

STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

RECOMMENDATION

## **Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act**

December 2013

(with revisions approved in Feb. and Apr. 2014)

California Law Revision Commission  
4000 Middlefield Road, Room D-2  
Palo Alto, CA 94303-4739  
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## NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

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STATE OF CALIFORNIA

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December 13, 2013

To: The Honorable Edmund G. Brown, Jr.  
*Governor of California*, and  
The Legislature of California

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.

Respectfully submitted,

Damian Capozzola  
*Chairperson*

## 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

The Uniform Law Commission (“ULC”)<sup>1</sup> approved the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (“UAGPPJA”) in 2007.<sup>2</sup> The scope of this uniform act is relatively narrow; it focuses only on jurisdiction and related issues in court proceedings involving adults who require assistance with personal care, property administration, or both.<sup>3</sup> Nonetheless, the legislation

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

is likely to have a big impact, because the proportion of elderly adults in this country is rapidly growing, while the whole population is highly mobile, frequently moving and conducting transactions across state lines.<sup>4</sup>

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

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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 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.

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

The Law Revision Commission held a series of public meetings on the topic, prepared and circulated extensive written materials in connection with those meetings, and received an abundance of thoughtful input from stakeholders. After researching and analyzing the matter, the Commission recommends that California enact UAGPPJA, with various modifications as presented and described in this recommendation.

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

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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*.

### The Impetus for UAGPPJA

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

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

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

Those differences can be problematic, because the population of the country is not only aging but is also highly mobile. Extended families are dispersed across the country, people often move for work or other reasons, and many of the adults who need a court-appointed assistant have homes, property, or other ties in more

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*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 (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*.

than one state.<sup>20</sup> Due to this mobility, three main types of problems are frequent in the court proceedings described above:

- Jurisdictional issues.
- Transfer issues.
- Interstate recognition issues.

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

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

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

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

#### ***Short Title***

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

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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*.

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

### *Limitations on Scope*

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

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

Under California law, a minor who is or was married is treated as an adult for some but not all of the types of proceedings covered by UAGPPJA.<sup>27</sup> Because other states may treat such a minor differently and even California does not treat such a minor as an adult for all of the proceedings covered by UAGPPJA, it seems

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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).

simplest to completely exclude minors from California's version of the act.

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

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

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

29. See *id*.

30. See Penal Code §§ 1026-1027 (civil commitment of person found not guilty by reason of insanity), 1367-1376 (civil commitment of person found incompetent to stand trial), 2960-2981 (civil commitment of 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).

proceedings.<sup>31</sup> Yet that limitation is not expressly stated in the uniform act.

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

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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., *Conservatorship of Roulet*, 23 Cal. 3d 219, 235, 616 P.2d 836, 167 Cal. Rptr. 854 (1980); *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). Because California courts have found a variety of

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

*Adults with Developmental Disabilities.* Finally, a carefully-tailored limitation should apply with respect to an adult with a developmental disability. In California, an adult with a developmental disability is entitled to be evaluated by a regional center and to receive a broad range of services pursuant to an individualized plan.<sup>36</sup> The intent is to “enable persons with developmental disabilities to approximate the pattern of everyday

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constitutional protections with regard to involuntary mental health treatment that are not the established “law of the land” (i.e., federal law, as definitively interpreted by the United States Supreme Court), the concept of transferring an out-of-state proceeding involving such treatment to California under UAGPPJA would pose serious problems.

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

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

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

36. See Welf. & Inst. Code § 4646; see also *Sanchez v. Johnson*, 416 F.3d 1051, 1064-68 (9th Cir. 2001).

living available to people without disabilities of the same age.”<sup>37</sup> To further that intent, California provides a variety of conservatorship possibilities for an adult with a developmental disability, including the option of a limited conservatorship in which the adult retains all legal and civil rights except those which the court designates as legal disabilities and specifically grants to the limited conservator.<sup>38</sup>

Due to those special opportunities for an adult with a developmental disability, the proposed legislation would not apply UAGPPJA’s streamlined transfer procedure<sup>39</sup> to such an adult. Instead, the Commission recommends making the transfer procedure (but not UAGPPJA’s registration procedure)<sup>40</sup> expressly inapplicable to an adult with a developmental disability, and to any proceeding in which a person is appointed to provide personal care

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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 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*; but see proposed Prob. Code § 2017 & Comment *infra* (residence-based limitation on registration of conservatorship order does not apply to conservatorship order issued by court of California tribe).

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.

or property administration for an adult with a developmental disability.<sup>41</sup>

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

### *Definitions*

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

*The Problem of Different and Conflicting Terminology.* Unfortunately, California uses very different and sometimes conflicting terminology for many of the concepts defined in

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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.

UAGPPJA. A table summarizing the situation is presented in Appendix A.

In short, UAGPPJA defines a “guardian” as “a person appointed by the court to make decisions regarding the person of an adult ...”<sup>43</sup> In California, however, a “guardian” may only be appointed for a minor.<sup>44</sup> The term “conservator of the person” is comparable to what UAGPPJA denominates a “guardian.” In what is known as a “Probate Code conservatorship” (sometimes referred to as a “general conservatorship”), a California court may, with certain exceptions, appoint a “conservator of the person” for “a person who is unable to provide properly for his or her personal needs for physical health, food, clothing, or shelter ...”<sup>45</sup>

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

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

A further complication is the terminology used to refer to the types of proceedings in which such appointments are made. Under UAGPPJA, a “guardianship proceeding” is “a judicial proceeding

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43. UAGPPJA § 102(3).

44. See Prob. Code §§ 1500-1501.

45. Prob. Code § 1801(a).

46. UAGPPJA § 102(2).

47. Prob. Code § 1801(b).

48. Prob. Code § 1801(c).

49. *Id.*

in which an order for the appointment of a guardian is sought or has been issued.”<sup>50</sup> A “protective order” is “an order appointing a conservator or other order related to management of an adult’s property.”<sup>51</sup> A “protective proceeding” is “a judicial proceeding in which a protective order is sought or has been issued.”<sup>52</sup> The term “conservatorship” is not defined, although it is used in a few places in UAGPPJA, apparently to refer to a proceeding in which a UAGPPJA “conservator” is appointed.<sup>53</sup>

In California, the term “guardianship proceeding” is reserved for proceedings relating to minors, which are not addressed by UAGPPJA. Under California law, the term “conservatorship proceeding” encompasses both a proceeding to appoint a “conservator of the person” and a proceeding to appoint a “conservator of the estate,” as well as a proceeding to appoint a “conservator of the person and estate.” Moreover, the term “protective proceeding” is used far more inclusively than under UAGPPJA. Instead of being limited to proceedings that involve management of property, the term seems to encompass all “conservatorship proceedings” and “guardianship proceedings,” as well as some types of similar proceedings.<sup>54</sup>

Due to these terminology differences, it would be confusing to enact UAGPPJA in California as is. Rather, the Commission recommends revising the act to use California terminology throughout.<sup>55</sup> That would make the act consistent with the

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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).

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

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

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

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

It is therefore necessary to consider the manner in which those entities conduct the types of proceedings governed by UAGPPJA. The District of Columbia is subject to federal due process

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"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.

protections,<sup>57</sup> as are Puerto Rico,<sup>58</sup> the U.S. Virgin Islands,<sup>59</sup> Guam,<sup>60</sup> and the Commonwealth of the Northern Mariana Islands.<sup>61</sup> American Samoa, the only other inhabited territory or insular possession subject to the jurisdiction of the United States, appears to offer analogous due process protections through its own constitution.<sup>62</sup> It therefore appears appropriate to apply UAGPPJA to proceedings from these U.S.-affiliated entities, affording the same comity as would be accorded to an actual state.

The situation for federally recognized Indian tribes is similar but somewhat more complicated. While federally recognized Indian tribes are not directly subject to the due process protections in the federal constitution, Congress has acted to legislatively extend due process protections to the tribes.<sup>63</sup> Generally, the conception of due process applicable to tribes differs from federal and state due process in that Congress sought to balance individual protections

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

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. See 25 U.S.C. § 1302(a)(8).

with continued tribal self-determination.<sup>64</sup> Due process rights cannot be asserted against tribes in federal court due to sovereign immunity, so remedies must be sought in individual tribal courts and those courts are not bound to follow federal case law on due process.<sup>65</sup> It appears, however, that tribal courts are no less protective of individual rights than federal courts.<sup>66</sup>

For that reason, the Commission generally recommends that federally recognized Indian tribes be afforded the same comity that would be accorded to a sister state. However, as discussed further below, some provisions of UAGPPJA must be adjusted when applied to tribes, to accommodate the special character of tribal court jurisdiction.<sup>67</sup>

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

In addition to the provisions discussed above, Article 1 of UAGPPJA contains a provision regarding application of the proposed legislation to a court proceeding in another country,<sup>68</sup> provisions facilitating communication and cooperation between courts of different states,<sup>69</sup> and a provision on taking testimony in another state.<sup>70</sup> Aside from revisions to conform to California terminology, and a clarification relating to assessment of expenses

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

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

66. See, e.g., 108 Employees of the Crow Tribe of Indians v. Crow Tribe of Indians, 2001 Crow 10, ¶ 20 (2001); McCarthy, *Civil Rights in Tribal Courts: The Indian Bill of Rights at Thirty Years*, 34 Idaho L. Rev. 465, 489 (1998); Freitag, *supra* note 64, at 864.

67. See discussions of “Tribal Court Jurisdiction” and “Transfer Involving Tribal Court” *infra* and note 219 & accompanying text *infra*.

68. UAGPPJA § 103.

69. UAGPPJA §§ 104, 105.

70. UAGPPJA § 106.

incurred when courts cooperate under UAGPPJA,<sup>71</sup> the Commission does not recommend any changes relating to those provisions.<sup>72</sup>

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

Article 2 of UAGPPJA addresses the problem of determining the proper jurisdiction of a proceeding in which a court appoints someone to assist another person with personal care or property management. Jurisdictional issues arise often, because individuals frequently have contacts with more than one state.<sup>73</sup> For example, an individual might own property in several states, or might spend part of the year living in one state and part of the year living in another state. If such an individual appears to need a court-appointed assistant, it is important to have an effective mechanism for resolving which state has jurisdiction to evaluate the need for an appointment, select an assistant if needed, and supervise the proceeding afterwards. Article 2 of UAGPPJA is intended to provide such a mechanism.<sup>74</sup>

In general, UAGPPJA would establish a three-tier hierarchy for determining jurisdiction.<sup>75</sup> At the top of the hierarchy is the “home state,” which is determined by examining where the individual was physically present for a six-month period preceding the filing of the petition for appointment of an assistant.<sup>76</sup> The home state has

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

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

73. UAGPPJA Prefatory Note, p. 1.

74. *Id.*

75. UAGPPJA Prefatory Note, p. 3.

76. 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*.

primary jurisdiction to make an appointment.<sup>77</sup> Next in the hierarchy is a “significant-connection” state,<sup>78</sup> which is defined as a state, other than the home state, with which the individual has a significant connection aside from mere physical presence and in which significant evidence concerning the individual is available.<sup>79</sup> Finally, a court from a state that is neither the home state nor a significant-connection state may exercise jurisdiction in certain limited circumstances.<sup>80</sup>

The details of UAGPPJA’s jurisdictional scheme, including exceptions to the general rules described above, are explained at length in UAGPPJA.<sup>81</sup> It is not necessary to reiterate all of those details here. UAGPPJA’s jurisdictional scheme is reasonable because it is based on the strength of an individual’s ties to a jurisdiction.<sup>82</sup> Eliminating jurisdictional uncertainties through a uniform approach would be a major step forward. The Commission therefore recommends that the Legislature enact UAGPPJA’s jurisdictional rules with very few revisions.

The proposed legislation would conform those rules to California terminology, drafting practices, and notice procedure.<sup>83</sup>

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

78. 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.

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

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

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

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

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

In addition, the proposed legislation would make a few other minor modifications,<sup>84</sup> and refine the treatment of the following matters:

***Exclusive Basis for Jurisdiction***

Section 202 of UAGPPJA states that the act’s jurisdictional rules “provid[e] the exclusive jurisdictional basis” for a court to appoint a person to assist an adult with personal care or property administration. The apparent intent is to make clear that UAGPPJA’s jurisdictional rules are the only basis for determining which state has jurisdiction of a proceeding to make such an appointment.<sup>85</sup> If the provision was enacted in California, those jurisdictional rules would apply regardless of whether a party is invoking the transfer procedures of UAGPPJA or is seeking to establish a new conservatorship in California.<sup>86</sup>

Because UAGPPJA’s jurisdictional provisions would have this impact, it would be helpful to include a “signpost provision” in Chapter 4 (“Jurisdiction and Venue”) of Part 4 (“Provisions Common to Guardianship and Conservatorship”) of Division 4 of the Probate Code.<sup>87</sup> That step would serve to alert people to the existence of those jurisdictional provisions, which might otherwise be overlooked when a conservatorship is being initiated in, rather than transferred to, California.

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84. 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*.

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

86. 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.

87. See proposed amendment of Prob. Code § 2200 *infra*.

The Commission also recommends revising the language of UAGPPJA Section 202 to clarify its scope. From the ULC's discussion of this provision, it is evident that the provision is only intended to address which state has jurisdiction, not other jurisdictional issues like whether an appellate court may make such an appointment.<sup>88</sup> The Commission proposes to make this point more clear.<sup>89</sup>

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

In a number of places, UAGPPJA refers to a court that “declines to exercise jurisdiction” because another state is “a more appropriate forum.”<sup>90</sup> For example, the second clause of Section 203(2)(A) would give jurisdiction to a court in a significant-connection state if a court in the home state has declined to exercise jurisdiction because the significant-connection state is a more appropriate forum.<sup>91</sup> Similarly, Section 203(3) would give

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

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

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

91. 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

jurisdiction to a court in a peripheral state (a state that is neither the home state, a significant-connection state, nor a place with special jurisdiction under Section 204) if that is constitutionally permissible and the home state plus all significant-connection states have declined to exercise jurisdiction because the peripheral state is a more appropriate forum.<sup>92</sup>

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

Under UAGPPJA, when a court “declines to exercise jurisdiction” because another state is “a more appropriate forum,” it must “either dismiss or stay the proceeding.”<sup>93</sup> The uniform act thus contemplates that the court will take an affirmative step, the issuance of a dismissal or stay order. But the act is silent on whether the court’s order must expressly state that the court is declining to exercise jurisdiction because another state is a more appropriate forum.<sup>94</sup>

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

- (1) Revise UAGPPJA Section 203(2)(A) and (3) to make clear that they apply only when a court in another

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filed in another state. See UAGPPJA § 206(b) (corresponding to proposed Prob. Code § 1996(b) *infra*).

