

Second Supplement to Memorandum 2013-26

**Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act:
Comments of TEXCOM Sub-Committee**

The Commission has received the following communication relating to the registration procedure in the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act ("UAGPPJA"):

Exhibit p.

- Jennifer Wilkerson, State Bar Trusts and Estates Section (6/3/13) 1

This communication "represent[s] the view of the UAGPPJA sub-committee of the Trusts and Estates Executive Committee (TEXCOM) of the State Bar of California." Exhibit p. 1. The comments "have not been approved by the Board of Trustees of the California State Bar and should not be construed as representing the policy of the State Bar." *Id.* This supplement presents and analyzes those comments.

The TEXCOM sub-committee reports that "[w]hile UAGPPJA offers many benefits for creating uniformity of conservatorship jurisdiction laws among the states, the registration provisions are of great concern to TEXCOM. *Id.* Those registration provisions "address the problem of interstate recognition when a conservator needs to take action in another state," such as "seeking out-of-state medical care for a conservatee or selling property held in another state." *Id.* at 2. The TEXCOM sub-committee is concerned about the possibility that a conservator might use the registration process to avoid having to comply with stiff requirements of California's conservatorship laws. As the sub-committee puts it: "To avoid having to meet [California] standards, a conservator may instead attempt to use registration of another court's order as an 'end run' around California's stricter laws for someone who currently resides in or intends to move to this state." *Id.*

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 TEXCOM sub-committee acknowledges that the Commission has already recommended some modifications of UAGPPJA's registration provisions to address this concern. But the sub-committee believes that additional protections are warranted. Specifically, it proposes to:

- (1) Require notice to interested persons of the application for registration of the order in another state.
- (2) In some circumstances, limit the time a registered order will remain effective to 120 days, unless extended by the court.

Id. Each of those suggestions is discussed below.

PROPOSED NOTICE REQUIREMENT

The first recommendation of the TEXCOM sub-committee focuses on the notice requirement for registering a conservatorship. We begin by presenting that suggestion; next we analyze it.

Proposal of the TEXCOM Sub-Committee

The TEXCOM sub-committee correctly notes that the proposed registration process would require an out-of-state conservator to notify the court supervising the conservatorship of an intent to register, but would not require such notice to anyone else. *Id.*; see proposed Prob. Code §§ 2011-2013; see also UAGPPJA §§ 401, 402. The sub-committee thinks this would provide inadequate protection against abuse of the registration process, because "it is unreasonable to expect a court (judge or clerk?) to read and 'question the rationale' for the registration, then figure out who and how to contact another state's court to report suspicions." Exhibit p. 2.

The TEXCOM sub-committee proposes to address this point by expanding the notice requirement, affording an opportunity to object to registration, and requiring court approval to proceed with registration when someone objects. *Id.* at 2-4. Specifically, the sub-committee would revise proposed Probate Code Sections 2011, 2012, and 2013 as follows:

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

2011. If a conservator of the person has been appointed in another state, the conservatee does not reside in this 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 notifying the court supervising the~~

~~conservatorship of an intent to register, may apply to register the conservatorship order in this state by filing certified copies of the order and letters of office, together with a cover sheet approved by the Judicial Council, in the superior court of any appropriate county of this state pursuant to Section 2014.~~

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

2012. If a conservator of the estate has been appointed in another state, ~~the conservatee does not reside in this state, and a petition for a conservatorship of the estate is not pending in this state, the conservator appointed in the other state, after notifying the court supervising the conservatorship of an intent to register,~~ may apply to register the conservatorship order in this state by filing certified copies of the order and letters of office and of any bond, 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 pursuant to Section 2014.

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

2013. If a conservator of the person and estate has been appointed in another state, ~~the conservatee does not reside in this 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 notifying the court supervising the conservatorship of an intent to register,~~ may apply to register the conservatorship order in this state by filing certified copies of the order and letters of office and of any bond, together with a cover sheet approved by the Judicial Council, in the superior court of any appropriate county of this state pursuant to Section 2014.

Id. at 9-10.

The sub-committee would also add the following new provision to the Commission's proposal, and renumber subsequent provisions in the article on registration:

§ 2014. Application to register

2014. (a) The application to register the conservatorship order in this state shall consist of all of the following and shall be filed in the superior court of any appropriate county in this state:

- (1) Registration form approved by the Judicial Council.
- (2) Certified copies of the conservatorship order and letters of office.
- (3) Bond, if required.
- (4) A declaration that notice pursuant to subdivision (b) of Section 2013 was given and no objections were received.

