragraph (1),
23 the court shall review the conservatorship as provided in Section 1851.1.

24 (g) Except as otherwise provided by Section 1851.1, Chapter 3 (commencing
25 with Section 1860), Chapter 9 (commencing with Section 2650) of Part 4, and
26 other law, when the court grants a petition under this section, the court shall
27 recognize a conservatorship order from the other state, including the determination
28 of the conservatee's incapacity and the appointment of the conservator.

29 (h) The denial by a court of this state of a petition to accept a conservatorship
30 transferred from another state does not affect the ability of the conservator to seek
31 appointment as conservator in this state under Chapter 1 (commencing with
32 Section 1800) of Part 3 if the court has jurisdiction to make an appointment other
33 than by reason of the provisional order of transfer.

34 **Comment.** Section 2002 is similar to Section 302 of the Uniform Adult Guardianship and
35 Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA"). Revisions have been made to
36 conform to California terminology for the proceedings in question. See Section 1982 & Comment
37 (definitions); see also Section 1980 Comment. For limitations on the scope of this chapter, see
38 Section 1981 & Comment. For guidance regarding the fee for filing a petition under this section,
39 see Gov't Code § 70655.

40 Paragraphs (1) and (2) of subdivision (a) correspond to Section 302(a) of UAGPPJA.
41 Paragraph (3) of subdivision (a) serves to facilitate compliance with Section 1981 (scope of
42 chapter).

43 Subdivision (b) corresponds to Section 302(b) of UAGPPJA. Revisions have been made to
44 conform to California practice, under which a party is required to give notice *of a hearing* on a
45 motion or petition, not just notice *of a petition*.

1 Subdivision (c) corresponds to Section 302(c) of UAGPPJA, but a hearing under subdivision
2 (c) is mandatory in every case. If there is no opposition to a transfer petition, the court may place
3 the matter on the consent calendar.

4 Paragraph (1) of subdivision (d) corresponds to Section 302(d)(1) of UAGPPJA, but modifies
5 the procedure that applies if a person objects to transfer of a conservatorship of the person. In that
6 circumstance, the objector does not bear the burden of establishing that the transfer would be
7 contrary to the interests of the conservatee. Rather, the requirement of paragraph (d)(1) is
8 satisfied only if the court determines that the transfer would not be contrary to the interests of the
9 conservatee.

10 Paragraphs (2) and (3) of subdivision (d) correspond to Section 302(d)(2) of UAGPPJA.
11 Revisions have been made to differentiate between: (1) a conservator who is ineligible, *under the*
12 *law of the transferring state*, to serve in California (e.g., a public guardian who, under the law of
13 another jurisdiction, is only authorized to act in that jurisdiction) and (2) a conservator who is
14 ineligible, *under California law*, to serve in California. In the former situation, paragraph (d)(2)
15 precludes the California court from provisionally granting the transfer. If the proceeding is to be
16 transferred to California, the transferring court must first replace the existing conservator with
17 one who would be authorized to act beyond the boundaries of the transferring state. In contrast, if
18 the existing conservator is ineligible due to California law, the transfer can proceed so long as the
19 transfer petition identifies a replacement who is willing and eligible to serve in California. See
20 paragraph (d)(3).

21 Paragraph (4) of subdivision (d) is necessary to reflect the limitations on the scope of this
22 chapter. See Section 1981 & Comment (scope of chapter).

23 Paragraph (1) of subdivision (e) corresponds to Section 302(e) of UAGPPJA. A second
24 sentence is included to make clear that a final order accepting a proceeding and appointing the
25 conservator to serve in California must meet the same requirements as an order appointing a
26 conservator in a proceeding that originates in California.

27 Paragraph (2) of subdivision (e) makes clear that a transfer to California does not become
28 effective until the California court enters a final order accepting the conservatorship and
29 appointing the conservator in California. Absent some other source of authority (e.g., registration
30 of the conservatorship under Article 4), the conservator cannot begin to function here as such
31 until the transfer becomes effective *and* all five of the enumerated follow-up steps have occurred.

32 Paragraph (3) of subdivision (e) underscores that once a conservatorship is transferred to
33 California, it is henceforth subject to California law and will be treated as a California
34 conservatorship. For example, if a conservatorship is transferred to California and the conservator
35 wishes to exercise the powers specified in Section 2356.5 (conservatee with dementia), the
36 requirements of that section must be satisfied.

37 Paragraph (4) of subdivision (e) directs the court to appoint a court investigator at the same
38 time that it issues a final order accepting transfer of a conservatorship. The court investigator
39 must promptly conduct an investigation similar to the investigation for establishing a new
40 conservatorship in California. See Section 1851.1 (investigation & review of transferred
41 conservatorship).

42 Paragraph (1) of subdivision (f) corresponds to Section 302(f) of UAGPPJA, but includes an
43 additional sentence that expressly authorizes the court to take any steps necessary to conform a
44 conservatorship to California law, including elimination or reduction of the conservator's powers.

45 Paragraph (2) of subdivision (f) directs the court to review the conservatorship at the same time
46 that it determines whether the conservatorship "needs to be modified to conform to the law of this
47 state" under paragraph (1) of subdivision (f). For details of this review process, see Section
48 1851.1 (investigation & review of transferred conservatorship).

49 Subdivision (g) corresponds to Section 302(g) of UAGPPJA, but there are limitations on the
50 comity accorded to the transferring court's determination of capacity and choice of conservator.
51 See Sections 1851.1 (investigation & review of transferred conservatorship), 1860-1865
52 (termination of conservatorship), 2650-2655 (removal of guardian or conservator).

53 Subdivision (h) corresponds to Section 302(h) of UAGPPJA.

1 **Notes.**

2 (1) Under Section 301(d)(1) of UAGPPJA, if a person objects to a transfer, the court must find
3 that “*the objector has not established* that the transfer would be contrary to the interests of the
4 incapacitated person” (Emphasis added.) In contrast, proposed Section 2002(d)(1) would
5 require the court to determine that the transfer would not be contrary to the interests of the
6 conservatee. The Commission seeks comment on any aspect of proposed Section 2002, but would
7 especially appreciate input on which standard it should use in paragraph (d)(1).

