

Memorandum 2013-27

**Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act:
Conforming Revisions**

If California enacts a version of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (“UAGPPJA”), some existing California statutes will have to be repealed or revised due to that enactment. A few such conforming revisions are already included in the draft legislation attached to Memorandum 2013-26. This memorandum discusses other conforming revisions that might be necessary.

Almost a year ago, the staff asked Jennifer Wilkerson whether the State Bar Trusts and Estates Section Executive Committee (“TEXCOM”) was aware of any code provisions that would require adjustment if UAGPPJA were enacted in California. In response, Ms. Wilkerson provided a list of some such provisions:

Exhibit p.

- Jennifer Wilkerson, State Bar Trusts and Estates Section (9/22/12) 1

The staff is grateful for her assistance. We discuss her list below.

The staff has also identified other provisions that may require conforming revisions, and we are still reviewing the codes for further such provisions. The process is slow and time-consuming. **We suggest that the Commission take the following steps:**

- (1) Approve a tentative recommendation at the June meeting.
- (2) Include in that tentative recommendation all conforming revisions the Commission has approved by that time.
- (3) Direct the staff to continue searching for additional conforming revisions and then report back to the Commission.
- (4) If necessary, prepare and circulate a second tentative recommendation consisting of additional conforming revisions.

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

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

The Commission has used this type of approach successfully in the past.

CONFORMING REVISIONS SUGGESTED BY JENNIFER WILKERSON

Ms. Wilkerson's list of conforming revisions to consider consists of seven items. Each item is discussed separately below.

Code of Civil Procedure Section 1913: Effect of Judicial Record of Sister State

Code of Civil Procedure Section 1913 specifies the effect of a judicial record of a sister state:

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 statute.

Ms. Wilkerson suggests modifying this provision "to reference the authority of a foreign Conservator allowed under the UAGPPJA Registration (Article 4) provisions." Exhibit p. 1. She explains:

[T]he UAGPPJA Registration procedure ... extend[s] the authority of a conservator beyond the jurisdiction of another state to California, as well as extend[ing] the reach of a California court's order to another state. This may fall within the final parenthetical exception to *Code of Civil Procedure* § 1913(b) but a specific reference to the UAGPPJA provision, if adopted, would be useful here.

Id. (italics in original).

As Ms. Wilkerson notes, Section 1913(b) limits the reach of a conservator's powers, but makes that limitation inapplicable where a broader reach is "expressly authorized by statute." Because Section 1913(b) is already subject to that exception, it does not appear essential to revise the provision to cross-refer to the proposed UAGPPJA registration procedure. **The staff concurs with Ms. Wilkerson, however, that such a step might be helpful.** We suggest the following amendment of Section 1913:

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

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 2 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.*).

Would the Commission like to include this conforming revision in a tentative recommendation?

Probate Code Sections 2200-2217: Jurisdiction and Venue

The next item in Ms. Wilkerson's list is Chapter 2 of Part 4 of Division 4 of the Probate Code (Prob. Code §§ 2200-2217), which is entitled "Jurisdiction and Venue." The chapter consists of two articles: Article 1 is entitled "Jurisdiction and Venue" and Article 2 is entitled "Change of Venue."

Ms. Wilkerson suggests that if UAGPPJA were enacted, this chapter could be retitled "Venue," because that is "what is mostly covered in these sections." Exhibit p. 1.

Ms. Wilkerson's observation about the content of Chapter 2 is essentially correct. Article 2 (Prob. Code §§ 2210-2217) focuses exclusively on the procedure for changing the venue of a guardianship or conservatorship proceeding (i.e., transferring the proceeding from a court in one California county to a court in another California county). The article has nothing to do with jurisdiction.

Article 1 (Prob. Code §§ 2200-2205) also consists primarily of venue provisions. The most notable exception is Probate Code Section 2205, which says that subject to certain limitations, a court that appoints a guardian of the person of a minor "shall have exclusive jurisdiction to determine all issues of custody or visitation of the minor until the guardianship proceeding is terminated." The only other exception is Probate Code Section 2200, which states that "[t]he superior court has jurisdiction of guardianship and conservatorship proceedings."