(b) Notice of the application to register shall be given not less than fifteen (15) days prior to the registration to all of the following:

(1) The appointing court in the other state.

(2) The persons who would be entitled to notice of a petition for the appointment of a conservator in the appointing state.

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

(c) The notice must be given pursuant to Section 1215.

(d) The notice of application required by subdivision (b) shall state all of the following:

(1) That upon registration of a conservatorship order from another state, the conservator may exercise in 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 non-resident parties.

(2) That a person seeking to object to the proposed registration must submit an objection to the conservator before the date on the notice, or before the registration, whichever is later.

(e) If an objection is received, the registration may proceed only with court authorization. If no timely objection is received, the conservator may apply to register the conservatorship order in the superior court of any appropriate county of this state.

See *id.* at 10-11 (the staff has made some minor revisions of the sub-committee's language to conform to standard legislative drafting practices).

The TEXCOM sub-committee says that this notice provision would "giv[e] interested parties the opportunity to object when registration of an out-of-state [conservatorship] may be intended for a purpose not in the conservatee's best interest." *Id.* at 4. According to the sub-committee, "[b]y requiring additional notice to those who may have concerns, there is a much greater likelihood of discovering situations where a conservator is intending to use the registration procedure to avoid California's more restrictive protections for conservatees in this state." *Id.*

The TEXCOM sub-committee views its proposed approach as "similar to the required notice of registration for an out-of-state child custody order under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)." *Id.* at 3. The sub-committee also points out that the proposed type of notice "directly to the personal representative, without a required court filing, is used elsewhere in the Probate Code, specifically the 'notice of proposed action' procedure under the Independent Administration of Estates Act (IAEA)." *Id.* at 4.

Analysis

As the TEXCOM sub-committee notes, the Commission's proposal already includes some protections against abuse of the registration process. In particular, proposed Section 2014 would deviate from UAGPPJA by making a conservatorship registration effective only so long as the conservatee resides outside of California:

§ 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.

(b) *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.*

(c) 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) 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.
- (2) *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) further underscores that a registration is only effective while the conservatee resides in another jurisdiction.

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

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

(Emphasis added.) Thus, for example, the registration procedure could not be used to place a conservatee in a California nursing home for any significant

length of time: If the conservatee is residing in California, the registration is ineffective and the conservator cannot exercise any authority in reliance on it.

Further, under both UAGPPJA and the Commission's proposal, registration of a conservatorship in California would only permit the out-of-state conservator to do what a California conservator could do. The out-of-state conservator would not be allowed to do anything prohibited by California law. See UAGPPJA § 403(a); proposed Prob. Code § 2014(a); see also Memorandum 2013-26, Attachment p. 26.

The Commission's proposal seeks to ensure that the out-of-state conservator is made aware of this requirement and agrees to comply with it. Proposed Probate Code Section 2023(b)(1) would direct the Judicial Council to develop a registration cover sheet. Among other things, the cover sheet

shall ... include a prominent statement that the conservator of a conservatorship registered under Section 2011, 2012, or 2013 is subject to the law of this state while acting in this state, is required to comply with that law in every respect, including, but not limited to, all applicable procedures, and is not authorized to take any action prohibited by the law of this state. Directly beneath this statement, the cover sheet shall include a signature box in which the [conservator] attests to these matters.

Memorandum 2013-26, Attachment p. 68 (proposed Prob. Code § 2023(b)(1), with correction replacing "conservatee" with "conservator").

Thus, if an out-of-state conservator registered the conservatorship in California and then relied on the registration to place the conservatee in a California medical facility or to sell any of the conservatee's California property (situations the sub-committee views as a potential source of concern — see Exhibit p. 4), the conservator could only do so subject to the same conditions as a California conservator. For example, if the conservatee's personal residence was located in California but the conservatorship was established in a significant-connection state and the conservatee was relocated, the out-of-state conservator could not sell the conservatee's personal residence without complying with California's special rules governing such a sale, including the notice requirement (Prob. Code § 2591.5(c); see also Prob. Code §§ 2352, 2352.5, 2543, 2591(c)(2), 2591.5). Similarly, the out-of-state conservator could not obtain medical care for the conservatee in California without complying with California's many restrictions on health care decisions, such as the general presumption that the

conservatee has capacity to give informed consent and the conservator's consent is not sufficient if the conservatee objects to treatment (Prob. Code § 2354(a)).

