

First Supplement to Memorandum 2013-56

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

In the draft recommendation attached to Memorandum 2013-56,¹ subdivision (a) of proposed Probate Code Section 2014 would provide:

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. *The conservator is subject to the law of this state while acting in this state, is required to comply with that law in every respect, including, but not limited to, all applicable procedures, and is not authorized to take any action prohibited by the law of this state. 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.*²

The provision makes clear that the conservator of an out-of-state conservatorship registered in California will have to comply with California law, including all applicable California procedures.

For example, Probate Code Section 2591.5 establishes special requirements for selling the conservatee's personal residence:

2591.5. (a) Notwithstanding any other provisions of this article, a conservator seeking an order under Section 2590 authorizing a

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). 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.

2. Emphasis added.

sale of the conservatee's personal residence *shall demonstrate to the court that the terms of sale, including the price for which the property is to be sold and the commissions to be paid from the estate, are in all respects in the best interests of the conservatee.*

(b) A conservator authorized to sell the conservatee's personal residence pursuant to Section 2590 shall comply with the provisions of Section 10309 concerning appraisal or new appraisal of the property for sale and sale at a minimum offer price. Notwithstanding Section 10309, if the last appraisal of the conservatee's personal residence was conducted more than six months prior to the proposed sale of the property, a new appraisal shall be required prior to the sale of the property, unless the court finds that it is in the best interests of the conservatee to rely on an appraisal of the personal residence that was conducted not more than one year prior to the proposed sale of the property. For purposes of this section, the date of sale is the date of the contract for sale of the property.

(c) Within 15 days of the close of escrow, the conservator shall serve a copy of the final escrow settlement statement on all persons entitled to notice of the petition for appointment for a conservator and all persons who have filed and served a request for special notice and shall file a copy of the final escrow statement along with a proof of service with the court.

(d) The court may, for good cause, waive any of the requirements of this section.³

To comply with this provision, the conservator of a registered conservatorship will, among other things, need to make the required showing in court.

It occurs to the staff that **it might be helpful to specify that the conservator must make that showing in a California court**, not in a court of the state where the conservatorship is pending. That could perhaps be done by **revising proposed Section 2014 along the following lines:**

§ 2014 (amended). 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. The conservator is subject to the law of this state while acting in this state, is required to comply with that law in every respect, including, but not limited to, all applicable procedures, and is not authorized to take any action prohibited by the law of this

3. Emphasis added.

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.

~~(b)~~ (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.

~~(e)~~ (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 wishes to exercise the powers 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 2352, 2352.5, 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 jurisdiction. 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.

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

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

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

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

Would the Commission like to incorporate these revisions into its proposal?

Respectfully submitted,

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