92. 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.

93. UAGPPJA § 206(b).

94. See *id.*

state has *expressly* declined jurisdiction on the ground that California is a more appropriate forum.<sup>95</sup>

- (2) Revise UAGPPJA Section 206 to make clear that when a California court declines to exercise jurisdiction because a court in another state is a more appropriate forum, the California court must do so *expressly in a record*.<sup>96</sup>

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

In addition, the proposed legislation would permit an interested person, a California court, or a court of another state to raise the issue of appropriate forum by a petition, motion, or request specifically directed to that issue.<sup>97</sup> It would not be necessary to file a conservatorship proceeding in California, which the court could “dismiss or stay,”<sup>98</sup> simply for the purpose of obtaining a ruling on that point.

That approach will avoid unduly burdening proposed conservatees and conservators, their family and friends, and the court system. A variety of procedural protections would apply to a petition, motion, or request raising the issue of appropriate forum, so California does not relinquish its jurisdiction (and thus its right to protect the proposed conservatee and enforce its conservatorship policies) unless that step is warranted.<sup>99</sup> Of particular importance, the petitioner would have to provide notice to the same persons who would be entitled to notice of a petition to appoint a

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

96. 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*.

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

98. UAGPPJA § 206(b).

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

conservator.<sup>100</sup> That requirement will help ensure that interested persons have an opportunity to speak up if they have concerns about California relinquishing its jurisdiction.

### *Special Jurisdiction*

Section 204 of UAGPPJA describes several situations in which a court has “special jurisdiction” (i.e., jurisdiction that is not based on UAGPPJA’s normal three-tier jurisdictional hierarchy<sup>101</sup>). Among other things, the section allows a court lacking jurisdiction under the normal hierarchy to make a short-term appointment in an “emergency”<sup>102</sup> for an individual who is physically present in the state.<sup>103</sup> The provision does not specify the procedure for making such an appointment.

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

101. 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.

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

The UAGPPJA definition “does not preclude an enacting jurisdiction from appointing a [conservator] under an emergency [conservatorship] statute with a different or broader test of emergency if the court otherwise has jurisdiction to make an appointment” under UAGPPJA’s normal three-tier jurisdictional hierarchy. UAGPPJA § 204 Comment. In other words, California’s temporary conservatorship procedure (Prob. Code §§ 2250-2258), including its “good cause” requirement, would continue to be available whenever California has jurisdiction as the proposed conservatee’s “home state” or jurisdiction otherwise exists under proposed Probate Code Section 1993(a)-(e) *infra* (corresponding to UAGPPJA § 203(1)-(3)).

103. See UAGPPJA § 204(a)(1).

California's procedure for establishing a permanent conservatorship would be too slow for use in an emergency situation.<sup>104</sup> Accordingly, if jurisdiction is based on the rule providing special jurisdiction to make an appointment in an emergency for an individual who is physically present in California, the proposed law would require use of California's procedure for establishing a temporary conservatorship.<sup>105</sup>

Section 204 of UAGPPJA also provides special jurisdiction to make an appointment when a conservatorship (or similar proceeding by another name) is in the process of being transferred from one state to another pursuant to the Act. More specifically, suppose California enacts UAGPPJA. Suppose further that a court in another state takes a preliminary step in the UAGPPJA transfer process: Issuing a provisional order to transfer a conservatorship to California.<sup>106</sup> In that circumstance, Section 204 would give a California court special jurisdiction to appoint a conservator for the conservatee, even though the transfer is not yet complete and California does not yet have jurisdiction under UAGPPJA's normal, three-tier jurisdictional hierarchy.<sup>107</sup>

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104. 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”).

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

106. For a detailed explanation of UAGPPJA's transfer procedure, see discussion of “Transfer Procedure Under UAGPPJA” *infra*.

107. See UAGPPJA § 204(a)(3). As the ULC explains, this special jurisdictional rule addresses a problem that often arises when relocating a conservatorship from one state to another:

A “Catch-22” arises frequently in such cases. The court in the transferring state will not allow the incapacitated or protected person to move and will not terminate the case until the court in the transferee state has accepted the matter. But the court in the transferee state will not accept the case until the incapacitated or protected person has physically moved and presumably become a resident of the transferee state.

As in the emergency situation discussed above, an appointment in these circumstances might be needed quickly. For example, it might be necessary to immediately empower someone to make living arrangements in California on another person's behalf, in preparation for moving that person across country to receive specialized medical treatment.

As before, California's procedure for establishing a permanent conservatorship would be too slow to use in this situation. Accordingly, if jurisdiction is based solely on the existence of a provisional order from another court transferring a proceeding to California, the proposed law would again require use of California's procedure for establishing a temporary conservatorship.<sup>108</sup>

### ***Tribal Court Jurisdiction***

As sovereigns, federally recognized Indian tribes have broad authority to regulate their own affairs.<sup>109</sup> A tribe's right to self-government includes the authority to maintain a system of justice.<sup>110</sup> Tribal jurisdiction to adjudicate matters arising on tribal land is broad, "encompassing all civil and criminal matters absent limitations imposed by lawful federal authority."<sup>111</sup> This includes the authority to appoint a conservator for a member who lacks decisionmaking capacity.<sup>112</sup>

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Subsection (a)(3), which grants the court in the transferee state limited jurisdiction to consider a petition requesting transfer of a proceeding [from] another state, is intended to unlock the stalemate.

UAGPPJA § 204 Comment.

108. See proposed Prob. Code § 1994(a)(3) & Comment *infra*.

109. Jessup, *Cohen's Handbook of Federal Indian Law* § 4.01[1][b], at 211 (2012) (hereafter "Cohen's Handbook") (citations omitted).

110. *Cohen's Handbook*, *supra* note 109, § 4.01[2][d], at 218 (citations omitted).

111. *Id.* at 219 (citations omitted).

112. *Id.* § 4.01[2][c], at 217 (citations omitted); 25 U.S.C. § 159 (indirectly recognizing tribal authority to appoint guardian for "incompetent" Indian).

Tribal court jurisdiction has special characteristics that are not easily reconciled with UAGPPJA's jurisdictional provisions. In determining which state has jurisdiction, UAGPPJA looks first to matters of geographical territory. The state in which the proposed conservatee has resided for a specified period of time (i.e., the person's "home state") has default jurisdiction.<sup>113</sup> UAGPPJA also generally provides that conservatorship jurisdiction is exclusive; only one state can exercise jurisdiction at a time.<sup>114</sup>

Those principles are not appropriate for determining the conservatorship jurisdiction of a tribal court, for the following reasons:

- (1) Because tribal territory overlaps with the territory of the state, a person who resides on tribal land also resides within the state that contains the tribal land. Such a person would have two "home states" under UAGPPJA. This would produce uncertain and problematic results.
- (2) With regard to matters of "core tribal concern" (which likely includes conservatorship), tribal courts can exercise civil jurisdiction over a tribe member who is not residing on tribal land.<sup>115</sup> This extraterritorial jurisdiction is inconsistent with the UAGPPJA provision granting default jurisdiction to a proposed conservatee's home state.<sup>116</sup>
- (3) Under Public Law 280,<sup>117</sup> tribal court civil jurisdiction over matters arising on tribal land is concurrent with state court jurisdiction.<sup>118</sup> This is

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113. See UAGPPJA § 203(1); proposed Prob. Code § 1993(a) *infra*.

114. See UAGPPJA § 205; proposed Prob. Code § 1995 *infra*.

115. *Cohen's Handbook*, *supra* note 109, § 4.01[2][e], at 220 (citations omitted) (emphasis added).

116. See UAGPPJA § 203(1); proposed Prob. Code § 1993(a) *infra*.

117. Codified at 18 U.S.C. § 1162; 25 U.S.C. §§ 1321-1326; 28 U.S.C. § 1360.

118. *Cohen's Handbook*, *supra* note 109, § 6.04[3][c], at 555 (citations omitted).

inconsistent with the rule of exclusive jurisdiction provided in UAGPPJA.<sup>119</sup>

For those reasons, the proposed law would make UAGPPJA's jurisdictional provisions inapplicable to federally recognized Indian tribes.<sup>120</sup> This would preserve existing law on the complex and sensitive matter of concurrent state court and tribal court civil jurisdiction.

However, the proposed law would include two provisions that would help California courts to address the complications that can arise with respect to tribal court jurisdiction. The first would expressly authorize a state court to decline to exercise conservatorship jurisdiction over a member of a federally recognized Indian tribe if, after considering all relevant factors, the court determines that the tribal court is the more appropriate forum.<sup>121</sup> This provision is modeled after the UAGPPJA provision that authorizes a state court to decline to exercise jurisdiction on the grounds that another state is the more appropriate forum.<sup>122</sup> The second new provision would require that a petition to appoint a conservator include certain information if the proposed conservatee is known to be a member of a federally recognized Indian tribe.<sup>123</sup> This would alert the court to any potential jurisdictional complexities and would facilitate early communication and cooperation between the state court and the tribal court.<sup>124</sup>

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119. See UAGPPJA § 205; proposed Prob. Code § 1995 *infra*.

120. See proposed Prob. Code § 2032 *infra*.

121. See proposed Prob. Code § 2033 *infra*.

122. See UAGPPJA § 206; proposed Prob. Code § 1996 *infra*.

123. See proposed amendment of Prob. Code § 1821 *infra* (adding subdivision (k)).

124. UAGPPJA authorizes communication and cooperation between the courts of different jurisdictions. See UAGPPJA §§ 104-105; proposed Prob. Code §§ 1984-1985 *infra*.

**Transfer (Article 3 of UAGPPJA)**

Article 3 of UAGPPJA addresses the problem of transfer: how to move what is known in California as a conservatorship from one state to another when such a move becomes necessary.<sup>125</sup> That problem can arise, for example, when the conservator or the conservator's spouse accepts a new job in a different state and the family needs to bring the conservatee along to the new state. Alternatively, family circumstances might change, necessitating replacement of the existing conservator with a family member who lives in another state. Or it might be necessary to move a conservatee to a nursing or medical facility in a different state, particularly if the conservatee resides near a state border or requires specialized care.<sup>126</sup>

Before UAGPPJA, in most states it was necessary to re-establish a conservatorship from scratch when such a move occurred.<sup>127</sup> In other words, the whole process of creating a conservatorship had to be repeated: filing a conservatorship petition, proving that the proposed conservatee lacks capacity to handle personal care or financial matters, choosing a conservator, and going through all of the other steps in the conservatorship process.

Such relitigation is costly, time-consuming, and stressful, draining resources of conservatees, their families, and the judicial system.<sup>128</sup> Those burdens can be particularly difficult for families that are already stretched thin, struggling to provide personal care and financial management for a needy relative, while also handling their own affairs.

In drafting Article 2 of UAGPPJA, the ULC sought to provide a streamlined transfer process, so that it would not be necessary to fully relitigate such a proceeding when a move occurred.<sup>129</sup> That transfer process involves a number of steps, as described below.

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125. See UAGPPJA Prefatory Note, p. 1.

126. See Alzheimer's Ass'n Case Statement, *supra* note 17.

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

128. *Id.*

129. *Id.*

### *Transfer Procedure Under UAGPPJA*

Although UAGPPJA uses the term “transfer,” what actually occurs is technically not transfer of a proceeding from one state to another. Rather, the process involves termination of an existing proceeding in one state and commencement of a new proceeding in another state, in an expedited and coordinated manner. The term “transfer” is just a shorthand way to refer to this process.<sup>130</sup>

A “transfer” under UAGPPJA requires the issuance of four court orders: (1) a provisional order granting the transfer, (2) a provisional order accepting the transfer, (3) a final order confirming the transfer, and (4) a final order accepting the transfer. A hearing is held only if the transferring court or the accepting court deems it necessary, or if one is requested by a person entitled to notice of the transfer proceeding.<sup>131</sup>

To begin the transfer process, a court-appointed assistant must file a transfer petition in the court currently supervising the proceeding.<sup>132</sup> That court must issue an order provisionally granting the transfer if it is satisfied that the other state will accept the transfer and the court makes certain findings regarding the proposed move.<sup>133</sup> The required findings differ slightly depending on whether the proceeding involves personal care or financial assistance.<sup>134</sup>

After the transferring court provisionally grants the transfer, the court-appointed assistant must file a petition in a court of the other state, asking it to accept the transfer.<sup>135</sup> That court must issue a provisional order accepting the transfer unless: (1) the assistant is ineligible for appointment in the accepting state or (2) someone

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

131. See UAGPPJA §§ 301(c), 302(c).

132. UAGPPJA § 301(a).

133. UAGPPJA § 301(d), (e).

134. See UAGPPJA § 301(d).

135. UAGPPJA § 302(a).

objects to the transfer and establishes that the transfer would be contrary to the interests of the person receiving assistance.<sup>136</sup>

On receipt of the provisional order accepting the transfer and whatever documents are normally required to terminate a proceeding of this type, the transferring court must issue a final order confirming the transfer and terminating its proceeding.<sup>137</sup> The transferring court's final order is then provided to the accepting court, which must issue a final order accepting the transfer and appointing the petitioner to provide assistance in the accepting state.<sup>138</sup> To expedite the transfer process, the court in the accepting state must give deference to the transferring court's determination of capacity and selection of the person to provide assistance.<sup>139</sup>

Because the applicable law and practice are likely to differ in the two states, within ninety days after issuing its final order accepting the transfer, the accepting court must determine whether the proceeding needs to be modified to conform to the law of that state.<sup>140</sup> The ninety-day requirement is not inflexible; a state may coordinate the conformity determination with other time limits applicable to the proceeding. The conformity determination is the last step in the transfer process.

Because UAGPPJA's transfer process would reduce the monetary, emotional, and other costs of relocating a proceeding, the Commission recommends the concept for enactment in California. To protect the state's policies and effectively implement the concept, however, the Commission suggests several modifications of UAGPPJA's transfer provisions. A few of those modifications relate to transfer of a California conservatorship to another state; most of the modifications relate to acceptance of a

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136. UAGPPJA § 302(d).