8 (2) Under proposed Probate Code Section 2002(f) (corresponding to UAGPPJA § 302(f)), a
9 court that issues a final order accepting a transfer would have ninety days from the date of its
10 order to determine whether the transferred proceeding needs to be modified to conform to
11 California law. At the same time that the court makes that determination, it would also have to
12 conduct a review of the conservatorship. The Commission would particularly appreciate
13 comments on whether the proposed ninety-day time period is appropriate.

14 **Article 4. Registration and Recognition of Orders from Other States**

15 **Background from Uniform Act**

16 Article 4 is designed to facilitate the enforcement of [conservatorship] orders in other states.
17 This article does not make distinctions among the types of orders that can be enforced.... While
18 some states have expedited procedures for sales of real estate by [a conservator of the estate]
19 appointed in [another state], few states have enacted statutes dealing with enforcement of [an
20 order appointing a conservator of the person], such as when a care facility questions the authority
21 of a [conservator of the person] appointed in another state. Sometimes, these sorts of refusals
22 necessitate that the proceeding be transferred to the other state or that an entirely new petition be
23 filed, problems that could often be avoided if [conservatorship] orders were entitled to
24 recognition in other states.

25 Article 4 provides for such recognition. The key concept is registration. Section [2011]
26 provides for registration of [an order appointing a conservator of the person], and Section [2012]
27 for registration of [an order appointing a conservator of the estate]. Following registration of the
28 order in the appropriate county of the other state, and after giving notice to the [supervising] court
29 of the intent to register the order in the other state, Section [2014] authorizes the ... conservator to
30 thereafter exercise all powers authorized in the order of appointment except as prohibited under
31 the laws of the registering state.

32 The drafters of the Act concluded that the registration of certified copies provides sufficient
33 protection and that it was not necessary to mandate the filing of authenticated copies.

34 [Adapted from the Uniform Law Commission’s General Comment to Article 4 of UAGPPJA.]

35 **§ 2011. Registration of order appointing conservator of person [UAGPPJA § 401]**

36 2011. If a conservator of the person has been appointed in another state and a
37 petition for the appointment of a conservator of the person is not pending in this
38 state, the conservator of the person appointed in the other state, after notifying the
39 court supervising the conservatorship of an intent to register, may register the
40 conservatorship order in this state by filing certified copies of the order and letters
41 of office, together with a cover sheet approved by the Judicial Council, in the
42 superior court of any appropriate county of this state.

43 **Comment.** Section 2011 is similar to Section 401 of the Uniform Adult Guardianship and
44 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to
45 conform to California terminology for the proceedings in question. See Section 1982 & Comment
46 (definitions); see also Section 1980 Comment. Revisions have also been made to clarify the

1 proper filing procedure under California law. The reference to the “appointing court” has been
2 replaced with a reference to the “court supervising the conservatorship,” because the court
3 currently supervising a conservatorship might not be the same court that originally appointed the
4 conservator. See Article 3 (transfer of conservatorship).

5 For the effect of a registration under this section, see Section 2014 (effect of registration). For
6 the applicable filing fee, see Gov’t Code § 70626 (fee for miscellaneous services). For
7 recordation with a county recorder, see Section 2016 (recordation of registration documents). For
8 guidance regarding third party reliance on a conservatorship order registered under this section,
9 see Section 2015 (good faith reliance on registration). For limitations on the scope of this chapter,
10 see Section 1981 & Comment.

11 **§ 2012. Registration of order appointing conservator of estate [UAGPPJA § 402]**

12 2012. If a conservator of the estate has been appointed in another state and a
13 petition for a conservatorship of the estate is not pending in this state, the
14 conservator appointed in the other state, after notifying the court supervising the
15 conservatorship of an intent to register, may register the conservatorship order in
16 this state by filing certified copies of the order and letters of office and of any
17 bond, together with a cover sheet approved by the Judicial Council, in the superior
18 court of any county of this state in which property belonging to the conservatee is
19 located.

20 **Comment.** Section 2012 is similar to Section 402 of the Uniform Adult Guardianship and
21 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to
22 conform to California terminology for the proceedings in question. See Section 1982 & Comment
23 (definitions); see also Section 1980 Comment. Revisions have also been made to clarify the
24 proper filing procedure under California law. The reference to the “appointing court” has been
25 replaced with a reference to the “court supervising the conservatorship,” because the court
26 currently supervising a conservatorship might not be the same court that originally appointed the
27 conservator. See Article 3 (transfer of conservatorship).

28 For the effect of a registration under this section, see Section 2014 (effect of registration). For
29 the applicable filing fee, see Gov’t Code § 70626 (fee for miscellaneous services). For
30 recordation with a county recorder, see Section 2016 (recordation of registration documents). For
31 guidance regarding third party reliance on a conservatorship order registered under this section,
32 see Section 2015 (good faith reliance on registration). For limitations on the scope of this chapter,
33 see Section 1981 & Comment.

34 **§ 2013. Registration of order appointing conservator of person and estate**

35 2013. If a conservator of the person and estate has been appointed in another
36 state and a petition for a conservatorship of the person, conservatorship of the
37 estate, or conservatorship of the person and estate is not pending in this state, the
38 conservator appointed in the other state, after notifying the court supervising the
39 conservatorship of an intent to register, may register the conservatorship order in
40 this state by filing certified copies of the order and letters of office and of any
41 bond, together with a cover sheet approved by the Judicial Council, in the superior
42 court of any appropriate county of this state.

43 **Comment.** Section 2013 is included for the sake of completeness. It serves to clarify the
44 registration procedure applicable to a conservatorship of the person and estate.

