

## Memorandum 2013-56

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

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In its study of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (“UAGPPJA”), the Commission<sup>1</sup> is working towards a final recommendation, which could be introduced in the Legislature next year. To that end, attached is a draft recommendation, which reflects the decisions that the Commission made at the October meeting.

A few issues relating to the attached draft are presented below. The staff expects most of these issues to be uncontroversial. At the upcoming meeting, the staff only plans to discuss the issues that are marked with a pointing hand symbol (☞) in this memorandum. If you would like to discuss any of the other issues, please plan to raise that issue at the meeting.

Additional issues relating to UAGPPJA are discussed in Memorandum 2013-55 (tribal issues) and in Memorandum 2013-57 (conforming revisions). The staff will present those memoranda separately.

The Commission should (1) **decide the remaining UAGPPJA issues**, including the ones raised in Memorandum 2013-55 and Memorandum 2013-57, and then (2) **determine whether to approve the attached draft as a final recommendation** (with or without revisions), **for printing and introduction in the Legislature.**

**☞ Proposed Probate Code Section 1994. Special Jurisdiction [UAGPPJA § 204]**

In the attached draft, proposed Probate Code Section 1994 would provide:

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

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

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

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

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

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

(b) If a petition for the appointment of a conservator of the person in an emergency is brought in this state and this state was not the home state of the proposed conservatee on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment of a temporary conservator of the person.

**Comment.** Section 1994 is similar to Section 204 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 specify the procedure for making an emergency appointment under paragraph (a)(1).

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

In drafting this provision, the Commission decided to revise the language of the corresponding UAGPPJA provision (UAGPPJA § 204) to specify the procedure for making an emergency appointment under paragraph (a)(1). In that circumstance, California’s normal procedures for establishing a temporary conservatorship would apply.

It occurs to the staff that a similar revision should be made in paragraph (a)(3), which would give a California court special jurisdiction to appoint a conservator “for a proposed conservatee for whom a provisional order to transfer a proceeding from another state has been issued ....” Like an emergency appointment under paragraph (a)(1), an appointment under paragraph (a)(3) would be temporary; presumably, it would only last until the transfer procedure was completed.

If the Commission agrees with this analysis, it could **revise proposed Section 1994 and the accompanying Comment as shown below:**

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

....

(3) Appoint a conservator of the person, conservator of the estate, or conservator of the person and estate for a proposed conservatee for whom a provisional order to transfer a proceeding from another state has been issued under procedures similar to Section 2001. In making an appointment under this paragraph, a court shall follow the procedures specified in Chapter 3 (commencing with Section 2250) of Part 4. The temporary conservatorship shall terminate in accordance with Section 2257.

(b) If a petition for the appointment of a conservator of the person in an emergency ....

**Comment.** Section 1994 is similar to Section 204 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 specify the procedure for making an emergency appointment under paragraph (a)(1) or an appointment under paragraph (a)(3) while a transfer petition is pending.

See Section 1991(a) ....

**Would the Commission like to make such revisions?**

**Proposed Probate Code Section 2001. Transfer of a California Conservatorship to Another State [UAGPPJA § 301]**

Proposed Probate Code Section 2001 would authorize and specify the procedure for a petition to transfer a conservatorship from California to another state. The corresponding UAGPPJA provision is Section 301.

Subdivisions (d) and (e) of UAGPPJA Section 301 would specify the standard that a court must apply when deciding whether to provisionally grant a petition to transfer a proceeding to another state. Among other things, those subdivisions would specify what happens when someone objects to such a transfer:

(d) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(1) the incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(2) an objection to the transfer has not been made or, *if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person*; and

(3) plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

(e) The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(1) the protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in Section 201(b);

(2) *an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person*; and

(3) adequate arrangements will be made for management of the protected person's property.<sup>2</sup>

After much discussion on several occasions, the Commission decided to specify a different standard for a California court to apply when deciding whether to provisionally grant a petition to transfer a California conservatorship to another state. In the attached draft (as in the Tentative Recommendation), subdivisions (d) and (e) of proposed Probate Code Section 2001 would specify that when someone objects to such a transfer, the court may provisionally grant the transfer *only* if it determines that the transfer would *not* be contrary to the interests of the conservatee:

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

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

....  
(e) The court shall issue a provisional order granting a petition to transfer a conservatorship of the estate, and shall direct the conservator of the estate to petition for acceptance of the

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2. Emphasis added.

conservatorship in the other state, if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds all of the following:

....  
(2) An objection to the transfer has not been made or, *if an objection has been made, the court determines that the transfer would not be contrary to the interests of the conservatee.*  
....<sup>3</sup>

The preliminary part of the Tentative Recommendation (p. 25, lines 16-22) contrasts the two standards as follows:

To prevent a transfer, UAGPPJA would require the objector to establish that the transfer would be contrary to the interests of the subject of the proceeding.<sup>162</sup> If an objector failed to meet that burden, the transfer would go forward. In contrast, the Commission suggests that a transfer should only be permitted if the court affirmatively determines that the transfer would not be contrary to the interests of the conservatee.<sup>163</sup>

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<sup>162</sup>/ See UAGPPJA § 301(d)(2), (e)(2).

<sup>163</sup>/ See proposed Prob. Code § 2001(d), (e) & Comment *infra*.

That discussion provides a straightforward comparison of the two standards, but it does not explain why the Commission chose to deviate from the UAGPPJA approach.

In the attached draft (p. 20, line 27, to p. 21, line 6), the staff remedied that omission and sought to improve the discussion by revising it as follows:

To prevent a transfer, UAGPPJA would require ~~the~~ an objector to establish that the transfer would be contrary to the interests of the subject of the proceeding.<sup>125</sup> ~~If an~~ there was no objection, or the objector failed to meet that burden, the transfer would go forward. In contrast, the Commission suggests that a transfer from California to another state should only be permitted over an objection if the court affirmatively determines that the transfer would not be contrary to the interests of the conservatee.<sup>126</sup>

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<sup>125</sup>/ See UAGPPJA § 301(d)(2), (e)(2).

<sup>126</sup>/ See proposed Prob. Code § 2001(d), (e) & Comment *infra*. As compared to the UAGPPJA approach, the recommended approach would be more consistent with existing California law, which reflects a policy of requiring justification for relocation of a California conservatee to a new state, particularly if the conservatee's personal residence was in California when the

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3. Emphasis added.

conservatorship proceeding commenced. See Prob. Code §§ 2113, 2352, 2352.5; Judicial Council Form GC-090.

The staff considers these revisions consistent with the Commission's discussion at the October meeting.<sup>4</sup> **If you have a concern or comment about the above revisions, please raise that point at or before the upcoming Commission meeting.**

In the Tentative Recommendation, the Comment to proposed Section 2001 provides a different description of the two approaches:

**Comment.** Section 2001 is similar to Section 301 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA")....

....

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

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

In the staff's opinion, that description is not as clear or straightforward as the one in the preliminary part (with or without the revisions discussed above).

To prevent confusion, the staff believes the Comment should mirror the discussion in the preliminary part:

**Comment.** Section 2001 is similar to Section 301 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA")....

....

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

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4. See First Supplement to Memorandum 2013-44, pp. 3-7; Draft Minutes (Oct. 2013), pp. 3-4, 8-9.

To prevent such a transfer, the UAGPPJA provision would require an objector to establish that the transfer would be contrary to the interests of the subject of the proceeding. If there was no objection, or the objector failed to meet that burden, the transfer would go forward. In contrast, under subdivision (d) of this section, a transfer from California to another state would go forward over an objection only if the court affirmatively determines that the transfer would not be contrary to the interests of the conservatee.

Subdivision (e) corresponds to Section 301(e) of UAGPPJA, but modifies the procedure that applies if a person objects to transfer of a conservatorship of the estate. ~~In that circumstance, the objector does not bear the burden of establishing that the transfer would be contrary to the interests of the conservatee. Rather, the requirement of paragraph (e)(2) is satisfied only if the court determines that the transfer would not be contrary to the interests of the conservatee.~~ To prevent such a transfer, the UAGPPJA provision would require an objector to establish that the transfer would be contrary to the interests of the subject of the proceeding. If there was no objection, or the objector failed to meet that burden, the transfer would go forward. In contrast, under subdivision (e) of this section, a transfer from California to another state would go forward over an objection only if the court affirmatively determines that the transfer would not be contrary to the interests of the conservatee.

We have taken the liberty of incorporating these revisions in the attached draft. **If you have a concern or comment about them, please raise that point at or before the upcoming Commission meeting.**

### **Proposed Probate Code Section 2002. Accepting Conservatorship Transferred From Another State [UAGPPJA § 302]**

Proposed Probate Code Section 2002 would authorize and specify the procedure for a petition asking a California court to accept transfer of a conservatorship (or similar proceeding by another name) from another state. Two issues relating to that provision are discussed below.

#### *Concurrent Petition for a Temporary Conservatorship*

In October, the Commission discussed whether to add a new paragraph to subdivision (a) of proposed Section 2002, along the following lines:

(5) A petition under this section may be accompanied by a petition for the appointment of a temporary conservator under Section 1994 and Chapter 3 (commencing with Section 2250) of Part 4. The petition for the appointment of a temporary conservator shall request the appointment of a temporary conservator eligible for appointment in this state, and shall be limited to powers authorized for a temporary conservator in this state. For purposes

of Chapter 3 (commencing with Section 2250) of Part 4, the court shall treat a petition under this section as the equivalent of a petition for the appointment of a general conservator.<sup>5</sup>

The Commission decided to add such a paragraph, but directed the staff to revise the first sentence to make clear that a petition for the appointment of a temporary conservator may be filed at any time; it need not be submitted along with a transfer petition under proposed Section 2002.<sup>6</sup>

In the attached draft, the staff revised the first sentence as follows:

(5) A petition ~~under this section may be accompanied by a petition~~ for the appointment of a temporary conservator under Section 1994 and Chapter 3 (commencing with Section 2250) of Part 4 may be filed while a petition under this section is pending. The petition for the appointment of a temporary conservator shall request the appointment of a temporary conservator eligible for appointment in this state, and shall be limited to powers authorized for a temporary conservator in this state. For purposes of Chapter 3 (commencing with Section 2250) of Part 4, the court shall treat a petition under this section as the equivalent of a petition for the appointment of a general conservator.

**If you have a concern or comment about this revision, please raise that point at or before the upcoming Commission meeting.**

*✍ Issuance of a Final Order*

At the October meeting, the Commission decided to revise the sequencing of the transfer process along the following lines:

- (1) An out-of-state conservator files a transfer petition in the out-of-state court. If certain requirements are met, the court issues a provisional order granting the transfer.
- (2) The out-of-state conservator files a petition in a California court, asking that court to accept the proceeding.
- (3) The California court appoints a court investigator, who conducts an investigation and prepares a report.
- (4) The California court holds a hearing on the petition. If certain requirements are met, the California court issues a provisional order accepting the transfer.
- (5) The California court orders a further investigation of the conservatorship.

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5. See First Supplement to Memorandum 2013-44, pp. 23-26.

6. Draft Minutes (Oct. 2013), pp. 10-11.

- (6) Not later than 60 days after issuing a provisional order accepting the transfer, the California court must determine whether the conservatorship will need to be modified to conform to California law. The court shall conduct a hearing on that matter.
- (7) Upon receiving the final order granting the transfer, the California court issues a final order accepting the proceeding and appointing a conservator.
- (8) After the California court issues a final order accepting the proceeding, the conservator must take an oath, file the required bond, and acknowledge receipt of certain information the court is required to provide. In general, the conservator cannot begin to function as such in California until all those steps occur and the clerk of the court issues the letters of conservatorship.<sup>7</sup>

In Step #7, the California court is to issue a final order accepting a transfer “[u]pon receiving the final order granting the transfer.”

It is possible, however, that an out-of-state court might issue a final order granting a transfer, and the California court might receive that final order, *before* the California court conducts a hearing on conforming the conservatorship to California law. If so, would the California court be required to issue a final order accepting the transfer at that time?

The staff does not think that approach would be consistent with the Commission’s intent, as expressed at the October meeting. Rather, we believe the Commission intended that a California court would issue a final order accepting a transfer only after (1) the required court investigation, court review, and determination of how to conform a transferred conservatorship to California law are complete, and (2) the California court receives the out-of-state court’s final order granting the transfer.

We therefore drafted paragraph (i)(1) of proposed Section 2002 accordingly:

(i)(1) The court shall issue a final order accepting the proceeding and appointing the conservator as a conservator of the person, a conservator of the estate, or a conservator of the person and estate in this state *upon completion of the conformity determination and review* required by subdivision (h), or *upon its receipt* from the court from which the proceeding is being transferred of a final order issued under provisions similar to Section 2001 transferring the proceeding to this state, *whichever occurs later*. In appointing a conservator under this paragraph, the court shall comply with Section 1830.

**Comment.** Section 2002 ....

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7. Draft Minutes (Oct. 2013), p. 9; see also First Supplement to Memorandum 2013-44, p. 12.

....  
Paragraph (1) of subdivision (i) corresponds to Section 302(e) of UAGPPJA, but the court investigation, court review, and determination of how to conform the transferred conservatorship to California law must be complete before the court issues a final order accepting a proceeding and appointing the conservator to serve in California. The second sentence make clear that such an order must meet the same requirements as an order appointing a conservator in a proceeding that originates in California.<sup>8</sup>

....  
A consequence of this approach is that there might sometimes be a time gap between (1) when an out-of-state court issues a final order granting a transfer and terminating the proceeding pending in that court, thereby ending the conservator's authority to act pursuant to the order of appointment in that proceeding, and (2) when a California court issues a final order accepting the transfer and appointing a California conservator. During that period, the proceeding will be in limbo: The conservator will no longer be authorized to act pursuant to the other state's law, but will not yet be authorized to act pursuant to California law. However, that problem could be addressed by appointing a temporary conservator while the transfer petition is pending in the California court, as would be expressly authorized under proposed Section 2002(a)(2).

**Has the staff understood the Commission's intent correctly and properly implemented that intent in proposed Section 2002(i)(2)? Would the Commission prefer to draft that provision differently?**

☞ **Proposed Probate Code Sections 2011-2013. Registration of Order Appointing Conservator [UAGPPJA §§ 401, 402]**

Proposed Probate Code Section 2011 would specify a procedure for registering a conservatorship of the person (or similar proceeding by another name) that is pending in another state. Proposed Probate Code Sections 2012 and 2013 are parallel provisions, for registering a conservatorship of the estate and registering a conservatorship of the person and estate, respectively.

At the October meeting, the Commission decided to make certain specific revisions in those provisions, so as to expand and clarify the notice requirement.<sup>9</sup> The Commission further decided that a notice of intent to register should inform the recipient that a conservatorship registration is not effective if the conservatee

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8. Emphasis added.

9. See Draft Minutes (Oct. 2013), pp. 14-15.

relocates to California.<sup>10</sup> The Commission directed the staff to draft appropriate language implementing the latter decision, and flag that language for the Commission to review.<sup>11</sup>

For proposed Section 2011, the language chosen by the staff and incorporated into the attached draft is shown in underscore below:

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

2011. If a conservator of the person has been appointed in another state and a petition for the appointment of a conservator of the person is not pending in this state, the conservator of the person appointed in the other state, after providing notice pursuant to subdivisions (b) and (c), may register the conservatorship order in this state by filing certified copies of the order and letters of office, and proof of notice as required herein, together with a cover sheet approved by the Judicial Council, in the superior court of any appropriate county of this state.

(b) At least fifteen (15) days before registering a conservatorship in this state, the conservator shall provide notice of an intent to register to all of the following:

(1) The court supervising the conservatorship.

(2) Every person who would be entitled to notice of a petition for the appointment of a conservator in the state where the conservatorship is pending.

(3) Every person who would be entitled to notice of a petition for the appointment of a conservator in this state.

(c) Each notice provided pursuant to subdivision (b) shall include a prominent statement that the conservator of a conservatorship registered under this section is subject to the law of this state while acting in this state, is required to comply with that law in every respect, including, but not limited to, all applicable procedures, and is not authorized to take any action prohibited by the law of this state. In addition, each notice shall prominently state that the registration is effective only while the conservatee resides in another jurisdiction and does not authorize the conservator to take any action while the conservatee is residing in this state.

**Comment.** Subdivision (a) of Section 2011 is similar to Section 401 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 expand and clarify the notice requirement (see subdivisions (b) and (c)) and to clarify the proper filing procedure under California law. The reference to the

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10. *Id.* at 15.

11. *Id.*

“appointing court” has been replaced with a reference to the “court supervising the conservatorship,” because the court currently supervising a conservatorship might not be the same court that originally appointed the conservator. See Article 3 (transfer of conservatorship).

Paragraph (1) of subdivision (b) is similar to the notice requirement in UAGPPJA Section 401. Paragraphs (2) and (3) of subdivision (b) provide for additional notice, so as to alert interested persons that the conservatorship is being registered in California and the conservator might take action in California. If a person has concerns about such action, the person can either challenge a proposed action directly in a California court, or seek redress in the court supervising the conservatorship.

Under subdivision (c), a notice under this section must prominently inform the recipient about key limitations on the effect of registering a conservatorship in this state.

For further information on the effect of a registration under this section, see Section 2014 (effect of registration). For the applicable filing fee, see Gov’t Code § 70662 (fee for registration under California Conservatorship Jurisdiction Act). For recordation with a county recorder, see Section 2016 (recordation of registration documents). For guidance regarding third party reliance on a conservatorship order registered under this section, see Section 2015 (good faith reliance on registration). For limitations on the scope of this chapter, see Section 1981 & Comment.

The staff made similar revisions in proposed Sections 2012 and 2013.

Notably, the new subdivision drafted by the staff would not just require a notice of intent to register to “prominently state that the registration is effective only while the conservatee resides in another jurisdiction and does not authorize the conservator to take any action while the conservatee is residing in this state.” New subdivision (c) would also require a notice of intent to register to “include a prominent statement that the conservator of a conservatorship registered under this section is subject to the law of this state while acting in this state, is required to comply with that law in every respect, including, but not limited to, all applicable procedures, and is not authorized to take any action prohibited by the law of this state.” The latter requirement goes beyond what the Commission requested, but the staff thought it might be helpful to provide such information to interested persons and the court supervising the conservatorship.

**Are proposed Sections 2011, 2012, and 2013 in the attached draft acceptable to the Commission? Would the Commission like to revise them in any way?**

## ☞ **Proposed Probate Code Section 2023. Court Rules and Forms**

In the attached draft, subdivision (a) of proposed Probate Code Section 2023 directs the Judicial Council to “develop court rules and forms as necessary for the implementation” of California’s version of UAGPPJA. Subdivision (b) lists certain specific materials for the Judicial Council to develop.

In preparing the attached draft, it occurred to the staff that **subdivision (b) should refer to the notices required by proposed Sections 2011, 2012, and 2013, as shown in underscore below:**

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

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

(1) A cover sheet for registration of a conservatorship under Section 2011, 2012, or 2013. The cover sheet shall explain that a proceeding may not be registered under Section 2011, 2012, or 2013 if the proceeding relates to a minor. The cover sheet shall further explain that a proceeding in which a person is subjected to involuntary mental health care may not be registered under Section 2011, 2012, or 2013. The cover sheet shall require the conservator to initial each of these explanations. The cover sheet shall also include a prominent statement that the conservator of a conservatorship registered under Section 2011, 2012, or 2013 is subject to the law of this state while acting in this state, is required to comply with that law in every respect, including, but not limited to, all applicable procedures, and is not authorized to take any action prohibited by the law of this state. In addition, the cover sheet shall prominently state that the registration is effective only while the conservatee resides in another jurisdiction and does not authorize the conservator to take any action while the conservatee is residing in this state. Directly beneath these statements, the cover sheet shall include a signature box in which the conservator attests to these matters.

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

(3) A form for providing notice of intent to register a proceeding under Section 2011, 2012, or 2013.