The draft attached to Memorandum 2013-26 proposes to amend Section 2200 to serve as a "signpost provision," directing attention to the jurisdictional provisions of the proposed California Conservatorship Jurisdiction Act:

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.*).

The staff believes this is probably the best and least controversial way to coordinate the proposed version of UAGPPJA with the existing chapter entitled “Jurisdiction and Venue” (Prob. Code §§ 2200-2217).

It occurs to us, however, that the existing content of Probate Code Section 2200 was rendered superfluous by trial court unification. Before unification, municipal courts existed and it was meaningful to have a statute saying that “[t]he superior court has jurisdiction of guardianship and conservatorship proceedings.” Now, however, the California Constitution gives the superior court original jurisdiction of all causes except certain writ proceedings that must be brought in its appellate division. See Cal. Const. art. VI, § 10. Consequently, the guidance provided by Section 2200 is no longer necessary and it might be possible to repeal the provision as obsolete. If that was done and Probate Code Section 2205 was moved to a new location, the chapter entitled “Jurisdiction and Venue” could be renamed “Venue,” as Ms. Wilkerson suggests.

Such revisions would go beyond the scope of this study, however, and might entangle the UAGPPJA proposal in issues that could be avoided (e.g., concerns over whether Section 2200 has any remaining utility, or where Section 2205 should be placed). **It appears simplest to stick with the Commission’s current approach to the chapter entitled “Jurisdiction and Venue” (Prob. Code §§ 2200-2217).**

Probate Code Section 2352: Change of Conservatee’s Residence

Ms. Wilkerson next points out that Probate Code Section 2352(c) and Rule of Court 7.1063 “require a Court Order when the Conservatee’s residence is proposed to be moved out-of-state.” Exhibit p. 1. She says that those provisions “would now be covered by the UAGPPJA Transfer (Article 3) provisions, if adopted.” *Id.*

The court rule Ms. Wilkerson mentions pertains to conservatorship procedure, but determining how to conform that court rule to the Commission’s

proposed UAGPPJA legislation is not within the Commission's duties or authority. The Commission's role is to assist the Legislature and the Governor by recommending legislation on topics assigned to it by concurrent resolution or statute. See Gov't Code §§ 8280-8298. To the extent that a court rule conflicts with legislation enacted on Commission recommendation or otherwise, the legislation prevails. *See, e.g.,* Cal. Const. art. VI, § 6(d); *People v. Hall*, 8 Cal. 4th 950, 963, 883 P.2d 974, 35 Cal. Rptr. 2d 432 (1994). Thus, if the Commission's UAGPPJA proposal is enacted, the Judicial Council will revise Rule of Court 7.1063 and other court rules as needed to conform to the new legislative scheme. The delayed operative date for the proposal is specifically intended to afford time for the Judicial Council to make such adjustments. **There is no need for the Commission to get involved in that process.**

The other provision that Ms. Wilkerson mentions, Probate Code Section 2352(c), is a different story. That provision relates to changing the residence of a California conservatee or a California ward (i.e., a minor for whom a guardian has been appointed) to a location outside California. The provision is best understood if presented in the context of the section containing it:

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) An order under subdivision (c) 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.

(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.

(Emphasis added.)

If California enacted UAGPPJA's transfer procedure as presented in the draft attached to Memorandum 2013-26, a California conservator desiring to move the conservatee to another state could seek a UAGPPJA transfer, instead of requesting approval under Section 2352(c). Does that mean the option of seeking approval under Section 2352(c) should be eliminated as duplicative or unnecessary?

For two reasons, **the staff does not think so**. First, the UAGPPJA transfer process consists of “one integrated procedure” between a court in the transferring state and a court in the accepting state. UAGPPJA Art. 3 General Comment. Consequently, such a transfer cannot occur unless both states have enacted UAGPPJA. Thus, if California were to enact UAGPPJA, Section 2352(c)’s procedure for relocating a California conservatee would still be needed for relocation to a non-UAGPPJA jurisdiction.