45 For the effect of a registration under this section, see Section 2014 (effect of registration). For
46 the applicable filing fee, see Gov’t Code § 70626 (fee for miscellaneous services). For

1 recordation with a county recorder, see Section 2016 (recordation of registration documents). For
2 guidance regarding third party reliance on a conservatorship order registered under this section,
3 see Section 2015 (good faith reliance on registration). For limitations on the scope of this chapter,
4 see Section 1981 & Comment.

5 See Section 1982 (definitions).

6 **§ 2014. Effect of registration [UAGPPJA § 403]**

7 2014. (a) Upon registration of a conservatorship order from another state, the
8 conservator may, while the conservatee resides out of this state, exercise in any
9 county of this state all powers authorized in the order of appointment except as
10 prohibited under the laws of this state, including maintaining actions and
11 proceedings in this state and, if the conservator is not a resident of this state,
12 subject to any conditions imposed upon nonresident parties.

13 (b) Subdivision (a) applies only when the conservatee resides out of this state.
14 When the conservatee resides in this state, a conservator may not exercise any
15 powers pursuant to a registration under this article.

16 (c) A court of this state may grant any relief available under this chapter and
17 other law of this state to enforce a registered order.

18 **Comment.** Subdivision (a) of Section 2014 is similar to Section 403(a) of the Uniform Adult
19 Guardianship and Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have
20 been made to conform to California terminology for the proceedings in question. See Section
21 1982 & Comment (definitions); see also Section 1980 Comment. Revisions have also been made
22 to:

- 23 (1) Emphasize that registration of an out-of-state conservatorship in one county is
24 sufficient; it is not necessary to register in every county in which the conservator seeks
25 to act.
- 26 (2) Make clear that a registration is only effective while the conservatee resides in another
27 jurisdiction. If the conservatee becomes a California resident, the conservator cannot
28 act pursuant to a registration under Section 2011, 2012, or 2013, but can petition for
29 transfer of the conservatorship to California under Article 2.

30 Subdivision (b) further underscores that a registration is only effective while the conservatee
31 resides in another jurisdiction.

32 Subdivision (c) is the same as Section 403(b) of UAGPPJA.

33 For limitations on the scope of this chapter, see Section 1981 & Comment.

34 **§ 2015. Good faith reliance on registration**

35 2015. (a) A third person who acts in good faith reliance on a conservatorship
36 order registered under this article is not liable to any person for so acting if all of
37 the following requirements are satisfied:

38 (1) The conservator presents to the third person a file-stamped copy of the
39 registration documents required by Section 2011, 2012, or 2013, including, but not
40 limited to, the certified copy of the conservatorship order.

41 (2) Each of the registration documents, including, but not limited to, the
42 conservatorship order and the file-stamped cover sheet, appears on its face to be
43 valid.

1 (3) The conservator presents to the third person a form approved by the Judicial
2 Council, in which the conservator attests that the conservatee does not reside in
3 this state and the conservator promises to promptly notify the third person if the
4 conservatee becomes a resident of this state.

5 (4) The third person has not received any actual notice that the conservatee is
6 residing in this state.

7 (b) Nothing in this section is intended to create an implication that a third person
8 is liable for acting in reliance on a conservatorship order registered under this
9 article under circumstances where the requirements of subdivision (a) are not
10 satisfied. Nothing in this section affects any immunity that may otherwise exist
11 apart from this section.

12 **Comment.** Section 2015 is modeled on Section 4303 (good faith reliance on power of
13 attorney).

14 § 2016. Recordation of registration documents

15 2016. (a) A file-stamped copy of the registration documents required by this
16 Section 2011, 2012, or 2013 may be recorded in the office of any county recorder
17 in this state.

18 (b) A county recorder may charge a reasonable fee for recordation under
19 subdivision (a).

20 **Comment.** Section 2016 makes clear that registration documents under this chapter are
21 recordable in county property records.

22 Article 5. Miscellaneous Provisions

23 § 2021. Uniformity of application and construction [UAGPPJA § 501]

24 2021. In applying and construing this uniform act, consideration must be given
25 to the need to promote uniformity of the law with respect to its subject matter
26 among states that enact it, consistent with the need to protect individual civil rights
27 and in accordance with due process.

28 **Comment.** Section 2021 is similar to Section 501 of the Uniform Adult Guardianship and
29 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). A clause has been added to
30 underscore the importance of protecting a conservatee’s civil rights, particularly the constitutional
31 right of due process, which is deeply implicated in conservatorship proceedings. See U.S. Const.
32 amend. XIV; Cal. Const. art. I, §§ 7, 15; see also 2012 Conn. Pub. Act No. 12-22, § 22.

33 § 2022. Relationship to Electronic Signatures in Global and National Commerce Act 34 [UAGPPJA § 502]

35 2022. This chapter modifies, limits, and supersedes the federal Electronic
36 Signatures in Global and National Commerce Act, Title 15 (commencing with
37 Section 7001) of the United States Code, but does not modify, limit, or supersede
38 subdivision (c) of Section 101 of that act, which is codified as subdivision (c) of
39 Section 7001 of Title 15 of the United States Code, or authorize electronic

1 delivery of any of the notices described in subdivision (b) of Section 103 of that
2 act, which is codified as subdivision (b) of Section 7003 of Title 15 of the United
3 States Code.

4 **Comment.** Section 2022 is similar to Section 502 of the Uniform Adult Guardianship and
5 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to
6 conform to local drafting practices.

7 **§ 2023. Court rules and forms**

8 2023. (a) On or before January 1, 2016, the Judicial Council shall develop court
9 rules and forms as necessary for the implementation of this chapter.

10 (b) The materials developed pursuant to this section shall include, but not be
11 limited to, both of the following:

12 (1) A cover sheet for registration of a conservatorship under Section 2011, 2012,
13 or 2013. The cover sheet shall explain that a proceeding may not be registered
14 under Section 2011, 2012, or 2013 if the proceeding relates to a minor. The cover
15 sheet shall further explain that a proceeding in which a person is subjected to
16 involuntary mental health care may not be registered under Section 2011, 2012, or
17 2013. The cover sheet shall require the conservator to initial each of these
18 explanations. The cover sheet shall also include a prominent statement that the
19 conservator of a conservatorship registered under Section 2011, 2012, or 2013 is
20 subject to the law of this state while acting in this state, is required to comply with
21 that law in every respect, including, but not limited to, all applicable procedures,
22 and is not authorized to take any action prohibited by the law of this state. Directly
23 beneath this statement, the cover sheet shall include a signature box in which the
24 conservatee attests to these matters.