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

**Would the Commission like to make such a revision in proposed Section 2023?**

## Preliminary Part

In preparing the attached draft, the staff revised the preliminary part (narrative discussion) of the Commission's proposal to reflect the decisions made in October. Among other things, the staff softened a sentence that said it would be "ill-advised" to apply UAGPPJA's transfer procedure to an adult with a developmental disability:

Due to those special opportunities for an adult with a developmental disability, ~~it would be ill advised to the proposed legislation would not~~ apply UAGPPJA's streamlined transfer procedure to such an adult.

That revision seems consistent with the Commission's decision to add a footnote to the preliminary part stating:

After California gains some experience with the proposed California Conservatorship Jurisdiction Act, it might be easier to discern how to effectively apply the Act's transfer procedure to an adult with a developmental disability while ensuring that the adult's interests are adequately protected. If that occurs, then the Legislature could revise the Act to extend the transfer procedure to such an adult, subject to any necessary conditions or qualifications.

Draft Minutes (Oct. 2013), p. 4. **If you have a concern or comment about this revision, please raise that point at or before the upcoming meeting.**

In October, the Commission also decided:

The staff should add a new section to the preliminary part, which discusses the cost implications of the proposed legislation. The discussion should emphasize that (1) the proposed legislation will not add significant new costs to the state budget, because the costs associated with transferring a conservatorship to California or registering a conservatorship in California are likely to be less than or equal to the costs of establishing a new conservatorship in California under existing law, and (2) the proposed legislation is likely to result in significant cost savings for the judiciary (as well as for conservatees and their families), because it will ease the process of resolving conservatorship issues that span state lines. The staff should flag the discussion for the Commission to review at its next meeting.<sup>12</sup>

In accordance with the Commission's directions, the staff inserted a section entitled "Cost Implications of the Proposed Reform" into the preliminary part, as follows:

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12. Minutes (Oct. 2013), p. 17.

### **Cost Implications of the Proposed Reform**

By providing guidance to reduce and resolve jurisdictional disputes, establishing a streamlined transfer mechanism for relocating a conservatorship from one state to another, and facilitating out-of-state enforcement of conservatorship orders through a registration process, enactment of UAGPPJA in California would result in significant cost savings for conservatees, conservators, and other persons interested in or affected by a conservatorship situation.<sup>209</sup> For the same reasons, enactment of the proposed legislation would result in significant costs savings for the judiciary, and thus the state budget. Although some of the proposed procedural steps will require the expenditure of judicial resources,<sup>210</sup> certain expenditures would be offset by filing fees,<sup>211</sup> while others are likely to be less than or equal to the corresponding costs of invoking existing law.<sup>212</sup>

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209/ As the ULC explains:

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act will help to resolve many [conservatorship] issues such as original jurisdiction, registration, transfer, and out-of-state enforcement. *It provides procedures that will help to considerably reduce the cost of [conservatorship] cases from state to state.* It should be enacted as soon as possible in every jurisdiction.

ULC, *Adult Guardianship and Protective Proceedings Jurisdiction Act Summary*, <http://www.uniformlaws.org/ActSummary.aspx?title=Adult%20Guardianship%20and%20Protective%20Proceedings%20Jurisdiction%20Act>.

210/ E.g., holding a hearing on a transfer petition; conducting a court investigation of a conservatorship being transferred; appointing counsel for a conservatee in connection with a transfer petition.

211/ See, e.g., proposed Gov't Code § 70662 (fee for registration of conservatorship) & Comment *infra*.

212/ E.g., holding a hearing on establishment of a conservatorship in California upon relocating from another state; conducting a court investigation of a conservatorship being established in California under such circumstances; appointing counsel for a conservatee in connection with a petition to establish a conservatorship.

**If you have a concern or comment about this revision, please raise that point at or before the upcoming meeting.**

Respectfully submitted,

Barbara Gaal  
Chief Deputy Counsel

#L-750

STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

**STAFF DRAFT**

RECOMMENDATION

Uniform Adult Guardianship and Protective  
Proceedings Jurisdiction Act

December 2013

California Law Revision Commission  
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## SUMMARY OF 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 studied UAGPPJA to determine whether and, if so, in what form, the act should be enacted in California. After conducting extensive research and analysis, and receiving input from a broad range of stakeholders, the Commission 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.



## ACKNOWLEDGMENTS

Comments from knowledgeable persons are invaluable in the Commission's study process. The Commission would like to express its appreciation to the individuals and organizations who have taken the time to share their thoughts with the Commission.

Inclusion of the name of an individual or organization should not be taken as an indication of the individual's opinion or the organization's position on any aspect of this recommendation. The Commission regrets any errors or omissions that may have been made in compiling these acknowledgments.

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## UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

1 The Uniform Law Commission (“ULC”)<sup>1</sup> approved the Uniform Adult  
2 Guardianship and Protective Proceedings Jurisdiction Act (“UAGPPJA”) in 2007.<sup>2</sup>  
3 The scope of this uniform act is relatively narrow; it focuses only on jurisdiction  
4 and related issues in court proceedings involving adults who require assistance  
5 with personal care, property administration, or both.<sup>3</sup> Nonetheless, the legislation  
6 is likely to have a big impact, because the proportion of elderly adults in this  
7 country is rapidly growing, while the whole population is highly mobile,  
8 frequently moving and conducting transactions across state lines.<sup>4</sup>

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

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1. The Uniform Law Commission, also known as the National Conference of Commissioners on Uniform State Laws, is an unincorporated association comprised of each state’s Commission on Uniform Laws, as well as such commissions from the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. The state uniform law commissioners come together as the Uniform Law Commission to study and review state law to determine which areas of the law should be uniform. The ULC promotes the principle of uniformity by drafting and proposing statutes in areas of the law where uniformity between the states is deemed desirable. As the ULC puts it, the organization “provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.” 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](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 37 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

1 legislation to implement this act, the California Commission on Uniform State  
2 Laws<sup>6</sup> requested that the California Law Revision Commission undertake a study  
3 of it.<sup>7</sup> Such a study was needed, because UAGPPJA uses different terminology  
4 than California law on the same topic,<sup>8</sup> 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 held a series of public meetings on the topic,  
8 prepared and circulated extensive written materials in connection with those  
9 meetings, and received an abundance of thoughtful input from stakeholders. After  
10 researching and analyzing the matter, the Commission recommends that California  
11 enact UAGPPJA, with various modifications as presented and described in this  
12 recommendation.

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

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to 14-12503), Arkansas (Ark. Code §§ 28-74-101 to 28-74-505), Colorado (Colo. Rev. Stat. §§ 15-14.5-101 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 Jersey (N.J. Stat. §§ 3B:12B-1 to 3B:12B-22); New Mexico (N.M. Stat. Ann. §§ 45-5A-101 to 45-5A-502), New York (N.Y. Mental Hyg. Law §§ 83.01-83.45), 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 have not yet enacted UAGPPJA: Florida, Georgia, Kansas, Louisiana, Massachusetts, Michigan, Mississippi, New Hampshire, 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 Impetus for UAGPPJA**

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

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

12 A corollary trend is that many individuals with health problems (both elderly  
13 and younger ones) will need to have a court appoint a family member, friend, or  
14 other person to help manage the individual’s personal care or financial situation.<sup>16</sup>  
15 Statistics regarding the number of such court proceedings are not easy to obtain,  
16 but there were an estimated 400,000 of them in the country in 1987, and the  
17 number is probably much higher today.<sup>17</sup> Different states have different rules for  
18 such proceedings,<sup>18</sup> and even different terminology.<sup>19</sup>

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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](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](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](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](http://www.guardianship.org/reports/Guardianship_Survey_Report.pdf).

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

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

- 7 • Jurisdictional issues.
- 8 • Transfer issues.
- 9 • Interstate recognition issues.

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

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

#### 16 **General Provisions (Article 1 of UAGPPJA)**

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

#### 21 **Short Title**

22 Section 101 of UAGPPJA says that the legislation may be cited as “the Uniform  
23 Adult Guardianship and Protective Proceedings Jurisdiction Act.” That short title  
24 could cause confusion in California, because the Probate Code uses different  
25 terminology. The term “conservatorship” applies to the types of proceedings  
26 covered by UAGPPJA, and the term “guardianship” applies only to proceedings  
27 relating to minors.<sup>21</sup>

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(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.

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

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

6 *Limitations on Scope*

7 The Commission recommends adding a provision that would state several  
8 limitations on the scope of the proposed legislation.

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

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

20 Due to its definition of “adult,” UAGPPJA is already consistent with that  
21 approach. To underscore the limitation, however, the Commission recommends  
22 inclusion of a provision expressly stating that the California Conservatorship  
23 Jurisdiction Act does not apply to a minor, regardless of whether the minor is or  
24 was married.<sup>28</sup> The same provision should also state that the act does not apply to  
25 any proceeding in which a person is appointed to provide personal care or property  
26 administration for a minor.<sup>29</sup> Those steps will eliminate any ambiguity about  
27 whether the act applies to a minor who qualifies as an adult for some legal  
28 purposes.

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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*.

29. See *id*.

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

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

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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 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); *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.

1 that the Legislature expressly exclude those proceedings from the scope of the  
2 California Conservatorship Jurisdiction Act.<sup>35</sup>

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.<sup>36</sup> 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.”<sup>37</sup> 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.<sup>38</sup>

14 Due to those special opportunities for an adult with a developmental disability,  
15 the proposed legislation would not apply UAGPPJA’s streamlined transfer  
16 procedure<sup>39</sup> to such an adult. Instead, the Commission recommends making the  
17 transfer procedure (but not UAGPPJA’s registration procedure)<sup>40</sup> expressly

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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*.

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

1 inapplicable to an adult with a developmental disability, and to any proceeding in  
2 which a person is appointed to provide personal care or property administration for  
3 an adult with a developmental disability.<sup>41</sup>

4 That would mean that when such an adult moves to California from another  
5 state, it will be necessary to commence a new conservatorship proceeding in a  
6 California court, as under existing law. Although that might be more costly than  
7 using the transfer procedure, it would help ensure that the adult receives the  
8 benefit of California’s procedures for such adults, and full recognition of the rights  
9 to which the adult is entitled under California law. Likewise, if an adult with a  
10 developmental disability moves from California to another state, that state will  
11 have to evaluate the adult’s needs and the available resources using its normal  
12 processes, not an abbreviated transfer procedure. Again, the burdens of initiating a  
13 new proceeding appear less compelling than the importance of assuring that the  
14 developmentally disabled adult receives a careful evaluation and the full benefit of  
15 any special programs for such an adult.<sup>42</sup>

16 **Definitions**

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

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

25 In short, UAGPPJA defines a “guardian” as “a person appointed by the court to  
26 make decisions regarding the person of an adult ....”<sup>43</sup> In California, however, a  
27 “guardian” may only be appointed for a minor.<sup>44</sup> The term “conservator of the  
28 person” is comparable to what UAGPPJA denominates a “guardian.” In what is

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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 & Comment *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. After California gains some experience with the proposed California Conservatorship Jurisdiction Act, it might be easier to discern how to effectively apply the Act’s transfer procedure to an adult with a developmental disability while ensuring that the adult’s interests are adequately protected. If that occurs, then the Legislature could revise the Act to extend the transfer procedure to such an adult, subject to any necessary conditions or qualifications.

43. UAGPPJA § 102(3).

44. See Prob. Code §§ 1500-1501.

1 known as a “Probate Code conservatorship” (sometimes referred to as a “general  
2 conservatorship”), a California court may, with certain exceptions, appoint a  
3 “conservator of the person” for “a person who is unable to provide properly for his  
4 or her personal needs for physical health, food, clothing, or shelter ....”<sup>45</sup>

5 Under UAGPPJA, the term “conservator” refers to “a person appointed by the  
6 court to administer the property of an adult ....”<sup>46</sup> In California, the comparable  
7 term is a “conservator of the estate.” In a Probate Code conservatorship, a  
8 California court may, with certain exceptions, appoint a “conservator of the estate”  
9 for “a person who is substantially unable to manage his or her own financial  
10 resources or to resist fraud or undue influence ....”<sup>47</sup>

11 California also expressly recognizes that a single person may serve as both  
12 “conservator of the person” and “conservator of the estate.”<sup>48</sup> Such a person may  
13 be referred to as a “conservator of the person and estate.”<sup>49</sup> *Id.* In contrast,  
14 UAGPPJA does not include a special term for a person who acts in both roles (i.e.,  
15 a person who is both a “guardian” and a “conservator” as defined in UAGPPJA).

16 A further complication is the terminology used to refer to the types of  
17 proceedings in which such appointments are made. Under UAGPPJA, a  
18 “guardianship proceeding” is “a judicial proceeding in which an order for the  
19 appointment of a guardian is sought or has been issued.”<sup>50</sup> A “protective order” is  
20 “an order appointing a conservator or other order related to management of an  
21 adult’s property.”<sup>51</sup> A “protective proceeding” is “a judicial proceeding in which a  
22 protective order is sought or has been issued.”<sup>52</sup> The term “conservatorship” is not  
23 defined, although it is used in a few places in UAGPPJA, apparently to refer to a  
24 proceeding in which a UAGPPJA “conservator” is appointed.<sup>53</sup>

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

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45. Prob. Code § 1801(a).

46. UAGPPJA § 102(2).

47. Prob. Code § 1801(b).

48. Prob. Code § 1801(c).

49. *Id.*

50. UAGPPJA § 102(5).

51. UAGPPJA § 102(10).

52. UAGPPJA § 102(11).

53. 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 under UAGPPJA. Instead of being limited to proceedings that involve  
2 management of property, the term seems to encompass all “conservatorship  
3 proceedings” and “guardianship proceedings,” as well as some types of similar  
4 proceedings.<sup>54</sup>

5 Due to these terminology differences, it would be confusing to enact UAGPPJA  
6 in California as is. Rather, the Commission recommends revising the act to use  
7 California terminology throughout.<sup>55</sup> That would make the act consistent with the  
8 remainder of the Probate Code and with California case law, minimizing the  
9 possibility of confusion.

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

22 *Treatment of Specified Non-State Entities.* UAGPPJA’s definition of “state”  
23 includes the fifty states and several non-state entities: “the District of Columbia,  
24 Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe,  
25 or any territory or insular possession subject to the jurisdiction of the United  
26 States.”<sup>56</sup> If California were to enact UAGPPJA with that definition, California  
27 courts applying the act would be required to treat a proceeding from one of the  
28 enumerated non-state entities the same way as a proceeding from a state. For  
29 example, parties could use UAGPPJA’s streamlined transfer process to transfer a  
30 proceeding from one of those non-state entities to California, or vice versa.

31 It is therefore necessary to consider the manner in which those entities conduct  
32 the types of proceedings governed by UAGPPJA. The District of Columbia is  
33 subject to federal due process protections,<sup>57</sup> as are Puerto Rico,<sup>58</sup> the U.S. Virgin

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

55. See proposed Prob. Code § 1982 *infra*; see also proposed Prob. Code §§ 1980-2024 & Comments *infra*. The Commission also recommends replacing “must” with “shall” throughout the act, in conformity with California drafting practices.

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

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

1 Islands,<sup>59</sup> Guam,<sup>60</sup> and the Commonwealth of the Northern Mariana Islands.<sup>61</sup>  
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.<sup>62</sup> 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 [Insert discussion of federally recognized Indian tribes.]

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

9 In addition to the provisions discussed above, Article 1 of UAGPPJA contains a  
10 provision regarding application of the proposed legislation to a court proceeding in  
11 another country,<sup>63</sup> provisions facilitating communication and cooperation between  
12 courts of different states,<sup>64</sup> and a provision on taking testimony in another state.<sup>65</sup>  
13 Aside from revisions to conform to California terminology, and a clarification  
14 relating to assessment of expenses incurred when courts cooperate under  
15 UAGPPJA,<sup>66</sup> the Commission does not recommend any changes relating to those  
16 provisions.<sup>67</sup>

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

18 Article 2 of UAGPPJA addresses the problem of determining the proper  
19 jurisdiction of a proceeding in which a court appoints someone to assist another  
20 person with personal care or property management. Jurisdictional issues arise  
21 often, because individuals frequently have contacts with more than one state.<sup>68</sup> For  
22 example, an individual might own property in several states, or might spend part

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58. 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).

59. See 48 U.S.C. § 1561.

60. See 48 U.S.C. § 1421(e), (u).

61. 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).

62. 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](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](http://www.asbar.org/index.php?option=com_content&view=article&id=641:1asr2d10&catid=50:1asr2d&Itemid=254).

63. UAGPPJA § 103.

64. UAGPPJA §§ 104, 105.

65. UAGPPJA § 106.

66. See proposed Prob. Code § 1985(c) & Comment *infra*.

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

68. UAGPPJA Prefatory Note, p. 1.

1 of the year living in one state and part of the year living in another state. If such an  
2 individual appears to need a court-appointed assistant, it is important to have an  
3 effective mechanism for resolving which state has jurisdiction to evaluate the need  
4 for an appointment, select an assistant if needed, and supervise the proceeding  
5 afterwards. Article 2 of UAGPPJA is intended to provide such a mechanism.<sup>69</sup>

6 In general, UAGPPJA would establish a three-tier hierarchy for determining  
7 jurisdiction.<sup>70</sup> At the top of the hierarchy is the “home state,” which is determined  
8 by examining where the individual was physically present for a six-month period  
9 preceding the filing of the petition for appointment of an assistant.<sup>71</sup> The home  
10 state has primary jurisdiction to make an appointment.<sup>72</sup> Next in the hierarchy is a  
11 “significant-connection” state,<sup>73</sup> which is defined as a state, other than the home  
12 state, with which the individual has a significant connection aside from mere  
13 physical presence and in which significant evidence concerning the individual is  
14 available.<sup>74</sup> Finally, a court from a state that is neither the home state nor a  
15 significant-connection state may exercise jurisdiction in certain limited  
16 circumstances.<sup>75</sup>

17 The details of UAGPPJA’s jurisdictional scheme, including exceptions to the  
18 general rules described above, are explained at length in UAGPPJA.<sup>76</sup> It is not  
19 necessary to reiterate all of those details here. UAGPPJA’s jurisdictional scheme  
20 is reasonable because it is based on the strength of an individual’s ties to a  
21 jurisdiction.<sup>77</sup> Eliminating jurisdictional uncertainties through a uniform approach  
22 would be a major step forward. The Commission therefore recommends that the  
23 Legislature enact UAGPPJA’s jurisdictional rules with very few revisions.

24 The proposed legislation would conform those rules to California terminology,  
25 drafting practices, and notice procedure.<sup>78</sup> In addition, the proposed legislation

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69. *Id.*

70. UAGPPJA Prefatory Note, p. 3.

71. 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*.

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

73. 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.

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

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

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

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

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

1 would make a few other minor modifications,<sup>79</sup> and refine the treatment of the  
2 following matters:

3 ***Exclusive Basis for Jurisdiction***

4 Section 202 of UAGPPJA states that the act’s jurisdictional rules “provid[e] the  
5 exclusive jurisdictional basis” for a court to appoint a person to assist an adult with  
6 personal care or property administration. The apparent intent is to make clear that  
7 UAGPPJA’s jurisdictional rules are the only basis for determining which state has  
8 jurisdiction of a proceeding to make such an appointment.<sup>80</sup> If the provision was  
9 enacted in California, those jurisdictional rules would apply regardless of whether  
10 a party is invoking the transfer procedures of UAGPPJA or is seeking to establish  
11 a new conservatorship in California.<sup>81</sup>

12 Because UAGPPJA’s jurisdictional provisions would have this impact, it would  
13 be helpful to include a “signpost provision” in Chapter 4 (“Jurisdiction and  
14 Venue”) of Part 4 (“Provisions Common to Guardianship and Conservatorship”) of  
15 Division 4 of the Probate Code.<sup>82</sup> That step would serve to alert people to the  
16 existence of those jurisdictional provisions, which might otherwise be overlooked  
17 when a conservatorship is being initiated in, rather than transferred to, California.