137. UAGPPJA § 301(f).

138. UAGPPJA § 302(e).

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

140. UAGPPJA § 302(f).

similar proceeding from another state. Each set of proposed modifications is discussed in order below.

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

Section 301 of UAGPPJA specifies the process for transferring a proceeding to another state. If that section was enacted in California, a California court would not have to provisionally approve a transfer to another state unless it found that plans for care of the conservatee in the other state were “reasonable and sufficient,”<sup>141</sup> or, in a conservatorship of the estate, that adequate arrangements would be made for management of the conservatee’s property.<sup>142</sup> In those circumstances, a California court could in good conscience relinquish control over the conservatee and entrust the conservatee or the conservatee’s property to the supervision of the accepting court. Upon transfer, the situation would be comparable to that of any other conservatee beyond California’s jurisdictional reach: California would lack a basis for intervening and would have to respect the policy determinations and other decisions of its sister state.

During the transfer process, however, the California court would still have responsibility for supervising the care of the conservatee. To eliminate any doubt that the conservator is bound by California law throughout the transfer process, the Commission recommends making that point explicit in the provision governing the conservator’s oath.<sup>143</sup>

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

- Revisions to conform to California terminology.<sup>144</sup>

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

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

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

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

- Revisions to more clearly coordinate the provision with the provision governing acceptance of a transfer (UAGPPJA § 302).<sup>145</sup>
- Revisions to specify that the petitioner is responsible for giving the required notice.<sup>146</sup>
- Revisions to conform to California practice, under which a party is required to give notice *of a hearing* on a motion or petition, not just notice of a petition.<sup>147</sup>
- Revisions to require a hearing on every transfer petition.<sup>148</sup> This would afford interested persons a relatively easy means to voice objections; they would not have to bear the burden of figuring out how to request a hearing. If there are no objections to a transfer petition, the court could place the matter on the consent calendar.
- Revisions of the procedure that applies if a person objects to a transfer. To prevent a transfer, UAGPPJA would require an objector to establish that the transfer would be contrary to the interests of the subject of the

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145. 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”).

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

147. See *id*.

148. 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).

proceeding.<sup>149</sup> If 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>150</sup>

- Revisions to make clear which requirements apply to a proceeding that involves both personal care and property management (what is known in California as a conservatorship of the person and estate).<sup>151</sup>

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

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

*Expressly Requiring Compliance with California Law Upon Transfer.* If Section 302 of UAGPPJA was enacted in California, a California court would have to accept the transfer of a proceeding from another state upon satisfaction of the procedural requirements described above. That raises an important question: After the transfer, would the transferred proceeding continue to be governed by the laws of the state in which it was established, or would it be governed by California law? In other words, would the California court have to apply the policies and procedures of another state, or would it be free to follow California's own policies and

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149. See UAGPPJA § 301(d)(2), (e)(2).

150. 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.

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

procedures? There are many distinctions between California conservatorship law and comparable law in other states, so providing clear guidance on this point is critical.

UAGPPJA does not say so expressly, but it is fairly obvious that the ULC intended for a transferred proceeding to be governed by the law of the state to which it was transferred.<sup>152</sup> ULC representatives have confirmed as much.<sup>153</sup> Application of California law also appears to be the only sensible solution: Otherwise, similarly situated California conservatees would be subject to disparity in treatment depending on where a conservatorship originated, and California courts would have to learn and apply the rules of numerous other jurisdictions on a daily basis.

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

When a transfer to this state becomes effective, the conservatorship is subject to the law of this state and shall thereafter be treated as a conservatorship under the law of this state. If a law of this state, including, but not limited to, Section 2356.5, mandates compliance with special requirements to exercise a particular conservatorship power or take a particular step, the conservator of a transferred conservatorship may not exercise that power or take that step without first complying with those special requirements.<sup>154</sup>

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

153. 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).

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

That rule will help to ensure that California policies are protected. For example, California has detailed requirements for placing a conservatee with dementia in a secured perimeter residential care facility for dementia patients,<sup>155</sup> and for authorizing the administration of psychotropic medications to such a conservatee.<sup>156</sup> Under the Commission's proposed approach, it would be clear that a conservator would have to satisfy those requirements before taking those steps in California.

*Expressly Preventing a Court Appointee from Taking Action in California Until the Transfer is Complete and Becomes Effective.* For similar reasons, the Commission also recommends a second statutory clarification: Making clear that a court-appointed assistant may not take action in California pursuant to a transfer petition unless and until a California court issues a final order accepting the transfer and the court and conservator have completed the same series of steps that must be taken when a conservatorship originates in California.<sup>157</sup> In particular, the necessary steps are:

- (1) The conservator must take an oath to perform the duties of the position according to law.<sup>158</sup>
- (2) The court must set the bond and the conservator must file the required bond, if any.<sup>159</sup>

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155. See Prob. Code § 2356.5.

156. See *id.*

157. 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*.

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

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

- (3) The court must provide the conservator with the same informational materials that a new conservator receives when a conservatorship originates in California.<sup>160</sup>
- (4) The conservator must acknowledge receipt of the required informational materials.<sup>161</sup>
- (5) The clerk of the court must issue the letters of conservatorship.<sup>162</sup>

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

*Allowing But Not Mandating Full Reevaluation of Capacity and the Choice of the Appointee Pursuant to California Law.* Section 302 of UAGPPJA provides that “[i]n granting a petition under this section, the court shall recognize a ... conservatorship order from the other state, including the determination of the [conservatee’s] incapacity and the appointment of the ... conservator.”<sup>163</sup> The key purpose of that requirement is to eliminate the burden of having to “prove the case in the second state from scratch, including proving the respondent’s incapacity and the choice of ... conservator.”<sup>164</sup>

Although that is an important objective, the Commission has serious reservations about requiring a California court to accept another state’s ruling on capacity or choice of conservator without

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160. 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).

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

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

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

164. UAGPPJA Art. 3 General Comment.

qualification. Because the UAGPPJA process would not be a true transfer, the constitutional requirement to give full faith and credit to a sister state judgment<sup>165</sup> would not seem to apply. Further, the United States Supreme Court is likely to treat a conservatorship order in the same manner as a child custody order, concluding that because the order is subject to modification in the state that issued it, the order is also subject to modification in a sister state.<sup>166</sup>

Most importantly, California's policies and procedures regarding determination of capacity and selection of a conservator differ from those in other states. For example, California has enacted the Due Process in Competence Determinations Act, which establishes detailed and demanding rules and procedures for assessing a

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165. 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.

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

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

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

person's capacity.<sup>167</sup> In neighboring states (Arizona, Nevada, and Oregon), the rules regarding determination of capacity are not as fully developed.<sup>168</sup> Similarly, California's rules governing selection of a conservator differ in various respects from those in neighboring states, and those rules reflect policy choices such as how much weight to give to the conservatee's preference and how to rank a domestic partner in comparison to other relatives.<sup>169</sup> By requiring a California court to accept another state's determination of capacity or selection of appointee, Section 302 of UAGPPJA threatens to impinge on California's policy preferences regarding those matters.

On the other hand, however, requiring full relitigation of capacity and the choice of conservator in each case transferred to California would defeat the very purpose of UAGPPJA's transfer process: making relocation of this type of court proceeding less burdensome. In particular, assessing an individual's capacity can be embarrassing for that individual<sup>170</sup> and costly because it requires input from medical professionals<sup>171</sup> and might entail a jury trial.<sup>172</sup> UAGPPJA seeks to minimize those concerns.

The Commission therefore proposes a middle ground. Full relitigation of capacity and the choice of conservator would not be required in every case transferred to California. But such relitigation would be *allowed if requested in the normal manner that those issues can be revisited in any California conservatorship*: (1) by filing a petition for termination of the

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

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

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

170. 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.").

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

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

conservatorship, if the intent is to show that the conservatee has sufficient capacity to handle his or her own affairs without assistance,<sup>173</sup> or (2) by filing a petition to remove the conservator, if the intent is to obtain a new conservator in accordance with California law.<sup>174</sup> In other words, the issues of capacity and choice of conservator could be relitigated under California law if someone wanted to raise them.

Further, the first time that capacity is litigated in California, the relitigation process should be comparable to the process that would have been used if the conservatorship had originated in California. Accordingly, the Commission proposes to require the court to rebuttably presume that there is no need for a conservatorship.<sup>175</sup>

Likewise, if a person seeks removal of a conservator originally appointed in another state, a California court should reevaluate the choice of conservator in the same manner as if a conservator was being chosen for a proceeding that originated in California. The Commission therefore recommends that the statute governing removal of a conservator be amended to permit removal of a transferred conservator if that person “would not have been appointed in this state despite being eligible to serve under the law of this state.”<sup>176</sup>

As a further means of protecting California conservatorship policies in the transfer process, the Commission recommends that the court be required to appoint a court investigator promptly after the filing of a petition to accept a transfer.<sup>177</sup> The court investigator would first conduct a preliminary investigation, focusing on the requirements for issuing a provisional order accepting the

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

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

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

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

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

transfer.<sup>178</sup> If the court issues such an order, the court investigator would then conduct an investigation similar to the one that occurs when a new conservatorship is established in California.<sup>179</sup> Among other things, the court investigator would have to determine whether the conservatee objects to the conservator or prefers another person to act as conservator.<sup>180</sup> The investigator would also have to interview the conservator, the conservatee, and the conservatee's spouse or domestic partner (if any) to determine whether the conservator is acting in the best interests of the conservatee.<sup>181</sup> In addition, the investigator would have to make specific findings concerning the conservatee's capacity.<sup>182</sup>

The court would review the investigator's report at the same time that it determines whether the conservatorship conforms to California law.<sup>183</sup> When the court conducts the review, it would be authorized to take appropriate action in response to the court investigator's report.<sup>184</sup> The court could also modify the conservator's powers as necessary to conform to California law.<sup>185</sup> The review process would thus provide an opportunity to protect

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178. See *id.*

179. 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.

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

181. 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).

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

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

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

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

California's conservatorship policies, including its policies on determination of capacity and choice of the conservator.<sup>186</sup>

*Sequencing.* Under UAGPPJA, a court has up to ninety days *after* issuing a final order accepting a proceeding to determine how to conform that proceeding to local law.<sup>187</sup> By that time, the routine and ministerial prerequisites for serving as a California conservator (taking an oath, posting the required bond, providing and acknowledging receipt of the required informational materials, and issuance of the letters of conservatorship) are likely to have been completed, and the conservator probably will have been functioning as such in the new jurisdiction for awhile.

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

For that reason, the Commission recommends that the conformity determination, as well as the court investigation and review described above, *precede* issuance of the final order accepting a transfer.<sup>188</sup> That way, the court will be well-informed when it decides whether to issue such an order and, assuming that it does so, the conservatorship will be properly structured from the outset.

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

187. UAGPPJA § 302(f).

188. See proposed Prob. Code § 2002(d), (g), (h) & (i) & Comment *infra*. Virginia has taken a similar approach; it requires a final order accepting a transfer to include a determination of whether the guardianship or conservatorship needs to be modified to conform to Virginia law. See Va. Code Ann. § 64.2-2115(E).

The Commission recognizes that this approach might involve some logistical hurdles, but those complications should be manageable. For example, if a source of information was located in another state (e.g., the conservator, conservatee, or a friend or family member), the court investigator could gather information by telephone or other remote means; such techniques are already widely used in cases that originate in California. Similarly, if it became necessary for the conservator to take action in California before the conformity determination, review of the conservatorship, and completion of the transfer process, the conservator could seek a temporary appointment under the usual California procedures for such an appointment. The proposed legislation would expressly allow a conservator to apply for such a temporary appointment while a transfer petition is pending.<sup>189</sup>

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

- Revisions to conform to California terminology.<sup>190</sup>
- Revisions to provide guidance on the content of a petition to accept a transfer.<sup>191</sup>
- Revisions relating to the notice requirements for a petition to accept a transfer.<sup>192</sup>

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

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

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

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

- Revisions to expressly authorize an interested person to object to a proposed transfer, and to specify the permissible grounds for such an objection.<sup>193</sup>
- Revisions to require the court to conduct a hearing on issuance of an order provisionally accepting a transfer. Such a hearing should be mandatory for the same reasons previously expressed in connection with the proposed provision on transferring a California conservatorship to another state.<sup>194</sup> If there are no objections to issuance of the provisional order, the court could place the matter on the consent calendar.<sup>195</sup>
- Revisions of the standard for denying a provisional order due to the potential impact of the proposed transfer on the interests of the person requiring assistance.<sup>196</sup>
- Revisions to differentiate between (1) a conservator who is ineligible, *under the law of the transferring state*, to serve in California, and (2) a conservator

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

194. See *supra* note 148 & accompanying text.

195. See proposed Prob. Code § 2002(e) & Comment *infra*; see also *supra* note 148 & accompanying text.

196. 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 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 establish[es]” 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*.

who is ineligible, *under California law*, to serve in California.<sup>197</sup>

- Revisions to make clear that the determination of conformity with California law must occur at a hearing. The court review examining the court investigator's report would occur at the same hearing. If no issues are in dispute, the court could place these matters on the consent calendar.<sup>198</sup>

### ***Transfer Involving Tribal Court***

If a conservatorship established in a California court involves matters arising on tribal land, there could be limitations on the state court's subject matter jurisdiction. Most significantly, the state court could lack jurisdiction to take certain actions relating to the conservatee's property.<sup>199</sup>

Such gaps in state court jurisdiction could be addressed by the creation of a concurrent conservatorship in the appropriate tribal court, with the tribal court addressing matters that are beyond the state court's jurisdiction. To facilitate that solution, the proposed law would authorize a *partial* transfer of a conservatorship

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197. 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.

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

199. 25 U.S.C. § 1360(b).

between a state and tribal court.<sup>200</sup> The transferring court could transfer less than all of the powers granted to the conservator, retaining supervisory jurisdiction over the powers that are not transferred. For example, a state court that lacks jurisdiction regarding a conservatee's property on tribal land could transfer its powers relating to that particular property to the tribal court, while retaining jurisdiction over other aspects of the conservatorship.