25 (2) The form required by paragraph (3) of subdivision (a) of Section 2015. If the
26 Judicial Council deems it advisable, this form may be included in the civil cover
27 sheet developed under paragraph (1).

28 **Comment.** Section 2023 directs the Judicial Council to prepare any court rules and forms that
29 are necessary to implement this chapter before it becomes operative.

30 **Note.** In drafting proposed Section 2023, the Commission assumed that its proposed
31 UAGPPJA legislation would be introduced and enacted in 2014, but the bulk of it would not
32 become operative until January 1, 2016 (i.e., the normal operative date would be delayed by one
33 year, except the operative date of this section). The delayed operative date would be specified in
34 an uncodified section (see below). The one-year delay would give the Judicial Council time to
35 prepare court rules and forms to implement the legislation, as required by proposed Section 2023.
36 If the proposed legislation is not enacted in 2014, the operative dates will require adjustment.

37 **§ 2024. Transitional provision [UAGPPJA § 504]**

38 2024. (a) This chapter applies to conservatorship proceedings begun on or after
39 January 1, 2016.

40 (b) Articles 1, 3, and 4 and Sections 2021 and 2022 apply to proceedings begun
41 before January 1, 2016, regardless of whether a conservatorship order has been
42 issued.

1 **Comment.** Section 2024 is similar to Section 504 of the Uniform Adult Guardianship and
2 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to
3 conform to California terminology for the proceedings in question. See Section 1982 & Comment
4 (definitions); see also Section 1980 Comment. For limitations on the scope of this chapter, see
5 Section 1981 & Comment.

6 **Background from Uniform Act**

7 This Act applies retroactively to ... conservatorships in existence on the effective date. The ...
8 conservator appointed prior to the [operative] date of the Act may petition to transfer the
9 proceeding to another state under Article 3 and register and enforce the order in other states
10 pursuant to Article 4. The jurisdictional provisions of Article 2 also apply to proceedings begun
11 on or after the [operative] date. What the Act does not do is change the jurisdictional rules
12 midstream for petitions filed prior to the effective date for which an appointment has not been
13 made ... as of the effective date. Jurisdiction in such cases is governed by prior law. Nor does the
14 Act affect the validity of already existing appointments even though the court might not have had
15 jurisdiction had this Act been [operative] at the time the appointment was made.

16 [Adapted from the Uniform Law Commission’s Comment to UAGPPJA § 504.]

17 **Note.** In drafting proposed Section 2024, the Law Revision Commission assumed that its
18 proposed UAGPPJA legislation would be introduced and enacted in 2014, but the bulk of it
19 would not become operative until January 1, 2016 (i.e., the normal operative date would be
20 delayed by one year, except the operative date of this section). The delayed operative date would
21 be specified in an uncodified section (see below). The one-year delay would give the Judicial
22 Council time to prepare court rules and forms to implement the legislation, as required by
23 proposed Section 2023. If the proposed legislation is not enacted in 2014, the operative dates will
24 require adjustment.

25 **UNCODIFIED**

26 **Operative date [UAGPPJA § 505]**

27 **SEC. ____.** (a) Section 2023 of the Probate Code, as added by this act, becomes
28 operative on January 1, 2015.

29 (b) The remainder of this act becomes operative on January 1, 2016.

30 **Comment.** This uncodified section is similar to Section 505 of the Uniform Adult
31 Guardianship and Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have
32 been made to give the Judicial Council time to prepare court rules and forms as required by
33 Section 2023.

34 Revisions have also been made to conform to California usage of the terms “effective date”
35 and “operative date.” With regard to a statute, the term “effective date” refers to the date on
36 which the statute is recognized as part of California law. In contrast, the phrase “operative date”
37 refers to the date on which the statute actually takes effect. See, e.g., *People v. Palomar*, 171 Cal.
38 App. 3d 131, 134, 214 Cal. Rptr. 785 (1985) (“The ‘enactment is a law on its effective date only
39 in the sense that it cannot be changed except by legislative process; the rights of individuals under
40 its provisions are not substantially affected until the provision operates as law.’”).

41 Usually the operative date is the same as the effective date. *People v. Henderson*, 107 Cal.
42 App. 3d 475, 488, 166 Cal. Rptr. 20 (1980). In some instances, the Legislature exercises its
43 discretion to specify a different operative date. See, e.g., *Preston v. State Bd. of Equalization*, 25
44 Cal. 4th 197, 223-24, 19 P.3d 1148, 105 Cal. Rptr. 2d 407 (2001); *Cline v. Lewis*, 175 Cal. 315,
45 318, 165 P. 915 (1917); *Johnson v. Alexis*, 153 Cal. App. 3d 33, 40, 199 Cal. Rptr. 909 (1984).
46 The delayed operative date in this uncodified section is an example of that practice.

1 **Note.** In drafting this uncodified section, the Law Revision Commission assumed that its
2 proposed UAGPPJA legislation would be introduced and enacted in 2014. If the proposed
3 legislation is not enacted in 2014, the operative dates will require adjustment.

4 KEY CONFORMING REVISIONS

5 GOVERNMENT CODE

6 **Gov't Code § 70626 (as amended by 2012 Cal. Stat. ch. 41, § 45) (amended). Fees for** 7 **miscellaneous services**

8 SEC. _____. Section 70626 of the Government Code, as amended by Section 45
9 of Chapter 41 of the Statutes of 2012, is amended to read:

10 70626. (a) The fee for each of the following services is twenty-five dollars
11 (\$25). Subject to subdivision (e), amounts collected shall be distributed to the Trial
12 Court Trust Fund under Section 68085.1.