18 The Commission also recommends revising the language of UAGPPJA Section  
19 202 to clarify its scope. From the ULC’s discussion of this provision, it is evident  
20 that the provision is only intended to address which state has jurisdiction, not other  
21 jurisdictional issues like whether an appellate court may make such an  
22 appointment.<sup>83</sup> The Commission proposes to make this point more clear.<sup>84</sup>

23 ***Declining to Exercise Jurisdiction Because Another State is a More Appropriate Forum***

24 In a number of places, UAGPPJA refers to a court that “declines to exercise  
25 jurisdiction” because another state is “a more appropriate forum.”<sup>85</sup> For example,  
26 the second clause of Section 203(2)(A) would give jurisdiction to a court in a

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79. The Commission recommends that the provision establishing notice requirements (UAGPPJA § 208) be revised to make clear that the petitioner is responsible for giving the required notice. See proposed Prob. Code § 1998 & Comment *infra*. The Commission also recommends that the provision authorizing a court to decline jurisdiction due to unjustifiable conduct (UAGPPJA § 207) be revised to expressly permit recovery of medical examination expenses. See proposed Prob. Code § 1997 & Comment *infra*.

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

81. 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.

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

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

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

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

1 significant-connection state if a court in the home state has declined to exercise  
2 jurisdiction because the significant-connection state is a more appropriate forum.<sup>86</sup>  
3 Similarly, Section 203(3) would give jurisdiction to a court in a peripheral state (a  
4 state that is neither the home state, a significant-connection state, nor a place with  
5 special jurisdiction under Section 204) if that is constitutionally permissible and  
6 the home state plus all significant-connection states have declined to exercise  
7 jurisdiction because the peripheral state is a more appropriate forum.<sup>87</sup>

8 If those rules were enacted in California, a California court would sometimes  
9 have to determine whether a court in another state had “declined to exercise  
10 jurisdiction” because California is “a more appropriate forum.” Likewise, a court  
11 in another UAGPPJA state will sometimes have to determine whether a California  
12 court has “declined to exercise jurisdiction” because the other state is “a more  
13 appropriate forum.”

14 Under UAGPPJA, when a court “declines to exercise jurisdiction” because  
15 another state is “a more appropriate forum,” it must “either dismiss or stay the  
16 proceeding.”<sup>88</sup> The uniform act thus contemplates that the court will take an  
17 affirmative step, the issuance of a dismissal or stay order. But the act is silent on  
18 whether the court’s order must expressly state that the court is declining to  
19 exercise jurisdiction because another state is a more appropriate forum.<sup>89</sup>

20 To facilitate application of the jurisdictional rules, the proposed legislation  
21 would:

- 22 (1) Revise UAGPPJA Section 203(2)(A) and (3) to make clear that they apply  
23 only when a court in another state has *expressly* declined jurisdiction on the  
24 ground that California is a more appropriate forum.<sup>90</sup>

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86. 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*).

87. 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.

88. UAGPPJA § 206(b).

89. See *id.*

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

- 1 (2) Revise UAGPPJA Section 206 to make clear that when a California court  
2 declines to exercise jurisdiction because a court in another state is a more  
3 appropriate forum, the California court must do so *expressly in a record*.<sup>91</sup>

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

6 In addition, the proposed legislation would permit an interested person, a  
7 California court, or a court of another state to raise the issue of appropriate forum  
8 by a petition, motion, or request specifically directed to that issue.<sup>92</sup> It would not  
9 be necessary to file a conservatorship proceeding in California, which the court  
10 could “dismiss or stay,”<sup>93</sup> simply for the purpose of obtaining a ruling on that  
11 point.

12 That approach will avoid unduly burdening proposed conservatees and  
13 conservators, their family and friends, and the court system. A variety of  
14 procedural protections would apply to a petition, motion, or request raising the  
15 issue of appropriate forum, so California does not relinquish its jurisdiction (and  
16 thus its right to protect the proposed conservatee and enforce its conservatorship  
17 policies) unless that step is warranted.<sup>94</sup> Of particular importance, the petitioner  
18 would have to provide notice to the same persons who would be entitled to notice  
19 of a petition to appoint a conservator.<sup>95</sup> That requirement will help ensure that  
20 interested persons have an opportunity to speak up if they have concerns about  
21 California relinquishing its jurisdiction.

## 22 *Emergency Jurisdiction*

23 Section 204 of UAGPPJA describes several situations in which a court has  
24 “special jurisdiction” (i.e., jurisdiction that is not based on UAGPPJA’s normal  
25 three-tier jurisdictional hierarchy<sup>96</sup>). Among other things, the section allows a  
26 court lacking jurisdiction under the normal hierarchy to make a short-term  
27 appointment in an “emergency”<sup>97</sup> for an individual who is physically present in the

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91. See proposed Section 1996(b) & Comment *infra*. The proposed legislation would also revise UAGPPJA Section 206 to emphasize that in determining whether it is an appropriate forum, a court must consider the location of the proposed conservatee’s family, friends, and other persons required to be notified of the proceeding. See *id*.

92. See proposed Prob. Code § 1996 & Comment *infra*.

93. UAGPPJA § 206(b).

94. See proposed Prob. Code § 1996 & Comment *infra*.

95. See proposed Prob. Code § 1996(a)(3) *infra*.

96. 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.

97. 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

1 state.<sup>98</sup> The provision does not specify the procedure for making such an  
2 appointment.

3 California’s procedure for establishing a permanent conservatorship would be  
4 too slow for use in an emergency situation.<sup>99</sup> 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.<sup>100</sup>

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.<sup>101</sup> 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.<sup>102</sup>

19 Before UAGPPJA, in most states it was necessary to re-establish a  
20 conservatorship from scratch when such a move occurred.<sup>103</sup> 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 lacks 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.

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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 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)).

98. See UAGPPJA § 204(a)(1).

99. 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”).

100. See proposed Prob. Code § 1994(a)(1) & Comment *infra*.

101. See UAGPPJA Prefatory Note, p. 1.

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

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

1 Such relitigation is costly, time-consuming, and stressful, draining resources of  
2 conservatees, their families, and the judicial system.<sup>104</sup> Those burdens can be  
3 particularly difficult for families that are already stretched thin, struggling to  
4 provide personal care and financial management for a needy relative, while also  
5 handling their own affairs.

6 In drafting Article 2 of UAGPPJA, the ULC sought to provide a streamlined  
7 transfer process, so that it would not be necessary to fully relitigate such a  
8 proceeding when a move occurred.<sup>105</sup> That transfer process involves a number of  
9 steps, as described below.

10 ***Transfer Procedure Under UAGPPJA***

11 Although UAGPPJA uses the term “transfer,” what actually occurs is  
12 technically not transfer of a proceeding from one state to another. Rather, the  
13 process involves termination of an existing proceeding in one state and  
14 commencement of a new proceeding in another state, in an expedited and  
15 coordinated manner. The term “transfer” is just a shorthand way to refer to this  
16 process.<sup>106</sup>

17 A “transfer” under UAGPPJA requires the issuance of four court orders: (1) a  
18 provisional order granting the transfer, (2) a provisional order accepting the  
19 transfer, (3) a final order confirming the transfer, and (4) a final order accepting  
20 the transfer. A hearing is held only if the transferring court or the accepting court  
21 deems it necessary, or if one is requested by a person entitled to notice of the  
22 transfer proceeding.<sup>107</sup>

23 To begin the transfer process, a court-appointed assistant must file a transfer  
24 petition in the court currently supervising the proceeding.<sup>108</sup> That court must issue  
25 an order provisionally granting the transfer if it is satisfied that the other state will  
26 accept the transfer and the court makes certain findings regarding the proposed  
27 move.<sup>109</sup> The required findings differ slightly depending on whether the  
28 proceeding involves personal care or financial assistance.<sup>110</sup>

29 After the transferring court provisionally grants the transfer, the court-appointed  
30 assistant must file a petition in a court of the other state, asking it to accept the  
31 transfer.<sup>111</sup> That court must issue a provisional order accepting the transfer unless:

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104. *Id.*

105. *Id.*

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

107. See UAGPPJA §§ 301(c), 302(c).

108. UAGPPJA § 301(a).

109. UAGPPJA § 301(d), (e).

110. See UAGPPJA § 301(d).

111. UAGPPJA § 302(a).

1 (1) the assistant is ineligible for appointment in the accepting state or (2) someone  
2 objects to the transfer and establishes that the transfer would be contrary to the  
3 interests of the person receiving assistance.<sup>112</sup>

4 On receipt of the provisional order accepting the transfer and whatever  
5 documents are normally required to terminate a proceeding of this type, the  
6 transferring court must issue a final order confirming the transfer and terminating  
7 its proceeding.<sup>113</sup> The transferring court's final order is then provided to the  
8 accepting court, which must issue a final order accepting the transfer and  
9 appointing the petitioner to provide assistance in the accepting state.<sup>114</sup> To  
10 expedite the transfer process, the court in the accepting state must give deference  
11 to the transferring court's determination of capacity and selection of the person to  
12 provide assistance.<sup>115</sup>

13 Because the applicable law and practice are likely to differ in the two states,  
14 within ninety days after issuing its final order accepting the transfer, the accepting  
15 court must determine whether the proceeding needs to be modified to conform to  
16 the law of that state.<sup>116</sup> The ninety day requirement is not inflexible; a state may  
17 coordinate the conformity determination with other time limits applicable to the  
18 proceeding. The conformity determination is the last step in the transfer process.

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

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

28 Section 301 of UAGPPJA specifies the process for transferring a proceeding to  
29 another state. If that section was enacted in California, a California court would  
30 not have to provisionally approve a transfer to another state unless it found that  
31 plans for care of the conservatee in the other state were "reasonable and  
32 sufficient,"<sup>117</sup> or, in a conservatorship of the estate, that adequate arrangements  
33 would be made for management of the conservatee's property.<sup>118</sup> In those

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112. UAGPPJA § 302(d).

113. UAGPPJA § 301(f).

114. UAGPPJA § 302(e).

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

116. UAGPPJA § 302(f).

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

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

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

7 During the transfer process, however, the California court would still have  
8 responsibility for supervising the care of the conservatee. To eliminate any doubt  
9 that the conservator is bound by California law throughout the transfer process, the  
10 Commission recommends making that point explicit in the provision governing  
11 the conservator’s oath.<sup>119</sup>

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

- 14 • Revisions to conform to California terminology.<sup>120</sup>
- 15 • Revisions to more clearly coordinate the provision with the provision  
16 governing acceptance of a transfer (UAGPPJA § 302).<sup>121</sup>
- 17 • Revisions to specify that the petitioner is responsible for giving the required  
18 notice.<sup>122</sup>
- 19 • Revisions to conform to California practice, under which a party is required  
20 to give notice *of a hearing* on a motion or petition, not just notice of a  
21 petition.<sup>123</sup>
- 22 • Revisions to require a hearing on every transfer petition.<sup>124</sup> This would  
23 afford interested persons a relatively easy means to voice objections; they  
24 would not have to bear the burden of figuring out how to request a hearing.  
25 If there are no objections to a transfer petition, the court could place the  
26 matter on the consent calendar.
- 27 • Revisions of the procedure that applies if a person objects to a transfer. To  
28 prevent a transfer, UAGPPJA would require an objector to establish that the

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

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

121. Compare proposed Prob. Code § 2001(d), (e) & (f) *infra* (court shall direct conservator to petition for “acceptance of the conservatorship in the other state”) with proposed Prob. Code § 2002(a)(1) *infra* (“conservator must petition the court in this state to accept the conservatorship”) and proposed Prob. Code § 2002(i)(1) *infra* (“court shall issue final order accepting the proceeding”). See also UAGPPJA §§ 301(d) (court shall “direct the guardian to petition for guardianship in the other state”), 301(e) (court shall “direct the conservator to petition for conservatorship in the other state”), 302(a)(1) (“guardian or conservator must petition the court in this state to accept the guardianship or conservatorship”), 302(e)(1) (“court shall issue a final order accepting the proceeding”).

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

123. See *id.*

124. 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).

1 transfer would be contrary to the interests of the subject of the  
2 proceeding.<sup>125</sup> If there was no objection or the objector failed to meet that  
3 burden, the transfer would go forward. In contrast, the Commission suggests  
4 that a transfer from California to another state should only be permitted over  
5 an objection if the court affirmatively determines that the transfer would not  
6 be contrary to the interests of the conservatee.<sup>126</sup>

- 7 • Revisions to make clear which requirements apply to a proceeding that  
8 involves both personal care and property management (what is known in  
9 California as a conservatorship of the person and estate).<sup>127</sup>

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

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

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

25 UAGPPJA does not say so expressly, but it is fairly obvious that the ULC  
26 intended for a transferred proceeding to be governed by the law of the state to  
27 which it was transferred.<sup>128</sup> ULC representatives have confirmed as much.<sup>129</sup>  
28 Application of California law also appears to be the only sensible solution:  
29 Otherwise, similarly situated California conservatees would be subject to disparity  
30 in treatment depending on where a conservatorship originated, and California

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125. See UAGPPJA § 301(d)(2), (e)(2).

126. See proposed Prob. Code § 2001(d), (e) & Comment *infra*. As compared to the UAGPPJA approach, the recommended approach would be more consistent with existing California law, which reflects a policy of requiring justification for relocation of a California conservatee to a new state, particularly if the conservatee's personal residence was in California when the conservatorship proceeding commenced. See Prob. Code §§ 2113, 2352, 2352.5; Judicial Council Form GC-090.

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

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

129. 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).

1 courts would have to learn and apply the rules of numerous other jurisdictions on a  
2 daily basis.

3 Because this is such an important matter, the Commission recommends that it be  
4 stated expressly in the statutory provision on accepting a transfer. Specifically, the  
5 Commission proposes to include the following statement in that provision:

6 When a transfer to this state becomes effective, the conservatorship is subject to  
7 the law of this state and shall thereafter be treated as a conservatorship under the  
8 law of this state. If a law of this state, including, but not limited to, Section  
9 2356.5, mandates compliance with special requirements to exercise a particular  
10 conservatorship power or take a particular step, the conservator of a transferred  
11 conservatorship may not exercise that power or take that step without first  
12 complying with those special requirements.<sup>130</sup>

13 That rule will help to ensure that California policies are protected. For example,  
14 California has detailed requirements for placing a conservatee with dementia in a  
15 secured perimeter residential care facility for dementia patients,<sup>131</sup> and for  
16 authorizing the administration of psychotropic medications to such a  
17 conservatee.<sup>132</sup> Under the Commission’s proposed approach, it would be clear that  
18 a conservator would have to satisfy those requirements before taking those steps in  
19 California.

20 *Expressly Preventing a Court Appointee from Taking Action in California Until*  
21 *the Transfer is Complete and Becomes Effective.* For similar reasons, the  
22 Commission also recommends a second statutory clarification: Making clear that a  
23 court-appointed assistant may not take action in California pursuant to a transfer  
24 petition unless and until a California court issues a final order accepting the  
25 transfer and the court and conservator have completed the same series of steps that  
26 must be taken when a conservatorship originates in California.<sup>133</sup> In particular, the  
27 necessary steps are:

- 28 (1) The conservator must take an oath to perform the duties of the position  
29 according to law.<sup>134</sup>
- 30 (2) The court must set the bond and the conservator must file the required bond,  
31 if any.<sup>135</sup>

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130. See proposed Prob. Code § 2002(i)(4) & Comment *infra*. This concept may be conveniently referred to as the “When in Rome” principle.

131. See Prob. Code § 2356.5.

132. See *id.*

133. See proposed Prob. Code § 2002(i)(2) & Comment *infra*. Although the court-appointed assistant would not be able to take action *pursuant to a transfer petition* until that series of steps was completed, that person could take action *pursuant to an order establishing a temporary conservatorship*, if such an order existed. See proposed Prob. Code § 2002(i)(3) & Comment *infra*.

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

- 1 (3) The court must provide the conservator with the same informational  
2 materials that a new conservator receives when a conservatorship originates  
3 in California.<sup>136</sup>
- 4 (4) The conservator must acknowledge receipt of the required informational  
5 materials.<sup>137</sup>
- 6 (5) The clerk of the court must issue the letters of conservatorship.<sup>138</sup>

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

11 *Allowing But Not Mandating Full Reevaluation of Capacity and the Choice of*  
12 *the Appointee Pursuant to California Law.* Section 302 of UAGPPJA provides  
13 that “[i]n granting a petition under this section, the court *shall recognize a ...*  
14 *conservatorship order from the other state, including the determination of the*  
15 *[conservatee’s] incapacity and the appointment of the ... conservator.”*<sup>139</sup> The key  
16 purpose of that requirement is to eliminate the burden of having to “prove the case  
17 in the second state from scratch, including proving the respondent’s incapacity and  
18 the choice of ... conservator.”<sup>140</sup>

19 Although that is an important objective, the Commission has serious  
20 reservations about requiring a California court to accept another state’s ruling on  
21 capacity or choice of conservator without qualification. Because the UAGPPJA  
22 process would not be a true transfer, the constitutional requirement to give full  
23 faith and credit to a sister state judgment<sup>141</sup> would not seem to apply. Further, the  
24 United States Supreme Court is likely to treat a conservatorship order in the same  
25 manner as a child custody order, concluding that because the order is subject to  
26 modification in the state that issued it, the order is also subject to modification in a  
27 sister state.<sup>142</sup>

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

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

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

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

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

140. UAGPPJA Art. 3 General Comment.

141. 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.

142. 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.

1 Most importantly, California’s policies and procedures regarding determination  
2 of capacity and selection of a conservator differ from those in other states. For  
3 example, California has enacted the Due Process in Competence Determinations  
4 Act, which establishes detailed and demanding rules and procedures for assessing  
5 a person’s capacity.<sup>143</sup> In neighboring states (Arizona, Nevada, and Oregon), the  
6 rules regarding determination of capacity are not as fully developed.<sup>144</sup> Similarly,  
7 California’s rules governing selection of a conservator differ in various respects  
8 from those in neighboring states, and those rules reflect policy choices such as  
9 how much weight to give to the conservatee’s preference and how to rank a  
10 domestic partner in comparison to other relatives.<sup>145</sup> By requiring a California  
11 court to accept another state’s determination of capacity or selection of appointee,  
12 Section 302 of UAGPPJA threatens to impinge on California’s policy preferences  
13 regarding those matters.

14 On the other hand, however, requiring full relitigation of capacity and the choice  
15 of conservator in each case transferred to California would defeat the very purpose  
16 of UAGPPJA’s transfer process: making relocation of this type of court  
17 proceeding less burdensome. In particular, assessing an individual’s capacity can  
18 be embarrassing<sup>146</sup> for that individual and costly because it requires input from  
19 medical professionals<sup>147</sup> and might entail a jury trial.<sup>148</sup> UAGPPJA seeks to  
20 minimize those concerns.

21 The Commission therefore proposes a middle ground. Full relitigation of  
22 capacity and the choice of conservator would not be required in every case

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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.

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

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

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

146. 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.”).

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

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

1 transferred to California. But such relitigation would be *allowed if requested in the*  
2 *normal manner that those issues can be revisited in any California*  
3 *conservatorship*: (1) by filing a petition for termination of the conservatorship, if  
4 the intent is to show that the conservatee has sufficient capacity to handle his or  
5 her own affairs without assistance,<sup>149</sup> or (2) by filing a petition to remove the  
6 conservator, if the intent is to obtain a new conservator in accordance with  
7 California law.<sup>150</sup> In other words, the issues of capacity and choice of conservator  
8 could be relitigated under California law if someone wanted to raise them.

