

# CALIFORNIA LAW REVISION COMMISSION

## TENTATIVE RECOMMENDATION

### Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

June 2013

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

**COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN September 15, 2013.**

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

California Law Revision Commission  
4000 Middlefield Road, Room D-2  
Palo Alto, CA 94303-4739  
650-494-1335  
<commission@clrc.ca.gov>

## SUMMARY OF TENTATIVE RECOMMENDATION

In California, a conservatorship is a proceeding in which a court appoints someone to assist an adult with personal care or financial transactions because that adult lacks the ability to handle those matters without assistance. These types of court proceedings are becoming common across the United States, because the population of the country is aging.

At the same time, the population is highly mobile. Individuals frequently move from one state to another, own property or conduct transactions in more than one state, and spend time in multiple locations.

Due to these developments, a number of problems relating to conservatorships are occurring:

- Jurisdictional disputes.
- Issues relating to transferring a conservatorship from one state to another.
- Requests for recognition of a conservatorship that was established in another state.

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (“UAGPPJA”) was approved by the Uniform Law Commission in 2007 to address these problems. It provides a set of rules for resolving jurisdictional disputes, a streamlined process for transfer of a conservatorship, and a registration procedure to facilitate recognition of a conservatorship that was established in another state. The goal of the act is to alleviate the burdens of handling a conservatorship situation that involves more than one state.

A large majority of states have enacted UAGPPJA, including all three of California’s neighbors (Arizona, Oregon, and Nevada). California has not yet done so, however, because the uniform act uses different terminology than California and requires some adjustments to be workable in California.

The Law Revision Commission has been studying UAGPPJA to determine whether and, if so, in what form, the act should be enacted in California. Based on the work it has done thus far, the Commission tentatively recommends that UAGPPJA be enacted in California, with a number of modifications to protect California policies and ensure that the act works smoothly in this state.

This recommendation was prepared pursuant to Resolution Chapter 108 of the Statutes of 2012.

## UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

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

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

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1. The Uniform Law Commission, also known as the National Conference of Commissioners on Uniform State Laws, is an unincorporated association comprised of each state’s Commission on Uniform Laws, as well as such commissions from the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. The state uniform law commissioners come together as the Uniform Law Commission to study and review state law to determine which areas of the law should be uniform. The ULC promotes the principle of uniformity by drafting and proposing statutes in areas of the law where uniformity between the states is deemed desirable. As the ULC puts it, the organization “provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.” See ULC, *About the ULC*, <http://www.uniformlaws.org/Narrative.aspx?title=About%20the%20ULC>.

2. The final act, earlier versions of the act, and various materials relating to the act are available at the ULC website. See ULC, *Adult Guardianship and Protective Proceedings Jurisdiction Act*, <http://www.uniformlaws.org/Act.aspx?title=Adult%20Guardianship%20and%20Protective%20Proceedings%20Jurisdiction%20Act>. The final act can be found at:

[http://www.uniformlaws.org/shared/docs/adult\\_guardianship/uagppja\\_final\\_07.pdf](http://www.uniformlaws.org/shared/docs/adult_guardianship/uagppja_final_07.pdf)

3. Another uniform act, the Uniform Guardianship and Protective Proceedings Act (“UGPPA”) addresses all aspects of court proceedings that involve an adult or child who requires assistance with personal care, property administration, or both. Only a few states have enacted UGPPA, and California is not one of them. See ULC, *Guardianship and Protective Proceedings Act*, <http://www.uniformlaws.org/Act.aspx?title=Guardianship%20and%20Protective%20Proceedings%20Act>.

Still another uniform act, the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”) served as a model in drafting UAGPPJA. UCCJEA has been enacted in almost every state (including California) and has effectively minimized the problem of multiple court jurisdiction in child custody cases. See ULC, *Child Custody Jurisdiction and Enforcement Act*, <http://www.uniformlaws.org/Act.aspx?title=Child%20Custody%20Jurisdiction%20and%20Enforcement%20Act>; see also UAGPPJA Prefatory Note, p. 2.

Further information about UGPPA and UCCJEA is available at the ULC website, <http://www.uniformlaws.org>.

4. See discussion of “The Impetus for UAGPPJA” *infra*.

5. UAGPPJA has been enacted by the District of Columbia (D.C. Code §§ 21-2401.01 to 21-2405.03), Puerto Rico (Act 296 of 2012 (effective Oct. 5, 2012)), and 36 states: Alabama (Ala. Code §§ 26-2B-101 to 26-2B-503), Alaska (Alaska Stat. §§ 13.27.010 to 13.27.495), Arizona (Ariz. Rev. Stat. Ann. §§ 14-12101 to 14-12503), Arkansas (Ark. Code §§ 28-74-101 to 28-74-505), Colorado (Colo. Rev. Stat. §§ 15-14.5-101

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

7 The Law Revision Commission has held a series of public meetings on the topic  
8 and has received considerable stakeholder input. Based on the work it has done  
9 thus far, the Commission tentatively recommends that California enact UAGPPJA,  
10 with various modifications as presented and described in this tentative  
11 recommendation.

12 The purpose of this tentative recommendation is to broadly solicit public  
13 comment on the Commission’s tentative conclusions. The Commission will often  
14 substantially revise a proposal in response to comment it receives. Consequently,  
15 it is just as important to express support for the tentative recommendation, or  
16 aspects of it, as it is to urge the Commission to make revisions or abandon the  
17 proposal. Written comments may be in any form and may be submitted by email  
18 or traditional mail delivery. **To be most helpful, comments should be submitted**  
19 **by September 15, 2013.**

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to 15-14.5-503), Connecticut (Conn. Gen. Stat. §§ 45a-667 to 45a-667v), Delaware (Del. Code Ann. tit. 12, §§ 39A-101 to 39A-402), Hawaii (Haw. Rev. Stat. §§ 551G-1 to 551G-42), Idaho (Idaho Code Ann. §§ 15-13-101 to 15-13-504), Illinois (755 Ill. Comp. Stat. 8/101 to 8/505), Indiana (Ind. Code §§ 29-3.5-1-1 to 29-3.5-5-3), Iowa (Iowa Code §§ 633.700 to 633.722), Kentucky (Ky. Rev. Stat. Ann. §§ 387.810 to 387.854), Maine (Me. Rev. Stat. tit. 18A, §§ 5-511 to 5-554), Maryland (Md. Code Ann. §§ 13.5-101 to 13.5-501), Minnesota (Minn. Stat. §§ 524.5-601 to 524.5-903), Missouri (Mo. Rev. Stat. §§ 475.501 to 475.555), Montana (Mont. Code Ann. §§ 72-5-601 to 72-5-638), Nebraska (Neb. Rev. Stat. §§ 30-3901 to 30-3923), Nevada (Nev. Rev. Stat. §§ 159.1991 to 159.2029), New Jersey (N.J. Stat. §§ 3B:12B-1 to 3B:12B-22); New Mexico (N.M. Stat. Ann. §§ 45-5A-101 to 45-5A-502), North Dakota (N.D. Cent. Code §§ 28-35-01 to 28-35-20), Ohio (Ohio Rev. Code Ann. §§ 2112.01 to 2112.43), Oklahoma (Okla. Stat. Ann. tit. 30, §§ 3-301 to 3-322), Oregon (Or. Rev. Stat. Ann. §§ 125.800 to 125.852), Pennsylvania (20 Pa. Cons. Stat. §§ 5901 to 5992), South Carolina (S.C. Code Ann. §§ 62-5-700 to 62-5-716), South Dakota (S.D. Codified Laws §§ 29A-5A-101 to 29A-5A-503), Tennessee (Tenn. Code Ann. §§ 34-8-101 to 34-8-503), Utah (Utah Code Ann. §§ 75-5b-101 to 75-5b-503), Vermont (Vt. Stat. Ann. tit. 14, §§ 3151 to 3193), Virginia (Va. Code Ann. §§ 64.2-2100 to 64.2-2120), Washington (Wash. Rev. Code §§ 11.90.010 to 11.90.470), West Virginia (W. Va. Code Ann. §§ 44C-1-1 to 44C-5-3), and Wyoming (Wyo. Stat. Ann. §§ 3-8-101 to 3-8-502 (effective July 1, 2013)).

California and the following states have not yet enacted UAGPPJA: Florida, Georgia, Kansas, Louisiana, Massachusetts, Michigan, Mississippi, New Hampshire, New York, North Carolina, Rhode Island, Texas, and Wisconsin.

6. The California Commission on Uniform State Laws represents California on the ULC. See Gov’t Code §§ 10270-10282.

7. See Letter from D. Boyer-Vine to B. Hebert (Nov. 2, 2009) (attached to CLRC Staff Memorandum 2010-39 (available from the Commission, <http://www.clrc.ca.gov>)). One of the Law Revision Commission’s duties is to “[r]eceive and consider proposed changes in the law recommended by ... the National Conference of Commissioners on Uniform State Laws ...” Gov’t Code § 8289.

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

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

### 5 **The Impetus for UAGPPJA**

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

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

16 A corollary trend is that many individuals with health problems (both elderly  
17 and younger ones) will need to have a court appoint a family member, friend, or  
18 other person to help manage the individual’s personal care or financial situation.<sup>16</sup>

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9. See United States Census Bureau, *The Older Population: 2010* (Nov. 2011), p. 1, available at <http://www.census.gov/prod/cen2010/briefs/c2010br-09.pdf>.

10. *Id.* at 1, 3.

11. *Id.* at 3.

12. See, e.g., Administration on Aging, *Aging Statistics*, available at [http://www.aoa.gov/Aging\\_Statistics](http://www.aoa.gov/Aging_Statistics) (“By 2030, there will be about 72.1 million older persons, more than twice their number in 2000”); M. Toossi, *Labor Force Projections to 2020: A More Slowly Growing Workforce*, in *Monthly Labor Review* (Jan. 2012), p. 45, available at <http://www.bls.gov/opub/mlr/2012/01/art3full.pdf> (“In 2020, the 55-years-and-older age group will total 97.8 million, composing 28.7 percent of the 2020 resident population, compared with 24.7 percent in 2010.”).