13 (1) Issuing a writ of attachment, a writ of mandate, a writ of execution, a writ of
14 sale, a writ of possession, a writ of prohibition, or any other writ for the
15 enforcement of any order or judgment.

16 (2) Issuing an abstract of judgment.

17 (3) Issuing a certificate of satisfaction of judgment under Section 724.100 of the
18 Code of Civil Procedure.

19 (4) Certifying a copy of any paper, record, or proceeding on file in the office of
20 the clerk of any court.

21 (5) Taking an affidavit, except in criminal cases or adoption proceedings.

22 (6) Acknowledgment of any deed or other instrument, including the certificate.

23 (7) Recording or registering any license or certificate, or issuing any certificate
24 in connection with a license, required by law, for which a charge is not otherwise
25 prescribed.

26 (8) Issuing any certificate for which the fee is not otherwise fixed.

27 (b) The fee for each of the following services is thirty dollars (\$30). Subject to
28 subdivision (e), amounts collected shall be distributed to the Trial Court Trust
29 Fund under Section 68085.1.

30 (1) Issuing an order of sale.

31 (2) Receiving and filing an abstract of judgment rendered by a judge of another
32 court and subsequent services based on it, unless the abstract of judgment is filed
33 under Section 704.750 or 708.160 of the Code of Civil Procedure.

34 (3) Filing a confession of judgment under Section 1134 of the Code of Civil
35 Procedure.

36 (4) Filing an application for renewal of judgment under Section 683.150 of the
37 Code of Civil Procedure.

38 (5) Issuing a commission to take a deposition in another state or place under
39 Section 2026.010 of the Code of Civil Procedure, or issuing a subpoena under

1 Section 2029.300 of the Code of Civil Procedure to take a deposition in this state
2 for purposes of a proceeding pending in another jurisdiction.

3 (6) Filing and entering an award under the Workers' Compensation Law
4 (Division 4 (commencing with Section 3200) of the Labor Code).

5 (7) Filing an affidavit of publication of notice of dissolution of partnership.

6 (8) Filing an appeal of a determination whether a dog is potentially dangerous or
7 vicious under Section 31622 of the Food and Agricultural Code.

8 (9) Filing an affidavit under Section 13200 of the Probate Code, together with
9 the issuance of one certified copy of the affidavit under Section 13202 of the
10 Probate Code.

11 (10) Registering a conservatorship under Article 4 (commencing with Section
12 2011) of Chapter 8 of Part 3 of Division 4 of the Probate Code.

13 ~~(10)~~ (11) Filing and indexing all papers for which a charge is not elsewhere
14 provided, other than papers filed in actions or special proceedings, official bonds,
15 or certificates of appointment.

16 (c) The fee for filing a first petition under Section 2029.600 or 2029.620 of the
17 Code of Civil Procedure, if the petitioner is not a party to the out-of-state case, is
18 eighty dollars (\$80). Amounts collected shall be distributed to the Trial Court
19 Trust Fund pursuant to Section 68085.1.

20 (d) The fee for delivering a will to the clerk of the superior court in which the
21 estate of a decedent may be administered, as required by Section 8200 of the
22 Probate Code, is fifty dollars (\$50).

23 (e) From July 1, 2011, to June 30, 2017, inclusive, ten dollars (\$10) of each fee
24 collected pursuant to subdivisions (a) and (b) shall be used by the Judicial Council
25 for the expenses of the Judicial Council in implementing and administering the
26 civil representation pilot program under Section 68651.

27 (f) This section shall become inoperative on July 1, 2017, and, as of January 1,
28 2018, is repealed, unless a later enacted statute, that becomes operative on or
29 before January 1, 2018, deletes or extends the dates on which it becomes
30 inoperative and is repealed.

31 **Comment.** Section 70626 (as amended by 2012 Cal. Stat. ch. 41, § 45) is amended to specify
32 the fee for registering a conservatorship order from another jurisdiction under the California
33 Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

34 The section is also amended to correct a cross-reference.

35 **Gov't Code § 70626 (as amended by 2012 Cal. Stat. ch. 41, § 46) (amended). Fees for**
36 **miscellaneous services**

37 SEC. _____. Section 70626 of the Government Code, as amended by Section 46
38 of Chapter 41 of the Statutes of 2012, is amended to read:

39 70626. (a) The fee for each of the following services is fifteen dollars (\$15).
40 Amounts collected shall be distributed to the Trial Court Trust Fund under Section
41 68085.1.

1 (1) Issuing a writ of attachment, a writ of mandate, a writ of execution, a writ of
2 sale, a writ of possession, a writ of prohibition, or any other writ for the
3 enforcement of any order or judgment.

4 (2) Issuing an abstract of judgment.

5 (3) Issuing a certificate of satisfaction of judgment under Section 724.100 of the
6 Code of Civil Procedure.

7 (4) Certifying a copy of any paper, record, or proceeding on file in the office of
8 the clerk of any court.

9 (5) Taking an affidavit, except in criminal cases or adoption proceedings.

10 (6) Acknowledgment of any deed or other instrument, including the certificate.

11 (7) Recording or registering any license or certificate, or issuing any certificate
12 in connection with a license, required by law, for which a charge is not otherwise
13 prescribed.

14 (8) Issuing any certificate for which the fee is not otherwise fixed.

15 (b) The fee for each of the following services is twenty dollars (\$20). Amounts
16 collected shall be distributed to the Trial Court Trust Fund under Section 68085.1.

17 (1) Issuing an order of sale.

18 (2) Receiving and filing an abstract of judgment rendered by a judge of another
19 court and subsequent services based on it, unless the abstract of judgment is filed
20 under Section 704.750 or 708.160 of the Code of Civil Procedure.

21 (3) Filing a confession of judgment under Section 1134 of the Code of Civil
22 Procedure.

23 (4) Filing an application for renewal of judgment under Section 683.150 of the
24 Code of Civil Procedure.