9 Further, the first time that capacity is litigated in California, the relitigation  
10 process should be comparable to the process that would have been used if the  
11 conservatorship had originated in California. Accordingly, the Commission  
12 proposes to require the court to rebuttably presume that there is no need for a  
13 conservatorship.<sup>151</sup>

14 Likewise, if a person seeks removal of a conservator originally appointed in  
15 another state, a California court should reevaluate the choice of conservator in the  
16 same manner as if a conservator was being chosen for a proceeding that originated  
17 in California. The Commission therefore recommends that the statute governing  
18 removal of a conservator be amended to permit removal of a transferred  
19 conservator if that person “would not have been appointed in this state despite  
20 being eligible to serve under the law of this state.”<sup>152</sup>

21 As a further means of protecting California conservatorship policies in the  
22 transfer process, the Commission recommends that the court be required to  
23 appoint a court investigator promptly after the filing of a petition to accept a  
24 transfer.<sup>153</sup> The court investigator would first conduct a preliminary investigation,  
25 focusing on the requirements for issuing a provisional order accepting the  
26 transfer.<sup>154</sup> If the court issues such an order, the court investigator would then  
27 conduct an investigation similar to the one that occurs when a new conservatorship  
28 is established in California.<sup>155</sup> Among other things, the court investigator would  
29 have to determine whether the conservatee objects to the conservator or prefers

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

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

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

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

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

154. See *id.*

155. See proposed Prob. Code §§ 1851.1 & 2002(g) & Comments *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.

1 another person to act as conservator.<sup>156</sup> The investigator would also have to  
2 interview the conservator, the conservatee, and the conservatee’s spouse or  
3 domestic partner (if any) to determine whether the conservator is acting in the best  
4 interests of the conservatee.<sup>157</sup> In addition, the investigator would have to make  
5 specific findings concerning the conservatee’s capacity.<sup>158</sup>

6 The court would review the investigator’s report at the same time that it  
7 determines whether the conservatorship conforms to California law.<sup>159</sup> When the  
8 court conducts the review, it would be authorized to take appropriate action in  
9 response to the court investigator’s report.<sup>160</sup> The court could also modify the  
10 conservator’s powers as necessary to conform to California law.<sup>161</sup> The review  
11 process would thus provide an opportunity to protect California’s conservatorship  
12 policies, including its policies on determination of capacity and choice of the  
13 conservator.<sup>162</sup>

14 *Sequencing.* Under UAGPPJA, a court has up to ninety days *after* issuing a final  
15 order accepting a proceeding to determine how to conform that proceeding to local  
16 law.<sup>163</sup> By that time, the routine and ministerial prerequisites for serving as a  
17 California conservator (taking an oath, posting the required bond, providing and  
18 acknowledging receipt of the required informational materials, and issuance of the  
19 letters of conservatorship) are likely to have been completed, and the conservator  
20 probably will have been functioning as such in the new jurisdiction for awhile.

21 The pragmatic advantage of this approach is that it delays the conformity  
22 determination until the conservator and the conservatee are likely to have  
23 relocated to the new jurisdiction, making it easier for the court to assess how to  
24 conform the conservatorship to the law of that jurisdiction. From a substantive  
25 perspective, however, it seems backwards to examine and evaluate the  
26 conservatorship *after*, rather than *before*, deciding whether to issue a final order  
27 accepting the transfer.

28 For that reason, the Commission recommends that the conformity determination,  
29 as well as the court investigation and review described above, *precede* issuance of  
30 the final order accepting a transfer.<sup>164</sup> That way, the court will be well-informed

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156. See proposed Prob. Code § 1851.1(b)(6) *infra*.

157. 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).

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

159. See proposed Prob. Code § 2002(h)(2) & Comment *infra*.

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

161. See proposed Prob. Code § 2002(h)(1) *infra*.

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

163. UAGPPJA § 302(f).

164. See proposed Prob. Code § 2002(d), (g), (h) & (i) & Comment *infra*.

1 when it decides whether to issue such an order and, assuming that it does so, the  
2 conservatorship will be properly structured from the outset.

3 The Commission recognizes that this approach might involve some logistical  
4 hurdles, but those complications should be manageable. For example, if a source  
5 of information was located in another state (e.g., the conservator, conservatee, or a  
6 friend or family member), the court investigator could gather information by  
7 telephone or other remote means; such techniques are already widely used in cases  
8 that originate in California. Similarly, if it became necessary for the conservator to  
9 take action in California before the conformity determination, review of the  
10 conservatorship, and completion of the transfer process, the conservator could  
11 seek a temporary appointment under the usual California procedures for such an  
12 appointment. The proposed legislation would expressly allow a conservator to  
13 apply for such a temporary appointment while a transfer petition is pending.<sup>165</sup>

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

- 16 • Revisions to conform to California terminology.<sup>166</sup>
- 17 • Revisions to provide guidance on the content of a petition to accept a  
18 transfer.<sup>167</sup>
- 19 • Revisions relating to the notice requirements for a petition to accept a  
20 transfer.<sup>168</sup>
- 21 • Revisions to expressly authorize an interested person to object to a proposed  
22 transfer, and to specify the permissible grounds for such an objection.<sup>169</sup>
- 23 • Revisions to require the court to conduct a hearing on issuance of an order  
24 provisionally accepting a transfer. Such a hearing should be mandatory for  
25 the same reasons previously expressed in connection with the proposed  
26 provision on transferring a California conservatorship to another state.<sup>170</sup> If  
27 there are no objections to issuance of the provisional order, the court could  
28 place the matter on the consent calendar.<sup>171</sup>
- 29 • Revisions of the standard for denying a provisional order due to the  
30 potential impact of the proposed transfer on the interests of the person  
31 requiring assistance.<sup>172</sup>

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165. See proposed Prob. Code § 2002(a)(5) & Comment *infra*; see also proposed Prob. Code § 1994 *infra*.

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

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

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

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

170. See *supra* note 124 & accompanying text.

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

172. Under UAGPPJA, a court must issue an order provisionally accepting a transfer except in certain specified circumstances, one of which is: “*an objection is made and the objector establishes that transfer of*

- 1 • Revisions to differentiate between (1) a conservator who is ineligible, *under*  
2 *the law of the transferring state*, to serve in California, and (2) a conservator  
3 who is ineligible, *under California law*, to serve in California.<sup>173</sup>
- 4 • Revisions to make clear that the determination of conformity with California  
5 law must occur at a hearing. The court review examining the court  
6 investigator’s report would occur at the same hearing. If no issues are in  
7 dispute, the court could place these matters on the consent calendar.<sup>174</sup>

8 With all of the modifications discussed above, the Commission recommends that  
9 the Legislature enact UAGPPJA’s transfer procedure in California.

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

11 Article 4 of UAGPPJA addresses the problem of interstate recognition.<sup>175</sup> The  
12 discussion below describes that problem and UAGPPJA’s approach to it, and then  
13 explores the implications of the UAGPPJA approach for California.

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

15 Sometimes a person appointed to assist an individual with limited capacity has  
16 to take action in a state other than the one in which the court made the  
17 appointment. For example, it might be necessary to obtain medical care for the  
18 individual with limited capacity while that individual is traveling in another state  
19 or living near a state border with a medical facility located on the other side.<sup>176</sup>  
20 Alternatively, a conservator might need to sell or maintain property located in a  
21 different state, such as a vacation home belonging to the conservatee.<sup>177</sup> There are

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the proceeding would be contrary to the interests of” the person requiring assistance. UAGPPJA § 302(d)(1) (emphasis added). The proposed legislation would eliminate the necessity of an objection and the corollary requirement of having “the objector establis[h]” that transfer would be contrary to the interests of the person requiring assistance. It would be sufficient for the court to determine, on its own motion and on the basis of any evidence it has at hand, “that transfer of the proceeding would be contrary to the interests of the conservatee.” See proposed Prob. Code § 2002(f)(1) & Comment *infra*.

173. 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(e)(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(e)(3) & Comment *infra*.

The underlying concept is that an eligibility issue would have to be resolved by the court best-situated to make the determination: The transferring court would handle ineligibility that is based on the law of the transferring state, and the California court would handle ineligibility that is based on California law.

174. See proposed Prob. Code § 2002(h) & Comment *infra*.

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

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

177. See generally *id.*

1 also various other reasons why a court-appointed assistant might need to take steps  
2 in a different jurisdiction.<sup>178</sup>

3 In these types of situations, the court appointee sometimes encounters resistance  
4 from an individual or entity in the other state. For example, a care facility in the  
5 other state might question the appointee’s authority to act on behalf of the person  
6 with limited capacity.<sup>179</sup> Due to this sort of refusal, it is sometimes necessary to  
7 seek a second court appointment in the other state, but that is a difficult burden for  
8 many families to bear.<sup>180</sup>

9 Article 4 of UAGPPJA is designed to avoid this problem by facilitating  
10 enforcement of a court appointment that was made in another state.<sup>181</sup> The key  
11 concept of the article is registration.<sup>182</sup> By following a relatively simple procedure,  
12 a court appointee may register the appointment in another state, and may thereafter  
13 exercise in that state all of the powers authorized in the order of appointment,  
14 *except as prohibited under the laws of that state*.<sup>183</sup> In other words, when taking  
15 action in the state where the appointment is registered, the court appointee *must*  
16 *comply with the laws of that state*.

17 UAGPPJA’s registration procedure has two sets of implications for California:  
18 (1) implications of registering a California conservatorship in another state, and, if  
19 California enacts UAGPPJA, (2) implications of registering an out-of-state  
20 conservatorship (or comparable proceeding by another name) in California. Each  
21 set of implications is discussed below.

#### 22 ***Implications of Registering a California Conservatorship in Another State***

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

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

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178. 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.

179. UAGPPJA Art. 4 General Comment.

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

181. See UAGPPJA Art. 4 General Comment.

182. *Id.*

183. See UAGPPJA §§ 401-403.

1 with the law of this state, as well as other applicable law, at all times, *in any*  
2 *location within or without the state.*<sup>184</sup>

3 ***Implications of Registering an Out-of-State Conservatorship in California***

4 If California decides to enact UAGPPJA, another scenario could occur: A  
5 conservatorship (or comparable proceeding by another name) could be registered  
6 in California pursuant to the UAGPPJA procedure, and the out-of-state appointee  
7 could then take action in California.

8 Again, that prospect does not appear to be problematic, at least in most  
9 circumstances. As explained above, a court appointee acting pursuant to a  
10 UAGPPJA registration must comply with the law of the state of registration.<sup>185</sup>  
11 Accordingly, if an out-of-state appointment was registered in California, the  
12 appointee would have to comply with California law while taking action in  
13 California, and thus would not pose any threat to California policies.

14 The proposed legislation would underscore and reinforce that requirement. Like  
15 UAGPPJA, it would provide that the out-of-state conservator “may exercise in this  
16 state all powers authorized in the order of appointment *except as prohibited under*  
17 *the laws of this state . . .*”<sup>186</sup> In addition, the proposed legislation would expressly  
18 state that the conservator is

19 subject to the law of this state while acting in the state, is required to comply with  
20 that law in every respect, including, but not limited to, all applicable procedures,  
21 and is not authorized to take any action prohibited by the law of this state.<sup>187</sup>

22 The proposed legislation would specifically make clear that if a California law  
23 “mandates compliance with special requirements to exercise a particular  
24 conservatorship power or take a particular step, the conservator of a registered  
25 conservatorship may not exercise that power or take that step without first  
26 complying with those special requirements.”<sup>188</sup> For example, if a conservatorship  
27 was registered in California and the conservator wished to place the conservatee in  
28 a secured facility for dementia patients, the conservator could not do so without  
29 fulfilling California’s special requirements for taking that step.<sup>189</sup>

30 The proposed legislation would seek to ensure that the conservator is made  
31 aware of the important fundamental principle described above, and agrees to  
32 comply with it. To register in California, the appointee would have to file not only  
33 the registration documents required by UAGPPJA (certified copies of the

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

185. See *supra* note 183 & accompanying text.

186. Proposed Prob. Code § 2014(a) (emphasis added); see also UAGPPJA § 403(a).

187. Proposed Prob. Code § 2014(a).

188. *Id.*

189. See proposed Prob. Code § 2014 & Comment *infra*; see also Prob. Code § 2356.6 (conservatee with dementia).

1 conservatorship order and letters of office), but also a cover sheet to be developed  
2 by the Judicial Council, which would inform the appointee that the appointee is  
3 subject to California law while acting in the state, is required to comply with that  
4 law in every respect, including, but not limited to, all applicable procedures, and is  
5 not authorized to take any action prohibited by California law.<sup>190</sup> Below that  
6 statement would be a signature box, in which the appointee attests to those  
7 matters, reducing the likelihood that an appointee would overlook the need to  
8 follow California law.<sup>191</sup>

9 Before registering the proceeding in California, the appointee would also have to  
10 provide the same information to the court supervising the proceeding and to  
11 interested persons, in a notice of intent to register.<sup>192</sup> That would further strengthen  
12 the protection for California policies.<sup>193</sup>

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

17 The Commission believes, however, that if a conservator-conservatee  
18 relationship is relocated to California, it should be officially transferred to  
19 California and subjected to the safeguards of the transfer process. For that reason,  
20 the registration of an out-of-state conservatorship in California should only be  
21 effective while the conservatee resides in another jurisdiction. If the conservatee  
22 moves to California, the conservator should no longer be able to take action in  
23 California pursuant to the registration, and should have to seek a transfer of the  
24 court proceeding to California. The Commission proposes to modify UAGPPJA's  
25 registration procedure to achieve that result<sup>194</sup> and ensure that the conservator,  
26 conservatee, family members, friends, and third parties are informed of this  
27 limitation.<sup>195</sup>

28 The Commission also recommends a few other modifications of UAGPPJA's  
29 registration procedure:

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190. See proposed Prob. Code § 2023 & Comment *infra*; see also proposed Prob. Code §§ 2011-2013 *infra*.

191. See proposed Prob. Code § 2023 *infra*.

192. See proposed Prob. Code §§ 2011-2013 & Comments *infra*. The notice would be provided to everyone who would be entitled to notice of a petition to establish a conservatorship (or a comparable proceeding by another name) in (1) the state supervising the conservatorship being registered and (2) California. See *id*.

193. Through such notification, the recipients would be alerted to the possibility that the conservator might take action in California. If a recipient had concerns about such action, the recipient could either challenge the proposed action directly in a California court, or seek redress in the court supervising the conservatorship. The proposed legislation does not authorize the recipient to object to the registration itself, because such an objection would lack context and specificity.

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

195. See proposed Prob. Code §§ 2011-2013, 2015 & 2023 & Comments *infra*.

- 1 • Revisions to conform to California terminology.<sup>196</sup>
- 2 • Revisions to clarify the procedure for filing the registration documents in a  
3 California court.<sup>197</sup>
- 4 • Revisions to reflect that the court that originally made an appointment may  
5 not be the one currently supervising the proceeding.<sup>198</sup>
- 6 • Addition of a provision that expressly permits and governs registration of a  
7 court appointment that involves both personal care and property  
8 management.<sup>199</sup>
- 9 • Revisions to make clear that registration in a single county is sufficient; it is  
10 not necessary to register in every county in which the court appointee  
11 wishes to act.<sup>200</sup>
- 12 • Addition of a “safe harbor” provision, under which a person who relies in  
13 good faith on a UAGPPJA registration would be protected from liability in  
14 specified circumstances.<sup>201</sup>
- 15 • Addition of a provision authorizing recordation of UAGPPJA registration  
16 documents.<sup>202</sup>

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

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

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

- 26 • Section 501 of UAGPPJA is a standard ULC provision directing courts to  
27 consider the need to promote uniformity of the law when applying and  
28 construing the act. To emphasize the importance of respecting a

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196. See proposed Prob. Code §§ 2011-2012 & Comments *infra*; see also proposed Prob. Code § 2013 & Comment *infra*.

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

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

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

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

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

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

1 conservatee’s constitutional rights in applying and construing the act, the  
2 Commission recommends modifying this provision to refer to those rights,  
3 as well as the need to promote uniformity.<sup>203</sup>

- 4 • Section 505 of UAGPPJA would specify the “effective date” of the  
5 proposed legislation. In California, it is important to differentiate between  
6 the “effective date” and the “operative date” of legislation. The “effective  
7 date” is when the legislation officially becomes part of the law of the  
8 state.<sup>204</sup> The “operative date” is when the legislation actually starts to  
9 operate in the state.<sup>205</sup> The Commission recommends that UAGPPJA have a  
10 one-year delayed operative date if it is enacted in California. The one year  
11 delay in operation of the statute would afford time for the Judicial Council  
12 to prepare court rules and forms necessary for smooth implementation of the  
13 legislation.<sup>206</sup> The Commission further recommends enactment of a  
14 provision directing the Judicial Council to prepare such rules and forms  
15 before the specified operative date.<sup>207</sup>

#### 16 **Conforming Revisions**

17 Some existing California statutes will have to be repealed or revised to properly  
18 coordinate them with the proposed UAGPPJA legislation. The Commission has  
19 identified code sections that require such adjustment and has included conforming  
20 revisions of them in this recommendation.<sup>208</sup>

21 The Commission is continuing to review the codes to determine whether  
22 additional conforming revisions are necessary. If so, the Commission will issue a  
23 supplemental recommendation on that point.

#### 24 **Cost Implications of the Proposed Reform**

25 By providing guidance to reduce and resolve jurisdictional disputes, establishing  
26 a streamlined transfer mechanism for relocating a conservatorship from one state  
27 to another, and facilitating out-of-state enforcement of conservatorship orders

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203. 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.

204. 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).

205. 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.

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

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

208. See “Conforming Revisions” *infra*.

1 through a registration process, enactment of UAGPPJA in California would result  
2 in significant cost savings for conservatees, conservators, and other persons  
3 interested in or affected by a conservatorship situation.<sup>209</sup> For the same reasons,  
4 enactment of the proposed legislation would result in significant costs savings for  
5 the judiciary, and thus the state budget. Although some of the proposed procedural  
6 steps will require the expenditure of judicial resources,<sup>210</sup> certain expenditures  
7 would be offset by filing fees,<sup>211</sup> while others are likely to be less than or equal to  
8 the corresponding costs of invoking existing law.<sup>212</sup>

9 **Need for the Proposed Reform**

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

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

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209. As the ULC explains:

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act will help to resolve many [conservatorship] issues such as original jurisdiction, registration, transfer, and out-of-state enforcement. *It provides procedures that will help to considerably reduce the cost of [conservatorship] cases from state to state.* It should be enacted as soon as possible in every jurisdiction.

ULC, *Adult Guardianship and Protective Proceedings Jurisdiction Act Summary*, <http://www.uniformlaws.org/ActSummary.aspx?title=Adult%20Guardianship%20and%20Protective%20Proceedings%20Jurisdiction%20Act>

210. E.g., holding a hearing on a transfer petition; conducting a court investigation of a conservatorship being transferred; appointing counsel for a conservatee in connection with a transfer petition.

211. See, e.g., proposed Gov't Code § 70662 (fee for registration of conservatorship) & Comment *infra*.

212. E.g., holding a hearing on establishment of a conservatorship in California upon relocating from another state; conducting a court investigation of a conservatorship being established in California under such circumstances; appointing counsel for a conservatee in connection with a petition to establish a conservatorship.



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 proceeding”) 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, but court does not appoint someone to assist that adult with financial matters	"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, but the court does not appoint someone to assist that adult with financial matters. 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 (d) Application of this chapter to a conservatee with dementia is subject to the  
14 express limitations of Sections 2002 and 2014, as well as the other requirements of  
15 this chapter.

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

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

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

47 Authority to involuntarily commit a person in California, or to subject a person to other  
48 involuntary mental health treatment here, cannot be obtained merely by transferring an out-of-  
49 state conservatorship pursuant to Article 3, or by registering an out-of-state conservatorship

1 pursuant to Article 4. To obtain such authority, it is necessary to follow the procedures provided  
2 by California law.

3 Subdivision (c) makes clear that the transfer procedure provided in Article 3 of this chapter  
4 (Sections 2001-2002) does not apply to an adult with a developmental disability. Consistent with  
5 that rule, subdivision (c) also states that the transfer procedure is inapplicable to several types of  
6 proceedings specifically designed for such an adult.