The TEXCOM sub-committee wants to bolster the protections described above by adding a notice requirement for registration of an out-of-state conservatorship, in hopes that additional notice will result in an objection and court intervention "where a conservator is intending to use the registration procedure to avoid California's more restrictive protections for conservatees in this state." Exhibit p. 4. In effect, the sub-committee is proposing to supplement existing enforcement mechanisms (e.g., a suit for damages for failure to comply with California's rules governing sale of a personal residence) with an additional, preventive means of enforcement: an objection to registration, followed by court review of the proposed registration.

In determining whether to enact such a notice requirement, the Commission should weigh the potential benefits of this enforcement mechanism against any countervailing policy considerations. In particular, the proposed approach would make the registration procedure more burdensome on conservators, by requiring them to give notice of the proposed registration to multiple parties. This burden would be imposed in every case, even when the registration is unobjectionable and is done for some minor but significant purpose, like convincing a California company to mail bills to the conservator instead of the conservatee, or persuading a California credit union to allow the conservator to liquidate an account containing only a small sum.

In addition to giving notice to multiple parties, the out-of-state conservator would have to respond to any objections, and appear in court if an objection was raised. The proposed approach would specifically mandate that "[i]f an objection is received, the registration may proceed only with court authorization." *Id.* at 4, 7, 11. This would impose substantial costs and give an objector a significant power to delay or block registration. While the requirement of court approval could be useful if there was a legitimate objection of the kind contemplated by the TEXCOM sub-committee, it would also present an opportunity for unwarranted obstruction by an uncooperative family member or other person entitled to notice.

The proposed approach would thus increase the burdens on an out-of-state conservator, and would often impose a burden on the conservatee as well: In many instances, the associated expenses would be paid from the conservatee's estate, reducing the conservatee's assets. By consuming judicial resources, the

approach would also place new burdens on the state's court system, which is already strained due to budget cuts.

The imposition of such burdens would not only be a deviation from UAGPPJA, but would also be contrary to its spirit, because UAGPPJA seeks to streamline conservatorship processes and ease the task of conducting a conservatorship across state lines. According to the TEXCOM sub-committee, "[i]t is likely in the vast majority of cases that registration would proceed without objection." *Id.* at 4. Consequently, the notice requirement would entail costs (albeit relatively minor costs) without affording any benefits "in the vast majority of cases." In still other cases, there might be an unmeritorious objection to registration, which could lead to substantial court costs as well as the minor costs of giving notice.

Is the likelihood of a meritorious objection in the remaining cases sufficient to justify the increased costs that the proposed notice requirement would entail in all cases? How often and how well would the proposed notice requirement actually stem abuse of the registration process? **The Commission should carefully weigh the pros and cons of the proposed notice requirement before deciding whether to incorporate that requirement into its proposal.**

In doing so, the Commission should be aware of certain distinctions between the UAGPPJA context and the UCCJEA registration provision referenced by the TEXCOM sub-committee (Fam. Code § 3445). In particular,

- (1) Registration under the UCCJEA provision is the prerequisite for court enforcement of a child custody order. On most occasions, that is likely to be a more significant legal event than the private exercise of conservatorship powers, and it may therefore be deserving of more procedural protections.
- (2) The only grounds for objection to a UCCJEA registration are lack of jurisdiction, failure of required notice, or vacation, stay, or modification of the order. See Fam. Code § 3445(d). By contrast, the TEXCOM sub-committee's proposal does not limit the grounds for objection. See Exhibit pp. 4, 6-7, 10-11. Presumably, someone could object because the objector disagrees with the purpose of the registration. It might be better to resolve that kind of objection in the court supervising the conservatorship, not in the state of registration.

As yet, the staff is not convinced that the danger of abuse is sufficient to warrant a comparable notice requirement, with a broader opportunity to object, in the context of UAGPPJA. Rather, **we think it might be better to enact UAGPPJA in**

California without such a requirement, while keeping the idea in mind in case problems with the registration procedure surface in the future.

We suggest, however, that the Commission consider some other possible means of strengthening the protection against abuse of the registration procedure. For example, **proposed Probate Code Section 2023 could be revised as follows:**

§ 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, both of the following:

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

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

Would the Commission like to make this change?