13. See, e.g., Healthy People, *2020 Topics and Objectives*, available at <http://www.healthypeople.gov/2020/topicsobjectives2020/overview.aspx?topicid=31>; United States Census Bureau, *supra* note 9, at p. 18.

14. United States Census Bureau, *supra* note 9, at p. 18.

15. See R. Jaslow, *Alzheimer’s Rates Expected to Triple by 2050 Because of Aging Baby Boomers*, CBS News (Feb. 6, 2013), available at [http://www.cbsnews.com/8301-204\\_162-57568046/alzheimers-rates-expected-to-triple-by-2050-because-of-aging-baby-boomers](http://www.cbsnews.com/8301-204_162-57568046/alzheimers-rates-expected-to-triple-by-2050-because-of-aging-baby-boomers) (referring to study conducted by J. Weuve of the Rush Institute for Healthy Aging in Chicago, which was published online in *Neurology* on Feb. 6, 2013); see also Alzheimer’s Ass’n, *2013 Alzheimer’s Disease Facts & Figures*, available at [http://www.alz.org/alzheimers\\_disease\\_facts\\_and\\_figures.asp#quickFacts](http://www.alz.org/alzheimers_disease_facts_and_figures.asp#quickFacts) (“By 2050, the number of people age 65 and older with Alzheimer’s disease may nearly triple, from 5 million to a projected 13.8 million, barring the development of medical breakthroughs to prevent, slow or stop the disease.”).

16. See Center for Elders and the Courts, *Adult Guardianship Court Data and Issues: Results from an Online Survey* (March 2, 2010), p. 4, available at [http://www.guardianship.org/reports/Guardianship\\_Survey\\_Report.pdf](http://www.guardianship.org/reports/Guardianship_Survey_Report.pdf).

1 Statistics regarding the number of such court proceedings are not easy to obtain,  
2 but there were an estimated 400,000 of them in the country in 1987, and the  
3 number is probably much higher today.<sup>17</sup> Different states have different rules for  
4 such proceedings,<sup>18</sup> and even different terminology.<sup>19</sup>

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

- 11 • Jurisdictional issues.
- 12 • Transfer issues.
- 13 • Interstate recognition issues.

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

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

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

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

#### 25 **Short Title**

26 Section 101 of UAGPPJA says that the legislation may be cited as “the Uniform  
27 Adult Guardianship and Protective Proceedings Jurisdiction Act.” That short title  
28 could cause confusion in California, because the Probate Code uses different

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17. Alzheimer’s Ass’n, *Adult Guardianship Jurisdiction Case Statement*, available at <http://www.uniformlaws.org/Shared/Docs/Alzheimers%20Assoc%20Support%20Letter.pdf>; see also Center for Elders and the Courts, *supra* note 16, at 8 (describing difficulties in obtaining data); *id.* at 13 (reporting that California had 5,089 “adult guardianship” filings and a total caseload of 39,909 in 2008); E. Wood, American Bar Ass’n Comm’n on Law & Aging *for the Nat’l Center on Elder Abuse, State-Level Adult Guardianship Data: An Exploratory Survey* (Aug. 2006), available at <http://www.ncea.aoa.gov/Resources/Publication/docs/GuardianshipData.pdf> (describing difficulties in obtaining data).

18. See, e.g., UAGPPJA Prefatory Note, p. 1 (“the United States has 50 plus guardianship systems”).

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

20. See Alzheimer’s Ass’n Case Statement, *supra* note 17; see also Center for Elders and the Courts, *supra* note 16, at 17.

1 terminology. The term “conservatorship” applies to the types of proceedings  
2 covered by UAGPPJA, and the term “guardianship” applies only to proceedings  
3 relating to minors.<sup>21</sup>

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

9 *Limitations on Scope*

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

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

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

23 Due to its definition of “adult,” UAGPPJA is already consistent with that  
24 approach. To underscore the limitation, however, the Commission tentatively  
25 recommends inclusion of a provision expressly stating that the California  
26 Conservatorship Jurisdiction Act does not apply to a minor, regardless of whether  
27 the minor is or was married.<sup>28</sup> The same provision should also state that the act  
28 does not apply to any proceeding in which a person is appointed to provide

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

22. See proposed Prob. Code § 1981 *infra*.

23. See *id*.

24. UAGPPJA § 102 (defining “conservator,” “guardian,” “guardianship proceeding” & “protective proceeding”).

25. See UAGPPJA § 102(1) (defining “adult”).

26. See UAGPPJA § 102 Comment.

27. See, e.g., Prob. Code §§ 1515 & Comment (guardian of estate may be appointed for minor who is married or has had marriage dissolved, but not guardian of person), 1800.3 & Comment (conservator of person may be appointed for minor who is married or has had marriage dissolved, but not conservator of estate), 1860 & Comment (dissolution of minor’s marriage does not terminate conservatorship of person established for that minor).

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

1 personal care or property administration for a minor.<sup>29</sup> Those steps will eliminate  
2 any ambiguity about whether the act applies to a minor who qualifies as an adult  
3 for some legal purposes.

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

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

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29. See *id.*

30. See Penal Code §§ 1026-1027 (civil commitment of person found not guilty by reason of insanity), 1367-1376 (civil commitment of person found incompetent to stand trial), 2960-2981 (civil commitment of mentally disordered offender); Welf. & Inst. Code §§ 1800-1803 (civil commitment of person who would otherwise be discharged from the Youth Authority), 3050-3555 (civil commitment of narcotics addict), 3100-3111 (same), 5000-5550 (conservatorship under Lanterman-Petris-Short Act), 6500-6513 (civil commitment of person with a developmental disability who is dangerous to others or to self), 6600-6609.3 (civil commitment of sexually violent predator).

31. See Second Supplement to CLRC Staff Memorandum 2012-50, Exhibit p. 2 (Comments of Eric Fish, Senior Legislative Counsel & Legal Counsel for ULC).

32. Welf. & Inst. Code §§ 5000-5550; see also Health & Safety Code §§ 416-416.23 (Director of Developmental Services as conservator for developmentally disabled adult); *In re Violet C.*, 213 Cal. App. 3d 86, 261 Cal. Rptr. 470 (1989) (Director of Developmental Services acting as conservator for developmentally disabled adult may seek civil commitment of that adult under specified circumstances and may delegate that authority to regional center); *North Bay Regional Center v. Sherry S.*, 207 Cal. App. 3d 449, 256 Cal. Rptr. 129 (1989) (same).

33. Prob. Code § 1801(a)-(c).

34. Some of the constitutional constraints on involuntary mental health treatment are based on the federal Constitution as interpreted by the United States Supreme Court. See, e.g., *Kansas v. Hendricks*, 521 U.S. 346 (1997); *Addington v. Texas*, 441 U.S. 418 (1979). Those constraints are of relatively little concern with regard to UAGPPJA’s streamlined transfer process, because every state must comply with them.

Other constitutional constraints on involuntary mental health treatment are based on the California Constitution, or on the federal constitution as interpreted by a California court in a context that the United States Supreme Court has not specifically addressed. See, e.g., *People v. Wilkinson*, 185 Cal. App. 4th 543, 100 Cal. Rptr. 3d 776 (2010); *People v. Fisher*, 172 Cal. App. 4th 1006, 91 Cal. Rptr. 3d 609 (2009);



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

3 *Adults with Developmental Disabilities.* Finally, a carefully-tailored limitation  
4 should apply with respect to an adult with a developmental disability. In  
5 California, an adult with a developmental disability is entitled to be evaluated by a  
6 regional center and to receive a broad range of services pursuant to an  
7 individualized plan.<sup>36</sup> The intent is to “enable persons with developmental  
8 disabilities to approximate the pattern of everyday living available to people  
9 without disabilities of the same age.”<sup>37</sup> To further that intent, California provides a  
10 variety of conservatorship possibilities for an adult with a developmental  
11 disability, including the option of a limited conservatorship in which the adult  
12 retains all legal and civil rights except those which the court designates as legal  
13 disabilities and specifically grants to the limited conservator.<sup>38</sup>

14 Due to those special opportunities for an adult with a developmental disability, it  
15 would be ill-advised to apply UAGPPJA’s streamlined transfer procedure<sup>39</sup> to such  
16 an adult. Instead, the Commission tentatively recommends making the transfer

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Conservatorship of Roulet, 23 Cal. 3d 219, 235, 616 P.2d 836, 167 Cal. Rptr. 854 (1980). Because California courts have found a variety of constitutional protections with regard to involuntary mental health treatment that are not the established “law of the land” (i.e., federal law, as definitively interpreted by the United States Supreme Court), the concept of transferring an out-of-state proceeding involving such treatment to California under UAGPPJA would pose serious problems.

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

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

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

36. See Welf. & Inst. Code § 4646; see also *Sanchez v. Johnson*, 416 F.3d 1051, 1064-68 (9th Cir. 2001). The intent is to “enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age.” Welf. & Inst. Code § 4501; see also Welf. & Inst. Code §§ 4500-4868 (“Services for the Developmentally Disabled”).

37. Welf. & Inst. Code § 4501; see also Welf. & Inst. Code §§ 4500-4868 (“Services for the Developmentally Disabled”).

38. Section 1801(d); *cf.* Section 1801(a)-(c) (regular Probate Code conservatorship); Health & Safety Code §§ 416-416.23 (Director of Developmental Services as conservator for developmentally disabled adult); Welf. & Inst. Code §§ 6500-6513 (judicial commitment of person with developmental disability who is dangerous to others or to self).