7 Under California law, an adult with a developmental disability is entitled to be evaluated by a  
8 regional center and to receive a broad range of services pursuant to an individualized plan. See  
9 Welf. & Inst. Code § 4646; see also *Sanchez v. Johnson*, 416 F.3d 1051, 1064-68 (9th Cir. 2001).  
10 The intent is to “enable persons with developmental disabilities to approximate the pattern of  
11 everyday living available to people without disabilities of the same age.” Welf. & Inst. Code §  
12 4501; see also Welf. & Inst. Code §§ 4500-4868 (“Services for the Developmentally Disabled”).  
13 To further that intent, California provides a variety of conservatorship possibilities for an adult  
14 with a developmental disability, including the option of a limited conservatorship in which the  
15 adult “retain[s] all legal and civil rights except those which by court order have been designated  
16 as legal disabilities and have been specifically granted to the limited conservator.” Section  
17 1801(d); *cf.* Section 1801(a)-(c) (regular Probate Code conservatorship); Health & Safety Code  
18 §§ 416-416.23 (Director of Developmental Services as conservator for developmentally disabled  
19 person); Welf. & Inst. Code §§ 6500-6513 (judicial commitment of person with developmental  
20 disability who is dangerous to others or to self).

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

28 Subdivision (d) serves to highlight the rules applicable to a conservatee with dementia.

29 **§ 1982. Definitions [UAGPPJA § 102]**

30 1982. In this chapter:

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

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

35 (c) “Conservator” means a person appointed by the court to serve as a  
36 conservator of the estate, a conservator of the person, or a conservator of the  
37 person and estate.

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

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

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

1 (g) “Conservatorship order” means an order appointing a conservator of the  
2 estate, a conservator of the person, or a conservator of the person and estate in a  
3 conservatorship proceeding.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 5 **Background from Uniform Act**

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

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

11 **Note.** The reference to “a federally recognized Indian tribe” is shown in brackets in proposed  
12 Section 1982(m), because the Commission is still in the process of determining how to treat  
13 Indian tribes in the proposed legislation. For discussion of that matter, see Memorandum 2013-  
14 55.

### 15 **§ 1983. International application of chapter [UAGPPJA § 103]**

16 1983. A court of this state may treat a foreign country as if it were a state for the  
17 purpose of applying this article and Articles 2, 3, and 5.

18 **Comment.** Section 1983 is the same as Section 103 of the Uniform Adult Guardianship and  
19 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). In determining whether to treat a  
20 foreign country as if it were a state pursuant to this section, the court should consider all relevant  
21 factors, including, but not limited to, evidence showing any of the following:

22 (1) The judicial system in the foreign country does not regularly provide impartial  
23 tribunals.

24 (2) The judicial system in the foreign country does not regularly provide procedures  
25 compatible with the requirements of due process of law.

26 (3) The specific proceeding in the foreign court was not conducted in an impartial tribunal.

27 (4) The specific proceeding in the foreign court was not compatible with the requirements  
28 of due process of law.

29 (5) An aspect of the foreign proceeding is repugnant to the public policy of this state or of  
30 the United States.

31 (6) The circumstances of the foreign proceeding raise substantial doubt about the integrity  
32 of the foreign judicial system.

33 See generally Code Civ. Proc. § 1716; Uniform Foreign-Country Money Judgments  
34 Recognition Act § 4 (2005).

### 35 **Background from Uniform Act**

36  
37 This section addresses application of the Act to [conservatorship orders] issued in other  
38 countries. A foreign order is not enforceable pursuant to the registration procedures of Article 4,  
39 but a court in this country may otherwise apply this Act to a foreign proceeding if the foreign  
40 country were an American state. Consequently, a court may conclude that the court in the foreign  
41 country has jurisdiction because it constitutes the [proposed conservatee’s] “home state” or  
42 “significant-connection state” and may therefore decline to exercise jurisdiction on the ground  
43 that the court of the foreign country has a higher priority under Section [1993]. Or the court may  
44 treat the foreign country as if it were a state of the United States for purposes of applying the  
45 transfer provisions of Article 3.

46 This section addresses similar issues to but differs in result from Section 105 of the Uniform  
47 Child Custody Jurisdiction and Enforcement Act (1997). Under the UCCJEA, the United States  
48 court must honor a custody order issued by the court of a foreign country if the order was issued

1 under factual circumstances in substantial conformity with the jurisdictional standards of the  
2 UCCJEA. Only if the child custody law violates fundamental principles of human rights is  
3 enforcement excused. Because [conservatorship] regimes vary so greatly around the world,  
4 particularly in civil law countries, it was concluded that under this Act a more flexible approach  
5 was needed. Under this Act, a court may but is not required to recognize the foreign order.

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

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

10 **§ 1984. Communication between courts [UAGPPJA § 104]**

11 1984. (a) A court of this state may communicate with a court in another state  
12 concerning a proceeding arising under this chapter. The court may allow the  
13 parties to participate in the communication. Except as otherwise provided in  
14 subdivision (b), the court shall make a record of the communication. The record  
15 may be limited to the fact that the communication occurred.

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

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

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

28 **Background from Uniform Act**

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

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

43 ....

44 This section does not prescribe the extent of the record that the court must make, leaving that  
45 issue to the court. A record might include notes or transcripts of a court reporter who listened to a  
46 conference call between the courts, an electronic recording of a telephone call, a memorandum  
47 summarizing a conversation, and email communications. No record need be made of relatively  
48 inconsequential matters such as scheduling, calendars, and court records.

49 Section 110 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997) addresses  
50 similar issues as this section but is more detailed. As is the case with several other provisions of

1 this Act, the drafters of this Act concluded that the more varied circumstances of  
2 [conservatorship] proceedings suggested a greater need for flexibility.

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

4 **§ 1985. Cooperation between courts [UAGPPJA § 105]**

5 1985. (a) In a conservatorship proceeding in this state, a court of this state may  
6 request the appropriate court of another state to do any of the following:

7 (1) Hold an evidentiary hearing.

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

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

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

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

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

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

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

26 (c) Travel and other necessary and reasonable expenses incurred under  
27 subdivisions (a) and (b) may be assessed against the parties according to the law of  
28 this state.

29 **Comment.** Subdivisions (a) and (b) of Section 1985 are similar to Section 105 of the Uniform  
30 Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions  
31 have been made to conform to California terminology for the proceedings in question. See  
32 Section 1982 & Comment (definitions); see also Section 1980 Comment.

33 Subdivision (c) provides guidance on assessment of expenses under this section. For a similar  
34 provision, see Family Code Section 3412(c).

35 For limitations on the scope of this chapter, see Section 1981 & Comment. For another  
36 provision on cooperation between courts, see Family Code Section 3412 (cooperation between  
37 courts regarding child custody jurisdiction), which is similar to Section 112 of the Uniform Child  
38 Custody Jurisdiction and Enforcement Act (1997).

39 **Background from Uniform Act**

40 [Subdivision (a)] of this section is similar to Section 112(a) of the Uniform Child Custody  
41 Jurisdiction and Enforcement Act (1997), although modified to address issues of concern in  
42 [conservatorship] proceedings and with the addition of [paragraph (a)(7)], which addresses the  
43 release of health information protected under HIPAA. [Subdivision (b)], which clarifies that a  
44 court has jurisdiction to respond to requests for assistance from courts in other states even though

1 it might otherwise not have jurisdiction over the proceeding, is not found in although probably  
2 implicit in the UCCJEA.

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

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

13 [Adapted from the Uniform Law Commission's Comment to UAGPPJA § 105.]

14 **§ 1986. Taking testimony in another state [UAGPPJA § 106]**

15 1986. (a) In a conservatorship proceeding, in addition to other procedures that  
16 may be available, testimony of a witness who is located in another state may be  
17 offered by deposition or other means allowable in this state for testimony taken in  
18 another state. The court on its own motion may order that the testimony of a  
19 witness be taken in another state and may prescribe the manner in which and the  
20 terms upon which the testimony is to be taken.

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

25 **Comment.** Section 1986 is similar to Section 106(a)-(b) of the Uniform Adult Guardianship  
26 and Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA"). Revisions have been made to  
27 conform to California terminology for the proceedings in question. See Section 1982 & Comment  
28 (definitions); see also Section 1980 Comment. For limitations on the scope of this chapter, see  
29 Section 1981 & Comment. For a child custody provision like Section 1986, see Family Code  
30 Section 3411 (evidence from another state in child custody case), which is similar to Section 111  
31 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997).

32 For further guidance on taking a deposition in another state for purposes of a proceeding  
33 pending in this state, see Code Civ. Proc. § 2026.010; Gov't Code § 70626. For further guidance  
34 on telephone depositions, see Code Civ. Proc. § 2025.310. For further guidance on audio or video  
35 recording of a deposition, see Code Civ. Proc. §§ 2020.310(c), 2025.220(a), 2025.330(c),  
36 2025.340, 2025.510(f), 2025.530, 2025.560. For the admissibility of secondary evidence  
37 (including secondary evidence of a deposition), see Evid. Code §§ 1520-1523 (proof of content of  
38 writing). For guidance on taking a deposition in this state for purposes of a proceeding pending in  
39 another state, see Code Civ. Proc. §§ 2029.100-2029.900 (Interstate and International Depositions  
40 and Discovery Act); Gov't Code § 70626; *Deposition in Out-of-State Litigation*, 37 Cal. L.  
41 Revision Comm'n Reports 99 (2007).

42 **Background from Uniform Act**

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

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

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

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

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

9 [Adapted from the Uniform Law Commission’s Comment to UAGPPJA § 106.]

## 10 Article 2. Jurisdiction

### 11 Background from Uniform Act

12 The jurisdictional rules in Article 2 will determine which state’s courts may appoint a ...  
13 conservator. Section [1991] contains definitions of “emergency,” “home state,” and “significant  
14 connection-state,” terms used only in Article 2 that are key to understanding the jurisdictional  
15 rules under the Act. Section [1992] provides that Article 2 is the exclusive jurisdictional basis for  
16 a court of the enacting state to appoint a [conservator]. Consequently, Article 2 is applicable even  
17 if all of the [proposed conservatee’s] significant contacts are in-state. Section [1993] is the  
18 principal provision governing jurisdiction, creating a three-level priority; the home state, followed  
19 by a significant-connection state, followed by other jurisdictions. But there are circumstances  
20 under Section [1993] where a significant-connection state may have jurisdiction even if the  
21 [proposed conservatee] also has a home state, or a state that is neither a home or significant-  
22 connection state may be able to assume jurisdiction even though the particular [proposed  
23 conservatee] has both a home state and one or more significant-connection states. One of these  
24 situations is if a state declines to exercise jurisdiction under Section [1996] because a court of that  
25 state concludes that a court of another state is a more appropriate forum. Another is Section  
26 [1997], which authorizes a court to decline jurisdiction or fashion another appropriate remedy if  
27 jurisdiction was acquired because of unjustifiable conduct. Section [1995] provides that once an  
28 appointment is made or order issued, the court’s jurisdiction continues until the proceeding is  
29 terminated or the appointment order expires by its own terms.

30 Section [1994] addresses special cases. Regardless of whether it has jurisdiction under the  
31 general principles stated in Section [1993], a court in the state where the individual is currently  
32 physically present has jurisdiction to appoint a [conservator of the person] in an emergency, and a  
33 court in a state where an individual’s real or tangible personal property is located has jurisdiction  
34 to appoint a [conservator of the estate]. In addition, a court not otherwise having jurisdiction  
35 under Section [1993] has jurisdiction to consider a petition to accept the transfer of an already  
36 existing ... conservatorship from another state as provided in Article 3.

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

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

### 42 § 1991. Definitions and significant connection factors [UAGPPJA § 201]

43 1991. (a) In this article:

44 (1) “Emergency” means a circumstance that likely will result in substantial harm  
45 to a proposed conservatee’s health, safety, or welfare, and for which the  
46 appointment of a conservator of the person is necessary because no other person  
47 has authority and is willing to act on behalf of the proposed conservatee.

1 (2) “Home state” means the state in which the proposed conservatee was  
2 physically present, including any period of temporary absence, for at least six  
3 consecutive months immediately before the filing of a petition for a  
4 conservatorship order, or, if none, the state in which the proposed conservatee was  
5 physically present, including any period of temporary absence, for at least six  
6 consecutive months ending within the six months prior to the filing of the petition.

7 (3) “Significant-connection state” means a state, other than the home state, with  
8 which a proposed conservatee has a significant connection other than mere  
9 physical presence and in which substantial evidence concerning the proposed  
10 conservatee is available.

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

14 (1) The location of the proposed conservatee’s family and other persons required  
15 to be notified of the conservatorship proceeding.

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

18 (3) The location of the proposed conservatee’s property.

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

22 **Comment.** Subdivision (a) of Section 1991 is similar to Section 201(a) of the Uniform Adult  
23 Guardianship and Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have  
24 been made to conform to California terminology for the proceedings in question. See Section  
25 1982 & Comment (definitions); see also Section 1980 Comment.

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

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

### 30 **Background from Uniform Act**

31 The terms “emergency,” “home state,” and “significant-connection state” are defined in this  
32 section and not in Section [1982] because they are used only in Article 2.

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

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

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

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

6 The definition of “home state” [paragraph (a)(2)] is derived from but differs in a couple of  
7 respects from the definition of the same term in Section 102 of the Uniform Child Custody  
8 Jurisdiction and Enforcement Act (1997). First, unlike the definition in the UCCJEA, the  
9 definition in this Act clarifies that actual physical presence is necessary. The UCCJEA definition  
10 instead focuses on where the child has “lived” for the prior six months. Basing the test on where  
11 someone has “lived” may imply that the term “home state” is similar to the concept of domicile.  
12 Domicile, in [a conservatorship] context, is a vague concept that can easily lead to claims of  
13 jurisdiction by courts in more than one state. Second, under the UCCJEA, home state jurisdiction  
14 continues for six months following physical removal from the state and the state has ceased to be  
15 the actual home. Under this Act, the six-month tail is incorporated directly into the definition of  
16 home state. The place where the [proposed conservatee] was last physically present for six  
17 months continues as the home state for six months following physical removal from the state.  
18 This modification of the UCCJEA definition eliminates the need to refer to the six-month tail  
19 each time home state jurisdiction is mentioned in the Act.

20 The definition of “significant-connection state” [paragraph (a)(3)] is similar to Section  
21 201(a)(2) of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). However,  
22 [subdivision (b)] of this Section adds a list of factors relevant to [conservatorship] proceedings to  
23 aid the court in deciding whether a particular place is a significant-connection state. Under  
24 Section [2001(e)(1)], the significant connection factors listed in the definition are to be taken into  
25 account in determining whether a conservatorship may be transferred to another state.

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

## 27 § 1992. Exclusive basis [UAGPPJA § 202]

28 1992. For a conservatorship proceeding governed by this article, this article  
29 provides the exclusive basis for determining whether the courts of this state, as  
30 opposed to the courts of another state, have jurisdiction to appoint a conservator of  
31 the person, a conservator of the estate, or a conservator of the person and estate.

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

- 34 (1) Conform to California terminology for the proceedings in question. See Section 1982  
35 & Comment (definitions); see also Section 1980 Comment.
- 36 (2) Make clear that this article only focuses on which state’s courts have jurisdiction to  
37 appoint a conservator. The article does not address other jurisdictional issues, such as  
38 whether an appellate court may make such an appointment.

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

### 40 **Background from Uniform Act**

41 Similar to Section 201(b) of the Uniform Child Custody Jurisdiction and Enforcement Act  
42 (1997), which provides that the UCCJEA is the exclusive basis for determining jurisdiction to  
43 issue a child custody order, this section provides that this article is the exclusive jurisdictional  
44 basis for determining jurisdiction to appoint a [conservator]. An enacting jurisdiction will  
45 therefore need to repeal any existing provisions addressing jurisdiction in [conservatorship  
46 proceedings]. The drafters of this Act concluded that limiting the Act to “interstate” cases was  
47 unworkable. Such cases are hard to define, but even if they could be defined, overlaying this Act  
48 onto a state’s existing jurisdictional rules would leave too many gaps and inconsistencies. In  
49 addition, if the particular case is truly local, the local court would likely have jurisdiction under  
50 both this Act as well as under prior law.

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

2 **§ 1993. Jurisdiction [UAGPPJA § 203]**

3 1993. (a) A court of this state has jurisdiction to appoint a conservator for a  
4 proposed conservatee if this state is the proposed conservatee’s home state.

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

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

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

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

17 (2) Before the court makes the appointment, no conservatorship petition is filed  
18 in the proposed conservatee’s home state, no objection to the court’s jurisdiction is  
19 filed by a person required to be notified of the proceeding, and the court in this  
20 state concludes that it is an appropriate forum under the factors set forth in Section  
21 1996.

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

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

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

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

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

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

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

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

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

44 Subdivision (e), relating to jurisdiction in a state that is neither the home state nor a significant-  
45 connection state, corresponds to Section 203(3) of UAGPPJA. Revisions have been made to

1 emphasize that a court may not be deemed to have “declined jurisdiction” unless the court has  
2 expressly taken that step.

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

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

### 6 **Background from Uniform Act**

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

13 While this section is the principal provision for determining whether a particular court has  
14 jurisdiction to appoint a [conservator], it is not the only provision. As indicated in the cross-  
15 reference in Section [1993(f)], a court that does not otherwise have jurisdiction under Section  
16 [1993] may have jurisdiction under the special circumstances specified in Section [1994].

17 Pursuant to Section [1993(a)], the home state has primary jurisdiction to appoint a ...  
18 conservator .... This jurisdiction terminates if the state ceases to be the home state, if a court of  
19 the home state declines to exercise jurisdiction under Section [1996] on the basis that another  
20 state is a more appropriate forum, or, as provided in Section [1995], a court of another state has  
21 appointed a [conservator] consistent with this Act. The standards by which a home state that has  
22 enacted the Act may decline jurisdiction on the basis that another state is a more appropriate  
23 forum are specified in Section [1996]. Should the home state not have enacted the Act, Section  
24 [1993(a)] does not require that the declination meet the standards of Section [1996].

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

32 A significant-connection state has jurisdiction under [these] possible bases: Section [1993(b),  
33 (c), and (d)]. Under Section [1993(b)], a significant-connection state has jurisdiction if the  
34 individual does not have a home state .... [Under Section 1993(c), a significant-connection state  
35 has jurisdiction] if the home state has declined jurisdiction on the basis that the significant-  
36 connection state is a more appropriate forum.

37 Section [1993(d)] is designed to facilitate consideration of cases where jurisdiction is not in  
38 dispute. Section [1993(d)] allows a court in a significant-connection state to exercise jurisdiction  
39 even though the [proposed conservatee] has a home state and the home state has not declined  
40 jurisdiction. The significant-connection state may assume jurisdiction under these circumstances,  
41 however, only in situations where the parties are not in disagreement concerning which court  
42 should hear the case. Jurisdiction may not be exercised by a significant-connection state under  
43 Section [1993(d)] if (1) a petition has already been filed and is still pending in the home state or  
44 other significant-connection state; or (2) prior to making the appointment ..., a petition is filed in  
45 the [proposed conservatee’s] home state or an objection to the court’s jurisdiction is filed by a  
46 person required to be notified of the proceeding. Additionally, the court in the significant-  
47 connection state must conclude that it is an appropriate forum applying the factors listed in  
48 Section [1996].

49 There is nothing comparable to Section [1993(d)] in the Uniform Child Custody Jurisdiction  
50 and Enforcement Act (1997). Under Section 201 of the UCCJEA a court in a significant-

1 connection state acquires jurisdiction only if the child does not have a home state or the court of  
2 that state has declined jurisdiction. The drafters of this Act concluded that cases involving adults  
3 differed sufficiently from child custody matters that a different rule is appropriate for adult  
4 proceedings in situations where jurisdiction is uncontested.

5 Pursuant to Section [1993(e)], a court in a state that is neither the home state or a significant-  
6 connection state has jurisdiction if the home state and all significant-connection states have  
7 declined jurisdiction or the [proposed conservatee] does not have a home state or significant-  
8 connection state. The state must have some connection with the proceeding, however. As Section  
9 [1993(e)] clarifies, jurisdiction in the state must be consistent with the state and United States  
10 constitutions.

11 [Adapted from the Uniform Law Commission’s Comment to UAGPPJA § 203.]