Similarly, **proposed Probate Code Section 2015 could be revised along the following lines:**

§ 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).

Would the Commission like to make this change?

In addition, **it might be helpful to expand the discussion of the registration procedure in the preliminary part of the Commission's proposal** (see Memorandum 2013-26, Attachment pp. 25-28). In particular, that discussion should refer to the requirements of proposed Section 2023 and perhaps provide more information about proposed Section 2015 than is in the current draft. The staff will prepare some possible language and present it at or before the Commission meeting.

Finally, the draft attached to Memorandum 2013-13 would require use of a cover sheet to register a conservatorship in California (see proposed Prob. Code §§ 2011, 2012, 2013, 2023), yet the TEXCOM sub-committee does not include that cover sheet in the list of documents to be submitted when applying to register a

conservatorship (see Exhibit pp. 6-7, 10-11). If the Commission decides to revise its draft to include the TEXCOM sub-committee's proposed notice requirement, it will need to coordinate the sub-committee's list of what must be included in an application to register with the cover sheet requirement of proposed Sections 2011, 2012, 2013, and 2023.

PROPOSED TIME LIMIT

The second recommendation of the TEXCOM sub-committee to protect against abuse of registration "is a proposed 120-day expiration for registered orders when California has jurisdiction as either a home state or a significant-connection state." Exhibit p. 4. That suggestion is presented and analyzed below.

Proposal of the TEXCOM Sub-Committee

The TEXCOM sub-committee suggests revising proposed Probate Code Section 2014 to incorporate a 120-day time limit on some conservatorship registrations, as shown in strikeout and underscore below:

§ 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~~ does not reside in 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.

~~(b) 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.~~

(b) If this state has primary jurisdiction as either a home state or significant-connection state, both of the following apply:

(1) The registration shall terminate 120 days after the date of registration, or when the conservatee becomes a resident of this state, whichever is earlier.

(2) The court may for good cause order that the time for termination of the registration be extended.

(c) Any registration shall terminate and the conservator shall have no further authority to exercise any powers when the conservatee becomes a resident of this state.

~~(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.

Id. at 11 (the staff has made some minor revisions of the sub-committee's language to conform to standard legislative drafting practices).

The proposed time limit is modeled on a similar 120-day limit recently enacted in Connecticut. *Id.* at 4. Unlike the Connecticut statute, however, the sub-committee's proposal would apply the time limit only when California "has primary jurisdiction as either a home state or significant-connection state." The sub-committee explains that under the UAGPPJA definitions of home state and significant-connection state, "the conservatee would have been a California resident within the preceding six (6) months, or have family or other significant ties to this state." *Id.* The sub-committee says that a time limit should apply in those two situations because they "present the greatest risk of a conservatee returning back to California or having a personal residence in this state, with the conservator seeking to rely on registration of another state's order rather than properly transferring the conservatorship proceeding back to this state." *Id.*

Analysis

The staff has serious concerns about the proposed 120-day time limit. In particular,

- The time limit would add complexity to the registration process and potentially increase the likelihood of ambiguities and disputes, such as disputes over whether a registration was timely renewed and whether an act occurred while a registration was effective or only after a registration expired.
- Registration for a period longer than 120 days might often be necessary, such as when an out-of-state conservator must repeatedly deal with a creditor or debtor located in California. Under the sub-committee's proposal, the 120-day time limit could only be extended with court approval. The requirement of seeking court approval would be burdensome on conservators, conservatees, and the court system.
- Under the Commission's proposal, a conservatorship registration would already be rendered ineffective if the conservatee becomes a California resident. There does not seem to be any need to render the registration doubly ineffective by imposing a time limit.
- Although the sub-committee warns that a conservatorship registration might be used "as a long term substitute for complying with California's conservatorship laws," *id.* at 5, that concern is misplaced and is not a valid justification for imposing a time limit. Under the UAGPPJA registration process, the conservator of a registered conservatorship cannot do anything

that is prohibited under the law of the state of registration. See UAGPPJA § 403; proposed Prob. Code § 2014.

- The subcommittee's proposal uses the term "primary jurisdiction," but that term is not used or defined in UAGPPJA or in the subcommittee's proposal. The staff is unsure what the term is supposed to mean; we would expect the state with "primary jurisdiction" to be the state where the conservatorship is pending, but that construction would not make sense in this context.
- Title companies and other parties relying on registration documents might be leery of having to watch out for expiration of a time limit.