Second, the staff can envision situations in which it might be appropriate to change the conservatee’s residence to another state without transferring the conservatorship to the other state, at least not immediately. For example, a California conservator might normally take care of a conservatee at home, but might need to place the conservatee in a medical facility just over the state border for an indefinite period while the conservatee recovers from a health problem. Or a California conservatee might want to move to a relative’s home in another state on a trial basis, while retaining the option to return to California and live with the existing conservator. In situations like these, the Section 2352(c) approval process might be preferable to using UAGPPJA’s transfer procedure.

We therefore recommend **coordinating Section 2352 with UAGPPJA’s transfer procedure, rather than eliminating Section 2352(c) altogether**. In particular, Section 2352 could be amended along the following lines:

Prob. Code § 2352 (amended). Residence of ward or conservatee

2352.

(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.

....

Comment. Section 2352 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

Would the Commission like to include this amendment in its tentative recommendation?

Probate Code Sections 2800-2808: Transfer of Conservatee’s Personal Property from a California Conservator to an Out-of-State Conservator

Probate Code Sections 2800-2808 apply when a California conservator of the estate wants to transfer some or all of the personal property of the estate to a conservator or comparable fiduciary in another jurisdiction, and the conservatee is residing in that other jurisdiction when the California conservator petitions for transfer of the personal property. Under specified conditions, in accordance with a specified procedure, a California court may issue an order granting such a transfer. Prob. Code § 2801. “If the court’s order provides for the transfer of *all* of the property of the estate to the foreign ... conservator, the court, upon settlement of the final account, shall order the ... conservatorship of the estate terminated upon the filing with the clerk of the court of a receipt for the property executed by the foreign ... conservator.” Prob. Code § 2808.

If California enacts UAGPPJA, how would UAGPPJA interrelate with the property transfer procedure specified in Sections 2800-2808? That question is addressed below.

UAGPPJA and Sections 2800-2808

Jennifer Wilkerson thinks that Sections 2800-2808 could coexist with UAGPPJA. She writes:

Probate Code §§ 2800 et seq. address the transfer of personal property to a foreign ... conservator in another state where the conservatee is residing. The UAGPPJA Registration provisions, if adopted, may allow personal property to be transferred to another state based on registration of the other State’s order, without a petition under these sections. However, it does not appear

conflicting to leave our current provisions in place should someone wish to file a Court Petition for approval for additional protection.

Exhibit p. 1 (*italics in original*).

The staff concurs that if California enacts UAGPPJA, Sections 2800-2808 would still be useful for some purposes. At a minimum, the procedure described in those sections would remain useful with respect to jurisdictions that are not included in the definition of “state” that is used in California’s version of UAGPPJA.

With respect to jurisdictions that do qualify as a “state” under that legislation, the analysis is more complicated. Sections 2800-2808 apply only when conservatorship proceedings are pending in two places: (1) California and (2) the jurisdiction where the conservatee resides and where the conservator would like to transfer some of the conservatee’s personal property that is under the stewardship of a California conservator.

In general, UAGPPJA seeks to assure that a conservator is appointed “in only one state.” UAGPPJA Prefatory Note, p. 2. But Section 204(a)(2) of UAGPPJA (corresponding to proposed Prob. Code § 1994(a)(2)) provides special jurisdiction to appoint a conservator “with respect to real or tangible personal property” located in a state, even though that state would otherwise lack jurisdiction under UAGPPJA. Thus, the situation where an individual “owns property located in multiple states” is an exception to the general rule limiting jurisdiction to one state. UAGPPJA Prefatory Note, p. 2.

In theory, then, the multiple conservatorship situation addressed by Sections 2800-2808 could arise even with respect to transfer of personal property to a jurisdiction that qualifies as a “state” under the version of UAGPPJA that California enacts. If that situation arose, however, would it make any sense to require court approval of the personal property transfer pursuant to Sections 2800-2808?

To answer this question, the staff tried to contemplate scenarios that might occur:

- (1) **Transfer of a conservatorship from California to another UAGPPJA state.** The multiple conservatorship situation could not arise in connection with a UAGPPJA transfer, because a state can only issue a final order accepting a transfer *after* a sister state has issued a final order confirming the transfer and terminating the conservatorship in the sister state. See UAGPPJA §§ 301, 302; proposed Prob. Code §§ 2001, 2002.