39. See discussion of “Transfer (Article 3 of UAGPPJA)” *infra*.

1 procedure (but not UAGPPJA’s registration procedure)<sup>40</sup> expressly inapplicable to  
2 an adult with a developmental disability, and to any proceeding in which a person  
3 is appointed to provide personal care or property administration for an adult with a  
4 developmental disability.<sup>41</sup>

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

17 **Definitions**

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

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

26 In short, UAGPPJA defines a “guardian” as “a person appointed by the court to  
27 make decisions regarding the person of an adult ...”<sup>42</sup> In California, however, a  
28 “guardian” may only be appointed for a minor.<sup>43</sup> The term “conservator of the  
29 person” is comparable to what UAGPPJA denominates a “guardian.” In what is  
30 known as a “Probate Code conservatorship” (sometimes referred to as a “general

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40. Under UAGPPJA’s registration procedure, it would be possible for a court-appointee to register an out-of-state proceeding in California, and then exercise certain powers within California. See discussion of “Registration and Recognition (Article 4 of UAGPPJA)” *infra*. The Law Revision Commission tentatively recommends that such a registration only be effective as long as the person with limited capacity resides in another jurisdiction. See proposed Prob. Code § 2014 & Comment *infra*.

If the Legislature follows that approach, then registration in a California court would confer powers only with respect to an adult with a developmental disability who resides outside the state. Consequently, that person probably will not be in a position to participate in California’s programs for adults with developmental disabilities, and there is no need to preclude application of the registration procedure.

41. See proposed Prob. Code § 1981(c) & Comment *infra*.

42. UAGPPJA § 102(3).

43. See Prob. Code §§ 1500-1501.

1 conservatorship”), a California court may, with certain exceptions, appoint a  
2 “conservator of the person” for “a person who is unable to provide properly for his  
3 or her personal needs for physical health, food, clothing, or shelter ....”<sup>44</sup>

4 Under UAGPPJA, the term “conservator” refers to “a person appointed by the  
5 court to administer the property of an adult ....”<sup>45</sup> In California, the comparable  
6 term is a “conservator of the estate.” In a Probate Code conservatorship, a  
7 California court may, with certain exceptions, appoint a “conservator of the estate”  
8 for “a person who is substantially unable to manage his or her own financial  
9 resources or to resist fraud or undue influence ....”<sup>46</sup>

10 California also expressly recognizes that a single person may serve as both  
11 “conservator of the person” and “conservator of the estate.”<sup>47</sup> Such a person may  
12 be referred to as a “conservator of the person and estate.”<sup>48</sup> *Id.* In contrast,  
13 UAGPPJA does not include a special term for a person who acts in both roles (i.e.,  
14 a person who is both a “guardian” and a “conservator” as defined in UAGPPJA).

15 A further complication is the terminology used to refer to the types of  
16 proceedings in which such appointments are made. Under UAGPPJA, a  
17 “guardianship proceeding” is “a judicial proceeding in which an order for the  
18 appointment of a guardian is sought or has been issued.”<sup>49</sup> A “protective order” is  
19 “an order appointing a conservator or other order related to management of an  
20 adult’s property.”<sup>50</sup> A “protective proceeding” is “a judicial proceeding in which a  
21 protective order is sought or has been issued.”<sup>51</sup> The term “conservatorship” is not  
22 defined, although it is used in a few places in UAGPPJA, apparently to refer to a  
23 proceeding in which a UAGPPJA “conservator” is appointed.<sup>52</sup>

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

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44. Prob. Code § 1801(a).

45. UAGPPJA § 102(2).

46. Prob. Code § 1801(b).

47. Prob. Code § 1801(c).

48. *Id.*

49. UAGPPJA § 102(5).

50. UAGPPJA § 102(10).

51. UAGPPJA § 102(11).

52. See UAGPPJA § 102 Comment (explaining that “protective proceeding” is broader than “conservatorship” because “protective proceeding” encompasses proceeding in which party seeks property management order without appointment of conservator).

1 management of property, the term seems to encompass all “conservatorship  
2 proceedings” and “guardianship proceedings,” as well as some types of similar  
3 proceedings.<sup>53</sup>

4 Due to these terminology differences, it would be confusing to enact UAGPPJA  
5 in California as is. Rather, the Commission tentatively recommends revising the  
6 act to use California terminology throughout.<sup>54</sup> That would make the act consistent  
7 with the remainder of the Probate Code and with California case law, minimizing  
8 the possibility of confusion.

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

21 *Treatment of Specified Non-State Entities.* UAGPPJA’s definition of “state”  
22 includes the fifty states and several non-state entities: “the District of Columbia,  
23 Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe,  
24 or any territory or insular possession subject to the jurisdiction of the United  
25 States.”<sup>55</sup> If California were to enact UAGPPJA with that definition, California  
26 courts applying the act would be required to treat a proceeding from one of the  
27 enumerated non-state entities the same way as a proceeding from a state. For  
28 example, parties could use UAGPPJA’s streamlined transfer process to transfer a  
29 proceeding from one of those non-state entities to California, or vice versa.

30 It is therefore necessary to consider the manner in which those entities conduct  
31 the types of proceedings governed by UAGPPJA. The District of Columbia is  
32 subject to federal due process protections,<sup>56</sup> as are Puerto Rico,<sup>57</sup> the U.S. Virgin

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

54. See proposed Prob. Code § 1982 *infra*; see also proposed Prob. Code §§ 1980-2024 & Comments *infra*.

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

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

57. See 48 U.S.C. §§ 731c, 731d; *Fornaris v. Ridge Tool Co.*, 423 F.3d 563, 566-67 (1st Cir. 1970), *rev’d on other grounds*, 400 U.S. 41 (1970); *Mora v. Mejias*, 206 F.2d 377, 382 (1st Cir. 1953); see also P.R. Const. art. II, § 7 (due process requirement of Puerto Rico Constitution).

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

7 The situation for federally recognized Indian tribes is similar but somewhat  
8 more complicated. While federally recognized Indian tribes are not directly  
9 subject to the due process protections in the federal constitution, Congress has  
10 acted to legislatively extend due process protections to the tribes.<sup>62</sup> Generally, the  
11 conception of due process applicable to tribes differs from federal and state due  
12 process in that Congress sought to balance individual protections with continued  
13 tribal self-determination.<sup>63</sup> Due process rights cannot be asserted against tribes in  
14 federal court due to sovereign immunity, so remedies must be sought in individual  
15 tribal courts and those courts are not bound to follow federal case law on due  
16 process.<sup>64</sup> Limited data suggests, however, that tribal courts are no less protective  
17 of individual rights than federal courts.<sup>65</sup>

18 The California Tribal Court/State Court Forum<sup>66</sup> and the Probate and Mental  
19 Health Advisory Committee of the Judicial Council are jointly studying  
20 recognition of tribal court judgments and orders in proceedings that would, if  
21 conducted in a California court, be brought in the Probate Division. Their joint  
22 study includes examination of UAGPPJA.

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58. See 48 U.S.C. § 1561.

59. See 48 U.S.C. § 1421(e), (u).

60. Covenant to Establish a Commonwealth of Northern Mariana Islands in Political Union with the United States of America § 501(a); see also CNMI Const. art. I, § 5 (due process requirement of CNMI Constitution).

61. See Am. Samoa Const. art. I, § 2; *Ferstle v. Am. Samoa Gov't*, 7 Am. Samoa 2d 26, 48-51 (Trial Div. 1988), available at [http://www.asbar.org/index.php?option=com\\_content&view=article&id=875:ferstle-v-american-samoa-govt&catid=56&Itemid=254](http://www.asbar.org/index.php?option=com_content&view=article&id=875:ferstle-v-american-samoa-govt&catid=56&Itemid=254); *Craddick v. Territorial Registrar*, 1 Am. Samoa 2d 10, 12 (App. Div. 1980), available at [http://www.asbar.org/index.php?option=com\\_content&view=article&id=641:1asr2d10&catid=50:1asr2d&Itemid=254](http://www.asbar.org/index.php?option=com_content&view=article&id=641:1asr2d10&catid=50:1asr2d&Itemid=254).

62. See 25 U.S.C. § 1302(a)(8).

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

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

65. See, e.g., *108 Employees of the Crow Tribe of Indians v. Crow Tribe of Indians*, 2001 Crow 10, ¶ 20 (2001); McCarthy, *Civil Rights in Tribal Courts: The Indian Bill of Rights at Thirty Years*, 34 Idaho L. Rev. 465, 489 (1998); Freitag, *supra* note 63, at 864.

66. The California Tribal Court/State Court Forum is a coalition consisting of tribal court judges, state court judges, the Chairs of certain Judicial Council advisory committees, the director of Native American Affairs for the State Attorney General's Office, and the Tribal Advisor to Governor Brown. See Judicial Council, *California Tribal Court/State Court Forum Roster (As of May 16, 2013)*, available at <http://www.courts.ca.gov/documents/Roster-TribalStateCourtMembers.pdf>.

1 In light of that ongoing work, the Commission defers decision on whether  
2 California’s version of UAGPPJA should include a federally recognized Indian  
3 tribe in the definition of “state.” The Commission plans to revisit that question  
4 later, after receiving input from the joint study. **Comments on the issue are**  
5 **especially encouraged.**

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

7 In addition to the provisions discussed above, Article 1 of UAGPPJA contains a  
8 provision regarding application of the proposed legislation to a court proceeding in  
9 another country,<sup>67</sup> provisions facilitating communication and cooperation between  
10 courts of different states,<sup>68</sup> and a provision on taking testimony in another state.<sup>69</sup>  
11 Aside from revisions to conform to California terminology, the Commission does  
12 not recommend any changes relating to those provisions.<sup>70</sup>

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

14 Article 2 of UAGPPJA addresses the problem of determining the proper  
15 jurisdiction of a proceeding in which a court appoints someone to assist another  
16 person with personal care or property management. Jurisdictional issues arise  
17 often, because individuals frequently have contacts with more than one state.<sup>71</sup> For  
18 example, an individual might own property in several states, or might spend part  
19 of the year living in one state and part of the year living in another state. If such an  
20 individual appears to need a court-appointed assistant, it is important to have an  
21 effective mechanism for resolving which state has jurisdiction to evaluate the need  
22 for an appointment, select an assistant if needed, and supervise the proceeding  
23 afterwards. Article 2 of UAGPPJA is intended to provide such a mechanism.<sup>72</sup>

24 In general, UAGPPJA would establish a three-tier hierarchy for determining  
25 jurisdiction.<sup>73</sup> At the top of the hierarchy is the “home state,” which is determined  
26 by examining where the individual was physically present for a six-month period  
27 preceding the filing of the petition for appointment of an assistant.<sup>74</sup> The home

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67. UAGPPJA § 103.