Absent more compelling evidence that a time limit is needed, we recommend that the Commission stick with its current approach, rather than deviating from UAGPPJA by imposing a time limit on registration in specified circumstances.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel



TRUSTS & ESTATES SECTION

THE STATE BAR OF CALIFORNIA

June 3, 2013

California Law Revision Commission
Barbara Gaal, Chief Deputy Counsel
4000 Middlefield Road, Room D-2
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Re: Proposed revision of UAGPPJA "Registration" provisions

Dear Commissioners:

This letter includes comments and a proposal for additional statutory language to the "Registration" provisions included as Article 4 of UAGPPJA. These comments are in addition to other issues I raised at the April 11, 2013 CLRC meeting, as addressed by staff counsel's Memo 2013-26. We have continuing concerns to be addressed in a separate Memorandum.

The comments herein represent the view of the UAGPPJA sub-committee of the Trusts and Estates Executive Committee (TEXCOM) of the State Bar of California. They have not been approved by the Board of Trustees of the California State Bar and should not be construed as representing the policy of the State Bar.

Attorneys appointed to TEXCOM have technical expertise in the areas of trust and estate law, including Conservatorship proceedings. Our working group has followed the adoption of UAGPPJA in other states, and we submitted an initial draft legislative proposal on which Ms. Gaal relied heavily in preparing the Staff Draft Tentative Recommendation. We continue to offer our expertise toward the mutual goal of a well-drafted legislative proposal.

Article 4 of UAGPPJA outlines a procedure for registration of another state's conservatorship order, so that the out-of-state conservator may be authorized to perform acts within this state. The registration provisions, as modified by staff counsel Barbara Gaal, were included as proposed Probate Code Sections 2011-2014 in the Staff Draft Tentative Recommendation dated 4-3-2013 (Memo-15).

While UAGPPJA offers many benefits for creating uniformity of conservatorship jurisdiction laws among the states, the registration provisions are of great concern to TEXCOM.

In its study of UAGPPJA, the Commission has reviewed several issues concerning the registration provisions. At the April 11, 2013 CLRC meeting, I again spoke to specific problems noted by TEXCOM. Due to the pressing agenda, I offered to submit a written Memo for review at the next CLRC meeting detailing TEXCOM's specific concerns.

Our working group's proposed revisions to Probate Code sections 2011-2014 are attached, both as a "redlined" version of the tentative draft text, and as pure text for easier review.

EX 1

As noted in staff counsel's preliminary part draft (Memo 2013-15 First Supplement, at pp 19-22), the registration provisions address the problem of interstate recognition when a conservator needs to take action in another state. This may include situations such as seeking out-of-state medical care for a conservatee, or selling property held in another state.

Far more than in other states, conservatorship laws in California afford higher protections for the civil and due process rights of individuals. For example, California law requires a personal visit by the court investigator before appointment of a conservator in every case. Also, before moving a conservatee from his or her personal residence, the conservator must overcome the presumption that it is the least restrictive appropriate residence. Probate Code section 2352.5.

To avoid having to meet these standards, a conservator may instead attempt to use registration of another court's order as an "end run" around California's stricter laws for someone who currently resides in or intends to move to this state. Acknowledging these concerns, the Commission has previously recommended modifications of UAGPPJA's registration provisions. See Minutes of 10-18-2012 meeting at pp 5-6.

While the modifications of UAGPPJA made to date provide some additional protections, TEXCOM would like to see even stronger provisions:

- 1) Requiring notice to interested persons of the application for registration of the order in another state; and
- 2) Limiting the time a registered order will remain effective to 120 days, unless extended by the court.

Requirement of Notice

When a conservator (or guardian) appointed in another state seeks to act in California, UAGPPJA requires notice only to "the appointing court". Would this notice prevent using registration to avoid complying with California law when someone moves to this state? As summarized by the ABA Commission on Law and Aging¹:

Sections 401 and 402 of UAGPPJA establish procedures under which a conservator may register the order entered in another state to seek authority to act on the incapacitated person's behalf in this state. The Act requires that the guardian or conservator notify the court that appointed him or her of the intent to register in another state. **A court receiving such notice would under section 104 and 105 have the opportunity to question the rationale for the registration and to communicate and coordinate with the court in the other state. These procedures enable an appointing court that is concerned about elder abuse by the conservator to share that information with the other court and possibly prevent an abusive situation in the other state.** (emphasis added)

We believe this to be an unrealistic scenario, which offers little protection against abuse of the registration process. Particularly considering California's court budget cuts, it is unreasonable to expect a court (judge or clerk?) to read and "question the rationale" for the registration, then figure out who and how to contact another state's court to report suspicions.