25 (5) Issuing a commission to take a deposition in another state or place under
26 Section 2026.010 of the Code of Civil Procedure, or issuing a subpoena under
27 Section 2029.300 of the Code of Civil Procedure to take a deposition in this state
28 for purposes of a proceeding pending in another jurisdiction.

29 (6) Filing and entering an award under the Workers' Compensation Law
30 (Division 4 (commencing with Section 3200) of the Labor Code).

31 (7) Filing an affidavit of publication of notice of dissolution of partnership.

32 (8) Filing an appeal of a determination whether a dog is potentially dangerous or
33 vicious under Section 31622 of the Food and Agricultural Code.

34 (9) Filing an affidavit under Section 13200 of the Probate Code, together with
35 the issuance of one certified copy of the affidavit under Section 13202 of the
36 Probate Code.

37 (10) Registering a conservatorship under Article 4 (commencing with Section
38 2011) of Chapter 8 of Part 3 of Division 4 of the Probate Code.

39 ~~(10)~~ (11) Filing and indexing all papers for which a charge is not elsewhere
40 provided, other than papers filed in actions or special proceedings, official bonds,
41 or certificates of appointment.

42 (c) The fee for filing a first petition under Section 2029.600 or 2029.620 of the
43 Code of Civil Procedure, if the petitioner is not a party to the out-of-state case, is

1 eighty dollars (\$80). Amounts collected shall be distributed to the Trial Court
2 Trust Fund pursuant to Section 68085.1.

3 (d) The fee for delivering a will to the clerk of the superior court in which the
4 estate of a decedent may be administered, as required by Section 8200 of the
5 Probate Code, is fifty dollars (\$50).

6 (e) This section shall become operative on July 1, 2017.

7 **Comment.** Section 70626 (as amended by 2012 Cal. Stat. ch. 41, § 46) is amended to specify
8 the fee for registering a conservatorship order from another jurisdiction under the California
9 Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

10 The section is also amended to correct a cross-reference.

11 PROBATE CODE

12 **Prob. Code § 1834 (amended). Conservator’s acknowledgment of receipt**

13 SEC. _____. Section 1834 of the Probate Code is amended to read:

14 1834. (a) Before letters are issued in a conservatorship that originates in this
15 state or a conservatorship that is transferred to this state under Chapter 8
16 (commencing with Section 1980), the conservator (other than a trust company or a
17 public conservator) shall file an acknowledgment of receipt of (1) a statement of
18 duties and liabilities of the office of conservator, and (2) a copy of the
19 conservatorship information required under Section 1835. The acknowledgment
20 and the statement shall be in the form prescribed by the Judicial Council.

21 (b) The court may by local rules require the acknowledgment of receipt to
22 include the conservator’s birth date and driver’s license number, if any, provided
23 that the court ensures their confidentiality.

24 (c) The statement of duties and liabilities prescribed by the Judicial Council shall
25 not supersede the law on which the statement is based.

26 **Comment.** Section 1834 is amended to make clear that it applies to a conservatorship that is
27 transferred to California under the California Conservatorship Jurisdiction Act, as well as one that
28 originates in California.

29 **Prob. Code § 1851.1 (added). Investigation and review of transferred conservatorship**

30 SEC. _____. Section 1851.1 is added to the Probate Code, to read:

31 1851.1. (a) When a court investigator is appointed pursuant to Section 2002, the
32 investigator shall promptly commence an investigation of the transferred
33 conservatorship.

34 (b) In conducting an investigation and preparing a report under this section, the
35 court investigator shall do all of the following:

36 (1) Comply with the requirements of Section 1851.

37 (2) Conduct an interview of the conservator.

38 (3) Conduct an interview of the conservatee’s spouse or registered domestic
39 partner, if any.

1 (4) Inform the conservatee of the nature, purpose, and effect of the
2 conservatorship.

3 (5) Inform the conservatee and all other persons entitled to notice under
4 subdivision (b) of Section 2002 of the right to seek termination of the
5 conservatorship.

6 (6) Determine whether the conservatee objects to the conservator or prefers
7 another person to act as conservator.

8 (7) Inform the conservatee of the right to attend the hearing under subdivision
9 (c).

10 (8) Determine whether it appears that the conservatee is unable to attend the
11 hearing and, if able to attend, whether the conservatee is willing to attend the
12 hearing.

13 (9) Inform the conservatee of the right to be represented by legal counsel if the
14 conservatee so chooses, and to have legal counsel appointed by the court if the
15 conservatee is unable to retain legal counsel.

16 (10) Determine whether the conservatee wishes to be represented by legal
17 counsel and, if so, whether the conservatee has retained legal counsel and, if not,
18 the name of an attorney the conservatee wishes to retain.

19 (11) If the conservatee has not retained legal counsel, determine whether the
20 conservatee desires the court to appoint legal counsel.

21 (12) Determine whether the appointment of legal counsel would be helpful to
22 the resolution of the matter or is necessary to protect the interests of the
23 conservatee in any case where the conservatee does not plan to retain legal counsel
24 and has not requested the appointment of legal counsel by the court.

25 (13) Consider each of the categories specified in paragraphs (1) to (5), inclusive,
26 of subdivision (a) of Section 1821.

27 (14) Consider, to the extent practicable, whether the investigator believes the
28 conservatee suffers from any of the mental function deficits listed in subdivision
29 (a) of Section 811 that significantly impairs the conservatee's ability to understand
30 and appreciate the consequences of the conservatee's actions in connection with
31 any of the functions described in subdivision (a) or (b) of Section 1801 and
32 identify the observations that support that belief.

33 (c) The court shall review the conservatorship as provided in Section 2002. The
34 conservatee shall attend the hearing unless the conservatee's attendance is excused
35 under Section 1825. In conducting its review, the court shall make an express
36 finding on whether continuation of the conservatorship is the least restrictive
37 alternative needed for the protection of the conservatee. The court may take
38 appropriate action in response to the court investigator's report under this section.

39 (d) The court investigator's report under this section shall be confidential as
40 provided in Section 1851.