68. UAGPPJA §§ 104, 105.

69. UAGPPJA § 106.

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

71. UAGPPJA Prefatory Note, p. 1.

72. *Id.*

73. UAGPPJA Prefatory Note, p. 3.

74. The “home state” is the state in which the individual was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a court proceeding for appointment of an assistant; or, if none, the state in which the individual was physically present, including any period of temporary absence, for at least six consecutive months ending within six months before the filing of the court proceeding. See UAGPPJA § 201(2); proposed Prob. Code § 1991(a)(2) *infra*.

1 state has primary jurisdiction to make an appointment.<sup>75</sup> Next in the hierarchy is a  
2 “significant-connection” state,<sup>76</sup> which is defined as a state, other than the home  
3 state, with which the individual has a significant connection aside from mere  
4 physical presence and in which significant evidence concerning the individual is  
5 available.<sup>77</sup> Finally, a court from a state that is neither the home state nor a  
6 significant-connection state may exercise jurisdiction in certain limited  
7 circumstances.<sup>78</sup>

8 The details of UAGPPJA’s jurisdictional scheme, including exceptions to the  
9 general rules described above, are explained at length in UAGPPJA.<sup>79</sup> It is not  
10 necessary to reiterate all of those details here. UAGPPJA’s jurisdictional scheme  
11 is reasonable because it is based on the strength of an individual’s ties to a  
12 jurisdiction.<sup>80</sup> Eliminating jurisdictional uncertainties through a uniform approach  
13 would be a major step forward. The Commission therefore recommends that the  
14 Legislature enact UAGPPJA’s jurisdictional rules with very few revisions.

15 The proposed legislation would conform those rules to California terminology,  
16 drafting practices, and notice procedure.<sup>81</sup> In addition, the proposed legislation  
17 would refine the treatment of the following matters:

18 *Exclusive Basis for Jurisdiction.* Section 202 of UAGPPJA states that the act’s  
19 jurisdictional rules “provid[e] the exclusive jurisdictional basis” for a court to  
20 appoint a person to assist an adult with personal care or property administration.  
21 The apparent intent is to make clear that UAGPPJA’s jurisdictional rules are the  
22 only basis for determining which state has jurisdiction of a proceeding to make  
23 such an appointment.<sup>82</sup> If the provision was enacted in California, those  
24 jurisdictional rules would apply regardless of whether a party is invoking the  
25 transfer procedures of UAGPPJA or is seeking to establish a new conservatorship  
26 in California.<sup>83</sup>

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

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

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

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

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

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

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

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

83. See *id.* (“Article 2 is applicable even if all of the [proposed conservatee’s] significant contacts are in-state.”); see also UAGPPJA § 202 Comment; UAGPPJA § 503 Legislative Note.

1 Because UAGPPJA’s jurisdictional provisions would have this impact, it would  
 2 be helpful to include a “signpost provision” in Chapter 4 (“Jurisdiction and  
 3 Venue”) of Part 4 (“Provisions Common to Guardianship and Conservatorship”)  
 4 of Division 4 of the Probate Code.<sup>84</sup> That step would serve to alert people to the  
 5 existence of those jurisdictional provisions, which might otherwise be overlooked  
 6 when a conservatorship is being initiated in, rather than transferred to, California.

7 The Commission also recommends revising the language of UAGPPJA Section  
 8 202 to clarify its scope. From the ULC’s discussion of this provision, it is evident  
 9 that the provision is only intended to address which state has jurisdiction, not other  
 10 jurisdictional issues like whether an appellate court may make such an  
 11 appointment.<sup>85</sup> The Commission proposes to make this point more clear.<sup>86</sup>

12 *Declining to Exercise Jurisdiction.* In a number of places, UAGPPJA refers to a  
 13 court that “declines to exercise jurisdiction” because another state is “a more  
 14 appropriate forum.”<sup>87</sup> For example, the second clause of Section 203(2)(A) would  
 15 give jurisdiction to a court in a significant-connection state if a court in the home  
 16 state has declined to exercise jurisdiction because the significant-connection state  
 17 is a more appropriate forum.<sup>88</sup> Similarly, Section 203(3) would give jurisdiction to  
 18 a court in a peripheral state (a state that is neither the home state, a significant-  
 19 connection state, nor a place with special jurisdiction under Section 204) if that is  
 20 constitutionally permissible and the home state plus all significant-connection  
 21 states have declined to exercise jurisdiction because the peripheral state is a more  
 22 appropriate forum.<sup>89</sup>

23 If those rules were enacted in California, a California court would sometimes  
 24 have to determine whether a court in another state had “declined to exercise

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

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

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

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

88. Notably, this UAGPPJA provision *does not* require a court in a significant-connection state to find that every other significant-connection state has “declined to exercise jurisdiction because this state is a more appropriate forum.” Requiring such a finding would be unduly burdensome; depending on how many states are involved, it could be very costly for parties to have to initiate a conservatorship proceeding in each significant-connection state (plus the home state, if any) and obtain a court order declining to exercise jurisdiction from all but one of those states. Instead, it would be enough to initiate a conservatorship proceeding in the home state, obtain a court order from that state declining to exercise jurisdiction, and then seek jurisdiction in the significant-connection state that seems most appropriate based on the factors identified in Section 206(c) of UAGPPJA (corresponding to proposed Prob. Code § 1996(c) *infra*). If that state is a poor choice, the court could decline to exercise jurisdiction and may impose any condition the court considers just and proper, including the condition that a conservatorship proceeding be promptly filed in another state. See UAGPPJA § 206(b) (corresponding to proposed Prob. Code § 1996(b) *infra*).

89. This situation is not likely to occur often. The extreme result (assertion of jurisdiction by a state that has only tenuous ties to the proposed conservatee) justifies the burdens inherent in establishing that the home state and all significant-connection states have declined to exercise jurisdiction.



1 jurisdiction” because California is “a more appropriate forum.” Likewise, a court  
2 in another UAGPPJA state will sometimes have to determine whether a California  
3 court has “declined to exercise jurisdiction” because the other state is “a more  
4 appropriate forum.”

5 Under UAGPPJA, when a court “declines to exercise jurisdiction” because  
6 another state is “a more appropriate forum,” it must “either dismiss or stay the  
7 proceeding.”<sup>90</sup> The uniform act thus contemplates that the court will take an  
8 affirmative step, the issuance of a dismissal or stay order. But the act is silent on  
9 whether the court’s order must expressly state that the court is declining to  
10 exercise jurisdiction because another state is a more appropriate forum.<sup>91</sup>

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

- 13 (1) Revise UAGPPJA Section 203(2)(A) and (3) to make clear that they apply  
14 only when a court in another state has *expressly* declined jurisdiction on the  
15 ground that California is a more appropriate forum.<sup>92</sup>
- 16 (2) Revise UAGPPJA Section 206 to make clear that when a California court  
17 declines to exercise jurisdiction because a court in another state is a more  
18 appropriate forum, the California court must do so *expressly in a record*.<sup>93</sup>

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

21 *Emergency jurisdiction.* Section 204 of UAGPPJA describes several situations  
22 in which a court has “special jurisdiction” (i.e., jurisdiction that is not based on  
23 UAGPPJA’s normal three-tier jurisdictional hierarchy<sup>94</sup>). Among other things, the  
24 section allows a court lacking jurisdiction under the normal hierarchy to make a  
25 short-term appointment in an “emergency”<sup>95</sup> for an individual who is physically

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90. UAGPPJA § 206(b).

91. See *id.*

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

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

94. Section 203 of UAGPPJA (corresponding to proposed Prob. Code § 1993 *infra*) establishes the normal three-tier jurisdictional hierarchy. Section 204, governing “special jurisdiction,” applies only when a court is “lacking jurisdiction under Section 203(1) through (3)” and other specified conditions are met.

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

The UAGPPJA definition “does not preclude an enacting jurisdiction from appointing a [conservator] under an emergency [conservatorship] statute with a different or broader test of emergency if the court otherwise has jurisdiction to make an appointment” under UAGPPJA’s normal three-tier jurisdictional

1 present in the state.<sup>96</sup> The provision does not specify the procedure for making  
2 such an appointment.

3 California’s procedure for establishing a permanent conservatorship would be  
4 too slow for use in an emergency situation.<sup>97</sup> Accordingly, when jurisdiction is  
5 based on the rule providing special jurisdiction in an emergency, the proposed law  
6 would require use of California’s procedure for establishing a temporary  
7 conservatorship.<sup>98</sup>

8 **Transfer (Article 3 of UAGPPJA)**

9 Article 3 of UAGPPJA addresses the problem of transfer: how to move what is  
10 known in California as a conservatorship from one state to another when such a  
11 move becomes necessary.<sup>99</sup> That problem can arise, for example, when the  
12 conservator or the conservator’s spouse accepts a new job in a different state and  
13 the family needs to bring the conservatee along to the new state. Alternatively,  
14 family circumstances might change, necessitating replacement of the existing  
15 conservator with a family member who lives in another state. Or it might be  
16 necessary to move a conservatee to a nursing or medical facility in a different  
17 state, particularly if the conservatee resides near a state border or requires  
18 specialized care.<sup>100</sup>

19 Before UAGPPJA, in most states it was necessary to re-establish a  
20 conservatorship from scratch when such a move occurred.<sup>101</sup> In other words, the  
21 whole process of creating a conservatorship had to be repeated: filing a  
22 conservatorship petition, proving that the proposed conservatee lacks capacity to  
23 handle personal care or financial matters, choosing a conservator, and going  
24 through all of the other steps in the conservatorship process.

25 Such relitigation is costly, time-consuming, and stressful, draining resources of  
26 conservatees, their families, and the judicial system.<sup>102</sup> Those burdens can be  
27 particularly difficult for families that are already stretched thin, struggling to

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hierarchy. UAGPPJA § 204 Comment. In other words, California’s temporary conservatorship procedure (Prob. Code §§ 2250-2258), including its “good cause” requirement, would continue to be available whenever California has jurisdiction as the proposed conservatee’s “home state” or jurisdiction otherwise exists under proposed Probate Code Section 1993(a)-(e) (corresponding to UAGPPJA § 203(1)-(3)).