12 **§ 1994. Special jurisdiction [UAGPPJA § 204]**

13 1994. (a) A court of this state lacking jurisdiction under subdivisions (a) to (e),  
14 inclusive, of Section 1993 has special jurisdiction to do any of the following:

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

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

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

26 (b) If a petition for the appointment of a conservator of the person in an  
27 emergency is brought in this state and this state was not the home state of the  
28 proposed conservatee on the date the petition was filed, the court shall dismiss the  
29 proceeding at the request of the court of the home state, if any, whether dismissal  
30 is requested before or after the emergency appointment of a temporary conservator  
31 of the person.

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

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

39 **Background from Uniform Act**

40 This section lists the special circumstances where a court without jurisdiction under the general  
41 rule of Section [1993] has jurisdiction for limited purposes. The three purposes are (1) the  
42 appointment of a [conservator of the person] in an emergency for a [limited] term ... for a  
43 [proposed conservatee] who is physically located in the state ([paragraph] (a)(1)); (2) the  
44 [appointment of a conservator of the estate] for a [proposed conservatee] who owns an interest in  
45 real or tangible personal property located in the state ([paragraph] (a)(2)); and (3) the grant of

1 jurisdiction to consider a petition requesting the transfer of a ... conservatorship proceeding from  
2 another state ([paragraph] (a)(3)). If the court has jurisdiction under Section [1993], reference to  
3 Section [1994] is unnecessary. The general jurisdiction granted under Section [1993] includes  
4 within it all of the special circumstances specified in this section.

5 When an emergency arises, action must often be taken on the spot in the place where the  
6 [proposed conservatee] happens to be physically located at the time. This place may not  
7 necessarily be located in the [proposed conservatee's] home state or even a significant-connection  
8 state. [Paragraph] (a)(1) assures that the court where the [proposed conservatee] happens to be  
9 physically located at the time has jurisdiction to appoint a [conservator of the person] in an  
10 emergency but only for a limited period .... As provided in [paragraph] (b), the emergency  
11 jurisdiction is also subject to the authority of the court in the [proposed conservatee's] home state  
12 to request that the emergency proceeding be dismissed. The theory here is that the emergency  
13 appointment in the temporary location should not be converted into a de facto permanent  
14 appointment through repeated temporary appointments.

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

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

29 [Paragraph] (a)(3) is closely related to and is necessary for the effectiveness of Article 3, which  
30 addresses transfer of a ... conservatorship to another state. A "Catch-22" arises frequently in such  
31 cases. The court in the transferring state will not allow the [conservatee] to move and will not  
32 terminate the case until the court in the transferee state has accepted the matter. But the court in  
33 the transferee state will not accept the case until the [conservatee] has physically moved and  
34 presumably become a resident of the transferee state. [Paragraph] (a)(3), which grants the court in  
35 the transferee state limited jurisdiction to consider a petition requesting transfer of a proceeding  
36 [from] another state, is intended to unlock the stalemate.

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

40 [Adapted from the Uniform Law Commission's Comment to UAGPPJA § 204.]

41 **§ 1995. Exclusive and continuing jurisdiction [UAGPPJA § 205]**

42 1995. Except as otherwise provided in Section 1994, a court that has appointed a  
43 conservator consistent with this chapter has exclusive and continuing jurisdiction  
44 over the proceeding until it is terminated by the court or the appointment expires  
45 by its own terms.

46 **Comment.** Section 1995 is similar to Section 205 of the Uniform Adult Guardianship and  
47 Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA"). Revisions have been made to

1 conform to California terminology for the proceedings in question. See Section 1982 & Comment  
2 (definitions); see also Section 1980 Comment.

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

4 **Background from Uniform Act**

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

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

26 Article 3 authorizes a ... conservator to petition to transfer the proceeding to another state.  
27 Upon the conclusion of the transfer, the court in the accepting state will appoint the ...  
28 conservator as ... conservator in the accepting state and the court in the transferring estate will  
29 terminate the local proceeding, whereupon the jurisdiction of the transferring court terminates and  
30 the court in the accepting state acquires exclusive and continuing jurisdiction as provided in  
31 Section [1995].

32 [Adapted from the Uniform Law Commission's Comment to UAGPPJA § 205.]

33 **§ 1996. Appropriate forum [UAGPPJA § 206]**

34 1996. (a)(1) A court of this state having jurisdiction under Section 1993 to  
35 appoint a conservator may decline to exercise its jurisdiction if it determines at  
36 any time that a court of another state is a more appropriate forum.

37 (2) The issue of appropriate forum may be raised upon petition of any interested  
38 person, the court's own motion, or the request of another court.

39 (3) The petitioner, or, if there is no petitioner, the court in this state, shall give  
40 notice of the petition, motion, or request to the same persons and in the same  
41 manner as for a petition for a conservatorship under Section 1801. The notice shall  
42 state the basis for the petition, motion, or request, and shall inform the recipients  
43 of the date, time, and place of the hearing under paragraph (4). The notice shall  
44 also advise the recipients that they have a right to object to the petition, motion, or  
45 request. The notice to the potential conservatee shall inform the potential  
46 conservatee of the right to be represented by legal counsel if the potential  
47 conservatee so chooses, and to have legal counsel appointed by the court if the  
48 potential conservatee is unable to retain legal counsel.

1 (4) The court shall hold a hearing on the petition, motion, or request.

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

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

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

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

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

19 (4) The location of the proposed conservatee's family, friends, and other persons  
20 required to be notified of the conservatorship proceeding.

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

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

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

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

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

28 (10) 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.

34 Revisions have also been made to:

35 (1) Permit an interested person, a court of this state, or a court of another state to raise the  
36 issue of appropriate forum by a petition, motion, or request specifically directed to that  
37 issue, without filing a conservatorship proceeding in this state.

38 (2) Specify procedural requirements applicable to such a petition, motion, or request.  
39 Among other things, a hearing on the petition, motion, or request is mandatory in every  
40 case. If there is no opposition, the court may place the matter on the consent calendar.

41 (3) Require a court to prepare a record when it declines to exercise its jurisdiction, which  
42 expressly states that the court is taking that step. A person can present that record when  
43 seeking jurisdiction in another state.

- 1 (4) Emphasize that in determining whether it is an appropriate forum, a court must  
2 consider the location of the proposed conservatee’s family, friends, and other persons  
3 required to be notified of the conservatorship proceeding.

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

5 **Background from Uniform Act**

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

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

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

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

25 **§ 1997. Jurisdiction declined by reason of conduct [UAGPPJA § 207]**

26 1997. (a) If at any time a court of this state determines that it acquired  
27 jurisdiction to appoint a conservator because of unjustifiable conduct, the court  
28 may do any of the following:

29 (1) Decline to exercise jurisdiction.

30 (2) Exercise jurisdiction for the limited purpose of fashioning an appropriate  
31 remedy to ensure the health, safety, and welfare of the conservatee or proposed  
32 conservatee or the protection of the property of the conservatee or proposed  
33 conservatee or to prevent a repetition of the unjustifiable conduct, including  
34 staying the proceeding until a petition for the appointment of a conservator of the  
35 person, conservator of the estate, or conservator of the person and estate is filed in  
36 a court of another state having jurisdiction.

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

38 (A) The extent to which the conservatee or proposed conservatee and all persons  
39 required to be notified of the proceedings have acquiesced in the exercise of the  
40 court’s jurisdiction.

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

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

1 (b) If a court of this state determines that it acquired jurisdiction to appoint a  
2 conservator because a party seeking to invoke its jurisdiction engaged in  
3 unjustifiable conduct, it may assess against that party necessary and reasonable  
4 expenses, including attorney’s fees, investigative fees, court costs, communication  
5 expenses, medical examination expenses, witness fees and expenses, and travel  
6 expenses. The court may not assess fees, costs, or expenses of any kind against  
7 this state or a governmental subdivision, agency, or instrumentality of this state  
8 unless authorized by law other than this chapter.

9 **Comment.** Section 1997 is similar to Section 207 of the Uniform Adult Guardianship and  
10 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to  
11 conform to California terminology for the proceedings in question. See Section 1982 & Comment  
12 (definitions); see also Section 1980 Comment.

13 In subdivision (b), revisions have also been made to expressly authorize recovery of medical  
14 examination expenses. For a similar provision, see Conn. Gen. Stat. Ann. § 45-667m(b).

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

#### 16 **Background from Uniform Act**

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

29 [Subdivision] (a) gives the court authority to fashion an appropriate remedy when it has  
30 acquired jurisdiction because of unjustifiable conduct. The court may decline to exercise  
31 jurisdiction; exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to  
32 ensure the health, safety, and welfare of the [conservatee or proposed conservatee] or the  
33 protection of the ... property [of the conservatee or proposed conservatee] or [to] prevent a  
34 repetition of the unjustifiable conduct; or continue to exercise jurisdiction after considering  
35 several specified factors. Under [subdivision] (a), the unjustifiable conduct need not have been  
36 committed by a party.

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

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

#### 44 **§ 1998. Notice of proceeding [UAGPPJA § 208]**

45 1998. If a petition for the appointment of a conservator of the person,  
46 conservator of the estate, or conservator of the person and estate is brought in this  
47 state and this state was not the home state of the proposed conservatee on the date  
48 the petition was filed, in addition to complying with the notice requirements of this

1 state, the petitioner shall give notice of the petition or of a hearing on the petition  
2 to those persons who would be entitled to notice of the petition or of a hearing on  
3 the petition if a proceeding were brought in the home state of the proposed  
4 conservatee. The notice shall be given in the same manner as notice is required to  
5 be given in this state.

6 **Comment.** Section 1998 is similar to Section 208 of the Uniform Adult Guardianship and  
7 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to  
8 conform to California drafting practices and terminology for the proceedings in question. See  
9 Section 1982 & Comment (definitions); see also Section 1980 Comment. Revisions have also  
10 been made to:

- 11 (1) Reflect that some states require notice of a hearing on a petition, as opposed to notice  
12 of a petition.
- 13 (2) Make clear that the petitioner is responsible for giving the required notice. For a similar  
14 provision, see Ohio Rev. Code Ann. § 2112.26.

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

#### 17 **Background from Uniform Act**

18 While this Act tries not to interfere with a state’s underlying substantive law on  
19 [conservatorship] proceedings, the issue of notice is fundamental. Under this section, when a  
20 proceeding is brought other than in the [proposed conservatee’s] home state, the petitioner must  
21 give notice in the method provided under local law not only to those entitled to notice under local  
22 law but also to the persons required to be notified were the proceeding brought in the [proposed  
23 conservatee’s] home state. Frequently, the respective lists of persons to be notified will be the  
24 same. But where the lists are different, notice under this section will assure that someone with a  
25 right to assert that the home state has a primary right to jurisdiction will have the opportunity to  
26 make that assertion.

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

#### 28 **§ 1999. Proceedings in more than one state [UAGPPJA § 209]**

29 1999. Except for a petition for the appointment of a conservator under paragraph  
30 (1) or paragraph (2) of subdivision (a) of Section 1994, if a petition for the  
31 appointment of a conservator is filed in this state and in another state and neither  
32 petition has been dismissed or withdrawn, the following rules apply:

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

36 (b) If the court in this state does not have jurisdiction under Section 1993,  
37 whether at the time the petition is filed or at any time before the appointment, the  
38 court shall stay the proceeding and communicate with the court in the other state.  
39 If the court in the other state has jurisdiction, the court in this state shall dismiss  
40 the petition unless the court in the other state determines that the court in this state  
41 is a more appropriate forum.

42 **Comment.** Section 1999 is similar to Section 209 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. For limitations on the scope of this chapter, see  
46 Section 1981 & Comment.

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**Background from Uniform Act**

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

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

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

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

**Article 3. Transfer of Conservatorship**

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**Background from Uniform Act**

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

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

A transfer begins with the filing of a petition by the conservator as provided in Section [2001(a)].... Assuming the court in the transferring state is satisfied that the grounds for transfer stated in Section [2001(d) (conservatorship of the person)] or [2001(e) (conservatorship of the estate)] have been met, one of which is that the court is satisfied that the court in the other state will accept the case, the court must issue a provisional order approving the transfer. The transferring court will not issue a final order dismissing the case until, as provided in Section

1 [2001(f)], it receives a copy of the provisional order from the accepting court accepting the  
2 transferred proceeding.

3 Following issuance of the provisional order by the transferring court, a petition must be filed in  
4 the accepting court as provided in Section [2002(a)].... The court [may not issue] a provisional  
5 order accepting the case [if] it is established that the transfer would be contrary to the ...  
6 conservatee’s interests .... Section [2002(f)]. The term “interests” as opposed to “best interests”  
7 was chosen because of the strong autonomy values in modern [conservatorship] law. Should the  
8 court decline the transfer petition, it may consider a separately brought petition for the  
9 appointment of a [conservator] only if the court has a basis for jurisdiction under Sections [1993  
10 or 1994] other than by reason of the provisional order of transfer. Section [2002(k)].

11 .... Pursuant to Section [2001(g)], the provisional order from the accepting court must be filed  
12 in the transferring court. The transferring court will then issue a final order terminating the  
13 proceeding, subject to local requirements such as filing of a final report or account and the release  
14 of any bond. Pursuant to Section [2002(i)], the final order terminating the proceeding in the  
15 transferring court must then be filed in the accepting court, which will then convert its provisional  
16 order accepting the case into a final order appointing the petitioning ... conservator as ...  
17 conservator in the accepting state.

18 Because ... conservatorship law and practice will likely differ between the two states, the court  
19 in the accepting state must ... determine whether the ... conservatorship needs to be modified to  
20 conform to the law of the accepting state. Section [2002(h)].... [The conformity review] in the  
21 accepting state is also an appropriate time to change the ... conservator if there is a more  
22 appropriate person to act as ... conservator in the accepting state. The drafters specifically did not  
23 try to design the procedures in Article 3 for the difficult problems that can arise in connection  
24 with a transfer when the ... conservator is ineligible to act in the second state, a circumstance that  
25 can occur when a financial institution is acting as [conservator of the estate] or a government  
26 agency is acting as [conservator of the person]. Rather, the procedures in Article 3 are designed  
27 for the typical case where the ... conservator is legally eligible to act in the second state. Should  
28 that particular ... conservator not be the best person to act in the accepting state, a change of ...  
29 conservator can be initiated once the transfer has been secured.

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

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

42 **§ 2001. Transfer of conservatorship to another state [UAGPPJA § 301]**

43 2001. (a) A conservator appointed in this state may petition the court to transfer  
44 the conservatorship to another state.

45 (b) The petitioner shall give notice of a hearing on a petition under subdivision  
46 (a) to the persons that would be entitled to notice of a hearing on a petition in this  
47 state for the appointment of a conservator.

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

49 (d) The court shall issue an order provisionally granting a petition to transfer a  
50 conservatorship of the person, and shall direct the conservator of the person to

1 petition for acceptance of the conservatorship in the other state, if the court is  
2 satisfied that the conservatorship will be accepted by the court in the other state  
3 and the court finds all of the following:

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

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

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

11 (e) The court shall issue a provisional order granting a petition to transfer a  
12 conservatorship of the estate, and shall direct the conservator of the estate to  
13 petition for acceptance of the conservatorship in the other state, if the court is  
14 satisfied that the conservatorship will be accepted by the court of the other state  
15 and the court finds all of the following:

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

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

22 (3) Adequate arrangements will be made for management of the conservatee's  
23 property.

24 (f) The court shall issue a provisional order granting a petition to transfer a  
25 conservatorship of the person and estate, and shall direct the conservator to  
26 petition for acceptance of the conservatorship in the other state, if the requirements  
27 of subdivision (d) and the requirements of subdivision (e) are both satisfied.

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

30 (1) A provisional order accepting the proceeding from the court to which the  
31 proceeding is to be transferred which is issued under provisions similar to Section  
32 2002.

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

35 **Comment.** Section 2001 is similar to Section 301 of the Uniform Adult Guardianship and  
36 Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA"). Revisions have been made to  
37 conform to California drafting practices and terminology for the proceedings in question. See  
38 Section 1982 & Comment (definitions); see also Section 1980 Comment.

39 Revisions have also been made to more clearly coordinate this section with Section 2002  
40 (corresponding to UAGPPJA Section 302), which requires the conservator to file a petition "to  
41 accept the conservatorship" (not a petition "for a conservatorship") in the state to which the  
42 conservatorship would be transferred.

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

44 Subdivision (b) corresponds to Section 301(b) of UAGPPJA. Revisions have been made to  
45 specify that the petitioner is responsible for giving the notice (*cf.* Ohio Rev. Code Ann. §

1 2112.31(b)), and to conform to California practice, under which a party is required to give notice  
2 *of a hearing* on a motion or petition, not just notice *of a petition*.

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

8 Subdivision (d) corresponds to Section 301(d) of UAGPPJA, but modifies the procedure that  
9 applies if a person objects to transfer of a conservatorship of the person. To prevent such a  
10 transfer, the UAGPPJA provision would require an objector to establish that the transfer would be  
11 contrary to the interests of the subject of the proceeding. If there was no objection, or the objector  
12 failed to meet that burden, the transfer would go forward. In contrast, under subdivision (d) of  
13 this section, a transfer from California to another state would go forward over an objection only if  
14 the court affirmatively determines that the transfer would not be contrary to the interests of the  
15 conservatee.

16 Subdivision (e) corresponds to Section 301(e) of UAGPPJA, but modifies the procedure that  
17 applies if a person objects to transfer of a conservatorship of the estate. To prevent such a  
18 transfer, the UAGPPJA provision would require an objector to establish that the transfer would be  
19 contrary to the interests of the subject of the proceeding. If there was no objection, or the objector  
20 failed to meet that burden, the transfer would go forward. In contrast, under subdivision (e) of this  
21 section, a transfer from California to another state would go forward over an objection only if the  
22 court affirmatively determines that the transfer would not be contrary to the interests of the  
23 conservatee.

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

26 Subdivision (g) corresponds to Section 301(f) of UAGPPJA. If a conservatorship is transferred  
27 from California to another state, the conservator must continue to comply with California law  
28 until the court issues a final order confirming the transfer and terminating the conservatorship.  
29 See Section 2300 (oath & bond).

30 For limitations on the scope of this chapter, see Section 1981 & Comment. For guidance  
31 regarding the fee for filing a petition under this section, see Gov't Code § 70655.

32 **§ 2002. Accepting conservatorship transferred from another state [UAGPPJA § 302]**

33 2002. (a)(1) To confirm transfer of a conservatorship transferred to this state  
34 under provisions similar to Section 2001, the conservator shall petition the court in  
35 this state to accept the conservatorship.

36 (2) The petition shall include a certified copy of the other state's provisional  
37 order of transfer.

38 (3) On the first page of the petition, the petitioner shall state that the  
39 conservatorship does not fall within the limitations of Section 1981. The body of  
40 the petition shall allege facts showing that this chapter applies and the  
41 requirements for transfer of the conservatorship are satisfied.

42 (4) The petition shall specify any modifications necessary to conform the  
43 conservatorship to the law of this state, and the terms of a proposed final order  
44 accepting the conservatorship.

45 (5) A petition for the appointment of a temporary conservator under Section  
46 1994 and Chapter 3 (commencing with Section 2250) of Part 4 may be filed while  
47 a petition under this section is pending. The petition for the appointment of a  
48 temporary conservator shall request the appointment of a temporary conservator

1 eligible for appointment in this state, and shall be limited to powers authorized for  
2 a temporary conservator in this state. For purposes of Chapter 3 (commencing  
3 with Section 2250) of Part 4, the court shall treat a petition under this section as  
4 the equivalent of a petition for a general conservatorship.

5 (b) The petitioner shall give notice of a hearing on a petition under subdivision  
6 (a) to those persons that would be entitled to notice if the petition were a petition  
7 for the appointment of a conservator in both the transferring state and this state.  
8 The petitioner shall also give notice to any attorney of record for the conservatee  
9 in the transferring state and to any attorney appointed or appearing for the  
10 conservatee in this state. The petitioner shall give the notice in the same manner  
11 that notice of a petition for the appointment of a conservator is required to be  
12 given in this state, except that notice to the conservatee shall be given by mailing  
13 the petition instead of by personal service of a citation.