Indeed, there is nothing in the statute requiring the conservator to state the "rationale" when giving notice to the appointing court which might lead to further inquiry of the purpose for registering the order in another state.

¹ Bifocal, e-Journal of the ABA Commission on Law and Aging, Vol.30. No. 3, Feb 2009.

The tentative recommendation appropriately prohibits use of registration for a conservatee who resides in this state. Stronger enforcement of this protection is possible only with additional notice of the application for registration to the conservatee and other interested parties, with the opportunity to object.

We agree that a mandatory court hearing to review every application for registration is unnecessary. Instead, our proposed revision to section 2014 is similar to the required notice of registration for an out-of-state child custody order under the Uniform Child Custody Jurisdiction and Enforcement act (UCCJEA). See California Family Code Section 3445 and Judicial Council form FL-580 (“Registration of Out-of-State Custody Order”).¹

The TEXCOM working group’s proposal includes the following additional notice requirement as one of the requirements for registration:

§ 2014. Application to Register

... (b) Notice of the application to register shall be given not less than 15 days prior to the registration to the following:

- (1) The appointing court in the other state;
- (2) The persons who would be entitled to notice of a petition for the appointment of a conservator in the appointing state; and
- (3) The persons who would be entitled to notice of a petition for the appointment of a conservator in this state.

¹ **Family Code §3445.** (a) A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending all of the following to the appropriate court in this state:

- (1) A letter or other document requesting registration.
 - (2) Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified.
 - (3) Except as otherwise provided in Section 3429, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.
- (b) On receipt of the documents required by subdivision (a), the registering court shall do both of the following:
- (1) Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form.
 - (2) Serve notice upon the persons named pursuant to paragraph (3) of subdivision (a) and provide them with an opportunity to contest the registration in accordance with this section.
- (c) The notice required by paragraph (2) of subdivision (b) shall state all of the following:
- (1) That a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state.
 - (2) That a hearing to contest the validity of the registered determination must be requested within 20 days after service of the notice.
 - (3) That failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.
- (d) A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes any of the following:
- (1) That the issuing court did not have jurisdiction under Chapter 2 (commencing with Section 3421).
 - (2) That the child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under Chapter 2 (commencing with Section 3421).
 - (3) That the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section 3408, in the proceedings before the court that issued the order for which registration is sought.
- (e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served shall be notified of the confirmation.
- (f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

The required notice would include the following advisements:

§ 2014

. . . (c)(2) That a person seeking to object to the proposed registration must submit an objection to the conservator before the date shown on the notice, or before the registration, whichever is later.

(d) If an objection is received, the registration may proceed only with court authorization. If no timely objection is received, the conservator may apply to register the conservatorship order in the superior court of any appropriate county of this state.

This type of notice directly to the personal representative, without a required court filing, is used elsewhere in the Probate Code, specifically the ‘notice of proposed action’ procedure under the Independent Administration of Estates Act (IAEA). Probate Code sections 10580 et seq.

We see this minimal notice provision as giving interested parties the opportunity to object when registration of an out-of-state may be intended for a purpose not in the conservatee’s best interest. For example, if a family member objected to a care plan involving placement in a California facility, or sale of property held in this state, the conservator would be required to obtain court authorization to proceed with registration. It is likely in the vast majority of cases that registration would proceed without objection. By requiring additional notice to those who may have concerns, there is a much greater likelihood of discovering situations where a conservator is intending to use the registration procedure to avoid California’s more restrictive protections for conservatees in this state.

Expiration of Registered Order

The second additional protection against mis-use of the registration process is a proposed 120-day expiration for registered orders when California has jurisdiction as either a home state or a significant connection state. Under these definitions (section 1991), the conservatee would have been a California resident within the preceding six (6) months, or have family or other significant ties to this state. These two (2) situations present the greatest risk of a conservatee returning back to California or having a personal residence in this state, with the conservator seeking to rely on registration of another state’s order rather than properly transferring the conservatorship proceeding back to this state.