- (2) **Relocation of a conservatorship from California to a non-UAGPPJA state.** The UAGPPJA transfer process only works when both states have enacted UAGPPJA. If California enacts UAGPPJA, there may be times when a California conservatorship is established, and, before the California conservatorship ends, another conservatorship is established for the same conservatee in a non-UAGPPJA state. In such circumstances, it could still be useful to have a procedure for transferring the conservatee's personal property from the California conservator to the conservator in the other state.
- (3) **Relocation of a conservatorship from California to another UAGPPJA state, without using the UAGPPJA transfer process.** UAGPPJA facilitates transfer of a conservatorship from one state to another, but it does not make that the exclusive means of relocating a conservatorship. See UAGPPJA § 302(h) (denial of petition to accept transfer of conservatorship does not affect conservator's ability to seek appointment as conservator pursuant to state's ordinary procedures for appointment of conservator if that state has jurisdiction other than by reason of provisional order of transfer); proposed Prob. Code § 2002(h) (same). Thus, there may be times when a California conservatorship is established, and, before termination of that conservatorship, a second conservatorship for the same conservatee is established from scratch in another UAGPPJA state. Here, as in the preceding scenario, it would still be useful to have a procedure for transferring the conservatee's personal property from the California conservator to the conservator in the other state.
- (4) **Creation of a California conservatorship solely for the purpose of dealing with a nonresident conservatee's property located in California.** The multiple conservatorship situation could also arise with respect to a conservatee who has never resided in California but owns personal property in the state (e.g., a person who regularly visits California and stores some possessions at a friend's California home). Such a person might become subject to a conservatorship in the person's state of residence, and a second conservatorship might be established in California for purposes of dealing with the possessions located here. Absent UAGPPJA, the procedure described in Sections 2800-2808 would provide a way to transfer those possessions to the conservator in the person's state of residence.

If California were to enact UAGPPJA, then there might be no need to establish a California conservatorship to deal with the possessions located in California. Instead, the out-of-state conservator could register the out-of-state conservatorship in California, and exercise the same powers that a California conservator would have with respect to those possessions. But suppose the out-of-state conservator would like to transfer the possessions from California to the other state, as opposed to

handling them within California. Then, absent some conforming revisions, it would still be necessary to either (a) establish a California conservatorship and follow the procedure in Sections 2800-2808, or (b) follow the similar but less detailed procedure in Probate Code Sections 3800-3803, which apply when a nonresident has an out-of-state conservator but no California conservatorship proceeding is pending or contemplated. See UAGPPJA § 403 (UAGPPJA registration does not authorize out-of-state conservator to exercise powers prohibited in the state of registration); proposed Prob. Code § 2014 (same).

With regard to Scenario #1, Sections 2800-2808 are irrelevant because multiple conservatorships would not exist simultaneously and that is a prerequisite for use of the procedure described in those provisions. With regard to Scenarios #2 and #3, Sections 2800-2808 are clearly compatible with enactment of UAGPPJA in California.

With regard to Scenario #4, however, the staff wonders whether the result — requiring compliance with Sections 2800-2808 or Sections 3800-3803 to transfer personal property to an out-of-state conservator who has already gone through the UAGPPJA registration process — would be compatible with the spirit of UAGPPJA. Should it be necessary to obtain a court order and follow the procedural steps specified in Sections 2800-2808 or 3800-3803 to achieve such a property transfer, or would that be unduly burdensome and conflict with UAGPPJA’s objective of alleviating the costs and stress of conservatorship situations that span state lines? Should Sections 2800-2808 and 3800-3803 be made inapplicable to a conservatorship that is registered in California?

Comments on these issues would be helpful. In considering the issues, the Commission should bear in mind that a California court may order a transfer of personal property pursuant to Sections 2800-2808 only if the court determines all of the following:

- (a) The transfer will promote the best interests of the ... conservatee and the estate.
- (b) The substantial rights of creditors or claimants in this state will not be materially impaired by the transfer.
- (c) The foreign ... conservator is qualified, willing, and able to administer the property to be transferred.