96. See UAGPPJA § 204(a)(1).

97. See, e.g., Prob. Code §§ 1822(a) (notice of time and place of hearing on conservatorship petition shall be given “[a]t least 15 days before the hearing on the petition”), 1824 (citation and copy of conservatorship petition “shall be served on the proposed conservatee at least 15 days before the hearing”), 1826 (court investigator shall prepare report addressing numerous matters and shall submit that report to court “in writing, at least five days before the hearing”).

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

99. See UAGPPJA Prefatory Note, p. 1.

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

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

102. *Id.*

1 provide personal care and financial management for a needy relative, while also  
2 handling their own affairs.

3 In drafting Article 2 of UAGPPJA, the ULC sought to provide a streamlined  
4 transfer process, so that it would not be necessary to fully relitigate such a  
5 proceeding when a move occurred.<sup>103</sup> That transfer process involves a number of  
6 steps, as described below.

7 ***Transfer Procedure Under UAGPPJA***

8 Although UAGPPJA uses the term “transfer,” what actually occurs is  
9 technically not transfer of a proceeding from one state to another. Rather, the  
10 process involves termination of an existing proceeding in one state and  
11 commencement of a new proceeding in another state, in an expedited and  
12 coordinated manner. The term “transfer” is just a shorthand way to refer to this  
13 process.<sup>104</sup>

14 A “transfer” under UAGPPJA requires the issuance of four court orders: (1) a  
15 provisional order granting the transfer, (2) a provisional order accepting the  
16 transfer, (3) a final order confirming the transfer, and (4) a final order accepting  
17 the transfer. A hearing is held only if the transferring court or the accepting court  
18 deems it necessary, or if one is requested by a person entitled to notice of the  
19 transfer proceeding.<sup>105</sup>

20 To begin the transfer process, a court-appointed assistant must file a transfer  
21 petition in the court currently supervising the proceeding.<sup>106</sup> That court must issue  
22 an order provisionally granting the transfer if it is satisfied that the other state will  
23 accept the transfer and the court makes certain findings regarding the proposed  
24 move.<sup>107</sup> The required findings differ slightly depending on whether the  
25 proceeding involves personal care or financial assistance.<sup>108</sup>

26 After the transferring court provisionally grants the transfer, the court-appointed  
27 assistant must file a petition in a court of the other state, asking it to accept the  
28 transfer.<sup>109</sup> That court must issue a provisional order accepting the transfer unless:  
29 (1) the assistant is ineligible for appointment in the accepting state or (2) someone  
30 objects to the transfer and establishes that the transfer would be contrary to the  
31 interests of the person receiving assistance.<sup>110</sup>

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103. *Id.*

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

105. See UAGPPJA §§ 301(c), 302(c).

106. UAGPPJA § 301(a).

107. UAGPPJA § 301(d), (e).

108. See UAGPPJA § 301(d).

109. UAGPPJA § 302(a).

110. UAGPPJA § 302(d).

1 On receipt of the provisional order accepting the transfer and whatever  
2 documents are normally required to terminate a proceeding of this type, the  
3 transferring court must issue a final order confirming the transfer and terminating  
4 its proceeding.<sup>111</sup> The transferring court’s final order is then provided to the  
5 accepting court, which must issue a final order accepting the transfer and  
6 appointing the petitioner to provide assistance in the accepting state.<sup>112</sup> To  
7 expedite the transfer process, the court in the accepting state must give deference  
8 to the transferring court’s determination of capacity and selection of the person to  
9 provide assistance.<sup>113</sup>

10 Because the applicable law and practice are likely to differ in the two states,  
11 within ninety days after issuing its final order accepting the transfer, the accepting  
12 court must determine whether the proceeding needs to be modified to conform to  
13 the law of that state.<sup>114</sup> The ninety day requirement is not inflexible; a state may  
14 coordinate the conformity determination with other time limits applicable to the  
15 proceeding. The conformity determination is the last step in the transfer process.

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

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

25 Section 301 of UAGPPJA specifies the process for transferring a proceeding to  
26 another state. If that section was enacted in California, a California court would  
27 not have to provisionally approve a transfer to another state unless it found that  
28 plans for care of the conservatee in the other state were “reasonable and  
29 sufficient,”<sup>115</sup> or, in a conservatorship of the estate, that adequate arrangements  
30 would be made for management of the conservatee’s property.<sup>116</sup> In those  
31 circumstances, a California court could in good conscience relinquish control over  
32 the conservatee and entrust the conservatee or the conservatee’s property to the  
33 supervision of the accepting court. Upon transfer, the situation would be  
34 comparable to that of any other conservatee beyond California’s jurisdictional

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111. UAGPPJA § 301(f).

112. UAGPPJA § 302(e).

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

114. UAGPPJA § 302(f).

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

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

1 reach: California would lack a basis for intervening and would have to respect the  
2 policy determinations and other decisions of its sister state.

3 During the transfer process, however, the California court would still have  
4 responsibility for supervising the care of the conservatee. To eliminate any doubt  
5 that the conservator is bound by California law throughout the transfer process, the  
6 Commission recommends making that point explicit in the provision governing  
7 the conservator’s oath.<sup>117</sup>

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

- 10 • Revisions to conform to California terminology.<sup>118</sup>
- 11 • Revisions to more clearly coordinate the provision with the provision  
12 governing acceptance of a transfer (UAGPPJA § 302).<sup>119</sup>
- 13 • Revisions to conform to California practice, under which a party is required  
14 to give notice *of a hearing* on a motion or petition, not just notice of a  
15 petition.<sup>120</sup>
- 16 • Revisions to require a hearing on every transfer petition.<sup>121</sup> This would  
17 afford interested persons a relatively easy means to voice objections; they  
18 would not have to bear the burden of figuring out how to request a hearing.  
19 If there are no objections to a transfer petition, the court could place the  
20 matter on the consent calendar.
- 21 • Revisions of the procedure that applies if a person objects to a transfer. To  
22 prevent a transfer, UAGPPJA would require the objector to establish that the  
23 transfer would be contrary to the interests of the subject of the  
24 proceeding.<sup>122</sup> If an objector failed to meet that burden, the transfer would  
25 go forward. In contrast, the Commission suggests that a transfer should only  
26 be permitted if the court affirmatively determines that the transfer would not  
27 be contrary to the interests of the conservatee.<sup>123</sup>

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

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

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

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

121. See proposed Prob. Code § 2001(c) & Comment *infra*. A similar requirement applies when a conservator seeks to establish an out-of-state residence for a conservatee without petitioning for a transfer of the conservatorship. See Prob. Code § 2353(c); Cal. R. Ct. 7.1063(f).

122. See UAGPPJA § 301(d)(2), (e)(2).

123. See proposed Prob. Code § 2001(d), (e) & Comment *infra*.

- 1       • Revisions to make clear what requirements apply to a proceeding that  
2 involves both personal care and property management (what is known in  
3 California as a conservatorship of the person and estate).<sup>124</sup>

4 ***Transfer of Another State’s Conservatorship to California***

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

8 *Expressly Requiring Compliance with California Law Upon Transfer.* If Section  
9 302 of UAGPPJA was enacted in California, a California court would have to  
10 accept the transfer of a proceeding from another state upon satisfaction of the  
11 procedural requirements described above. That raises an important question: After  
12 the transfer, would the transferred proceeding continue to be governed by the laws  
13 of the state in which it was established, or would it be governed by California law?  
14 In other words, would the California court have to apply the policies and  
15 procedures of another state, or would it be free to follow California’s own policies  
16 and procedures? There are many distinctions between California conservatorship  
17 law and comparable law in other states, so providing clear guidance on this point  
18 is critical.

19 UAGPPJA does not say so expressly, but it is fairly obvious that the ULC  
20 intended for a transferred proceeding to be governed by the law of the state to  
21 which it was transferred.<sup>125</sup> ULC representatives have confirmed as much.<sup>126</sup>  
22 Application of California law also appears to be the only sensible solution:  
23 Otherwise similarly situated California conservatees would be subject to disparity  
24 in treatment depending on where a conservatorship originated, and California  
25 courts would have to learn and apply the rules of numerous other jurisdictions on a  
26 daily basis.

27 Because this is such an important matter, the Commission recommends that it be  
28 stated expressly in the statutory provision on accepting a transfer. Specifically, the  
29 Commission proposes to include a statement that “[w]hen a transfer to this state  
30 becomes effective, the conservatorship is subject to the law of this state and shall  
31 thereafter be treated as a conservatorship under the law of this state.”<sup>127</sup>

32 That rule will help to ensure that California policies are protected. For example,  
33 California has detailed requirements for placing a conservatee with dementia in a

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

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

126. See CLRC Staff Memorandum 2011-31 (Aug. 4, 2011), Exhibit pp. 3 (Comments of Prof. English, reporter for UAGPPJA), 4 (Comments of E. Fish, Senior Legislative Counsel & Legal Counsel for ULC).

127. See proposed Prob. Code § 2002(e)(3) & Comment *infra*. This concept may be conveniently referred to as the “When in Rome” principle.

1 secured perimeter residential care facility for dementia patients,<sup>128</sup> and for  
2 authorizing the administration of psychotropic medications to such a  
3 conservatee.<sup>129</sup> Under the Commission’s proposed approach, it would be clear that  
4 a conservator would have to satisfy those requirements before taking those steps in  
5 California.