With this refinement authorizing a partial transfer between a state and tribal court, and all of the other modifications discussed above, the Commission recommends that the Legislature enact UAGPPJA's transfer procedure in California.

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

Article 4 of UAGPPJA addresses the problem of interstate recognition.<sup>201</sup> The discussion below describes that problem and UAGPPJA's approach to it, and then explores the implications of the UAGPPJA approach for California.

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

Sometimes a person appointed to assist an individual with limited capacity has to take action in a state other than the one in which the court made the appointment. For example, it might be necessary to obtain medical care for the individual with limited capacity while that individual is traveling in another state or living near a state border with a medical facility located on the other side.<sup>202</sup> Alternatively, a conservator might need to sell or maintain property located in a different state, such as a vacation home belonging to the conservatee.<sup>203</sup> There are also various other

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200. See proposed Prob. Code § 2003 *infra*.

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

202. See generally Alzheimer's Ass'n Case Statement, *supra* note 17.

203. See generally *id*.

reasons why a court-appointed assistant might need to take steps in a different jurisdiction.<sup>204</sup>

In these types of situations, the court appointee sometimes encounters resistance from an individual or entity in the other state. For example, a care facility in the other state might question the appointee's authority to act on behalf of the person with limited capacity.<sup>205</sup> Due to this sort of refusal, it is sometimes necessary to seek a second court appointment in the other state, but that is a difficult burden for many families to bear.<sup>206</sup>

Article 4 of UAGPPJA is designed to avoid this problem by facilitating enforcement of a court appointment that was made in another state.<sup>207</sup> The key concept of the article is registration.<sup>208</sup> By following a relatively simple procedure, a court appointee may register the appointment in another state, and may thereafter exercise in that state all of the powers authorized in the order of appointment, *except as prohibited under the laws of that state*.<sup>209</sup> In other words, when taking action in the state where the appointment is registered, the court appointee *must comply with the laws of that state*.

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

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204. 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.

205. UAGPPJA Art. 4 General Comment.

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

207. See UAGPPJA Art. 4 General Comment.

208. *Id.*

209. See UAGPPJA §§ 401-403.

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

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

Such an obligation already appears to exist by virtue of the conservator's oath. Nonetheless, the Commission proposes to underscore the point by amending the provision that requires the oath. Specifically, the Commission recommends that the provision be amended to expressly require a California conservator "to comply with the law of this state, as well as other applicable law, at all times, *in any location within or without the state.*"<sup>210</sup>

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

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

Again, that prospect does not appear to be problematic, at least in most circumstances. As explained above, a court appointee acting pursuant to a UAGPPJA registration must comply with the law of the state of registration.<sup>211</sup> Accordingly, if an out-of-state appointment was registered in California, the appointee would have to comply with California law while taking action in California, and thus would not pose any threat to California policies.

The proposed legislation would underscore and reinforce that requirement. Like UAGPPJA, it would provide that the out-of-state

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

211. See *supra* note 209 & accompanying text.

conservator “may exercise in this state all powers authorized in the order of appointment *except as prohibited under the laws of this state ...*”<sup>212</sup> In addition, the proposed legislation would expressly state that when the conservator is acting pursuant to registration,

the conservator is subject to the law of this state governing the action, including, but not limited to, all applicable procedures, and is not authorized to take any action prohibited by the law of this state.<sup>213</sup>

The proposed legislation would specifically make clear that if a California law “mandates compliance with special requirements to exercise a particular conservatorship power or take a particular step, the conservator of a registered conservatorship may not exercise that power or take that step without first complying with those special requirements.”<sup>214</sup> For example, a conservator who is registered in California could not authorize the administration of dementia medication to a conservatee located within this state without fulfilling California’s special requirements for taking that step.<sup>215</sup>

The proposed legislation would seek to ensure that the conservator is made aware of the important fundamental principle described above, and agrees to comply with it. To register in California, the appointee would have to file not only the registration documents required by UAGPPJA (certified copies of the conservatorship order and letters of office), but also a cover sheet to be developed by the Judicial Council, which would inform the appointee that when the appointee is acting pursuant to registration, the appointee is subject to California law governing the action, including, but not limited to, all applicable procedures,

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

213. Proposed Prob. Code § 2014(a) *infra*.

214. *Id.*

215. See proposed Prob. Code § 2014 & Comment *infra*; see also Prob. Code § 2356.5 (conservatee with dementia).

and is not authorized to take any action prohibited by California law.<sup>216</sup> Below that statement would be a signature box, in which the appointee attests to those matters, reducing the likelihood that an appointee would overlook the need to follow California law.<sup>217</sup>

Before registering the proceeding in California, the appointee would also have to provide the same information to the court supervising the proceeding and to interested persons, in a notice of intent to register.<sup>218</sup> That would further strengthen the protection for California policies.<sup>219</sup>

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

The Commission believes, however, that if a conservator-conservatee relationship is relocated to California, it should be officially transferred to California and subjected to the safeguards of the transfer process. For that reason, the registration of an out-of-state conservatorship in California should only be effective while the conservatee resides in another jurisdiction. If the conservatee moves to California, the conservator should no longer

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

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

218. 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*.

219. 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.

be able to take action in California pursuant to the registration, and should have to seek a transfer of the court proceeding to California. The Commission proposes to modify UAGPPJA's registration procedure to achieve that result<sup>220</sup> and ensure that the conservator, conservatee, family members, friends, and third parties are informed of this limitation.<sup>221</sup>

This residency limitation would not apply to a person conserved by a court of a California tribe.<sup>222</sup> It is proper for a California tribal court to exercise jurisdiction over its members who reside in California.

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

- Revisions to conform to California terminology.<sup>223</sup>
- Revisions to clarify the procedure for filing the registration documents in a California court.<sup>224</sup>
- Revisions to reflect that the court that originally made an appointment may not be the one currently supervising the proceeding.<sup>225</sup>
- Addition of a provision that expressly permits and governs registration of a court appointment that

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

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

222. See proposed Prob. Code §§ 2017, 2023(c) *infra*.

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

224. 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).

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

involves both personal care and property management.<sup>226</sup>

- Revisions to make clear that registration in a single county is sufficient; it is not necessary to register in every county in which the court appointee wishes to act.<sup>227</sup>
- Addition of a “safe harbor” provision, under which a person who relies in good faith on a UAGPPJA registration would be protected from liability in specified circumstances.<sup>228</sup>
- Addition of a provision authorizing recordation of UAGPPJA registration documents.<sup>229</sup>

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

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

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

- Section 501 of UAGPPJA is a standard ULC provision directing courts to consider the need to promote uniformity of the law when applying and construing the act. To emphasize the importance of respecting a conservatee’s constitutional rights in

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

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

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

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

applying and construing the act, the Commission recommends modifying this provision to refer to those rights, as well as the need to promote uniformity.<sup>230</sup>

- Section 505 of UAGPPJA would specify the “effective date” of the proposed legislation. In California, it is important to differentiate between the “effective date” and the “operative date” of legislation. The “effective date” is when the legislation officially becomes part of the law of the state.<sup>231</sup> The “operative date” is when the legislation actually starts to operate in the state.<sup>232</sup> The Commission recommends that UAGPPJA have a one-year delayed operative date if it is enacted in California. The one year delay in operation of the statute would afford time for the Judicial Council to prepare court rules and forms necessary for smooth implementation of the legislation.<sup>233</sup> The Commission further recommends enactment of a provision

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230. 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.

231. 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).

232. 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.

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

directing the Judicial Council to prepare such rules and forms before the specified operative date.<sup>234</sup>

### **Conforming Revisions**

Some existing California statutes will have to be repealed or revised to properly coordinate them with the proposed UAGPPJA legislation. The Commission has identified code sections that require such adjustment and has included conforming revisions of them in this recommendation.<sup>235</sup>

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

### **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 enforcement of out-of-state 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>236</sup> For the same reasons, enactment of the proposed legislation would result in significant costs savings

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

235. See “Conforming Revisions” *infra*.

236. 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>>.

for the judiciary, and thus the state budget. Although some of the proposed procedural steps will require the expenditure of judicial resources,<sup>237</sup> certain expenditures would be offset by filing fees,<sup>238</sup> while others are likely to be less than or equal to the corresponding costs of invoking existing law.<sup>239</sup>

### **Need for the Proposed Reform**

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

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

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237. 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.

238. See, e.g., proposed Gov't Code § 70663 (fee for registration of conservatorship) & Comment *infra*.

239. 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))	<p>“conservator of the person” (Prob. Code § 1801(a))</p> <p>The UAGPPJA term (“guardian”) is potentially confusing because in California a “guardian” may only be appointed for a minor</p>
Person appointed to assist an adult with financial matters	“conservator” (UAGPPJA § 102(2))	<p>“conservator of the estate” (Prob. Code § 1801(b))</p> <p>The UAGPPJA term (“conservator”) is potentially confusing because in California a “conservator” could be responsible for personal care, financial matters, or both</p>

<i>Concept</i>	<i>UAGPPJA term</i>	<i>California term</i>
Person appointed to assist an adult with personal care and financial matters	none	<p>“conservator of the person and estate” (Prob. Code § 1801(c))</p> <p>UAGPPJA does not provide a term for an appointee with dual responsibilities, although this is a commonly occurring situation</p>
Judicial proceeding in which court appoints someone to assist an adult with personal care	“guardianship proceeding” (UAGPPJA § 102(5))	<p>“conservatorship of the person”</p> <p>The UAGPPJA term (“guardianship proceeding”) is potentially confusing because in California a “guardianship” may only be established for a minor</p>
Judicial proceeding in which court appoints someone to assist an adult with personal care and financial matters	None	<p>“conservatorship of the person and estate”</p> <p>UAGPPJA does not provide a term for this type of proceeding, although it is a commonly occurring situation</p>

<i>Concept</i>	<i>UAGPPJA term</i>	<i>California term</i>
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>
Adult for whom a court has appointed someone to provide assistance with personal care	“incapacitated person” (UAGPPJA § 102(6))	“conservatee”  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

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## PROPOSED LEGISLATION

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

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

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

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

#### Article 1. General Provisions

##### Background from Uniform Act

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

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

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

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

(b) This chapter may be cited as the "California Conservatorship Jurisdiction Act."

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

Due to differences between California terminology and that of the Uniform Law Commission, the short title provided in the uniform act ("Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act") could cause confusion within this state. See Sections 1500-1502 ("guardian" may only be nominated for minor, not for adult); see also Sections 1301, 4126 & 4672 (using term "protective proceeding" differently than in uniform act); Cal. R. Ct. 7.51(d), 10.478(a) & 10.776(a) (same); Welf. & Inst. Code § 15703 (same). The alternative title provided in this section ("California Conservatorship Jurisdiction Act") is consistent with California terminology for the types of proceedings covered by UAGPPJA.

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

**Background from Uniform Act**

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

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

led the Uniform Law Commission to appoint a drafting committee involved adults.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Application of this chapter to a conservatee with dementia is subject to the express limitations of Sections 2002 and 2014, as well as the other requirements of this chapter.

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

Paragraph (1) of subdivision (a) makes explicit that this chapter does not apply to a minor, even if the minor is married or has had a marriage dissolved. Paragraph (2) states a corollary rule: The chapter does not apply to any proceeding in which a person is appointed to provide personal care or property administration for a minor. Those limitations are consistent with the scope of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). See UAGPPJA § 102(1) (defining “adult” as “an individual who has attained [18] years of age”). The uniform act does, however, recognize that some states may wish to modify that scope because their conservatorship law encompasses certain minors. See UAGPPJA § 102 Comment. Under California law, a minor who is or was married is treated as an adult for

some but not all purposes. See, e.g., Sections 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). Different treatment of such minors may apply in other states. To prevent confusion and avoid complications that might arise due to differential treatment of such minors across state lines, they are expressly excluded from the scope of this chapter and the chapter is strictly limited to adults. For definitions consistent with this limitation, see Section 1982 (defining "adult," "conservatee" & other terms).

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

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

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

Under California law, an adult with a developmental disability is entitled to be evaluated by a regional center and to receive a broad range of services pursuant to an individualized plan. 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”). To further that intent, California provides a variety of conservatorship possibilities for an adult with a developmental disability, including the option of a limited conservatorship in which the adult “retain[s] all legal and civil rights except those which by court order have been designated as legal disabilities and have been specifically granted to the limited conservator.” Section 1801(d); *cf.* Section 1801(a)-(c) (regular Probate Code conservatorship); Health & Safety Code §§ 416-416.23 (Director of Developmental Services as conservator for developmentally disabled person); Welf. & Inst. Code §§ 6500-6513 (judicial commitment of person with developmental disability who is dangerous to others or to self).

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

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

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

1982. In this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Background from Uniform Act**

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

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

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

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

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

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

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

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

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

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

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

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

### **Background from Uniform Act**

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

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

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

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

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

1984. (a) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter. The court may allow the parties to participate in the communication. Except as otherwise provided in subdivision (b),

the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

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

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

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

### **Background from Uniform Act**

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

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

....

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

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

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

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

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

(1) Hold an evidentiary hearing.

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

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

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

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

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

(7) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including

protected health information as defined in Section 160.103 of Title 45 of the Code of Federal Regulations.

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

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

**Comment.** Subdivisions (a) and (b) of Section 1985 are similar to Section 105 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.

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

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

### **Background from Uniform Act**

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

Court cooperation is essential to the success of this Act. This section is designed to facilitate such court cooperation. It provides mechanisms for courts to cooperate with each other in order to decide cases in an efficient manner without causing undue expense to the parties. Courts may request assistance from courts of other states and may assist courts of other states. Typically, such assistance will be requested to resolve a

jurisdictional issue arising under Article 2 or an issue concerning a transfer proceeding under Article 3.

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

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

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

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

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

**Comment.** Section 1986 is similar to Section 106(a)-(b) 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. For limitations on the scope of this chapter, see Section 1981 & Comment. For a child custody provision like Section 1986, see Family Code Section 3411 (evidence from another state in child custody case), which is similar to Section 111 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997).