The proposed revision to section 2015 would terminate the effectiveness of a registered order after 120 days in these matters, unless extended by the court. This assures that the registered order is effective for a limited time, and thus may not be used as a substitute for acting as conservator in this state.

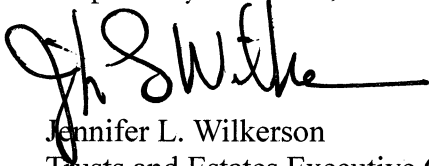
Our proposed revision is based on a similar addition to UAGPPJA as enacted in **Connecticut**:

Sec. 21. (NEW) (Effective October 1, 2012) (a) On registration in this state under section 19 of this act of a conservator of the person order from another state or under section 20 of this act of a conservator of the estate order from another state, the conservator may exercise in 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 on nonresident parties. **The registration of a conservator of the person order under section 19 of this act shall lapse one hundred twenty days after such registration, except that the registration may be extended for good cause for an additional one hundred twenty days by the court of probate in this state having jurisdiction over the location within this state where the person under the conservator of the person order resides, is domiciled or is located.**

Unlike the broader Connecticut provision, the TEXCOM proposal would limit the automatic expiration after 120 days to cases where the conservatee has strong ties in this state. Such a provision would allow a conservator to take the immediate actions needed such as for sale of a property, or obtaining medical care for the conservatee. By including a 120 day expiration, the registered order could not, however, be used as a long term substitute for complying with California's conservatorship laws, particularly if the conservatee has moved back or intends to return to this state.

I will be in attendance at the June 13th CLRC meeting to discuss our proposal, and other issues we have raised, in further detail or to answer questions and concerns. Thank you for your thorough review of this important legislation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. L. Wilkerson", with a long horizontal stroke extending to the right.

Jennifer L. Wilkerson
Trusts and Estates Executive Committee (TEXCOM)
State Bar of California

(Text version) TEXCOM working group proposed revisions to Tentative Draft of UAGPPJA Registration sections:

§ 2011. Registration of order appointing conservator of person² [UAGPPJA § 401]

2011. If a conservator of the person has been appointed in another state, the conservatee does not reside in this 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 may apply to register the conservatorship order in this state pursuant to section 2014.

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

2012. If a conservator of the estate has been appointed in another state, the conservatee does not reside in this state, and a petition for a conservatorship of the estate is not pending in this state, the conservator appointed in the other state may apply to register the conservatorship order in this state pursuant to section 2014.

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

2013. If a conservator of the person and estate has been appointed in another state, the conservatee does not reside in this 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 may apply to register the conservatorship order in this state pursuant to section 2014.

§ 2014. Application To Register.

2014. (a) The application to register the conservatorship order in this state shall consist of all of the following and shall be filed in the superior court of any appropriate county in this state:

- (1) Registration form approved by the Judicial Council;
- (2) Certified copies of the conservatorship order and letters of office;
- (3) Bond (if required); and
- (4) A declaration that notice pursuant to section 2014(b) was given and no objections were received.

² As in our initial draft proposal, the TEXCOM working group believes it is unnecessary to separate into three (3) sections the appointment of conservator of the person, estate or both. Thus sections 2011 – 2013 could be combined into one section which provides “(a) If a conservator of the person or estate or both has been appointed in another state, . . .”

(b) Notice of the application to register shall be given not less than 15 days prior to the registration to the following:

(1) The appointing court in the other state;

(2) The persons who would be entitled to notice of a petition for the appointment of a conservator in the appointing state; and

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

(c) The notice must be given pursuant to Probate Code section 1215.

(d) The notice of application required by subdivision (b) shall state all of the following:

(1) That upon registration of a conservatorship order from another state, the conservator may exercise in 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 non-resident parties;

(2) That a person seeking to object to the proposed registration must submit an objection to the conservator before the date shown on the notice, or before the registration, whichever is later.

(e) If an objection is received, the registration may proceed only with court authorization. If no timely objection is received, the conservator may apply to register the conservatorship order in the superior court of any appropriate county of this state.

§ 2015. Effect of registration [UAGPPJA § 403].