6 *Expressly Preventing a Court Appointee from Taking Action in California Until*  
7 *the Transfer is Complete and Becomes Effective.* For similar reasons, the  
8 Commission also recommends a second statutory clarification: Making clear that a  
9 court-appointed assistant may not take action in California pursuant to a transfer  
10 petition unless and until a California court issues a final order accepting the  
11 transfer and the court and conservator have completed the same series of steps that  
12 must be taken when a conservatorship originates in California.<sup>130</sup> In particular, the  
13 necessary steps are:

- 14 (1) The conservator must take an oath to perform the duties of the position  
15 according to law.<sup>131</sup>
- 16 (2) The court must set the bond and the conservator must file the required bond,  
17 if any.<sup>132</sup>
- 18 (3) The court must provide the conservator with the same informational  
19 materials that a new conservator receives when a conservatorship originates  
20 in California.<sup>133</sup>
- 21 (4) The conservator must acknowledge receipt of the required informational  
22 materials.<sup>134</sup>
- 23 (5) The clerk of the court must issue the letters of conservatorship.<sup>135</sup>

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

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128. See Prob. Code § 2356.5.

129. See *id.*

130. See proposed Prob. Code § 2002(e)(2) & Comment *infra*.

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

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

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

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

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

1     *Allowing But Not Mandating Full Reevaluation of Capacity and the Choice of*  
2 *the Appointee Pursuant to California Law.* Section 302 of UAGPPJA provides  
3 that “[i]n granting a petition under this section, the court *shall recognize a ...*  
4 *conservatorship order from the other state, including the determination of the*  
5 *[conservatee’s] incapacity and the appointment of the ... conservator.”*<sup>136</sup> The key  
6 purpose of that requirement is to eliminate the burden of having to “prove the case  
7 in the second state from scratch, including proving the respondent’s incapacity and  
8 the choice of ... conservator.”<sup>137</sup>

9     Although that is an important objective, the Commission has serious  
10 reservations about requiring a California court to accept another state’s ruling on  
11 capacity or choice of conservator without qualification. Because the UAGPPJA  
12 process would not be a true transfer, the constitutional requirement to give full  
13 faith and credit to a sister state judgment<sup>138</sup> would not seem to apply. Further, the  
14 United States Supreme Court is likely to treat a conservatorship order in the same  
15 manner as a child custody order, concluding that because the order is subject to  
16 modification in the state that issued it, the order is also subject to modification in a  
17 sister state.<sup>139</sup>

18     Most importantly, California’s policies and procedures regarding determination  
19 of capacity and selection of a conservator differ from those in other states. For  
20 example, California has enacted the Due Process in Competence Determinations  
21 Act, which establishes detailed and demanding rules and procedures for assessing  
22 a person’s capacity.<sup>140</sup> In neighboring states (Arizona, Nevada, and Oregon), the

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

137. UAGPPJA Art. 3 General Comment.

138. The federal constitution requires each state to give full faith and credit to judgments entered in other states. U.S. Const. art. IV, § 1; see also 28 U.S.C. § 1738.

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

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

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

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



1 rules regarding determination of capacity are not as fully developed.<sup>141</sup> Similarly,  
2 California's rules governing selection of a conservator differ in various respects  
3 from those in neighboring states, and those rules reflect policy choices such as  
4 how much weight to give to the conservatee's preference and how to rank a  
5 domestic partner in comparison to other relatives.<sup>142</sup> By requiring a California  
6 court to accept another state's determination of capacity or selection of appointee,  
7 Section 302 of UAGPPJA threatens to impinge on California's policy preferences  
8 regarding those matters.

9 On the other hand, however, requiring full relitigation of capacity and the choice  
10 of conservator in each case transferred to California would defeat the very purpose  
11 of UAGPPJA's transfer process: making relocation of this type of court  
12 proceeding less burdensome. In particular, assessing an individual's capacity can  
13 be embarrassing<sup>143</sup> for that individual and costly because it requires input from  
14 medical professionals<sup>144</sup> and might entail a jury trial.<sup>145</sup> UAGPPJA seeks to  
15 minimize those concerns.

16 The Commission therefore proposes a middle ground. Full relitigation of  
17 capacity and the choice of conservator would not be required in every case  
18 transferred to California. But such relitigation would be *allowed if requested in the*  
19 *normal manner that those issues can be revisited in any California*  
20 *conservatorship*: (1) by filing a petition for termination of the conservatorship, if  
21 the intent is to show that the conservatee has sufficient capacity to handle his or  
22 her own affairs without assistance,<sup>146</sup> or (2) by filing a petition to remove the  
23 conservator, if the intent is to obtain a new conservator in accordance with  
24 California law.<sup>147</sup> In other words, the issues of capacity and choice of conservator  
25 could be relitigated under California law if someone wanted to raise them.

26 Further, the first time that capacity is relitigated in California after a transfer, the  
27 relitigation process should be comparable to the process that would have been  
28 used if the conservatorship had originated in California. Accordingly, the  
29 Commission proposes to require the court to rebuttably presume that there is no  
30 need for a conservatorship.<sup>148</sup>

31 Likewise, if a person seeks removal of the conservator of a transferred  
32 proceeding, the choice of conservator should be reevaluated in the same manner as

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

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

143. See, e.g., James E. Spar & Asenath LaRue, *Clinical Manual of Geriatric Psychiatry* 362 (2006) ("The process of appointment of a ... conservator is often demeaning and embarrassing to the conservatee.").

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

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

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

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

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

1 if a conservator was being chosen for a proceeding that originated in California.  
2 The Commission therefore recommends that the statute governing removal of a  
3 conservator be amended to permit removal of a transferred conservator if that  
4 person “would not have been appointed in this state despite being eligible to serve  
5 under the law of this state.”<sup>149</sup>

6 As a further means of protecting California conservatorship policies in the  
7 transfer process, the Commission recommends that the court be required to  
8 appoint a court investigator when it issues a final order accepting a transfer.<sup>150</sup> The  
9 court investigator would be required to promptly conduct an investigation similar  
10 to the one that occurs when a new conservatorship is established in California.<sup>151</sup>  
11 Among other things, the court investigator would have to determine whether the  
12 conservatee objects to the conservator or prefers another person to act as  
13 conservator.<sup>152</sup> The investigator would also have to interview the conservator, the  
14 conservatee, and the conservatee’s spouse or domestic partner (if any) to  
15 determine whether the conservator is acting in the best interests of the  
16 conservatee.<sup>153</sup> In addition, the investigator would have to make specific findings  
17 concerning the conservatee’s capacity.<sup>154</sup>

18 The court would review the investigator’s report at the same time that it  
19 determines whether the conservatorship conforms to California law.<sup>155</sup> The  
20 Commission tentatively recommends that the court conduct those inquiries within  
21 ninety days after the court issues its final order accepting the transfer (the same  
22 time period specified in Section 302(f) of UAGPPJA). **Input on the proper time  
23 period to use would be particularly helpful.**

24 When the court conducts the review, it would be authorized to take appropriate  
25 action in response to the court investigator’s report.<sup>156</sup> The court could also modify

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

150. See proposed Prob. Code § 2002(e)(4) & Comment *infra*. It does not seem advisable to require the court investigation earlier in the transfer process, because it may be difficult and unduly expensive to obtain information about the conservatorship while the conservatee, the conservator, or both are located in another state.

151. See proposed Prob. Code § 1851.1 & Comment *infra*. This investigation would not impose any new costs on the state. Under existing law, a comparable court investigation has to be conducted when a conservatorship (or comparable proceeding by another name) is relocated to California and has to be re-established from scratch. See Prob. Code § 1826. In either situation, it might sometimes be possible to save costs by using some of the materials that were generated while the case was pending in the other state.

152. See proposed Prob. Code § 1851.1(b)(5) *infra*.

153. See proposed Prob. Code § 1851.1(b)(1) *infra* (requiring compliance with Prob. Code § 1851); see also proposed Prob. Code § 1851.1(b)(2)-(3) *infra* (requiring interviews of conservator and spouse or domestic partner).

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

155. See proposed Prob. Code § 2002(f)(2) & Comment *infra*.

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

1 the conservator's powers as necessary to conform to California law.<sup>157</sup> The review  
2 process would thus provide an opportunity to protect California's conservatorship  
3 policies, including its policies on determination of capacity and choice of the  
4 conservator.<sup>158</sup>

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

- 7 • Revisions to conform to California terminology.<sup>159</sup>
- 8 • Revisions to reflect and facilitate compliance with limitations on the scope  
9 of the proposed legislation.<sup>160</sup>
- 10 • Revisions to conform to California practice, under which a party is required  
11 to give notice *of a hearing* on a motion or petition, not just notice of a  
12 petition.<sup>161</sup>
- 13 • Revisions to require a hearing on every transfer petition, for the same  
14 reasons previously expressed. As before, if there are no objections to a  
15 transfer petition, the court could place the matter on the consent calendar.<sup>162</sup>
- 16 • Revisions of the procedure that applies if a person objects to a transfer. To  
17 prevent a transfer, UAGPPJA would require the objector to establish that the  
18 transfer would be contrary to the interests of the subject of the proceeding. If  
19 an objector failed to meet that burden, the transfer would go forward. In  
20 contrast, the Commission suggests that a transfer should only be permitted if  
21 the court affirmatively determines that the transfer would not be contrary to  
22 the interests of the conservatee.<sup>163</sup>
- 23 • Revisions to differentiate between (1) a conservator who is ineligible, *under*  
24 *the law of the transferring state*, to serve in California, and (2) a conservator  
25 who is ineligible, *under California law*, to serve in California.<sup>164</sup>

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157. See proposed Prob. Code § 2002(f)(1) *infra*.

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

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

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

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

162. See proposed Prob. Code § 2002(c) & Comment *infra*; see also *supra* note 121 & accompanying text.

163. See proposed Prob. Code § 2002(d)(1) & Comment *infra*.

164. If the existing conservator was ineligible, *under the law of the transferring state*, to serve in California, the California court could not provisionally approve the transfer. See proposed Prob. Code § 2002(d)(2) & Comment *infra*. The court supervising the proceeding in the transferring state would have to replace the conservator before transferring the proceeding. *Id.*

In contrast, if the existing conservator was ineligible, *under California law*, to serve in California, the California court could provisionally approve the transfer, so long as the transfer petition identifies a replacement who is willing and eligible to serve in California. See proposed Prob. Code § 2002(d)(3) & Comment *infra*.