For further guidance on taking a deposition in another state for purposes of a proceeding pending in this state, see Code Civ. Proc. § 2026.010; Gov't Code § 70626. For further guidance on telephone depositions, see Code Civ. Proc. § 2025.310. For further guidance on audio or video recording of a deposition, see Code Civ. Proc. §§

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

### **Background from Uniform Act**

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

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

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

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

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

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

## **Article 2. Jurisdiction**

### **Background from Uniform Act**

The jurisdictional rules in Article 2 will determine which state's courts may appoint a ... conservator. Section [1991] contains definitions of "emergency," "home state," and "significant connection-state," terms used only in Article 2 that are key to understanding the jurisdictional rules under the Act. Section [1992] provides that Article 2 is the

exclusive jurisdictional basis for a court of the enacting state to appoint a [conservator]. Consequently, Article 2 is applicable even if all of the [proposed conservatee's] significant contacts are in-state. Section [1993] is the principal provision governing jurisdiction, creating a three-level priority; the home state, followed by a significant-connection state, followed by other jurisdictions. But there are circumstances under Section [1993] where a significant-connection state may have jurisdiction even if the [proposed conservatee] also has a home state, or a state that is neither a home or significant-connection state may be able to assume jurisdiction even though the particular [proposed conservatee] has both a home state and one or more significant-connection states. One of these situations is if a state declines to exercise jurisdiction under Section [1996] because a court of that state concludes that a court of another state is a more appropriate forum. Another is Section [1997], which authorizes a court to decline jurisdiction or fashion another appropriate remedy if jurisdiction was acquired because of unjustifiable conduct. Section [1995] provides that once an appointment is made or order issued, the court's jurisdiction continues until the proceeding is terminated or the appointment order expires by its own terms.

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

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

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

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

1991. (a) In this article:

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

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

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

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

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

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

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

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

**Comment.** Subdivision (a) of Section 1991 is similar to Section 201(a) 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.

Subdivision (b) is similar to Section 201(b) of 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.

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

### **Background from Uniform Act**

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

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

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

Appointing a [conservator of the person] in an emergency should be an unusual event. Although most states have emergency [conservatorship] statutes, not all states do, and in those states that do have such statutes, there is great variation on whether and how an emergency is defined. To provide some uniformity on when a court acquires emergency jurisdiction, the drafters of this Act concluded that adding a definition of emergency was essential. The 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 Section [1993].

Pursuant to Section [1993], a court in the [proposed conservatee’s] home state has primary jurisdiction to appoint a [conservator]. A court in a significant-connection state has jurisdiction if the [proposed conservatee] does not have a home state and in other circumstances specified in Section [1993]. The definitions of “home state” and

“significant-connection state” are therefore important to an understanding of the Act.

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

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

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

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

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

**Comment.** Section 1992 is similar to Section 202 of the Uniform Adult Guardianship and 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 (definitions); see also Section 1980 Comment.
- (2) Make clear that this article only focuses on which state’s courts have jurisdiction to appoint a conservator. The article does not address other jurisdictional issues, such as whether an appellate court may make such an appointment.

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

### **Background from Uniform Act**

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

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

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

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

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

(c) A court of this state has jurisdiction to appoint a conservator for a proposed conservatee if, on the date the petition is filed, this

state is a significant-connection state and a court of the proposed conservatee's home state has expressly declined to exercise jurisdiction because this state is a more appropriate forum.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Background from Uniform Act**

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

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

Pursuant to Section [1993(a)], the home state has primary jurisdiction to appoint a ... conservator .... This jurisdiction terminates if the state ceases to be the home state, if a court of the home state declines to exercise jurisdiction under Section [1996] on the basis that another state is a more appropriate forum, or, as provided in Section [1995], a court of another state has appointed a [conservator] consistent with this Act. The

standards by which a home state that has enacted the Act may decline jurisdiction on the basis that another state is a more appropriate forum are specified in Section [1996]. Should the home state not have enacted the Act, Section [1993(a)] does not require that the declination meet the standards of Section [1996].

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

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

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

There is nothing comparable to Section [1993(d)] in the Uniform Child Custody Jurisdiction and Enforcement Act (1997). Under Section 201 of the UCCJEA a court in a significant-connection state acquires jurisdiction only if the child does not have a home state or the court of

that state has declined jurisdiction. The drafters of this Act concluded that cases involving adults differed sufficiently from child custody matters that a different rule is appropriate for adult proceedings in situations where jurisdiction is uncontested.

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

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

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

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:

(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. 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 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) or an appointment under paragraph (a)(3) while a transfer petition is pending.

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

### **Background from Uniform Act**

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

When an emergency arises, action must often be taken on the spot in the place where the [proposed conservatee] happens to be physically located at the time. This place may not necessarily be located in the [proposed conservatee’s] home state or even a significant-connection state. [Paragraph] (a)(1) assures that the court where the [proposed conservatee] happens to be physically located at the time has jurisdiction to appoint a [conservator of the person] in an emergency but only for a limited period .... As provided in [paragraph] (b), the emergency jurisdiction is also subject to the authority of the court in the [proposed conservatee’s] home state to request that the emergency proceeding be

dismissed. The theory here is that the emergency appointment in the temporary location should not be converted into a de facto permanent appointment through repeated temporary appointments.

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

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

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

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

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

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

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

**Comment.** Section 1995 is similar to Section 205 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.

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

**Background from Uniform Act**

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

The exclusive and continuing jurisdiction conferred by this section only applies to [conservatorship] orders made ... under Section [1993]. Orders made under the special jurisdiction conferred by Section [1994] are not exclusive. And as provided in Section [1994(b)], the jurisdiction of a court in a state other than the home state to appoint a [conservator] in an emergency is subject to the right of a court in the home state to

request that the proceeding be dismissed and any appointment terminated.

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

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

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

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

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

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

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

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

in this state. The court's order shall be based on evidence presented to the court. The order shall be in a record and shall expressly state that the court declines to exercise its jurisdiction because a court of another state is a more appropriate forum. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a conservator of the person, conservator of the estate, or conservator of the person and estate be filed promptly in another state.

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

(1) Any expressed preference of the proposed conservatee.

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

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

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

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

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

(7) The nature and location of the evidence.

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

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

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

**Comment.** Section 1996 is similar to Section 206 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA"). Revisions have been made to conform to California terminology for the proceedings in question. See Section 1982 & Comment (definitions); see also Section 1980 Comment.

Revisions have also been made to:

- (1) Permit an interested person, a court of this state, or a court of another state to raise the issue of appropriate forum by a petition, motion, or request specifically directed to that issue, without filing a conservatorship proceeding in this state.
- (2) Specify procedural requirements applicable to such a petition, motion, or request. Among other things, a hearing on the petition, motion, or request is mandatory in every case. If there is no opposition, the court may place the matter on the consent calendar.
- (3) Require a court to prepare a record when it declines to exercise its jurisdiction, which expressly states that the court is taking that step. A person can present that record when seeking jurisdiction in another state.
- (4) 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 conservatorship proceeding.

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

### **Background from Uniform Act**

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

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

Under Section [1993(d)], the factors specified in [subdivision] (c) of this section are to be employed in determining whether a court of a significant-connection state may assume jurisdiction when a petition has not been filed in the [proposed conservatee's] home state or in another

significant-connection state. Under Section [1997(a)(3)(B)], the court is to consider these factors in deciding whether it will retain jurisdiction when unjustifiable conduct has occurred.

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

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

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

(1) Decline to exercise jurisdiction.

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

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

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

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

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

(b) If a court of this state determines that it acquired jurisdiction to appoint a conservator because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, medical examination expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses

of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this chapter.

**Comment.** Section 1997 is similar to Section 207 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.

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

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

### **Background from Uniform Act**

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

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

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

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

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

1998. If a petition for the appointment of a conservator of the person, conservator of the estate, or conservator of the person and estate is brought in this state and this state was not the home state of the proposed conservatee on the date the petition was filed, in addition to complying with the notice requirements of this state, the petitioner shall give notice of the petition or of a hearing on the petition to those persons who would be entitled to notice of the petition or of a hearing on the petition if a proceeding were brought in the home state of the proposed conservatee. The notice shall be given in the same manner as notice is required to be given in this state.

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

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

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

### **Background from Uniform Act**

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

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

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

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

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

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

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

### **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

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

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

.... Pursuant to Section [2001(g)], the provisional order from the accepting court must be filed in the transferring court. The transferring court will then issue a final order terminating the proceeding, subject to

local requirements such as filing of a final report or account and the release of any bond. Pursuant to Section [2002(i)], the final order terminating the proceeding in the transferring court must then be filed in the accepting court, which will then convert its provisional order accepting the case into a final order appointing the petitioning ... conservator as ... conservator in the accepting state.

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

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

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

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

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

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

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

(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:

(1) The conservatee 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 court determines that the transfer would not be contrary to the interests of the conservatee.

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

(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 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:

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

(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.

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

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

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

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

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

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

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

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

Subdivision (b) corresponds to Section 301(b) of UAGPPJA. Revisions have been made to specify that the petitioner is responsible for giving the notice (*cf.* Ohio Rev. Code Ann. § 2112.31(b)), and to conform to California practice, under which a party is required to give notice *of a hearing* on a motion or petition, not just notice *of a petition*.

Subdivision (c) corresponds to Section 301(c) of UAGPPJA, but a hearing under subdivision (c) is mandatory in every case. If there is no opposition to a transfer petition, the court may place the matter on the consent calendar. 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 Section 2253(c); Cal. R. Ct. 7.1063(f).

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. 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. 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.

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

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

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

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

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

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

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

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

(5) 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 a general conservatorship.

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

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

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

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

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

(4) This chapter is inapplicable under Section 1981.

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

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

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

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

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

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

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

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

(h)(1) Not later than 60 days after issuance of an order provisionally granting the petition, the court shall determine whether the conservatorship needs to be modified to conform to the law of this state. The court may take any action necessary to achieve compliance with the law of this state, including, but not limited to, striking or modifying any conservator powers that are not permitted under the law of this state.

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

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

(i)(1) The court shall issue a final order accepting the proceeding and appointing the conservator 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.

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

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

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

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

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

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

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

(4) When a transfer to this state becomes effective, the conservatorship is subject to the law of this state and shall thereafter be treated as a conservatorship under the law of this state. If a law of this state, including, but not limited to, Section 2356.5, mandates compliance with special requirements to exercise

a particular conservatorship power or take a particular step, the conservator of a transferred conservatorship may not exercise that power or take that step without first complying with those special requirements.

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

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

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

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

Subdivision (b) corresponds to Section 302(b) of UAGPPJA. Revisions have been made to specify that the petitioner is responsible for giving the notice, and to conform to California practice, under which a party is required to give notice *of a hearing* on a motion or petition, not

just notice *of a petition*. Revisions have also been made to eliminate the necessity for personal service of a citation on the conservatee, and make clear that all attorneys for the conservatee must receive notice.

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

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

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

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

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

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

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

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

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

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

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 makes clear that such an order must meet the same requirements as an order appointing a conservator in a proceeding that originates in California.

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

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

Paragraph (4) of subdivision (i) underscores that once a conservatorship is transferred to California, it is henceforth subject to California law and will be treated as a California conservatorship. For example, if a conservatorship is transferred to California and the conservator wishes to exercise the powers specified in Section 2356.5

(conservatee with dementia), the requirements of that section must be satisfied.

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

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

### **§ 2003. Transfer involving member of California tribe**

2003. If a conservatorship is transferred under this article from a court of this state to the court of a California tribe or from the court of a California tribe to a court of this state, the order that provisionally grants the transfer may expressly provide that specified powers of the conservator will not be transferred. Jurisdiction over the specified powers will be retained by the transferring state and will not be included in the powers that are granted to the conservator in the state that accepts the transfer.

**Comment.** Section 2003 is new. See Section 2031(a) ("California tribe" defined).

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

### **Background from Uniform Act**

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

Article 4 provides for such recognition. The key concept is registration. Section [2011] provides for registration of [an order

appointing a conservator of the person], and Section [2012] for registration of [an order appointing a conservator of the estate]. Following registration of the order in the appropriate county of the other state, and after giving notice to the [supervising] court of the intent to register the order in the other state, Section [2014] authorizes the ... conservator to thereafter exercise all powers authorized in the order of appointment except as prohibited under the laws of the registering state.

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

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

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

2011. (a) 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 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 being supervised.

(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 prominently state that when a conservator acts pursuant to registration, the conservator is subject to the law of this state governing the action, including, but not limited to, all applicable

procedures, and is not authorized to take any action prohibited by the law of this state. Except as provided in subdivision (c) of Section 2023, each notice shall also 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 “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 § 70663 (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 a special rule applicable to a California tribe, see Section 2017 (California tribal court conservatorship order). For limitations on the scope of this chapter, see Section 1981 & Comment.

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

2012. (a) If a conservator of the estate has been appointed in another state and a petition for a conservatorship of the estate is not pending in this state, the conservator 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 of any bond, and proof of notice as required herein, together with a cover sheet approved by the Judicial Council, in the superior court of any county of this state in which property belonging to the conservatee is located.

(b) At least 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 being supervised.

(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 prominently state that when a conservator acts pursuant to registration, the conservator is subject to the law of this state governing the action, including, but not limited to, all applicable procedures, and is not authorized to take any action prohibited by the law of this state. Except as provided in subdivision (c) of Section 2023, each notice shall also 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 2012 is similar to Section 402 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 “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 § 70663 (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 a special rule applicable to a California tribe, see Section 2017 (California tribal court conservatorship order). For limitations on the scope of this chapter, see Section 1981 & Comment.

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

2013. (a) If a conservator of the person and estate has been appointed in another state and a petition for a conservatorship of the person, conservatorship of the estate, or conservatorship of the person and estate is not pending in this state, the conservator 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 of any bond, 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 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 being supervised.

(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 prominently state that when a conservator acts pursuant to registration, the conservator is subject to the law of this state governing the action, including, but not limited to, all applicable procedures, and is not authorized to take any action prohibited by the law of this state. Except as provided in subdivision (c) of Section 2023, each notice shall also 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 2013 is included for the sake of completeness. It serves to clarify the registration procedure applicable to a conservatorship of the person and estate.

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 § 70663 (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 a special rule applicable to a California tribe, see Section 2017 (California tribal court conservatorship order). For limitations on the scope of this chapter, see Section 1981 & Comment.

See Section 1982 (definitions).