2015. (a) Upon registration of a conservatorship order from another state, the conservator may, while the conservatee does not reside in this state, exercise in 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 guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(b) If this state has primary jurisdiction as either a home state or significant connection state:

(1) The registration shall terminate one hundred and twenty days after such registration, or when the conservatee becomes a resident of this state, whichever is earlier;

(2) The court may for good cause order that the time for the termination of the registration be extended.

(c) Any registration shall terminate and the conservator shall have no further authority to exercise any powers when the conservatee becomes a resident of this state.

(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.

§ 2016. Good faith reliance on registration.

2016. (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.

(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.

§ 2017. Recordation of registration documents.

2017. (a) A file-stamped copy of the registration documents required by sections 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).

(Redlined version) TEXCOM working group proposed revisions to Tentative Draft of UAGPPJA
Registration sections:

§ 2011. Registration of order appointing conservator of person¹ [UAGPPJA § 401]

2011. If a conservator of the person has been appointed in another state, the conservatee does not reside in this 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 giving notice to the court supervising the conservatorship of an intent to register,~~ may apply to register the conservatorship order in this state pursuant to section 2014, ~~by filing certified copies of the order and letters of office, together with a cover sheet approved by the Judicial Council, in the superior court of any appropriate county of this state.~~

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

2012. If a conservator of the estate has been appointed in another state, the conservatee does not reside in this state, and a petition for a conservatorship of the estate is not pending in this state, the conservator appointed in the other state, ~~after notifying the court supervising the conservatorship of an intent to register,~~ may apply to register the conservatorship order in this state pursuant to section 2014, ~~by filing certified copies of the order and letters of office and of any bond, together with a cover sheet approved by the Judicial Council, in the superior court of any appropriate county of this state in which property belonging to the conservatee is located.~~

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

2013. If a conservator of the person and estate has been appointed in another state, the conservatee does not reside in this 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

¹ As in our initial draft proposal, the TEXCOM working group believes it is unnecessary to separate into three (3) sections the appointment of conservator of the person, estate or both. Thus sections 2011 – 2013 could be combined into one section which provides “(a) If a conservator of the person or estate or both has been appointed in another state, . . .”

state, the conservator appointed in the other state, ~~after notifying the court supervising the conservatorship of an intent to register,~~ may apply to register the conservatorship order in this state pursuant to section 2014, ~~by filing certified copies of the order and letters of office and of any bond, together with a cover sheet approved by the Judicial Council, in the superior court of any appropriate county of this state.~~

§ 2014. Application To Register.

2014. (a) The application to register the conservatorship order in this state shall consist of all of the ---
following and shall be filed in the superior court of any appropriate county in this state:

- (1) Registration form approved by the Judicial Council;
- (2) Certified copies of the conservatorship order and letters of office;
- (3) Bond (if required); and
- (4) A declaration that notice pursuant to section 2014(b) was given and no objections were received.

(b) Notice of the application to register shall be given not less than 15 days prior to the registration to the following:

- (1) The appointing court in the other state;
- (2) The persons who would be entitled to notice of a petition for the appointment of a conservator in the appointing state; and
- (3) The persons who would be entitled to notice of a petition for the appointment of a conservator in this state.

(c) The notice must be given pursuant to Probate Code section 1215.

(d) The notice of application required by subdivision (b) shall state all of the following:

- (1) That upon registration of a conservatorship order from another state, the conservator may exercise in 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 non-resident parties;

(2) That a person seeking to object to the proposed registration must submit an objection to the conservator before the date shown on the notice, or before the registration, whichever is later.

(e) If an objection is received, the registration may proceed only with court authorization. If no timely objection is received, the conservator may apply to register the conservatorship order in the superior court of any appropriate county of this state.

§ 20154. Effect of registration [UAGPPJA § 403].

20154. (a) Upon registration of a conservatorship order from another state, the conservator may, while the conservatee does not ~~resides out of~~ in this state, exercise in 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 guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(b) If this state has primary jurisdiction as either a home state or significant connection state:

(1) The registration shall terminate one hundred and twenty days after such registration, or when the conservatee becomes a resident of this state, whichever is earlier;

(2) The court may for good cause order that the time for the termination of the registration be extended.

(c) Any registration shall terminate and the conservator shall have no further authority to exercise any powers when the conservatee becomes a resident of this state.

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

§ 20165. Good faith reliance on registration.

20165. (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.

(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.

§ 20176. Recordation of registration documents.

20176. (a) A file-stamped copy of the registration documents required by ~~this~~ Sections 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).