1 With all of the modifications discussed above, the Commission tentatively  
2 recommends that the Legislature enact UAGPPJA's transfer procedure in  
3 California.

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

5 Article 4 of UAGPPJA addresses the problem of interstate recognition.<sup>165</sup> The  
6 discussion below describes that problem and UAGPPJA's approach to it, and then  
7 explores the implications of the UAGPPJA approach for California.

8 *The Problem and UAGPPJA's Solution*

9 Sometimes a person appointed to assist an individual with limited capacity has  
10 to take action in a state other than the one in which the court made the  
11 appointment. For example, it might be necessary to obtain medical care for the  
12 individual with limited capacity while that individual is traveling in another state  
13 or living near a state border with a medical facility located on the other side.<sup>166</sup>  
14 Alternatively, a conservator might need to sell or maintain property located in a  
15 different state, such as a vacation home belonging to the conservatee.<sup>167</sup> There are  
16 also various other reasons why a court-appointed assistant might need to take steps  
17 in a different jurisdiction.<sup>168</sup>

18 In these types of situations, the court appointee sometimes encounters resistance  
19 from an individual or entity in the other state. For example, a care facility in the  
20 other state might question the appointee's authority to act on behalf of the person  
21 with limited capacity.<sup>169</sup> Due to this sort of refusal, it is sometimes necessary to  
22 seek a second court appointment in the other state, but that is a difficult burden for  
23 many families to bear.<sup>170</sup>

24 Article 4 of UAGPPJA is designed to avoid this problem by facilitating  
25 enforcement of a court appointment that was made in another state.<sup>171</sup> The key  
26 concept of the article is registration.<sup>172</sup> By following a relatively simple procedure,  
27 a court appointee may register the appointment in another state, and may thereafter  
28 exercise in that state all of the powers authorized in the order of appointment,

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

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

167. See generally *id.*

168. To give just one more example, a conservatee might have a creditor located in another state and the conservator might have to negotiate an agreement with that creditor or make payments to that creditor.

169. UAGPPJA Art. 4 General Comment.

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

171. See UAGPPJA Art. 4 General Comment.

172. *Id.*

1 *except as prohibited under the laws of that state.*<sup>173</sup> In other words, when taking  
2 action in the state where the appointment is registered, the court appointee *must*  
3 *comply with the laws of that state.*

#### 4 ***Implications for California***

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

10 Such an obligation already appears to exist by virtue of the conservator’s oath.  
11 Nonetheless, the Commission proposes to underscore the point by amending the  
12 provision that requires the oath. Specifically, the Commission recommends that  
13 the provision be amended to expressly require a California conservator “to comply  
14 with the law of this state, as well as other applicable law, at all times, *in any*  
15 *location within or without the state.*”<sup>174</sup>

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

20 Again, that prospect does not appear to be problematic, at least in most  
21 circumstances. As explained above, a court appointee acting pursuant to a  
22 UAGPPJA registration must comply with the law of the state of registration.<sup>175</sup>  
23 Accordingly, if an out-of-state appointment was registered in California, the  
24 appointee would have to comply with California law while taking action in  
25 California, and thus would not pose any threat to California policies.

26 The proposed legislation seeks to ensure that the appointee is made aware of that  
27 requirement and agrees to comply with it. To register in California, the appointee  
28 would have to file not only the registration documents required by UAGPPJA  
29 (certified copies of the conservatorship order and letters of office), but also a cover  
30 sheet to be developed by the Judicial Council, which would inform the appointee  
31 that the appointee is subject to California law while acting in the state, is required  
32 to comply with that law in every respect, including, but not limited to, all  
33 applicable procedures, and is not authorized to take any action prohibited by  
34 California law.<sup>176</sup> Below that statement would be a signature box, in which the

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173. See UAGPPJA §§ 401-403.

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

175. See *supra* note 172 & accompanying text.

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

1 appointee attests to those matters, reducing the likelihood that an appointee would  
2 overlook the need to follow California law.<sup>177</sup>

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

7 The Commission believes, however, that if a conservator-conservatee  
8 relationship is relocated to California, it should be officially transferred to  
9 California and subjected to the safeguards of the transfer process. For that reason,  
10 the registration of an out-of-state conservatorship in California should only be  
11 effective while the conservatee resides in another jurisdiction. If the conservatee  
12 moves to California, the conservator should no longer be able to take action in  
13 California pursuant to the registration, and should have to seek a transfer of the  
14 court proceeding to California. The Commission tentatively proposes to modify  
15 UAGPPJA's registration procedure to achieve that result<sup>178</sup> and ensure that the  
16 conservator and third parties are informed of this limitation.<sup>179</sup>

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

- 19 • Revisions to conform to California terminology.<sup>180</sup>
- 20 • Revisions to clarify the procedure for filing the registration documents in a  
21 California court.<sup>181</sup>
- 22 • Revisions to reflect that the court that originally made an appointment may  
23 not be the one currently supervising the proceeding.<sup>182</sup>
- 24 • Addition of a provision that expressly permits and governs registration of a  
25 court appointment that involves both personal care and property  
26 management.<sup>183</sup>
- 27 • Revisions to make clear that registration in a single county is sufficient; it is  
28 not necessary to register in every county in which the court appointee  
29 wishes to act.<sup>184</sup>

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

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

179. See proposed Prob. Code §§ 2015, 2023 *infra*.

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

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

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

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

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

- 1 • Addition of a “safe harbor” provision, under which a person who relies in  
2 good faith on a UAGPPJA registration would be protected from liability in  
3 specified circumstances.<sup>185</sup>
- 4 • Addition of a provision authorizing recordation of UAGPPJA registration  
5 documents.<sup>186</sup>

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

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

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

- 15 • Section 501 of UAGPPJA is a standard ULC provision directing courts to  
16 consider the need to promote uniformity of the law when applying and  
17 construing the act. To emphasize the importance of respecting a  
18 conservatee’s constitutional rights in applying and construing the act, the  
19 Commission recommends modifying this provision to refer to those rights,  
20 as well as the need to promote uniformity.<sup>187</sup>
- 21 • Section 505 of UAGPPJA would specify the “effective date” of the  
22 proposed legislation. In California, it is important to differentiate between  
23 the “effective date” and the “operative date” of legislation. The “effective  
24 date” is when the legislation officially becomes part of the law of the  
25 state.<sup>188</sup> The “operative date” is when the legislation actually starts to  
26 operate in the state.<sup>189</sup> The Commission recommends that UAGPPJA have a  
27 one-year delayed operative date if it is enacted in California. The one year  
28 delay in operation of the statute would afford time for the Judicial Council  
29 to prepare court rules and forms necessary for smooth implementation of the

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

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

187. See proposed Prob. Code § 2021 & Comment *infra*. Connecticut has already modified UAGPPJA Section 501 in this manner. See 2012 Conn. Pub. Act No. 12-22, § 22.

188. In general, the effective date of a California statute enacted during a regular session of the Legislature is January 1 of the year following its enactment. See Cal. Const. art. IV, § 8(c)(1); Gov’t Code § 9600(a). “The ‘enactment is a law on its effective date only in the sense that it cannot be changed except by the legislative process; the rights of individuals under its provisions are not substantially affected until the provision operates as law.’” *People v. Palomar*, 171 Cal. App. 3d 131, 134, 214 Cal. Rptr. 785 (1985).

189. Usually the operative date is the same as the effective date. *People v. Henderson*, 107 Cal. App. 3d 475, 488, 166 Cal. Rptr. 20 (1980). In some instances, the Legislature exercises its discretion to specify a different operative date. See, e.g., *Preston v. State Bd. of Equalization*, 25 Cal. 4th 197, 223-24, 19 P.3d 1148, 105 Cal. Rptr. 2d 407 (2001); *Cline v. Lewis*, 175 Cal. 315, 318, 165 P. 915 (1917); *Johnson v. Alexis*, 153 Cal. App. 3d 33, 40, 199 Cal. Rptr. 909 (1984). That step is appropriate in this context.

1           legislation.<sup>190</sup> The Commission further recommends enactment of a  
2           provision directing the Judicial Council to prepare such rules and forms  
3           before the specified operative date.<sup>191</sup>

#### 4   **Conforming Revisions**

5       Some existing California statutes will have to be repealed or revised to properly  
6       coordinate them with the proposed UAGPPJA legislation. A few such conforming  
7       revisions are included in this tentative recommendation.<sup>192</sup> The Commission is still  
8       reviewing the codes for additional conforming revisions, which will be circulated  
9       for public comment at a later date. **The Commission welcomes and encourages**  
10      **input on which code provisions would require conforming revisions and how**  
11      **they should be revised.**

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

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

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

21      **The Commission urges interested persons to express their views on this**  
22      **matter by providing written comments to the Commission or participating in**  
23      **discussion of this study at a Commission meeting. Such comments will be**  
24      **invaluable in refining the Commission’s proposal to effectively serve the**  
25      **citizens of California.**

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

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

192. See “Key Conforming Revisions” *infra*.



APPENDIX A

The following table summarizes the differences between UAGPPJA terminology and California terminology for the types of situations addressed in UAGPPJA:

<i>Concept</i>	<i>UAGPPJA term</i>	<i>California term</i>
Person appointed to assist an adult with personal care	“guardian” (UAGPPJA § 102(3))	“conservator of the person” (Prob. Code § 1801(a))  The UAGPPJA term (“guardian”) is potentially confusing because in California a “guardian” may only be appointed for a minor
Person appointed to assist an adult with financial matters	“conservator” (UAGPPJA § 102(2))	“conservator of the estate” (Prob. Code § 1801(b))  The UAGPPJA term (“conservator”) is potentially confusing because in California a “conservator” could be responsible for personal care, financial matters, or both
Person appointed to assist an adult with personal care and financial matters	none	“conservator of the person and estate” (Prob. Code § 1801(c))  UAGPPJA does not provide a term for an appointee with dual responsibilities, although this is a commonly occurring situation