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

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

(b) When subdivision (a) requires a conservator to comply with a law of this state that makes it necessary to obtain court approval or take other action in court, the conservator shall seek that approval or proceed as needed in an appropriate court of this state. In handling the matter, that court shall communicate and cooperate with the court that is supervising the conservatorship, in accordance with Sections 1984 and 1985.

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

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

**Comment.** Subdivision (a) of Section 2014 is similar to Section 403(a) 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:

- (1) Underscore that any conservatorship registered in California is fully subject to California law while the conservator is acting in the state. For example, if a conservatorship is registered in California and the conservator seeks to exercise a power specified in Section 2356.5 (conservatee with dementia) within the state, the requirements of that section must be satisfied. Similarly, if the conservator of a registered conservatorship wishes to sell the conservatee’s personal residence located in California, the transaction must comply with California’s special requirements for such a sale (see, e.g., Sections 2540(b), 2543, 2591.5).
- (2) Emphasize that registration of an out-of-state conservatorship in one county is sufficient; it is not necessary to register in every county in which the conservator seeks to act.
- (3) Make clear that a registration is only effective while the conservatee resides in another state. If the conservatee becomes a California resident, the conservator cannot act pursuant to a registration under Section 2011, 2012, or 2013, but can petition for transfer of the conservatorship to California under Article 2. For an exception to the rule that a registration is only effective while the conservatee resides in another state, see Section 2017 (California tribal court conservatorship order).

Subdivision (b) provides guidance on which court is the appropriate forum for purposes of complying with California procedures as required under subdivision (a).

Subdivision (c) further underscores that a registration is only effective while the conservatee resides in another jurisdiction. For an exception to this rule, see Section 2017 (California tribal court conservatorship order).

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

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

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

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

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

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

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

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

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

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

For the effect of registration under this article, see Section 2014 & Comment. For a special rule applicable to a conservatorship order of a court of a California tribe, see Section 2017 & Comment.

**§ 2016. Recordation of registration documents**

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

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

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

**§ 2017. California tribal court conservatorship order**

2017. Notwithstanding any other provision of this article:

(a) A conservatorship order of a court of a California tribe can be registered under Section 2011, 2012, or 2013, regardless of whether the conservatee resides in California.

(b) The effect of a conservatorship order of a court of a California tribe that is registered under Section 2011, 2012, or 2013 is not contingent on whether the conservatee resides in California.

(c) Paragraphs (3) and (4) of subdivision (a) of Section 2015 do not apply to a conservatorship order of a court of a California tribe.

**Comment.** Section 2017 provides that the residence-based limitations on registration of a conservatorship order, in Sections 2011, 2012, 2013, and 2015, do not apply to a conservatorship order of a court of a California tribe. See Section 2031(a) (“California tribe” defined).

## Article 5. Miscellaneous Provisions

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

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

**Comment.** Section 2021 is similar to Section 501 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007)

("UAGPPJA"). A clause has been added to underscore the importance of protecting a conservatee's civil rights, particularly the constitutional right of due process, which is deeply implicated in conservatorship proceedings. See U.S. Const. amend. XIV; Cal. Const. art. I, §§ 7, 15; see also 2012 Conn. Pub. Act No. 12-22, § 22. The provision has also been revised to replace "must" with "shall," in conformity with California drafting practices.

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

2022. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (Title 15 (commencing with Section 7001) of the United States Code), but does not modify, limit, or supersede subdivision (c) of Section 101 of that act, which is codified as subdivision (c) of Section 7001 of Title 15 of the United States Code, or authorize electronic delivery of any of the notices described in subdivision (b) of Section 103 of that act, which is codified as subdivision (b) of Section 7003 of Title 15 of the United States Code.

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

**§ 2023. Court rules and forms**

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, all 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

prominently state that when a conservator acts pursuant to registration, the conservator is subject to the law of this state governing the action, including, but not limited to, all applicable procedures, and is not authorized to take any action prohibited by the law of this state. Except as provided in subdivision (c), the cover sheet shall also 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.

(c) The materials prepared pursuant to this section shall be consistent with Section 2017.

**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.

Subdivision (c) requires that the materials prepared by the Judicial Council be consistent with Section 2017, relating to the registration of a conservatorship order of a court of a California tribe.

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

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

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

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

**Comment.** Section 2024 is similar to Section 504 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. For limitations on the scope of this chapter, see Section 1981 & Comment.

**Background from Uniform Act**

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

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

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

## Article 6. Federally Recognized Indian Tribe

### § 2031. Definitions

2031. For the purposes of this chapter:

(a) “California tribe” means an Indian tribe with jurisdiction that has tribal land located in California.

(b) “Indian tribe with jurisdiction” means a federally recognized Indian tribe that has a court system that exercises jurisdiction over proceedings that are substantially equivalent to conservatorship proceedings.

(c) “Tribal land” means land that is, with respect to a specific Indian tribe and the members of that tribe, “Indian country” as defined in Section 1151 of Title 18 of the United States Code.

**Comment.** Section 2031 is new.

### § 2032. Tribal court jurisdiction

2032. Article 2 (commencing with Section 1991) does not apply to a proposed conservatee who is a member of an Indian tribe with jurisdiction.

**Comment.** Section 2032 is new.

### § 2033. Declining jurisdiction where tribal court is more appropriate forum

2033. (a) If a petition for the appointment of a conservator has been filed in a court of this state and a conservator has not yet been appointed, any person entitled to notice of a hearing on the petition may move to dismiss the petition on the grounds that the proposed conservatee is a member of an Indian tribe with jurisdiction. The petition shall state the name of the Indian tribe.

(b) If, after communicating with the named tribe, the court of this state finds that the proposed conservatee is a member of an Indian tribe with jurisdiction, it may grant the motion to dismiss if it finds that there is good cause to do so. If the motion is granted, the court may impose any condition the court considers just and

proper, including the condition that a petition for the appointment of a conservator be filed promptly in the tribal court.

(c) In determining whether there is good cause to grant the motion, the court may consider all relevant factors, including, but not limited to, the following:

(1) Any expressed preference of the proposed conservatee.

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

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

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

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

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

(7) The nature and location of the evidence.

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

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

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

(11) The timing of the motion, taking into account the parties' and court's expenditure of time and resources.

(d) Notwithstanding subdivision (b), the court shall not dismiss the petition if the tribal court expressly declines to exercise its jurisdiction with regard to the proposed conservatee.

**Comment.** Section 2033 is new.

The second sentence of subdivision (b) is similar to the fourth sentence of Section 1996(b).

The factors listed in paragraphs (c)(1)-(10) are drawn from Section 1996(c). Paragraph (c)(11) is similar to a factor considered in

determining whether to transfer a child custody case to tribal court under 25 U.S.C. § 1911(b). See also Welf. & Inst. Code § 305.5(c)(2)(B).

## UNCODIFIED

### **Operative date [UAGPPJA § 505]**

SEC. \_\_\_\_\_. (a) Section 2023 of the Probate Code, as added by this act, becomes operative on January 1, 2015.

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

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

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

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). The delayed operative date in this uncodified section is an example of that practice.

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

## CONFORMING REVISIONS

### CODE OF CIVIL PROCEDURE

#### **Code Civ. Proc. § 1913 (amended). Effect of judicial record of sister state**

SEC. \_\_\_\_\_. Section 1913 of the Code of Civil Procedure is amended to read:

1913. (a) Subject to subdivision (b), the effect of a judicial record of a sister state is the same in this state as in the state where it was made, except that it can only be enforced in this state by an action or special proceeding.

(b) The authority of a guardian, conservator, or committee, or of a personal representative, does not extend beyond the jurisdiction of the government under which that person was invested with authority, except to the extent expressly authorized by Article 4 (commencing with Section 2011) of Chapter 8 of Part 3 of Division 4 of the Probate Code or another statute.

**Comment.** Section 1913 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Prob. Code § 1980 *et seq.*).

### GOVERNMENT CODE

#### **Gov't Code § 70663 (added). Registration under California Conservatorship Jurisdiction Act**

SEC. \_\_\_\_\_. Section 70663 is added to the Government Code, to read:

70663. The fee for registering a conservatorship under Article 4 (commencing with Section 2011) of Chapter 8 of Part 3 of Division 4 of the Probate Code is thirty dollars (\$30). The amounts collected shall be distributed to the Trial Court Trust Fund under Section 68085.1.

**Comment.** Section 70663 is added to specify the fee for registering a conservatorship order from another jurisdiction under the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

## PROBATE CODE

**Prob. Code § 1301.5 (added). Appeals under California  
Conservatorship Jurisdiction Act**

SEC. \_\_\_\_\_. Section 1301.5 is added to the Probate Code, to read:  
1301.5. The following rules apply with respect to the California  
Conservatorship Jurisdiction Act, Chapter 8 (commencing with  
Section 1980) of Part 4:

(a)(1) An appeal may be taken from an order assessing expenses against a party under Section 1997 if the amount exceeds five thousand dollars (\$5,000).

(2) An order under Section 1997 assessing expenses of five thousand dollars (\$5,000) or less against a party may be reviewed on an appeal by that party after entry of a final judgment or an appealable order in the conservatorship proceeding. At the discretion of the court of appeal, that type of order may also be reviewed upon petition for an extraordinary writ.

(b) An appeal may be taken from an order under Section 2001 denying a petition to transfer a conservatorship to another state.

(c) An appeal may be taken from a final order under Section 2002 accepting a transfer and appointing a conservator in this state.

(d) Notwithstanding any other law, an appeal may not be taken from either of the following until the court enters a final order under Section 2002 accepting the proposed transfer and appointing a conservator in this state:

(1) An order under Section 2002 determining whether or how to conform a conservatorship to the law of this state.

(2) An order that is made pursuant to a court review under Sections 1851.1 and 2002.

**Comment.** Section 1301.5 is added to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

Paragraph (1) of subdivision (a) is modeled on Code of Civil Procedure Section 904.1(a)(12). Paragraph (2) is modeled on Code of Civil Procedure Section 904.1(b).

Subdivision (b) makes clear that an order *denying* a petition to transfer a conservatorship to another state is appealable. An order *provisionally*

*granting* such a petition is not appealable. If a court issues a *final* order granting a transfer to another state, the court will terminate the conservatorship and enter a final judgment, which will be appealable. See Code Civ. Proc. § 904.1.

Subdivision (c) makes clear that a *final* order accepting a transfer of a conservatorship is appealable. See also Section 1301(a) (order granting letters of conservatorship is appealable). In contrast, an order *provisionally granting* a petition to transfer a conservatorship to California is not appealable. If a court *denies* such a petition, the California proceeding will be over and the court will enter an order of dismissal, which will be appealable. See Code Civ. Proc. §§ 581d, 904.1.

Subdivision (d) makes clear that a conformity determination under Section 2002 is not appealable until the court issues a final order accepting the transfer and appointing a California conservator. The same is true of an order that is made pursuant to a court review under Sections 1851.1 and 2002.

**Prob. Code § 1455 (amended). Authority to file petition for instructions or petition to grant power or authority**

SEC. \_\_\_\_\_. Section 1455 of the Probate Code is amended to read:

1455. Any petition for instructions or to grant a guardian or a conservator any power or authority under this division, which may be filed by a guardian or conservator, may also be filed by a person who petitions for the appointment of a guardian or conservator, including, but not limited to, a person who petitions under Section 2002 for transfer of a conservatorship.

**Comment.** Section 1455 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

**Prob. Code § 1471 (amended). Mandatory appointment of counsel in specified circumstances**

SEC. \_\_\_\_\_. Section 1471 of the Probate Code is amended to read:

1471. (a) If a conservatee, proposed conservatee, or person alleged to lack legal capacity is unable to retain legal counsel and requests the appointment of counsel to assist in the particular matter, whether or not ~~such~~ that person lacks or appears to lack

legal capacity, the court shall, at or before the time of the hearing, appoint the public defender or private counsel to represent the interest of ~~such~~ that person in the following proceedings under this division:

(1) A proceeding to establish or transfer a conservatorship or to appoint a proposed conservator.

(2) A proceeding to terminate the conservatorship.

(3) A proceeding to remove the conservator.

(4) A proceeding for a court order affecting the legal capacity of the conservatee.

(5) A proceeding to obtain an order authorizing removal of a temporary conservatee from the temporary conservatee's place of residence.

(b) If a conservatee or proposed conservatee does not plan to retain legal counsel and has not requested the court to appoint legal counsel, whether or not ~~such~~ that person lacks or appears to lack legal capacity, the court shall, at or before the time of the hearing, appoint the public defender or private counsel to represent the interests of ~~such~~ that person in any proceeding listed in subdivision (a) if, based on information contained in the court investigator's report or obtained from any other source, the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee or proposed conservatee.

(c) In any proceeding to establish a limited conservatorship, if the proposed limited conservatee has not retained legal counsel and does not plan to retain legal counsel, the court shall immediately appoint the public defender or private counsel to represent the proposed limited conservatee. The proposed limited conservatee shall pay the cost for ~~such~~ that legal service if he or she is able. This subdivision applies irrespective of any medical or psychological inability to attend the hearing on the part of the proposed limited conservatee as allowed in Section 1825.

**Comment.** Section 1471 is amended to make clear that it applies when a conservatorship is transferred under the California Conservatorship Jurisdiction Act (Sections 1980-2024).

The section is also amended to replace “such” with “that,” in conformity with California drafting practices.

**Prob. Code § 1821 (amended). Content of petition to appoint conservator**

SEC. \_\_\_\_\_. Section 1821 of the Probate Code is amended to read:

1821. (a) The petition shall request that a conservator be appointed for the person or estate, or both, shall specify the name, address, and telephone number of the proposed conservator and the name, address, and telephone number of the proposed conservatee, and state the reasons why a conservatorship is necessary. Unless the petitioner or proposed conservator is a bank or other entity authorized to conduct the business of a trust company, the petitioner or proposed conservator shall also file supplemental information as to why the appointment of a conservator is required. The supplemental information to be submitted shall include a brief statement of facts addressed to each of the following categories:

(1) The inability of the proposed conservatee to properly provide for his or her needs for physical health, food, clothing, and shelter.

(2) The location of the proposed conservatee’s residence and the ability of the proposed conservatee to live in the residence while under conservatorship.

(3) Alternatives to conservatorship considered by the petitioner or proposed conservator and reasons why those alternatives are not available.

(4) Health or social services provided to the proposed conservatee during the year preceding the filing of the petition, when the petitioner or proposed conservator has information as to those services.