14 (c) Any person entitled to notice under subdivision (b) may object to the petition  
15 on one or more of the following grounds:

16 (1) Transfer of the proceeding would be contrary to the interests of the  
17 conservatee.

18 (2) Under the law of the transferring state, the conservator is ineligible for  
19 appointment in this state.

20 (3) Under the law of this state, the conservator is ineligible for appointment in  
21 this state, and the transfer petition does not identify a replacement who is willing  
22 and eligible to serve in this state.

23 (4) This chapter is inapplicable under Section 1981.

24 (d) Promptly after the filing of a petition under subdivision (a), the court shall  
25 appoint an investigator under Section 1454. The investigator shall promptly  
26 commence a preliminary investigation of the conservatorship, which focuses on  
27 the matters described in subdivision (f).

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

29 (f) The court shall issue an order provisionally granting a petition filed under  
30 subdivision (a) unless any of the following occurs:

31 (1) The court determines that transfer of the proceeding would be contrary to the  
32 interests of the conservatee.

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

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

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

39 (g) If the court issues an order provisionally granting the petition, the  
40 investigator shall promptly commence an investigation under Section 1851.1.

41 (h)(1) Not later than 60 days after issuance of an order provisionally granting the  
42 petition, the court shall determine whether the conservatorship needs to be  
43 modified to conform to the law of this state. The court may take any action

1 necessary to achieve compliance with the law of this state, including, but not  
2 limited to, striking or modifying any conservator powers that are not permitted  
3 under the law of this state.

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

6 (3) The conformity determination and the review required by this subdivision  
7 shall occur at a hearing, which shall be noticed as provided in subdivision (b).

8 (i)(1) The court shall issue a final order accepting the proceeding and appointing  
9 the conservator as a conservator of the person, a conservator of the estate, or a  
10 conservator of the person and estate in this state upon completion of the  
11 conformity determination and review required by subdivision (h), or upon its  
12 receipt from the court from which the proceeding is being transferred of a final  
13 order issued under provisions similar to Section 2001 transferring the proceeding  
14 to this state, whichever occurs later. In appointing a conservator under this  
15 paragraph, the court shall comply with Section 1830.

16 (2) A transfer to this state does not become effective unless and until the court  
17 issues a final order under paragraph (1). A conservator may not take action in this  
18 state pursuant to a transfer petition unless and until the transfer becomes effective  
19 and all of the following steps have occurred:

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

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

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

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

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

27 (3) Paragraph (2) does not preclude a person who has been appointed as a  
28 temporary conservator pursuant to Chapter 3 (commencing with Section 2250)  
29 from taking action in this state pursuant to the order establishing the temporary  
30 conservatorship.

31 (4) When a transfer to this state becomes effective, the conservatorship is  
32 subject to the law of this state and shall thereafter be treated as a conservatorship  
33 under the law of this state. If a law of this state, including, but not limited to,  
34 Section 2356.5, mandates compliance with special requirements to exercise a  
35 particular conservatorship power or take a particular step, the conservator of a  
36 transferred conservatorship may not exercise that power or take that step without  
37 first complying with those special requirements.

38 (j) Except as otherwise provided by Section 1851.1, Chapter 3 (commencing  
39 with Section 1860), Chapter 9 (commencing with Section 2650) of Part 4, and  
40 other law, when the court grants a petition under this section, the court shall  
41 recognize a conservatorship order from the other state, including the determination  
42 of the conservatee's incapacity and the appointment of the conservator.

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

6 **Comment.** Section 2002 is similar to Section 302 of the Uniform Adult Guardianship and  
7 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to  
8 conform to California drafting practices and terminology for the proceedings in question. See  
9 Section 1982 & Comment (definitions); see also Section 1980 Comment. For limitations on the  
10 scope of this chapter, see Section 1981 & Comment. For guidance regarding the fee for filing a  
11 petition under this section, see Gov’t Code § 70655. For rules governing appointment of counsel,  
12 see Sections 1470-1472; see also Section 1851.1(b)(9)-(12).

13 Paragraphs (1) and (2) of subdivision (a) correspond to Section 302(a) of UAGPPJA.  
14 Paragraphs (3) and (4) of that subdivision provide guidance on the content of a petition under this  
15 section. The first sentence of paragraph (3) serves to facilitate compliance with Section 1981  
16 (scope of chapter). Paragraph (5) of subdivision (a) makes clear that an out-of-state conservator  
17 may simultaneously seek a transfer under this section and a temporary conservatorship under  
18 Sections 1994 and 2250-2258.

19 Subdivision (b) corresponds to Section 302(b) of UAGPPJA. Revisions have been made to  
20 specify that the petitioner is responsible for giving the notice, and to conform to California  
21 practice, under which a party is required to give notice *of a hearing* on a motion or petition, not  
22 just notice *of a petition*. Revisions have also been made to eliminate the necessity for personal  
23 service of a citation on the conservatee, and make clear that all attorneys for the conservatee must  
24 receive notice.

25 Subdivision (c) specifies the permissible grounds for objecting to a petition under this section.

26 Subdivision (d) directs the court to appoint an investigator, to help it determine whether to  
27 provisionally accept the transfer.

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

31 Paragraph (1) of subdivision (f) corresponds to Section 302(d)(1) of UAGPPJA. Revisions  
32 have been made to eliminate the necessity of an objection and the corollary requirement of having  
33 “the objector establis[h]” that transfer would be contrary to the conservatee’s interests. Under  
34 paragraph (f)(1), it is sufficient if the court makes the required determination on its own motion,  
35 on the basis of any evidence it has at hand.

36 Paragraphs (2) and (3) of subdivision (f) correspond to Section 302(d)(2) of UAGPPJA.  
37 Revisions have been made to differentiate between: (1) a conservator who is ineligible, *under the*  
38 *law of the transferring state*, to serve in California (e.g., a public guardian who, under the law of  
39 another jurisdiction, is only authorized to act in that jurisdiction) and (2) a conservator who is  
40 ineligible, *under California law*, to serve in California. In the former situation, paragraph (f)(2)  
41 precludes the California court from provisionally granting the transfer. If the proceeding is to be  
42 transferred to California, the transferring court must first replace the existing conservator with  
43 one who would be authorized to act beyond the boundaries of the transferring state. In contrast, if  
44 the existing conservator is ineligible due to California law, the transfer can proceed so long as the  
45 transfer petition identifies a replacement who is willing and eligible to serve in California. See  
46 paragraph (f)(3).

47 Paragraph (4) of subdivision (f) is necessary to reflect the limitations on the scope of this  
48 chapter. See Section 1981 & Comment (scope of chapter).

49 Subdivision (g) directs the court-appointed investigator to further investigate the  
50 conservatorship if the court provisionally accepts the transfer. For details of this investigative  
51 process, see Section 1851.1 (investigation & review of out-of-state conservatorship).

1 Paragraph (1) of subdivision (h) corresponds to Section 302(f) of UAGPPJA, but the court is to  
2 undertake the conformity determination before it issues a final order accepting a transfer, rather  
3 than afterwards. In addition, the paragraph expressly authorizes the court to take any action  
4 necessary to conform a conservatorship to California law, including elimination or reduction of  
5 the conservator’s powers.

6 Paragraph (2) of subdivision (h) directs the court to review the conservatorship at the same  
7 time that it determines whether the conservatorship “needs to be modified to conform to the law  
8 of this state” under paragraph (1) of subdivision (h). For details of this review process, see  
9 Section 1851.1 (investigation & review of out-of-state conservatorship).

10 Paragraph (3) of subdivision (h) makes clear that the required conformity determination and  
11 review must occur at a hearing. If there is no opposition to a transfer petition, the court may place  
12 the matter on the consent calendar.

13 Paragraph (1) of subdivision (i) corresponds to Section 302(e) of UAGPPJA, but the court  
14 investigation, court review, and determination of how to conform the transferred conservatorship  
15 to California law must be complete before the court issues a final order accepting a proceeding  
16 and appointing the conservator to serve in California. The second sentence makes clear that such  
17 an order must meet the same requirements as an order appointing a conservator in a proceeding  
18 that originates in California.

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

24 Paragraph (3) of subdivision (i) makes clear that a person who has been appointed as a  
25 temporary conservator in California can begin to function in the state even though a transfer  
26 petition is pending.

27 Paragraph (4) of subdivision (i) underscores that once a conservatorship is transferred to  
28 California, it is henceforth subject to California law and will be treated as a California  
29 conservatorship. For example, if a conservatorship is transferred to California and the conservator  
30 wishes to exercise the powers specified in Section 2356.5 (conservatee with dementia), the  
31 requirements of that section must be satisfied.

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

36 Subdivision (k) corresponds to Section 302(h) of UAGPPJA.

## 37 Article 4. Registration and Recognition of Orders from Other States

### 38 **Background from Uniform Act**

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

48 Article 4 provides for such recognition. The key concept is registration. Section [2011]  
49 provides for registration of [an order appointing a conservator of the person], and Section [2012]  
50 for registration of [an order appointing a conservator of the estate]. Following registration of the  
51 order in the appropriate county of the other state, and after giving notice to the [supervising] court

1 of the intent to register the order in the other state, Section [2014] authorizes the ... conservator to  
2 thereafter exercise all powers authorized in the order of appointment except as prohibited under  
3 the laws of the registering state.

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

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

7 **§ 2011. Registration of order appointing conservator of person [UAGPPJA § 401]**

8 2011. If a conservator of the person has been appointed in another state and a  
9 petition for the appointment of a conservator of the person is not pending in this  
10 state, the conservator of the person appointed in the other state, after providing  
11 notice pursuant to subdivisions (b) and (c), may register the conservatorship order  
12 in this state by filing certified copies of the order and letters of office, and proof of  
13 notice as required herein, together with a cover sheet approved by the Judicial  
14 Council, in the superior court of any appropriate county of this state.

15 (b) At least fifteen (15) days before registering a conservatorship in this state,  
16 the conservator shall provide notice of an intent to register to all of the following:

17 (1) The court supervising the conservatorship.

18 (2) Every person who would be entitled to notice of a petition for the  
19 appointment of a conservator in the state where the conservatorship is pending.

20 (3) Every person who would be entitled to notice of a petition for the  
21 appointment of a conservator in this state.

22 (c) Each notice provided pursuant to subdivision (b) shall include a prominent  
23 statement that the conservator of a conservatorship registered under this section is  
24 subject to the law of this state while acting in this state, is required to comply with  
25 that law in every respect, including, but not limited to, all applicable procedures,  
26 and is not authorized to take any action prohibited by the law of this state. In  
27 addition, each notice shall prominently state that the registration is effective only  
28 while the conservatee resides in another jurisdiction and does not authorize the  
29 conservator to take any action while the conservatee is residing in this state.

30 **Comment.** Subdivision (a) of Section 2011 is similar to Section 401 of the Uniform Adult  
31 Guardianship and Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have  
32 been made to conform to California terminology for the proceedings in question. See Section  
33 1982 & Comment (definitions); see also Section 1980 Comment. Revisions have also been made  
34 to expand and clarify the notice requirement (see subdivisions (b) and (c)) and to clarify the  
35 proper filing procedure under California law. The reference to the “appointing court” has been  
36 replaced with a reference to the “court supervising the conservatorship,” because the court  
37 currently supervising a conservatorship might not be the same court that originally appointed the  
38 conservator. See Article 3 (transfer of conservatorship).

39 Paragraph (1) of subdivision (b) is similar to the notice requirement in UAGPPJA Section 401.  
40 Paragraphs (2) and (3) of subdivision (b) provide for additional notice, so as to alert interested  
41 persons that the conservatorship is being registered in California and the conservator might take  
42 action in California. If a person has concerns about such action, the person can either challenge a  
43 proposed action directly in a California court, or seek redress in the court supervising the  
44 conservatorship.

45 Under subdivision (c), a notice under this section must prominently inform the recipient about  
46 key limitations on the effect of registering a conservatorship in this state.

1 For further information on the effect of a registration under this section, see Section 2014  
2 (effect of registration). For the applicable filing fee, see Gov't Code § 70662 (fee for registration  
3 under California Conservatorship Jurisdiction Act). For recordation with a county recorder, see  
4 Section 2016 (recordation of registration documents). For guidance regarding third party reliance  
5 on a conservatorship order registered under this section, see Section 2015 (good faith reliance on  
6 registration). For limitations on the scope of this chapter, see Section 1981 & Comment.

7 **§ 2012. Registration of order appointing conservator of estate [UAGPPJA § 402]**

8 2012. If a conservator of the estate has been appointed in another state and a  
9 petition for a conservatorship of the estate is not pending in this state, the  
10 conservator appointed in the other state, after providing notice pursuant to  
11 subdivisions (b) and (c), may register the conservatorship order in this state by  
12 filing certified copies of the order and letters of office and of any bond, and proof  
13 of notice as required herein, together with a cover sheet approved by the Judicial  
14 Council, in the superior court of any county of this state in which property  
15 belonging to the conservatee is located.

16 (b) At least fifteen (15) days before registering a conservatorship in this state,  
17 the conservator shall provide notice of an intent to register to all of the following:

18 (1) The court supervising the conservatorship.

19 (2) Every person who would be entitled to notice of a petition for the  
20 appointment of a conservator in the state where the conservatorship is pending.

21 (3) Every person who would be entitled to notice of a petition for the  
22 appointment of a conservator in this state.

23 (c) Each notice provided pursuant to subdivision (b) shall include a prominent  
24 statement that the conservator of a conservatorship registered under this section is  
25 subject to the law of this state while acting in this state, is required to comply with  
26 that law in every respect, including, but not limited to, all applicable procedures,  
27 and is not authorized to take any action prohibited by the law of this state. In  
28 addition, each notice shall prominently state that the registration is effective only  
29 while the conservatee resides in another jurisdiction and does not authorize the  
30 conservator to take any action while the conservatee is residing in this state.

31 **Comment.** Subdivision (a) of Section 2012 is similar to Section 402 of the Uniform Adult  
32 Guardianship and Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA"). Revisions have  
33 been made to conform to California terminology for the proceedings in question. See Section  
34 1982 & Comment (definitions); see also Section 1980 Comment. Revisions have also been made  
35 to expand and clarify the notice requirement (see subdivisions (b) and (c)) and to clarify the  
36 proper filing procedure under California law. The reference to the "appointing court" has been  
37 replaced with a reference to the "court supervising the conservatorship," because the court  
38 currently supervising a conservatorship might not be the same court that originally appointed the  
39 conservator. See Article 3 (transfer of conservatorship).

40 Paragraph (1) of subdivision (b) is similar to the notice requirement in UAGPPJA Section 401.  
41 Paragraphs (2) and (3) of subdivision (b) provide for additional notice, so as to alert interested  
42 persons that the conservatorship is being registered in California and the conservator might take  
43 action in California. If a person has concerns about such action, the person can either challenge a  
44 proposed action directly in a California court, or seek redress in the court supervising the  
45 conservatorship.

1 Under subdivision (c), a notice under this section must prominently inform the recipient about  
2 key limitations on the effect of registering a conservatorship in this state.

3 For further information on the effect of a registration under this section, see Section 2014  
4 (effect of registration). For the applicable filing fee, see Gov't Code § 70662 (fee for registration  
5 under California Conservatorship Jurisdiction Act). For recordation with a county recorder, see  
6 Section 2016 (recordation of registration documents). For guidance regarding third party reliance  
7 on a conservatorship order registered under this section, see Section 2015 (good faith reliance on  
8 registration). For limitations on the scope of this chapter, see Section 1981 & Comment.

9 **§ 2013. Registration of order appointing conservator of person and estate**

10 2013. If a conservator of the person and estate has been appointed in another  
11 state and a petition for a conservatorship of the person, conservatorship of the  
12 estate, or conservatorship of the person and estate is not pending in this state, the  
13 conservator appointed in the other state, after providing notice pursuant to  
14 subdivisions (b) and (c), may register the conservatorship order in this state by  
15 filing certified copies of the order and letters of office and of any bond, and proof  
16 of notice as required herein, together with a cover sheet approved by the Judicial  
17 Council, in the superior court of any appropriate county of this state.

18 (b) At least fifteen (15) days before registering a conservatorship in this state,  
19 the conservator shall provide notice of an intent to register to all of the following:

20 (1) The court supervising the conservatorship.

21 (2) Every person who would be entitled to notice of a petition for the  
22 appointment of a conservator in the state where the conservatorship is pending.

23 (3) Every person who would be entitled to notice of a petition for the  
24 appointment of a conservator in this state.

25 (c) Each notice provided pursuant to subdivision (b) shall include a prominent  
26 statement that the conservator of a conservatorship registered under this section is  
27 subject to the law of this state while acting in this state, is required to comply with  
28 that law in every respect, including, but not limited to, all applicable procedures,  
29 and is not authorized to take any action prohibited by the law of this state. In  
30 addition, each notice shall prominently state that the registration is effective only  
31 while the conservatee resides in another jurisdiction and does not authorize the  
32 conservator to take any action while the conservatee is residing in this state.

33 **Comment.** Subdivision (a) of Section 2013 is included for the sake of completeness. It serves  
34 to clarify the registration procedure applicable to a conservatorship of the person and estate.

35 Paragraph (1) of subdivision (b) is similar to the notice requirement in UAGPPJA Section 401.  
36 Paragraphs (2) and (3) of subdivision (b) provide for additional notice, so as to alert interested  
37 persons that the conservatorship is being registered in California and the conservator might take  
38 action in California. If a person has concerns about such action, the person can either challenge a  
39 proposed action directly in a California court, or seek redress in the court supervising the  
40 conservatorship.

41 Under subdivision (c), a notice under this section must prominently inform the recipient about  
42 key limitations on the effect of registering a conservatorship in this state.

43 For further information on the effect of a registration under this section, see Section 2014  
44 (effect of registration). For the applicable filing fee, see Gov't Code § 70662 (fee for registration  
45 under California Conservatorship Jurisdiction Act). For recordation with a county recorder, see  
46 Section 2016 (recordation of registration documents). For guidance regarding third party reliance

1 on a conservatorship order registered under this section, see Section 2015 (good faith reliance on  
2 registration). For limitations on the scope of this chapter, see Section 1981 & Comment.

3 See Section 1982 (definitions).

4 **§ 2014. Effect of registration [UAGPPJA § 403]**

5 2014. (a) Upon registration of a conservatorship order from another state, the  
6 conservator may, while the conservatee resides out of this state, exercise in any  
7 county of this state all powers authorized in the order of appointment except as  
8 prohibited under the laws of this state, including maintaining actions and  
9 proceedings in this state and, if the conservator is not a resident of this state,  
10 subject to any conditions imposed upon nonresident parties. The conservator is  
11 subject to the law of this state while acting in this state, is required to comply with  
12 that law in every respect, including, but not limited to, all applicable procedures,  
13 and is not authorized to take any action prohibited by the law of this state. If a law  
14 of this state, including, but not limited to, Section 2352, 2352.5, 2355, 2356.5,  
15 2540, 2543, 2545, or 2591.5, or Article 2 (commencing with Section 1880) of  
16 Chapter 4 of Part 4, mandates compliance with special requirements to exercise a  
17 particular conservatorship power or take a particular step, the conservator of a  
18 registered conservatorship may not exercise that power or take that step without  
19 first complying with those special requirements.