41 (e) Except as provided in paragraph (2) of subdivision (a) of Section 1850, the
42 court shall review the conservatorship again one year after the review conducted

1 pursuant to subdivision (c), and annually thereafter, in the manner specified in
2 Section 1850.

3 (f) The first time that the need for a conservatorship is challenged by any
4 interested person or raised on the court's own motion after a transfer under Section
5 2002, whether in a review pursuant to this section or in a petition to terminate the
6 conservatorship under Chapter 3 (commencing with Section 1860), the court shall
7 presume that there is no need for a conservatorship. This presumption is
8 rebuttable, but can only be overcome by clear and convincing evidence.

9 (g) If a duty described in this section is the same as a duty imposed pursuant to
10 the amendments to Section 1826 or 1851 enacted by Chapter 493 of the Statutes of
11 2006, a superior court shall not be required to perform that duty until the
12 Legislature makes an appropriation identified for this purpose.

13 **Comment.** Section 1851.1 is added to provide guidance on the nature of the investigation and
14 review that is required when a conservatorship is transferred to California from another state
15 under the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*). In conducting a
16 review under this section, the court investigator might be able to use some evidence or other
17 resources from the proceeding that was transferred to California, particularly if the transferring
18 court recently conducted a review of that proceeding.

19 The court investigator's fee for conducting an investigation under this section is to be paid in
20 the same manner as if the conservatorship was originally established in California. See Section
21 1851.5 (assessment of conservatee for cost of conducting court investigation).

22 **Prob. Code § 2200 (amended). Jurisdiction**

23 SEC. _____. Section 2200 of the Probate Code is amended to read:

24 2200. (a) The superior court has jurisdiction of guardianship and
25 conservatorship proceedings.

26 (b) Chapter 8 (commencing with Section 1980) of Part 3 governs which state
27 has jurisdiction of a conservatorship proceeding.

28 **Comment.** Section 2200 is amended to direct attention to the jurisdictional provisions in the
29 California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

30 **Prob. Code § 2250 (amended). Petition for appointment of temporary guardian or
31 temporary conservator**

32 SEC. _____. Section 2250 of the Probate Code is amended to read:

33 2250. (a) On or after the filing of a petition for appointment of a guardian or
34 conservator, or under the circumstances specified in paragraph (1) of subdivision
35 (a) of Section 1994 and subject to the limitations of that section, any person
36 entitled to petition for appointment of the guardian or conservator may file a
37 petition for appointment of:

38 (1) A temporary guardian of the person or estate or both.

39 (2) A temporary conservator of the person or estate or both.

40 (b) The petition shall state facts which establish good cause for appointment of
41 the temporary guardian or temporary conservator. The court, upon that petition or
42 other showing as it may require, may appoint a temporary guardian of the person
43 or estate or both, or a temporary conservator of the person or estate or both, to

1 ~~serve pending the final determination of the court upon the petition for the~~
2 ~~appointment of the guardian or conservator until the temporary guardianship or~~
3 ~~temporary conservatorship terminates under Section 2257.~~

4 (c) If the petitioner is a private professional conservator under Section ~~2341~~
5 2340 or licensed under the Professional Fiduciaries Act, Chapter 6 (commencing
6 with Section 6500) of Division 3 of the Business and Professions Code, the
7 petition for appointment of a temporary conservator shall include both of the
8 following:

9 (1) A statement of the petitioner's registration or license information.

10 (2) A statement explaining who engaged the petitioner or how the petitioner was
11 engaged to file the petition for appointment of a temporary conservator and what
12 prior relationship the petitioner had with the proposed conservatee or the proposed
13 conservatee's family or friends, unless that information is included in a general
14 petition for appointment of a ~~general~~ conservator filed at the same time by the
15 person who filed the petition for appointment of a temporary conservator.

16 (d) If the petition is filed by a party other than the proposed conservatee, the
17 petition shall include a declaration of due diligence showing both of the following:

18 (1) Either the efforts to find the proposed conservatee's relatives named in the
19 general petition for appointment of a ~~general~~ conservator or why it was not
20 feasible to contact any of them. If the petition for a temporary conservator is filed
21 under Section 1994 and there is no general petition for appointment of a
22 conservator, this requirement may be satisfied by showing the efforts to find the
23 relatives required to be named in a general petition for appointment of a
24 conservator or why it was not feasible to contact any of them.

25 (2) Either the preferences of the proposed conservatee concerning the
26 appointment of a temporary conservator and the appointment of the proposed
27 temporary conservator or why it was not feasible to ascertain those preferences.

28 (e) Unless the court for good cause otherwise orders, at least five court days
29 before the hearing on the petition, notice of the hearing shall be given as follows:

30 (1) Notice of the hearing shall be personally delivered to the proposed ward if he
31 or she is 12 years of age or older, to the parent or parents of the proposed ward,
32 and to any person having a valid visitation order with the proposed ward that was
33 effective at the time of the filing of the petition. Notice of the hearing shall not be
34 delivered to the proposed ward if he or she is under 12 years of age. In a
35 proceeding for temporary guardianship of the person, evidence that a custodial
36 parent has died or become incapacitated, and that the petitioner is the nominee of
37 the custodial parent, may constitute good cause for the court to order that this
38 notice not be delivered.

39 (2) Notice of the hearing shall be personally delivered to the proposed
40 conservatee, and notice of the hearing shall be served on the persons required to be
41 named in the petition for appointment of conservator. If the petition states that the
42 petitioner and the proposed conservator have no prior relationship with the
43 proposed conservatee and has not been nominated by a family member, friend, or

1 other person with a relationship to the proposed conservatee, notice of hearing
2 shall be served on the public guardian of the county in which the petition is filed.

3 (3) A copy of the petition for temporary appointment shall be served with the
4 notice of hearing.

5 (f) If a temporary guardianship is granted ex parte and the hearing on the general
6 guardianship petition is not to be held within 30 days of the granting of the
7 temporary guardianship, the court shall set a hearing within 30 days to reconsider
8 the temporary guardianship. Notice of the hearing for reconsideration of the
9 temporary guardianship shall be provided pursuant to Section 1511, except that the
10 court may for good cause shorten the time for the notice of the hearing.