(5) The inability of the proposed conservatee to substantially manage his or her own financial resources, or to resist fraud or undue influence.

The facts required to address the categories set forth in paragraphs (1) to (5), inclusive, shall be set forth by the petitioner or proposed conservator if he or she has knowledge of the facts or

by the declarations or affidavits of other persons having knowledge of those facts.

If any of the categories set forth in paragraphs (1) to (5), inclusive, are not applicable to the proposed conservatorship, the petitioner or proposed conservator shall so indicate and state on the supplemental information form the reasons therefor.

The Judicial Council shall develop a supplemental information form for the information required pursuant to paragraphs (1) to (5), inclusive, after consultation with individuals or organizations approved by the Judicial Council, who represent public conservators, court investigators, the State Bar, specialists with experience in performing assessments and coordinating community-based services, and legal services for the elderly and disabled.

The supplemental information form shall be separate and distinct from the form for the petition. The supplemental information shall be confidential and shall be made available only to parties, persons given notice of the petition who have requested this supplemental information or who have appeared in the proceedings, their attorneys, and the court. The court shall have discretion at any other time to release the supplemental information to other persons if it would serve the interests of the conservatee. The clerk of the court shall make provision for limiting disclosure of the supplemental information exclusively to persons entitled thereto under this section.

(b) The petition shall set forth, so far as they are known to the petitioner or proposed conservator, the names and addresses of the spouse or domestic partner, and of the relatives of the proposed conservatee within the second degree. If no spouse or domestic partner of the proposed conservatee or relatives of the proposed conservatee within the second degree are known to the petitioner or proposed conservator, the petition shall set forth, so far as they are known to the petitioner or proposed conservator, the names and addresses of the following persons who, for the purposes of Section 1822, shall all be deemed to be relatives:

(1) A spouse or domestic partner of a predeceased parent of a proposed conservatee.

(2) The children of a predeceased spouse or domestic partner of a proposed conservatee.

(3) The siblings of the proposed conservatee's parents, if any, but if none, then the natural and adoptive children of the proposed conservatee's parents' siblings.

(4) The natural and adoptive children of the proposed conservatee's siblings.

(c) If the petitioner or proposed conservator is a professional fiduciary, as described in Section 2340, who is required to be licensed under the Professional Fiduciaries Act (Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code), the petition shall include the following:

(1) The petitioner's or proposed conservator's proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the proposed conservatee for services performed as a conservator. The petitioner's or proposed conservator's provision of a proposed hourly fee schedule or another statement of his or her proposed compensation, as required by this paragraph, shall not preclude a court from later reducing the petitioner's or proposed conservator's fees or other compensation.

(2) Unless a petition for appointment of a temporary conservator that contains the statements required by this paragraph is filed together with a petition for appointment of a conservator, both of the following:

(A) A statement of the petitioner's or proposed conservator's license information.

(B) A statement explaining who engaged the petitioner or proposed conservator or how the petitioner or proposed conservator was engaged to file the petition for appointment of a conservator or to agree to accept the appointment as conservator and what prior relationship the petitioner or proposed conservator had with the proposed conservatee or the proposed conservatee's family or friends.

(d) If the petition is filed by a person other than the proposed conservatee, the petition shall include a declaration of due diligence showing both of the following:

(1) Either the efforts to find the proposed conservatee's relatives or why it was not feasible to contact any of them.

(2) Either the preferences of the proposed conservatee concerning the appointment of a conservator and the appointment of the proposed conservator or why it was not feasible to ascertain those preferences.

(e) If the petition is filed by a person other than the proposed conservatee, the petition shall state whether or not the petitioner is a creditor or debtor, or the agent of a creditor or debtor, of the proposed conservatee.

(f) If the proposed conservatee is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of State Hospitals or the State Department of Developmental Services and that fact is known to the petitioner or proposed conservator, the petition shall state that fact and name the institution.

(g) The petition shall state, so far as is known to the petitioner or proposed conservator, whether or not the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the proposed conservatee.

(h) The petition may include an application for any order or orders authorized under this division, including, but not limited to, orders under Chapter 4 (commencing with Section 1870).

(i) The petition may include a further statement that the proposed conservatee is not willing to attend the hearing on the petition, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefer that another person act as conservator.

(j) In the case of an allegedly developmentally disabled adult, the petition shall set forth the following:

(1) The nature and degree of the alleged disability, the specific duties and powers requested by or for the limited conservator, and the limitations of civil and legal rights requested to be included in the court's order of appointment.

(2) Whether or not the proposed limited conservatee is or is alleged to be developmentally disabled.

Reports submitted pursuant to Section 416.8 of the Health and Safety Code meet the requirements of this section, and conservatorships filed pursuant to Article 7.5 (commencing with Section 416) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code are exempt from providing the supplemental information required by this section, so long as the guidelines adopted by the State Department of Developmental Services for regional centers require the same information that is required pursuant to this section.

(k) The petition shall state, so far as is known to the petitioner, whether or not the proposed conservatee is a member of a federally recognized Indian tribe. If so, the petition shall state the name of the tribe, the state in which the tribe is located, whether the proposed conservatee resides on tribal land, and whether the proposed conservatee is known to own property on tribal land. For the purposes of this subdivision, "tribal land" means land that is, with respect to a specific Indian tribe and the members of that tribe, "Indian country" as defined in Section 1151 of Title 18 of the United States Code.

**Comment.** Section 1821 is amended to provide that the petition include specified information about a proposed conservatee who is known to be a member of a federally recognized Indian tribe. Subdivision (k) does not impose a duty of inquiry on the petitioner.

Section 1821 is also amended to correct an incomplete cross-reference in subdivision (j).

**Prob. Code § 1834 (amended). Conservator's acknowledgment of receipt**

SEC. \_\_\_\_\_. Section 1834 of the Probate Code is amended to read:

1834. (a) Before letters are issued in a conservatorship that originates in this state or a conservatorship that is transferred to this state under Chapter 8 (commencing with Section 1980), the conservator (other than a trust company or a public conservator) shall file an acknowledgment of receipt of (1) a statement of duties and liabilities of the office of conservator, and (2) a copy of the conservatorship information required under Section 1835. The acknowledgment and the statement shall be in the form prescribed by the Judicial Council.

(b) The court may by local rules require the acknowledgment of receipt to include the conservator's birth date and driver's license number, if any, provided that the court ensures their confidentiality.

(c) The statement of duties and liabilities prescribed by the Judicial Council shall not supersede the law on which the statement is based.

**Comment.** Section 1834 is amended to make clear that it applies to a conservatorship that is transferred to California under the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*), as well as one that originates in California.

**Prob. Code § 1840 (amended). Appointment of conservator for absentee**

SEC. \_\_\_\_\_. Section 1840 of the Probate Code is amended to read:

1840. Except as otherwise provided in this article, a conservator for an absentee (Section 1403) shall be appointed as provided in Article 3 (commencing with Section 1820) of this chapter or Article 3 (commencing with Section 2001) of Chapter 8.

**Comment.** Section 1840 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

**Prob. Code § 1841 (amended). Contents of petition relating to absentee**

SEC. \_\_\_\_\_. Section 1841 of the Probate Code is amended to read:

1841. In addition to the other required contents of the petition, if the proposed conservatee is an absentee:

(a) The petition, and any notice required by Section 1822, Section 2002, or any other law, shall set forth the last known military rank or grade and the social security account number of the proposed conservatee.

(b) The petition shall state whether the absentee's spouse has commenced any action or proceeding against the absentee for judicial or legal separation, dissolution of marriage, annulment, or adjudication of nullity of their marriage.

**Comment.** Section 1841 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

**Prob. Code § 1842 (amended). Notice requirements for petition relating to absentee**

SEC. \_\_\_\_\_. Section 1842 of the Probate Code is amended to read:

1842. In addition to the persons and entities to whom notice of hearing is required under Section 1822 or 2002, if the proposed conservatee is an absentee, a copy of the petition and notice of the time and place of the hearing shall be mailed at least 15 days before the hearing to the secretary concerned or to the head of the United States department or agency concerned, as the case may be. In such case, notice shall also be published pursuant to Section 6061 of the Government Code in a newspaper of general circulation in the county in which the hearing will be held.

**Comment.** Section 1842 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

**Prob. Code § 1843 (amended). Notice requirements for petition relating to absentee**

SEC. \_\_\_\_\_. Section 1843 of the Probate Code is amended to read:

1843. (a) No citation is required under Section 1823 to the proposed conservatee if the proposed conservatee is an absentee.

(b) No notice is required under Section 2002 to the proposed conservatee if the proposed conservatee is an absentee.

**Comment.** Section 1843 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

**Prob. Code § 1844 (amended). Proof of inability to attend hearing**

SEC. \_\_\_\_\_. Section 1844 of the Probate Code is amended to read:

1844. (a) ~~An~~ In a proceeding to appoint a conservator for an absentee under Article 3 (commencing with Section 1820) of this chapter or Article 3 (commencing with Section 2001) of Chapter 8, an official written report or record complying with Section 1283 of the Evidence Code that a proposed conservatee is an absentee shall be received as evidence of that fact and the court shall not determine the status of the proposed conservatee inconsistent with the status determined as shown by the written report or record.

(b) The inability of the proposed conservatee to attend the hearing is established by the official written report or record referred to in subdivision (a).

**Comment.** Section 1844 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

**Prob. Code § 1845 (amended). Appointment of conservator for missing person**

SEC. \_\_\_\_\_. Section 1845 of the Probate Code is amended to read:

1845. (a) Except as otherwise provided in this article, a conservator of the estate of a person who is missing and whose whereabouts is unknown shall be appointed as provided in Article 3 (commencing with Section 1820) of this chapter or Article 3 (commencing with Section 2001) of Chapter 8.

(b) This article does not apply where the proposed conservatee is an absentee as defined in Section 1403.

**Comment.** Section 1845 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

**Prob. Code § 1846 (amended). Contents of petition relating to missing person**

SEC. \_\_\_\_\_. Section 1846 of the Probate Code is amended to read:

1846. In addition to the other required contents of the petition, if the proposed conservatee is a person who is missing and whose whereabouts is unknown, the petition shall state all of the following:

(a) The proposed conservatee owns or is entitled to the possession of real or personal property located in this state. In a proceeding to transfer a conservatorship of a missing person to this state under Article 3 (commencing with Section 2001) of Chapter 8, this requirement is also satisfied if the petition states that the proposed conservatee owns or is entitled to the possession of personal property that is to be relocated to this state upon approval of the transfer.

(b) The time and circumstance of the person's disappearance and that the missing person has not been heard from by the persons most likely to hear (naming them and their relationship to the missing person) since the time of disappearance and that the whereabouts of the missing person is unknown to those persons and to the petitioner.

(c) The last known residence of the missing person.

(d) A description of any search or inquiry made concerning the whereabouts of the missing person.

(e) A description of the estate of the proposed conservatee which requires attention, supervision, and care.

**Comment.** Section 1846 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

**Prob. Code § 1847 (amended). Notice requirements for petition relating to missing person**

SEC. \_\_\_\_\_. Section 1847 of the Probate Code is amended to read:

1847. In addition to the persons and entities to whom notice of hearing is required under Section 1822 or Section 2002, if the

proposed conservatee is a person who is missing and whose whereabouts is unknown:

(a) A copy of the petition for appointment of a conservator and notice of the time and place of the hearing on the petition shall be mailed at least 15 days before the hearing to the proposed conservatee at the last known address of the proposed conservatee.

(b) Notice of the time and place of the hearing shall also be published pursuant to Section 6061 of the Government Code in a newspaper of general circulation in the county in which the proposed conservatee was last known to reside if the proposed conservatee's last known address is in this state.

(c) Pursuant to Section 1202, the court may require that further or additional notice of the hearing be given.

**Comment.** Section 1847 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

**Prob. Code § 1848 (amended). Acts not required in proceeding to appoint conservator for missing person**

SEC. \_\_\_\_\_. Section 1848 of the Probate Code is amended to read:

1848. (a) In a proceeding under Article 3 (commencing with Section 1820) to appoint a conservator of the estate of a person who is missing and whose whereabouts is unknown, the following acts are not required:

(a) (1) Issuance of a citation to the proposed conservatee pursuant to Section 1823.

(b) (2) Service of a citation and petition pursuant to Section 1824.

(c) (3) Production of the proposed conservatee at the hearing pursuant to Section 1825.

(d) (4) Performance of the duties of the court investigator pursuant to Section 1826.

(e) (5) Performance of any other act that depends upon knowledge of the location of the proposed conservatee.

(b) In a proceeding to transfer a conservatorship of a missing person to this state under Article 3 (commencing with Section 2001) of Chapter 8, the following acts are not required:

(1) Notice to the proposed conservatee pursuant to Section 2002.

(2) Production of the proposed conservatee at the hearings pursuant to Section 2002.

(3) Performance of the duties of the court investigator pursuant to Section 1851.1.

(4) Performance of any other act that depends upon knowledge of the location of the proposed conservatee.

**Comment.** Section 1848 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

**Prob. Code § 1849 (amended). Required findings for appointment of conservator for missing person**

SEC. \_\_\_\_\_. Section 1849 of the Probate Code is amended to read:

1849. A conservator of the estate of a person who is missing and whose whereabouts is unknown may be appointed only if the court finds all of the following:

(a) The proposed conservatee owns or is entitled to the possession of real or personal property located in this state. In a proceeding to transfer a conservatorship of a missing person to this state under Article 3 (commencing with Section 2001) of Chapter 8, this requirement is also satisfied if the court finds that the proposed conservatee owns or is entitled to the possession of personal property that is to be relocated to this state upon approval of the transfer.

(b) The proposed conservatee remains missing and his or her whereabouts remains unknown.

(c) The estate of the proposed conservatee requires attention, supervision, and care.

**Comment.** Section 1849 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

**Prob. Code § 1851.1 (added). Investigation and review of transferred conservatorship**

SEC. \_\_\_\_\_. Section 1851.1 is added to the Probate Code, to read:

1851.1. (a) When a court issues an order provisionally granting a petition under Section 2002, the investigator appointed under Section 2002 shall promptly commence an investigation under this section.