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

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

25 **Comment.** Subdivision (a) of Section 2014 is similar to Section 403(a) of the Uniform Adult  
26 Guardianship and Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have  
27 been made to conform to California terminology for the proceedings in question. See Section  
28 1982 & Comment (definitions); see also Section 1980 Comment. Revisions have also been made  
29 to:

- 30 (1) Underscore that any conservatorship registered in California is fully subject to  
31 California law while the conservator is acting in the state. For example, if a  
32 conservatorship is registered in California and the conservator wishes to exercise the  
33 powers specified in Section 2356.5 (conservatee with dementia) within the state, the  
34 requirements of that section must be satisfied. Similarly, if the conservator of a  
35 registered conservatorship wishes to sell the conservatee’s personal residence located in  
36 California, the transaction must comply with California’s special requirements for such  
37 a sale (see, e.g., Sections 2352, 2352.5, 2540(b), 2543, 2591.5).
- 38 (2) Emphasize that registration of an out-of-state conservatorship in one county is  
39 sufficient; it is not necessary to register in every county in which the conservator seeks  
40 to act.
- 41 (3) Make clear that a registration is only effective while the conservatee resides in another  
42 jurisdiction. If the conservatee becomes a California resident, the conservator cannot  
43 act pursuant to a registration under Section 2011, 2012, or 2013, but can petition for  
44 transfer of the conservatorship to California under Article 2.

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

1 Subdivision (c) is the same as Section 403(b) of UAGPPJA.  
2 For limitations on the scope of this chapter, see Section 1981 & Comment.

3 **§ 2015. Good faith reliance on registration**

4 2015. (a) A third person who acts in good faith reliance on a conservatorship  
5 order registered under this article is not liable to any person for so acting if all of  
6 the following requirements are satisfied:

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

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

13 (3) The conservator presents to the third person a form approved by the Judicial  
14 Council, in which the conservator attests that the conservatee does not reside in  
15 this state and the conservator promises to promptly notify the third person if the  
16 conservatee becomes a resident of this state. The form shall also prominently state  
17 that the registration is effective only while the conservatee resides in another  
18 jurisdiction and does not authorize the conservator to take any action while the  
19 conservatee is residing in this state.

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

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

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

29 For the effect of registration under this article, see Section 2014 & Comment.

30 **§ 2016. Recordation of registration documents**

31 2016. (a) A file-stamped copy of the registration documents required by Section  
32 2011, 2012, or 2013 may be recorded in the office of any county recorder in this  
33 state.

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

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

1

## Article 5. Miscellaneous Provisions

2 **§ 2021. Uniformity of application and construction [UAGPPJA § 501]**

3 2021. In applying and construing this uniform act, consideration shall be given  
4 to the need to promote uniformity of the law with respect to its subject matter  
5 among states that enact it, consistent with the need to protect individual civil rights  
6 and in accordance with due process.

7 **Comment.** Section 2021 is similar to Section 501 of the Uniform Adult Guardianship and  
8 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). A clause has been added to  
9 underscore the importance of protecting a conservatee’s civil rights, particularly the constitutional  
10 right of due process, which is deeply implicated in conservatorship proceedings. See U.S. Const.  
11 amend. XIV; Cal. Const. art. I, §§ 7, 15; see also 2012 Conn. Pub. Act No. 12-22, § 22. The  
12 provision has also been revised to replace “must” with “shall,” in conformity with California  
13 drafting practices.

14 **§ 2022. Relationship to Electronic Signatures in Global and National Commerce Act**  
15 **[UAGPPJA § 502]**

16 2022. This chapter modifies, limits, and supersedes the federal Electronic  
17 Signatures in Global and National Commerce Act, Title 15 (commencing with  
18 Section 7001) of the United States Code, but does not modify, limit, or supersede  
19 subdivision (c) of Section 101 of that act, which is codified as subdivision (c) of  
20 Section 7001 of Title 15 of the United States Code, or authorize electronic  
21 delivery of any of the notices described in subdivision (b) of Section 103 of that  
22 act, which is codified as subdivision (b) of Section 7003 of Title 15 of the United  
23 States Code.

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

27 **§ 2023. Court rules and forms**

28 2023. (a) On or before January 1, 2016, the Judicial Council shall develop court  
29 rules and forms as necessary for the implementation of this chapter.

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

32 (1) A cover sheet for registration of a conservatorship under Section 2011, 2012,  
33 or 2013. The cover sheet shall explain that a proceeding may not be registered  
34 under Section 2011, 2012, or 2013 if the proceeding relates to a minor. The cover  
35 sheet shall further explain that a proceeding in which a person is subjected to  
36 involuntary mental health care may not be registered under Section 2011, 2012, or  
37 2013. The cover sheet shall require the conservator to initial each of these  
38 explanations. The cover sheet shall also include a prominent statement that the  
39 conservator of a conservatorship registered under Section 2011, 2012, or 2013 is  
40 subject to the law of this state while acting in this state, is required to comply with  
41 that law in every respect, including, but not limited to, all applicable procedures,

1 and is not authorized to take any action prohibited by the law of this state. In  
2 addition, the cover sheet shall prominently state that the registration is effective  
3 only while the conservatee resides in another jurisdiction and does not authorize  
4 the conservator to take any action while the conservatee is residing in this state.  
5 Directly beneath these statements, the cover sheet shall include a signature box in  
6 which the conservator attests to these matters.

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

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

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

19 **§ 2024. Transitional provision [UAGPPJA § 504]**

20 2024. (a) This chapter applies to conservatorship proceedings begun on or after  
21 January 1, 2016.

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

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

30 **Background from Uniform Act**

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

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

41 **Note.** In drafting proposed Section 2024, the Law Revision Commission assumed that its  
42 proposed UAGPPJA legislation would be introduced and enacted in 2014, but the bulk of it  
43 would not become operative until January 1, 2016 (i.e., the normal operative date would be  
44 delayed by one year, except the operative date of this section). The delayed operative date would  
45 be specified in an uncodified section (see below). The one-year delay would give the Judicial  
46 Council time to prepare court rules and forms to implement the legislation, as required by

1 proposed Section 2023. If the proposed legislation is not enacted in 2014, the operative dates will  
2 require adjustment.

3 UNCODIFIED

4 **Operative date [UAGPPJA § 505]**

5 SEC. \_\_\_\_\_. (a) Section 2023 of the Probate Code, as added by this act, becomes  
6 operative on January 1, 2015.

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

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

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

19 Usually the operative date is the same as the effective date. *People v. Henderson*, 107 Cal.  
20 App. 3d 475, 488, 166 Cal. Rptr. 20 (1980). In some instances, the Legislature exercises its  
21 discretion to specify a different operative date. See, e.g., *Preston v. State Bd. of Equalization*, 25  
22 Cal. 4th 197, 223-24, 19 P.3d 1148, 105 Cal. Rptr. 2d 407 (2001); *Cline v. Lewis*, 175 Cal. 315,  
23 318, 165 P. 915 (1917); *Johnson v. Alexis*, 153 Cal. App. 3d 33, 40, 199 Cal. Rptr. 909 (1984).  
24 The delayed operative date in this uncodified section is an example of that practice.

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

28 CONFORMING REVISIONS

29 CODE OF CIVIL PROCEDURE

30 **Code Civ. Proc. § 1913 (amended). Effect of judicial record of sister state**

31 1913. (a) Subject to subdivision (b), the effect of a judicial record of a sister  
32 state is the same in this state as in the state where it was made, except that it can  
33 only be enforced in this state by an action or special proceeding.

34 (b) The authority of a guardian, conservator, or committee, or of a personal  
35 representative, does not extend beyond the jurisdiction of the government under  
36 which that person was invested with authority, except to the extent expressly  
37 authorized by Article 4 (commencing with Section 2011) of Chapter 8 of Part 2 of  
38 Division 4 of the Probate Code or another statute.

39 **Comment.** Section 1913 is amended to reflect the enactment of the California Conservatorship  
40 Jurisdiction Act (Prob. Code § 1980 *et seq.*).

1

## GOVERNMENT CODE

2 **Gov't Code § 70662 (added). Registration under California Conservatorship Jurisdiction**  
3 **Act**

4 70662. The fee for registering a conservatorship under Article 4 (commencing  
5 with Section 2011) of Chapter 8 of Part 3 of Division 4 of the Probate Code is  
6 thirty dollars (\$30). Subject to subdivision (b), amounts collected shall be  
7 distributed to the Trial Court Trust Fund under Section 68085.1.

8 (b) From the operative date of this section to June 30, 2017, inclusive, ten  
9 dollars (\$10) of each fee collected pursuant to subdivision (b) shall be used by the  
10 Judicial Council for the expenses of the Judicial Council in implementing and  
11 administering the civil representation pilot program under Section 68651.

12 **Comment.** Section 70662 is added to specify the fee for registering a conservatorship order  
13 from another jurisdiction under the California Conservatorship Jurisdiction Act (Section 1980 *et*  
14 *seq.*).

15

## PROBATE CODE

16 **Prob. Code § 1471 (amended). Mandatory appointment of counsel in specified**  
17 **circumstances**

18 1471. (a) If a conservatee, proposed conservatee, or person alleged to lack legal  
19 capacity is unable to retain legal counsel and requests the appointment of counsel  
20 to assist in the particular matter, whether or not such person lacks or appears to  
21 lack legal capacity, the court shall, at or before the time of the hearing, appoint the  
22 public defender or private counsel to represent the interest of such person in the  
23 following proceedings under this division:

24 (1) A proceeding to establish or transfer a conservatorship or to appoint a  
25 proposed conservator.

26 (2) A proceeding to terminate the conservatorship.

27 (3) A proceeding to remove the conservator.

28 (4) A proceeding for a court order affecting the legal capacity of the  
29 conservatee.

30 (5) A proceeding to obtain an order authorizing removal of a temporary  
31 conservatee from the temporary conservatee's place of residence.

32 (b) If a conservatee or proposed conservatee does not plan to retain legal counsel  
33 and has not requested the court to appoint legal counsel, whether or not ~~such~~ that  
34 person lacks or appears to lack legal capacity, the court shall, at or before the time  
35 of the hearing, appoint the public defender or private counsel to represent the  
36 interests of ~~such~~ that person in any proceeding listed in subdivision (a) if, based on  
37 information contained in the court investigator's report or obtained from any other  
38 source, the court determines that the appointment would be helpful to the

1 resolution of the matter or is necessary to protect the interests of the conservatee or  
2 proposed conservatee.

3 (c) In any proceeding to establish a limited conservatorship, if the proposed  
4 limited conservatee has not retained legal counsel and does not plan to retain legal  
5 counsel, the court shall immediately appoint the public defender or private counsel  
6 to represent the proposed limited conservatee. The proposed limited conservatee  
7 shall pay the cost for ~~such~~ that legal service if he or she is able. This subdivision  
8 applies irrespective of any medical or psychological inability to attend the hearing  
9 on the part of the proposed limited conservatee as allowed in Section 1825.

10 **Comment.** Section 1471 is amended to make clear that it applies when a conservatorship is  
11 transferred under the California Conservatorship Jurisdiction Act (Sections 1980-2024).

12 The section is also amended to replace “such” with “that,” in conformity with California  
13 drafting practices.

14 **Prob. Code § 1834 (amended). Conservator’s acknowledgment of receipt**

15 SEC. \_\_\_\_\_. Section 1834 of the Probate Code is amended to read:

16 1834. (a) Before letters are issued in a conservatorship that originates in this  
17 state or a conservatorship that is transferred to this state under Chapter 8  
18 (commencing with Section 1980), the conservator (other than a trust company or a  
19 public conservator) shall file an acknowledgment of receipt of (1) a statement of  
20 duties and liabilities of the office of conservator, and (2) a copy of the  
21 conservatorship information required under Section 1835. The acknowledgment  
22 and the statement shall be in the form prescribed by the Judicial Council.

23 (b) The court may by local rules require the acknowledgment of receipt to  
24 include the conservator’s birth date and driver’s license number, if any, provided  
25 that the court ensures their confidentiality.

26 (c) The statement of duties and liabilities prescribed by the Judicial Council shall  
27 not supersede the law on which the statement is based.

28 **Comment.** Section 1834 is amended to make clear that it applies to a conservatorship that is  
29 transferred to California under the California Conservatorship Jurisdiction Act (Section 1980 *et*  
30 *seq.*), as well as one that originates in California.

31 **Prob. Code § 1851.1 (added). Investigation and review of transferred conservatorship**

32 SEC. \_\_\_\_\_. Section 1851.1 is added to the Probate Code, to read:

33 1851.1. (a) When a court issues an order provisionally granting a petition under  
34 Section 2002, the investigator appointed under Section 2002 shall promptly  
35 commence an investigation under this section.

36 (b) In conducting an investigation and preparing a report under this section, the  
37 court investigator shall do all of the following:

38 (1) Comply with the requirements of Section 1851.

39 (2) Conduct an interview of the conservator.

40 (3) Conduct an interview of the conservatee’s spouse or registered domestic  
41 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. The court may take appropriate action in response to the court  
36 investigator's report under this section.

37 (d) The court investigator's report under this section shall be confidential as  
38 provided in Section 1851.

39 (e) Except as provided in paragraph (2) of subdivision (a) of Section 1850, the  
40 court shall review the conservatorship again one year after the review conducted  
41 pursuant to subdivision (c), and annually thereafter, in the manner specified in  
42 Section 1850.

1 (f) The first time that the need for a conservatorship is challenged by any  
2 interested person or raised on the court's own motion after a transfer under Section  
3 2002, whether in a review pursuant to this section or in a petition to terminate the  
4 conservatorship under Chapter 3 (commencing with Section 1860), the court shall  
5 presume that there is no need for a conservatorship. This presumption is  
6 rebuttable, but can only be overcome by clear and convincing evidence. The court  
7 shall make an express finding on whether continuation of the conservatorship is  
8 the least restrictive alternative needed for the protection of the conservatee.

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 § 2300 (amended). Oath and bond**

31 SEC. \_\_\_\_\_. Section 2300 of the Probate Code is amended to read:

32 2300. Before the appointment of a guardian or conservator is effective,  
33 including, but not limited to, the appointment of a conservator under Section 2002,  
34 the guardian or conservator shall:

35 (a) Take an oath to perform the duties of the office according to law, ~~which.~~ The  
36 oath obligates the guardian or conservator to comply with the law of this state, as  
37 well as other applicable law, at all times, in any location within or without the  
38 state. If the conservator petitions for transfer of the conservatorship to another  
39 state pursuant to Section 2001, the conservator shall continue to comply with the  
40 law of this state until the court issues a final order confirming the transfer and  
41 terminating the conservatorship pursuant to Section 2001. The oath shall be  
42 attached to or endorsed upon the letters.

43 (b) File the required bond if a bond is required.

1       **Comment.** Section 2300 is amended to reflect the enactment of the California Conservatorship  
2 Jurisdiction Act (Section 1980 *et seq.*), particularly Article 3 (transfer of conservatorship) and  
3 Article 4 (registration and recognition of orders from other states).

4       **Prob. Code § 2352 (amended). Residence of ward or conservatee**

5       2352. (a) The guardian may establish the residence of the ward at any place  
6 within this state without the permission of the court. The guardian shall select the  
7 least restrictive appropriate residence that is available and necessary to meet the  
8 needs of the ward, and that is in the best interests of the ward.

9       (b) The conservator may establish the residence of the conservatee at any place  
10 within this state without the permission of the court. The conservator shall select  
11 the least restrictive appropriate residence, as described in Section 2352.5, that is  
12 available and necessary to meet the needs of the conservatee, and that is in the best  
13 interests of the conservatee.

14       (c) If permission of the court is first obtained, a guardian or conservator may  
15 establish the residence of a ward or conservatee at a place not within this state.  
16 Notice of the hearing on the petition to establish the residence of the ward or  
17 conservatee out of state, together with a copy of the petition, shall be given in the  
18 manner required by subdivision (a) of Section 1460 to all persons entitled to notice  
19 under subdivision (b) of Section 1511 or subdivision (b) of Section 1822.

20       (d)(1) An order under subdivision (c) relating to a ward shall require the  
21 guardian ~~or conservator~~ either to return the ward ~~or conservatee~~ to this state, or to  
22 cause a guardianship ~~or conservatorship~~ proceeding or its equivalent to be  
23 commenced in the place of the new residence, when the ward ~~or conservatee~~ has  
24 resided in the place of new residence for a period of four months or a longer or  
25 shorter period specified in the order.

26       (2) An order under subdivision (c) relating to a conservatee shall require the  
27 conservator to do one of the following when the conservatee has resided in the  
28 other state for a period of four months or a longer or shorter period specified in the  
29 order:

30       (A) Return the conservatee to this state.

31       (B) Petition for transfer of the conservatorship to the other state under Article 3  
32 (commencing with Section 2001) of Chapter 8 of Part 3 and corresponding law of  
33 the other state.

34       (C) Cause a conservatorship proceeding or its equivalent to be commenced in  
35 the other state.

36       (e)(1) The guardian or conservator shall file a notice of change of residence with  
37 the court within 30 days of the date of the change. The guardian or conservator  
38 shall include in the notice of change of residence a declaration stating that the  
39 ward's or conservatee's change of residence is consistent with the standard  
40 described in subdivision (b).

41       (2) The guardian or conservator shall mail a copy of the notice to all persons  
42 entitled to notice under subdivision (b) of Section 1511 or subdivision (b) of

1 Section 1822 and shall file proof of service of the notice with the court. The court  
2 may, for good cause, waive the mailing requirement pursuant to this paragraph in  
3 order to prevent harm to the conservatee or ward.

4 (3) If the guardian or conservator proposes to remove the ward or conservatee  
5 from his or her personal residence, except as provided by subdivision (c), the  
6 guardian or conservator shall mail a notice of his or her intention to change the  
7 residence of the ward or conservatee to all persons entitled to notice under  
8 subdivision (b) of Section 1511 and subdivision (b) of Section 1822. In the  
9 absence of an emergency, that notice shall be mailed at least 15 days before the  
10 proposed removal of the ward or conservatee from his or her personal residence. If  
11 the notice is served less than 15 days prior to the proposed removal of the ward or  
12 conservatee, the guardian or conservatee shall set forth the basis for the emergency  
13 in the notice. The guardian or conservator shall file proof of service of that notice  
14 with the court.

15 (f) This section does not apply where the court has made an order under Section  
16 2351 pursuant to which the conservatee retains the right to establish his or her own  
17 residence.

18 (g) As used in this section, “guardian” or “conservator” includes a proposed  
19 guardian or proposed conservator and “ward” or “conservatee” includes a  
20 proposed ward or proposed conservatee.

21 (h) This section does not apply to a person with developmental disabilities for  
22 whom the Director of the Department of Developmental Services or a regional  
23 center, established pursuant to Chapter 5 (commencing with Section 4620) of  
24 Division 4.5 of the Welfare and Institutions Code, acts as the conservator.

25 **Comment.** Section 2352 is amended to reflect the enactment of the California Conservatorship  
26 Jurisdiction Act (Section 1980 *et seq.*).

27 **Prob. Code § 2650 (amended). Grounds for removal**

28 SEC. \_\_\_\_\_. Section 2650 of the Probate Code is amended to read:

29 2650. A guardian or conservator may be removed for any of the following  
30 causes:

31 (a) Failure to use ordinary care and diligence in the management of the estate.

32 (b) Failure to file an inventory or an account within the time allowed by law or  
33 by court order.

34 (c) Continued failure to perform duties or incapacity to perform duties suitably.

35 (d) Conviction of a felony, whether before or after appointment as guardian or  
36 conservator.

37 (e) Gross immorality.

38 (f) Having such an interest adverse to the faithful performance of duties that  
39 there is an unreasonable risk that the guardian or conservator will fail faithfully to  
40 perform duties.

41 (g) In the case of a guardian of the person or a conservator of the person, acting  
42 in violation of any provision of Section 2356.

1 (h) In the case of a guardian of the estate or a conservator of the estate,  
2 insolvency or bankruptcy of the guardian or conservator.

3 (i) In the case of a conservator appointed by a court in another jurisdiction,  
4 removal because that person would not have been appointed in this state despite  
5 being eligible to serve under the law of this state.

6 ~~(i)~~ (j) In any other case in which the court in its discretion determines that  
7 removal is in the best interests of the ward or conservatee; but, in considering the  
8 best interests of the ward, if the guardian was nominated under Section 1500 or  
9 1501, the court shall take that fact into consideration.

10 **Comment.** Section 2650 is amended to reflect the enactment of the California Conservatorship  
11 Jurisdiction Act (Section 1980 *et seq.*).