Prob. Code § 2806. If it issues such an order, the court may “impose such terms and conditions as may be just.” Prob. Code § 2807. A somewhat similar standard applies to a transfer of property pursuant to Sections 3800-3803:

[I]f the court determines that removal of the property will not conflict with any restriction or limitation on the property or impair the right of the nonresident to the property or the rights of creditors or claimants in this state, the court shall make an order granting to the nonresident fiduciary leave to remove the property of the nonresident to the place of residence unless good cause to the contrary is shown.

Prob. Code § 3803(a). Are these extra protections necessary, or would it be enough to rely on the fiduciary obligations already imposed on the registered out-of-state conservator by the laws of the foreign jurisdiction *and* California laws aside from Sections 2800-2808 and 3800-3803?

UAGPPJA's Transfer Process and Sections 3800-3803

Regardless of how the Commission resolves the above questions, there is one more point that it should consider in connection with this set of issues. Suppose California enacts UAGPPJA and a conservatorship is transferred from California to another UAGPPJA state (Scenario #1). The California conservatorship is terminated in the UAGPPJA transfer process, leaving only the out-of-state conservatorship. To move the conservatee's assets from California to the other state, must the out-of-state conservator follow the procedure specified in Sections 3800-3803?

That might be overkill, given the protections already provided by the UAGPPJA transfer process. In particular, the Commission's proposal would not permit transfer of a conservatorship unless the California 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.*

Proposed Prob. Code § 2001(e) (emphasis added). Because such a determination would necessarily be made in connection with UAGPPJA's transfer process, it might be unnecessary to also require compliance with the property transfer procedure specified in Sections 3800-3803.

If the Commission takes that view, it could address the situation by proposing to amend Section 3800 along the following lines:

Prob. Code § 3800 (amended). Petition by nonresident's out-of-state fiduciary for removal of nonresident's property

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.*).

Alternatively, one could reasonably maintain that the property transfer procedure specified in Sections 3800-3803 is more attuned to protecting the rights of a California claimant or creditor than the UAGPPJA transfer process. In other words, one could say that the two different procedures would complement rather than duplicate each other.

If the Commission takes this second perspective it should attempt to coordinate the two procedures. That could perhaps be done by amending Sections 3800-3803 along the following lines:

Prob. Code § 3800 (amended). Petition by nonresident's out-of-state fiduciary for removal of nonresident's property

3800. (a)(1) 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)(2) The A petition under paragraph (1) 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.

(b)(1) If a conservator petitions to transfer a conservatorship to another state under Section 2001, the conservator may also petition to have property owned by the conservatee removed to the state where the conservatee will reside upon transfer of the conservatorship.

(2) A petition under paragraph (1) shall be filed in the same court as the petition to transfer the conservatorship.

Comment. Section 3800 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

Prob. Code § 3801 (amended). Notice

3801. (a) ~~The~~ A petition under this chapter shall be made upon at least 15 days' notice, by mail or personal delivery, to all of the following persons:

(1) The personal representative or other person in whose possession the property may be.

(2) Persons in this state, known to the petitioner, who are obligated to pay a debt, perform an obligation, or issue a security to the nonresident or the estate of the nonresident.

(b) If a petition is filed under subdivision (b) of Section 3800, notice shall also be given to any person entitled to notice of the petition to transfer the conservatorship under Section 2001.

~~(c)~~ (c) The A petition under this chapter shall be made upon such additional notice, if any, as the court may order.

(d) Unless the court otherwise directs, a petition under subdivision (b) of Section 3800 shall be heard at the same time as the petition to transfer the conservatorship under Section 2001.

Comment. Section 3801 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

Prob. Code § 3802 (amended). Certificate

3802. (a) ~~The~~ A nonresident fiduciary petitioning under subdivision (a) of Section 3800 shall produce and file one of the following certificates:

(1) A certificate that the fiduciary is entitled, by the laws of the place of appointment of the fiduciary, to the possession of the estate of the nonresident. The certificate shall be under the hand of the clerk and seal of the court from which the appointment of the fiduciary was derived and shall show a transcript of the record of appointment and that the fiduciary has entered upon the discharge of the duties of the fiduciary.