(b) In conducting an investigation and preparing a report under this section, the court investigator shall do all of the following:

- (1) Comply with the requirements of Section 1851.
- (2) Conduct an interview of the conservator.
- (3) Conduct an interview of the conservatee's spouse or registered domestic partner, if any.
- (4) Inform the conservatee of the nature, purpose, and effect of the conservatorship.
- (5) Inform the conservatee and all other persons entitled to notice under subdivision (b) of Section 2002 of the right to seek termination of the conservatorship.
- (6) Determine whether the conservatee objects to the conservator or prefers another person to act as conservator.
- (7) Inform the conservatee of the right to attend the hearing under subdivision (c).
- (8) Determine whether it appears that the conservatee is unable to attend the hearing and, if able to attend, whether the conservatee is willing to attend the hearing.
- (9) Inform the conservatee of the right to be represented by legal counsel if the conservatee so chooses, and to have legal counsel appointed by the court if the conservatee is unable to retain legal counsel.
- (10) Determine whether the conservatee wishes to be represented by legal counsel and, if so, whether the conservatee has retained legal counsel and, if not, the name of an attorney the conservatee wishes to retain.
- (11) If the conservatee has not retained legal counsel, determine whether the conservatee desires the court to appoint legal counsel.

(12) Determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee in any case where the conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court.

(13) Consider each of the categories specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 1821.

(14) Consider, to the extent practicable, whether the investigator believes the conservatee suffers from any of the mental function deficits listed in subdivision (a) of Section 811 that significantly impairs the conservatee's ability to understand and appreciate the consequences of the conservatee's actions in connection with any of the functions described in subdivision (a) or (b) of Section 1801 and identify the observations that support that belief.

(c) The court shall review the conservatorship as provided in Section 2002. The conservatee shall attend the hearing unless the conservatee's attendance is excused under Section 1825. The court may take appropriate action in response to the court investigator's report under this section.

(d) The court investigator's report under this section shall be confidential as provided in Section 1851.

(e) Except as provided in paragraph (2) of subdivision (a) of Section 1850, the court shall review the conservatorship again one year after the review conducted pursuant to subdivision (c), and annually thereafter, in the manner specified in Section 1850.

(f) The first time that the need for a conservatorship is challenged by any interested person or raised on the court's own motion after a transfer under Section 2002, whether in a review pursuant to this section or in a petition to terminate the conservatorship under Chapter 3 (commencing with Section 1860), the court shall presume that there is no need for a conservatorship. This presumption is rebuttable, but can only be overcome by clear and convincing evidence. The court shall make an express finding on whether continuation of the conservatorship is the least restrictive alternative needed for the protection of the conservatee.

(g) If a duty described in this section is the same as a duty imposed pursuant to the amendments to Section 1826 or 1851

enacted by Chapter 493 of the Statutes of 2006, a superior court shall not be required to perform that duty until the Legislature makes an appropriation identified for this purpose.

**Comment.** Section 1851.1 is added to provide guidance on the nature of the investigation and review that is required when a conservatorship is transferred to California from another state under the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*). In conducting a review under this section, the court investigator might be able to use some evidence or other resources from the proceeding that was transferred to California, particularly if the transferring court recently conducted a review of that proceeding.

The court investigator's fee for conducting an investigation under this section is to be paid in the same manner as if the conservatorship was originally established in California. See Section 1851.5 (assessment of conservatee for cost of conducting court investigation).

**Prob. Code § 1890 (amended). Rules relating to court order under Section 1880**

SEC. \_\_\_\_\_. Section 1890 of the Probate Code is amended to read:

1890. (a) An order of the court under Section 1880 may be included in the order of appointment of the conservator if the order was requested in the petition for the appointment of the conservator or the transfer petition under Section 2002 or, except in the case of a limited conservator, may be made subsequently upon a petition made, noticed, and heard by the court in the manner provided in this article.

(b) In the case of a petition filed under this chapter requesting that the court make an order under this chapter or that the court modify or revoke an order made under this chapter, when the order applies to a limited conservatee, the order may only be made upon a petition made, noticed, and heard by the court in the manner provided by Article 3 (commencing with Section 1820) of Chapter 1.

(c) No court order under Section 1880, whether issued as part of an order granting the original petition for appointment of a conservator or issued subsequent thereto, may be granted unless

supported by a declaration, filed at or before the hearing on the request, executed by a licensed physician, or a licensed psychologist within the scope of his or her licensure, and stating that the proposed conservatee or the conservatee, as the case may be, lacks the capacity to give an informed consent for any form of medical treatment and the reasons therefor. Nothing in this section shall be construed to expand the scope of practice of psychologists as set forth in the Business and Professions Code.

**Comment.** Subdivision (a) of Section 1890 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

**Prob. Code § 2107 (amended). Powers and duties of guardian or conservator of nonresident**

SEC. \_\_\_\_\_. Section 2107 of the Probate Code is amended to read:

2107. (a) Unless limited by court order, when a court of this state appoints a guardian or conservator of the person of a nonresident, the appointee has the same powers and duties as a guardian or conservator of the person of a resident while the nonresident is in this state.

(b) ~~A~~ When a court of this state appoints a guardian or conservator of the estate of a nonresident, the appointee has, with respect to the property of the nonresident within this state, the same powers and duties as a guardian or conservator of the estate of a resident. The responsibility of such a guardian or conservator with regard to inventory, accounting, and disposal of the estate is confined to the property that comes into the hands of the guardian or conservator in this state.

**Comment.** Section 2107 is amended to prevent confusion regarding its application, which might otherwise arise due to the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*). This clarification is not a substantive change. See Section 2107 Comment (1990 enactment), which explains that “[t]his section prescribes powers and duties of a guardian or conservator *appointed in California* for a nonresident.” (Emphasis added.)

**Prob. Code § 2200 (amended). Jurisdiction**

SEC. \_\_\_\_\_. Section 2200 of the Probate Code is amended to read:

2200. (a) The superior court has jurisdiction of guardianship and conservatorship proceedings.

(b) Chapter 8 (commencing with Section 1980) of Part 3 governs which state has jurisdiction of a conservatorship proceeding.

**Comment.** Section 2200 is amended to direct attention to the jurisdictional provisions in the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

**Prob. Code § 2300 (amended). Oath and bond**

SEC. \_\_\_\_\_. Section 2300 of the Probate Code is amended to read:

2300. Before the appointment of a guardian or conservator is effective, including, but not limited to, the appointment of a conservator under Section 2002, the guardian or conservator shall:

(a) Take an oath to perform the duties of the office according to law, which. The oath obligates the guardian or conservator to comply with the law of this state, as well as other applicable law, at all times, in any location within or without the state. If the conservator petitions for transfer of the conservatorship to another state pursuant to Section 2001, the conservator shall continue to comply with the law of this state until the court issues a final order confirming the transfer and terminating the conservatorship pursuant to Section 2001. The oath shall be attached to or endorsed upon the letters.

(b) File the required bond if a bond is required.

**Comment.** Section 2300 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*), particularly Article 3 (transfer of conservatorship) and Article 4 (registration and recognition of orders from other states).

**Prob. Code § 2352 (amended). Residence of ward or conservatee**

SEC. \_\_\_\_\_. Section 2352 of the Probate Code is amended to read:

2352. (a) The guardian may establish the residence of the ward at any place within this state without the permission of the court. The guardian shall select the least restrictive appropriate residence that is available and necessary to meet the needs of the ward, and that is in the best interests of the ward.

(b) The conservator may establish the residence of the conservatee at any place within this state without the permission of the court. The conservator shall select the least restrictive appropriate residence, as described in Section 2352.5, that is available and necessary to meet the needs of the conservatee, and that is in the best interests of the conservatee.

(c) If permission of the court is first obtained, a guardian or conservator may establish the residence of a ward or conservatee at a place not within this state. Notice of the hearing on the petition to establish the residence of the ward or conservatee out of state, together with a copy of the petition, shall be given in the manner required by subdivision (a) of Section 1460 to all persons entitled to notice under subdivision (b) of Section 1511 or subdivision (b) of Section 1822.

(d)(1) An order under subdivision (c) relating to a ward shall require the guardian ~~or conservator~~ either to return the ward ~~or conservatee~~ to this state, or to cause a guardianship ~~or conservatorship~~ proceeding or its equivalent to be commenced in the place of the new residence, when the ward ~~or conservatee~~ has resided in the place of new residence for a period of four months or a longer or shorter period specified in the order.

(2) An order under subdivision (c) relating to a conservatee shall require the conservator to do one of the following when the conservatee has resided in the other state for a period of four months or a longer or shorter period specified in the order:

(A) Return the conservatee to this state.

(B) Petition for transfer of the conservatorship to the other state under Article 3 (commencing with Section 2001) of Chapter 8 of Part 3 and corresponding law of the other state.

(C) Cause a conservatorship proceeding or its equivalent to be commenced in the other state.

(e)(1) The guardian or conservator shall file a notice of change of residence with the court within 30 days of the date of the change. The guardian or conservator shall include in the notice of change of residence a declaration stating that the ward's or conservatee's change of residence is consistent with the standard described in subdivision (b).

(2) The guardian or conservator shall mail a copy of the notice to all persons entitled to notice under subdivision (b) of Section 1511 or subdivision (b) of Section 1822 and shall file proof of service of the notice with the court. The court may, for good cause, waive the mailing requirement pursuant to this paragraph in order to prevent harm to the conservatee or ward.

(3) If the guardian or conservator proposes to remove the ward or conservatee from his or her personal residence, except as provided by subdivision (c), the guardian or conservator shall mail a notice of his or her intention to change the residence of the ward or conservatee to all persons entitled to notice under subdivision (b) of Section 1511 and subdivision (b) of Section 1822. In the absence of an emergency, that notice shall be mailed at least 15 days before the proposed removal of the ward or conservatee from his or her personal residence. If the notice is served less than 15 days prior to the proposed removal of the ward or conservatee, the guardian or conservatee shall set forth the basis for the emergency in the notice. The guardian or conservator shall file proof of service of that notice with the court.

(f) This section does not apply where the court has made an order under Section 2351 pursuant to which the conservatee retains the right to establish his or her own residence.

(g) As used in this section, "guardian" or "conservator" includes a proposed guardian or proposed conservator and "ward" or "conservatee" includes a proposed ward or proposed conservatee.

(h) This section does not apply to a person with developmental disabilities for whom the Director of the Department of Developmental Services or a regional center, established pursuant to Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code, acts as the conservator.

**Comment.** Section 2352 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

**Prob. Code § 2505 (amended). Proper forum for seeking court approval**

SEC. \_\_\_\_\_. Section 2505 of the Probate Code is amended to read:

2505. (a) Subject to subdivision (c), where the claim or matter is the subject of a pending action or proceeding, the court approval required by this article shall be obtained from the court in which the action or proceeding is pending.

(b) Where the claim or matter is not the subject of a pending action or proceeding, the court approval required by this article shall be obtained from one of the following:

(1) The court in which the guardianship or conservatorship proceeding is pending.

(2) The superior court of the county where the ward or conservatee or guardian or conservator resides at the time the petition for approval is filed.

(3) The superior court of any county where a suit on the claim or matter properly could be brought.

(c) Where the claim or matter is the subject of a pending action or proceeding that is not brought in a court of this state, court approval required by this article shall be obtained from either of the following:

(1) The court in which the action or proceeding is pending.

(2) The court in which the guardianship or conservatorship proceeding is pending.

(d)(1) Subdivisions (a), (b), and (c) do not apply to a conservatorship that is registered in this state pursuant to Article 4 (commencing with Section 2011) of Chapter 8 of Part 3.

(2) Except as provided in paragraph (3), when a conservatorship is registered in this state pursuant to Article 4 (commencing with Section 2011) of Chapter 8 of Part 3, the court approval required by this article shall be obtained in accordance with Section 2014.

(3) Notwithstanding Section 2014, when a conservatorship is registered in this state pursuant to Article 4 (commencing with

Section 2011) of Chapter 8 of Part 3, and the claim or matter in question is the subject of a pending action or proceeding that is not brought in a court of this state, the court approval required by this article may be obtained from the court in which the action or proceeding is pending.

**Comment.** Section 2505 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

**Prob. Code § 2650 (amended). Grounds for removal**

SEC. \_\_\_\_\_. Section 2650 of the Probate Code is amended to read:

2650. A guardian or conservator may be removed for any of the following causes:

(a) Failure to use ordinary care and diligence in the management of the estate.

(b) Failure to file an inventory or an account within the time allowed by law or by court order.

(c) Continued failure to perform duties or incapacity to perform duties suitably.

(d) Conviction of a felony, whether before or after appointment as guardian or conservator.

(e) Gross immorality.

(f) Having such an interest adverse to the faithful performance of duties that there is an unreasonable risk that the guardian or conservator will fail faithfully to perform duties.

(g) In the case of a guardian of the person or a conservator of the person, acting in violation of any provision of Section 2356.

(h) In the case of a guardian of the estate or a conservator of the estate, insolvency or bankruptcy of the guardian or conservator.

(i) In the case of a conservator appointed by a court in another jurisdiction, removal because that person would not have been appointed in this state despite being eligible to serve under the law of this state.

(i) (j) In any other case in which the court in its discretion determines that removal is in the best interests of the ward or conservatee; but, in considering the best interests of the ward, if

the guardian was nominated under Section 1500 or 1501, the court shall take that fact into consideration.

**Comment.** Section 2650 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

**Prob. Code § 3800 (amended). Petition by nonresident’s out-of-state fiduciary for removal of nonresident’s property**

SEC. \_\_\_\_\_. Section 3800 of the Probate Code is amended to read:

3800. (a) If a nonresident has a duly appointed, qualified, and acting guardian, conservator, committee, or comparable fiduciary in the place of residence and if no proceeding for guardianship or conservatorship of the nonresident is pending or contemplated in this state, the nonresident fiduciary may petition to have property owned by the nonresident removed to the place of residence.

(b) The petition for removal of property of the nonresident shall be filed in the superior court of the county in which the nonresident is or has been temporarily present or in which the property of the nonresident, or the principal part thereof, is located.

(c) If a conservatorship was transferred from this state to another state pursuant to Article 3 (commencing with Section 2001) of Chapter 8 of Part 3, the foreign conservator may remove the conservatee’s personal property from this state without seeking a petition under this chapter.

**Comment.** Section 3800 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

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