11 (g) Visitation orders with the proposed ward granted prior to the filing of a
12 petition for temporary guardianship shall remain in effect, unless for good cause
13 the court orders otherwise.

14 (h)(1) If a temporary conservatorship is granted ex parte, and a petition to
15 terminate the temporary conservatorship is filed more than 15 days before the first
16 hearing on the general petition for appointment of a conservator, or there is no
17 general petition for appointment of a conservator, the court shall set a hearing
18 within 15 days of the filing of the petition for termination of the temporary
19 conservatorship to reconsider the temporary conservatorship. Unless the court
20 otherwise orders, notice of the hearing on the petition to terminate the temporary
21 conservatorship shall be given at least 10 days prior to the hearing.

22 (2) If a petition to terminate the temporary conservatorship is filed within 15
23 days before the first hearing on the general petition for appointment of a
24 conservator, the court shall set the hearing at the same time that the hearing on the
25 general petition is set. Unless the court otherwise orders, notice of the hearing on
26 the petition to terminate the temporary conservatorship pursuant to this section
27 shall be given at least five court days prior to the hearing.

28 (i) If the court suspends powers of the guardian or conservator under Section
29 2334 or 2654 or under any other provision of this division, the court may appoint a
30 temporary guardian or conservator to exercise those powers until the powers are
31 restored to the guardian or conservator or a new guardian or conservator is
32 appointed.

33 (j) If for any reason a vacancy occurs in the office of guardian or conservator,
34 the court, on a petition filed under subdivision (a) or on its own motion, may
35 appoint a temporary guardian or conservator to exercise the powers of the
36 guardian or conservator until a new guardian or conservator is appointed.

37 (k) On or before January 1, 2008, the Judicial Council shall adopt a rule of court
38 that establishes uniform standards for good cause exceptions to the notice required
39 by subdivision (e), limiting those exceptions to only cases when waiver of the
40 notice is essential to protect the proposed conservatee or ward, or the estate of the
41 proposed conservatee or ward, from substantial harm.

1 (l) A superior court shall not be required to perform any duties imposed pursuant
2 to the amendments to this section enacted by Chapter 493 of the Statutes 2006
3 until the Legislature makes an appropriation identified for this purpose.

4 **Comment.** Subdivisions (a), (b), (d), and (h) of Section 2250 are amended to reflect the
5 enactment of California’s version of UAGPPJA (Section 1980 *et seq.*). In particular, under the
6 circumstances addressed in Section 1994(a)(1) (special jurisdiction to appoint conservator in
7 emergency), it might sometimes be sufficient to appoint a temporary conservator, without ever
8 appointing a conservator on a more permanent basis. The amendment of Section 2250 accounts
9 for that possibility.

10 Subdivision (c) is amended to correct a cross-reference. Subdivision (c) is also amended for
11 consistency of terminology, as is subdivision (d). *Compare* former subdivision (c) (referring to “a
12 petition for appointment of a general conservator”) and former subdivision (d) (same) with
13 subdivision (h) (referring repeatedly to “the general petition for appointment of a conservator”
14 and “the general petition”).

15 For further guidance on the notice requirements of subdivision (e), see Cal. R. Ct. 7.1062.

16 **Prob. Code § 2300 (amended). Oath and bond**

17 SEC. _____. Section 2300 of the Probate Code is amended to read:

18 2300. Before the appointment of a guardian or conservator is effective,
19 including, but not limited to, the appointment of a conservator under Section 2002,
20 the guardian or conservator shall:

21 (a) Take an oath to perform the duties of the office according to law, ~~which.~~ The
22 oath obligates the guardian or conservator to comply with the law of this state, as
23 well as other applicable law, at all times, in any location within or without the
24 state. If the conservator petitions for transfer of the conservatorship to another
25 state pursuant to Section 2001, the conservator shall continue to comply with the
26 law of this state until the court issues a final order confirming the transfer and
27 terminating the conservatorship pursuant to Section 2001. The oath shall be
28 attached to or endorsed upon the letters.

29 (b) File the required bond if a bond is required.

30 **Comment.** Section 2300 is amended to reflect the enactment of the California Conservatorship
31 Jurisdiction Act (Section 1980 *et seq.*), particularly Article 3 (transfer of conservatorship) and
32 Article 4 (registration and recognition of orders from other states).

33 **Prob. Code § 2650 (amended). Grounds for removal**

34 SEC. _____. Section 2650 of the Probate Code is amended to read:

35 2650. A guardian or conservator may be removed for any of the following
36 causes:

37 (a) Failure to use ordinary care and diligence in the management of the estate.

38 (b) Failure to file an inventory or an account within the time allowed by law or
39 by court order.

40 (c) Continued failure to perform duties or incapacity to perform duties suitably.

41 (d) Conviction of a felony, whether before or after appointment as guardian or
42 conservator.

43 (e) Gross immorality.

1 (f) Having such an interest adverse to the faithful performance of duties that
2 there is an unreasonable risk that the guardian or conservator will fail faithfully to
3 perform duties.

4 (g) In the case of a guardian of the person or a conservator of the person, acting
5 in violation of any provision of Section 2356.

6 (h) In the case of a guardian of the estate or a conservator of the estate,
7 insolvency or bankruptcy of the guardian or conservator.

8 (i) In the case of a conservator appointed by a court in another jurisdiction,
9 removal because that person would not have been appointed in this state despite
10 being eligible to serve under the law of this state.

11 ~~(i)~~ (j) In any other case in which the court in its discretion determines that
12 removal is in the best interests of the ward or conservatee; but, in considering the
13 best interests of the ward, if the guardian was nominated under Section 1500 or
14 1501, the court shall take that fact into consideration.

15 **Comment.** Section 2650 is amended to reflect the enactment of the California Conservatorship
16 Jurisdiction Act (Section 1980 *et seq*).