(2) A certificate that the fiduciary is entitled, by the laws of the place of residence, to custody of the estate of the nonresident, without the appointment of any court. The certificate shall be under the hand of the clerk and seal of either (i) the court in the place of residence having jurisdiction of estates of persons that have a

guardian, conservator, committee, or comparable fiduciary or (ii) the highest court in the place of residence.

(b) In the case of a foreign country, the certificate shall be accompanied by a final statement certifying the genuineness of the signature and official position of (1) the court clerk making the original certificate or (2) any foreign official who has certified either the genuineness of the signature and official position of the court clerk making the original certificate or the genuineness of the signature and official position of another foreign official who has executed a similar certificate in a chain of such certificates beginning with a certificate of the genuineness of the signature and official position of the clerk making the original certificate. The final statement may be made only by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States.

Comment. Section 3802 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

Prob. Code § 3803 (amended). Order on petition for removal of property

3803. (a) Upon ~~the~~ a petition under this chapter, if the court determines that removal of the property will not conflict with any restriction or limitation on the property or impair the right of the nonresident to the property or the rights of creditors or claimants in this state, the court shall make an order granting to the nonresident fiduciary leave to remove the property of the nonresident to the place of residence unless good cause to the contrary is shown.

(b) The order is authority to the fiduciary to sue for and receive the property in his or her own name for the use and benefit of the nonresident.

(c) The order is a discharge of the personal representative or other person in whose possession the property may be at the time the order is made and of the person obligated to pay a debt, perform an obligation, or issue a security to the nonresident or the estate of the nonresident, upon filing with the clerk of the court the receipt of the nonresident fiduciary for the property and transmitting a duplicate receipt, or a certified copy of the receipt, to the court, if any, from which the nonresident fiduciary received his or her appointment.

Comment. Section 3803 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

Which, if any, of these alternative approaches would the Commission like to pursue?

Probate Code Section 2401.1: Conservator's Duty Relating to Conservatee's Real Property in a Foreign Jurisdiction

The next provision in Ms. Wilkerson's list of possible conforming revisions is Probate Code Section 2401.1, which provides:

2401.1. The guardian or conservator shall use ordinary care and diligence to determine whether the ward or conservatee owns real property in a foreign jurisdiction and to preserve and protect that property. What constitutes use of ordinary care and diligence shall be determined by all the facts and circumstances known, or that become known, to the guardian or conservator, the value of the real property located in the foreign jurisdiction, and the needs of the ward or conservatee. The guardian or conservator, except as provided in subdivision (a) of Section 1061 and in Section 1062, is not charged with, and shall have no duty to inventory or account for the real property located in a foreign jurisdiction, but the guardian or conservator shall, when presenting the inventory and appraisal and accounting to the court, include the schedule set forth in subdivision (h) of Section 1063.

Ms. Wilkerson writes that this section "referencing the Conservator's duty to protect real property located in a foreign jurisdiction does not appear in conflict with UAGPPJA for any needed revisions." Exhibit p. 2.

The staff agrees with that assessment. **A conforming revision of Probate Code Section 2401.1 does not appear to be necessary.**

Probate Code Sections 2250-2258: Temporary Guardians and Temporary Conservators

Probate Code Sections 2250-2258 specify the procedure for appointing a temporary guardian (for a minor) or temporary conservator (for an adult). In her list of possible conforming revisions, Ms. Wilkerson says:

As noted in ... the TEXCOM working draft, the UAGPPJA Jurisdiction provisions (Article 2) include Special Jurisdiction for appointment of a conservator in an "emergency", which we believe is adequately covered by the Probate Code provisions for appointment of a temporary conservator. If the UAGPPJA provisions were adopted, clarification would be needed to distinguish these provisions from *Probate Code sections 2250-2258* and clarify the circumstances in which an "emergency" appointment would be used instead of a temporary conservatorship.

Exhibit p. 2 (*italics in original*).

Since Ms. Wilkerson made that comment last September, the Commission has expressly addressed the interrelationship between (1) emergency jurisdiction under its proposed version of UAGPPJA and (2) the temporary conservatorship procedure described in Probate Code Sections 2250-2258. See Memorandum 2013-26, Attachment pp. 15-16, 51-52 (proposed Prob. Code § 1994(a)(1) & Comment). Additional issues relating to that interrelationship are discussed at pages 10-12 of Memorandum 2013-26.

Does the Commission wish to take any further steps to address this point?

Probate Code Section 2356.5 (Conservatee with Dementia) and Lanterman-Petris-Short Proceedings

Finally, Ms. Wilkerson writes that if UAGPPJA is enacted in California, it will be necessary “to clarify whether the UAGPPJA Transfer provisions (Article 3) would be available for LPS proceedings or for additional dementia powers under *Probate Code* §2356.5, or expressly excluded thus requiring a full petition and hearing in these instances.” Exhibit p. 2 (italics in original).

Since Ms. Wilkerson made that comment last September, the Commission has expressly excluded Lanterman-Petris-Short (“LPS”) conservatorships from its proposed UAGPPJA legislation. See Memorandum 2013-26, Attachment pp. 6-7, 38-39 (proposed Prob. Code § 1981 & Comment). Similarly, the Commission has expressly addressed the interrelationship between its proposed version of UAGPPJA and Probate Code Section 2356.5, relating to a conservatee with dementia. See Memorandum 2013-26, Attachment pp. 20-21, 61-63 (proposed Prob. Code § 2002(e)(3) & Comment).

With regard to those points, no further steps appear necessary.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

**CONFORMING REVISIONS: LIST PROVIDED BY
JENNIFER WILKERSON (9/22/12)**

1. *Code of Civil Procedure §1913* provides:

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 statute.

This section would need to be modified to reference the authority of a foreign Conservator allowed under the UAGPPJA Registration (Article 4) provisions, if adopted. The UAGPPJA Registration procedure allows another state's guardianship (conservatorship) order to be "registered" as a foreign judgment in this state without "an action or special proceeding" as required by *Code of Civil Procedure §1913(a)*. The TEXCOM working draft includes notice provisions and the opportunity to submit an objection to the conservator or the court, similar to the notice of proposed action procedure in probate and trust administrations which avoid the requirement of a hearing when no objection is made.

Likewise, the UAGPPJA Registration procedure does extend the authority of a conservator beyond the jurisdiction of another state to California, as well as extend the reach of a California court's order to another state. This may fall within the final parenthetical exception to *Code of Civil Procedure §1913(b)*, but a specific reference to the UAGPPJA provision, if adopted, would be useful here.

2. *Probate Code §§2200 et seq.* are the "Jurisdiction and Venue" provisions in the Probate Code and thus could be modified to reference only Venue (e.g. within California), which [is] what is mostly covered in these sections. Note that TEXCOM's proposed placement ... of UAGPPJA in the Probate Code is at §1980-§2023.

3. *Probate Code §2352(c)* and *Rule of Court 7.1063* require a Court Order when the Conservatee's residence is proposed to be moved out-of-state. These provisions would now be covered by the UAGPPJA Transfer (Article 3) provisions, if adopted.

4. *Probate Code §§2800 et seq.* address the transfer of personal property to a foreign guardian or conservator in another state where the conservatee is residing. The UAGPPJA Registration provisions, if adopted, may allow personal property to be transferred to another state based on registration of the other State's order, without a petition under these sections. However, it does not appear conflicting to leave our current provisions in place should someone wish to file a Court Petition for approval for additional protection.

5. Likewise, *Probate Code §2401.1* referencing the Conservator's duty to protect real property located in a foreign jurisdiction does not appear in conflict with UAGPPJA for any needed revisions.

6. As noted in footnotes 11-12 of the TEXCOM working draft, the UAGPPJA Jurisdiction provisions (Article 2) include Special Jurisdiction for appointment of a conservator in an "emergency", which we believe is adequately covered by the Probate Code provisions for appointment of a temporary conservator. If the UAGPPJA provisions were adopted, clarification would be needed to distinguish these provisions from *Probate Code sections 2250-2258* and clarify the circumstances in which an "emergency" appointment would be used instead of a temporary conservatorship.

7. Barbara has previously noted the need to clarify whether the UAGPPJA Transfer provisions (Article 3) would be available for LPS proceedings or for additional dementia powers under *Probate Code §2356.5*, or expressly excluded thus requiring a full petition and hearing in these instances.