<i>Concept</i>	<i>UAGPPJA term</i>	<i>California term</i>
Judicial proceeding in which court appoints someone to assist an adult with personal care	“guardianship proceeding” (UAGPPJA § 102(5))	“conservatorship of the person”  The UAGPPJA term (“guardianship proceeding”) is potentially confusing because in California a “guardianship” may only be established for a minor
Judicial proceeding in which court appoints someone to assist an adult with financial matters	UAGPPJA uses the term “conservatorship” to refer to this type of proceeding, but it does not include a definition of that term	“conservatorship of the estate”  The UAGPPJA term (“conservatorship”) is potentially confusing because in California a “conservatorship” could involve assistance with personal care, instead of or in addition to assistance with financial matters
Judicial proceeding in which court appoints someone to assist an adult with personal care and financial matters	None	“conservatorship of the person and estate”  UAGPPJA does not provide a term for this type of proceeding, although it is a commonly occurring situation

<i>Concept</i>	<i>UAGPPJA term</i>	<i>California term</i>
Judicial order relating to management of an adult's finances	"protective order" (UAGPPJA § 102(10))	None  California does not have a term specifically for a judicial order relating to management of an adult's finances. The UAGPPJA term ("protective order") is potentially confusing because in California a "protective order" could protect an adult's personal safety, instead of or in addition to an adult's financial security. See, e.g., Code Civ. Proc. §§ 527.8-527.9.
Judicial proceeding in which court issues order relating to management of an adult's finances, but court does not appoint someone to assist that adult with financial matters	"protective proceeding" (UAGPPJA § 102(11))	None  California does not have a term specifically for a judicial proceeding in which the court issues an order relating to management of an adult's finances, but court does not appoint someone to assist that adult with financial matters. The UAGPPJA term ("protective proceeding") is potentially confusing because in California that term is used much more broadly

<i>Concept</i>	<i>UAGPPJA term</i>	<i>California term</i>
<p>Adult for whom a court has appointed someone to provide assistance with personal care</p>	<p>“incapacitated person” (UAGPPJA § 102(6))</p>	<p>“conservatee”</p> <p>The UAGPPJA term (“incapacitated person”) is not used in Division 4 of the Probate Code (Guardianship, Conservatorship, and Other Protective Proceedings), perhaps because a ward or conservatee is not necessarily “incapacitated” for all purposes. The California term (“conservatee”) encompasses an adult receiving assistance with financial matters, as well as an adult receiving assistance with personal care. In contrast, UAGPPJA does not define “conservatee,” but its definition of “conservator” suggests that “conservatee” for purposes of UAGPPJA encompasses only an adult receiving assistance with financial matters, not an adult receiving assistance with personal care</p>

## Contents

PROPOSED LEGISLATION .....	37
CHAPTER 8. INTERSTATE JURISDICTION, TRANSFER, AND RECOGNITION: CALIFORNIA	
CONSERVATORSHIP JURISDICTION ACT .....	37
Article 1. General Provisions .....	37
§ 1980. Short title [UAGPPJA § 101] .....	37
§ 1981. Limitations on scope of chapter .....	38
§ 1982. Definitions [UAGPPJA § 102] .....	40
§ 1983. International application of chapter [UAGPPJA § 103] .....	42
§ 1984. Communication between courts [UAGPPJA § 104] .....	43
§ 1985. Cooperation between courts [UAGPPJA § 105] .....	44
§ 1986. Taking testimony in another state [UAGPPJA § 106] .....	45
Article 2. Jurisdiction .....	46
§ 1991. Definitions and significant connection factors [UAGPPJA § 201] .....	47
§ 1992. Exclusive basis [UAGPPJA § 202] .....	48
§ 1993. Jurisdiction [UAGPPJA § 203] .....	49
§ 1994. Special jurisdiction [UAGPPJA § 204] .....	51
§ 1995. Exclusive and continuing jurisdiction [UAGPPJA § 205] .....	53
§ 1996. Appropriate forum [UAGPPJA § 206] .....	54
§ 1997. Jurisdiction declined by reason of conduct [UAGPPJA § 207] .....	55
§ 1998. Notice of proceeding [UAGPPJA § 208] .....	56
§ 1999. Proceedings in more than one state [UAGPPJA § 209] .....	57
Article 3. Transfer of Conservatorship .....	58
§ 2001. Transfer of conservatorship to another state [UAGPPJA § 301] .....	59
§ 2002. Accepting conservatorship transferred from another state [UAGPPJA § 302] .....	61
Article 4. Registration and Recognition of Orders from Other States .....	64
§ 2011. Registration of order appointing conservator of person [UAGPPJA § 401] .....	65
§ 2012. Registration of order appointing conservator of estate [UAGPPJA § 402] .....	65
§ 2013. Registration of order appointing conservator of person and estate .....	66
§ 2014. Effect of registration [UAGPPJA § 403] .....	66
§ 2015. Good faith reliance on registration .....	67
§ 2016. Recordation of registration documents .....	67
Article 5. Miscellaneous Provisions .....	67
§ 2021. Uniformity of application and construction [UAGPPJA § 501] .....	67
§ 2022. Relationship to Electronic Signatures in Global and National Commerce Act	
[UAGPPJA § 502] .....	68
§ 2023. Court rules and forms .....	68
§ 2024. Transitional provision [UAGPPJA § 504] .....	69
UNCODIFIED .....	70
Operative date [UAGPPJA § 505] .....	70
KEY CONFORMING REVISIONS .....	70
CODE OF CIVIL PROCEDURE .....	70
Code Civ. Proc. § 1913 (amended). Effect of judicial record of sister state .....	70
GOVERNMENT CODE .....	71
Gov’t Code § 70662 (added). Registration under California Conservatorship Jurisdiction	
Act .....	71
PROBATE CODE .....	71
Prob. Code § 1834 (amended). Conservator’s acknowledgment of receipt .....	71
Prob. Code § 1851.1 (added). Investigation and review of transferred conservatorship .....	71

## Contents (cont'd)

Prob. Code § 2200 (amended). Jurisdiction .....	73
Prob. Code § 2300 (amended). Oath and bond .....	73
Prob. Code § 2352 (amended). Residence of ward or conservatee .....	74
Prob. Code § 2650 (amended). Grounds for removal .....	75

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## PROPOSED LEGISLATION

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

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

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

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

15 Article 1. General Provisions

16 **Background from Uniform Act**

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

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

28 **§ 1980. Short title [UAGPPJA § 101]**

29 1980. (a) By enacting this chapter, it is the Legislature’s intent to enact a  
30 modified version of the Uniform Adult Guardianship and Protective Proceedings  
31 Jurisdiction Act.

32 (b) This chapter may be cited as the “California Conservatorship Jurisdiction  
33 Act.”

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

37 Due to differences between California terminology and that of the Uniform Law Commission,  
38 the short title provided in the uniform act (“Uniform Adult Guardianship and Protective  
39 Proceedings Jurisdiction Act”) could cause confusion within this state. See Sections 1500-1502  
40 (“guardian” may only be nominated for minor, not for adult); see also Sections 1301, 4126 &

1 4672 (using term “protective proceeding” differently than in uniform act); Cal. R. Ct. 7.51(d),  
2 10.478(a) & 10.776(a) (same); Welf. & Inst. Code § 15703 (same). The alternative title provided  
3 in this section (“California Conservatorship Jurisdiction Act”) is consistent with California  
4 terminology for the types of proceedings covered by UAGPPJA.

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

#### 10 **Background from Uniform Act**

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

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

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

#### 20 **§ 1981. Limitations on scope of chapter**

21 1981. (a)(1) This chapter does not apply to a minor, regardless of whether the  
22 minor is or was married.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

49 Subdivision (c) makes clear that the transfer procedure provided in Article 3 of this chapter  
50 (Sections 2001-2002) does not apply to an adult with a developmental disability. Consistent with

1 that rule, subdivision (c) also states that the transfer procedure is inapplicable to several types of  
2 proceedings specifically designed for such an adult.

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

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

24 **Note.** For the reasons stated in the Comment, proposed Section 1981(c) would make  
25 UAGPPJA’s streamlined transfer procedure (Article 3) inapplicable to a conservatorship of an  
26 adult with a developmental disability. The remainder of UAGPPJA — the general provisions  
27 (Article 1), the jurisdictional rules (Article 2), the registration procedure (Article 4), and the  
28 miscellaneous provisions (Article 5) — would apply to such a conservatorship.

29 The Law Revision Commission seeks comment on any aspect of proposed Section 1981, but  
30 would especially appreciate input on the proposed treatment of an adult with a developmental  
31 disability. Is the proposed approach sound? Why or why not? If not, what alternative approach  
32 would be preferable?

### 33 **§ 1982. Definitions [UAGPPJA § 102]**

34 1982. In this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 10 **Background from Uniform Act**

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

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

16 **Note.** The Law Revision Commission seeks comment on any aspect of proposed Section  
17 1982, but would especially appreciate input on whether to include a federally recognized Indian  
18 tribe in the definition of “State” and, if not, what alternative treatment would be appropriate.

19 The Commission is aware of Senate Bill 406 (Evans), which would enact the Tribal Court Civil  
20 Judgment Act. The Commission is also aware that the California Tribal Court/State Court Forum  
21 and the Probate and Mental Health Advisory Committee of the Judicial Council are jointly  
22 studying recognition of tribal judgments and orders in proceedings that would, if conducted in a  
23 California court, be brought in the Probate Division.

24 The Commission’s tentative inclination is to postpone decision on whether to include a  
25 federally recognized Indian tribe in the definition of “State.” Once the fate of SB 406 is decided  
26 and the joint study is complete (or at least well underway), it might be easier to decide how to  
27 proceed on this point.

28 In addition, the Commission has tentatively decided that the UAGPPJA legislation should have  
29 a delayed operative date, to allow the Judicial Council to develop rules and forms. See the  
30 proposed uncodified section and accompanying Comment below. It might be possible to resolve  
31 and address the tribal issues during the transitional year, after UAGPPJA is enacted but before it  
32 becomes operative.

33 For these reasons, the reference to “a federally recognized Indian tribe” is shown in brackets in  
34 proposed Section 1982(m). The Commission encourages comments on these matters.

#### 35 **§ 1983. International application of chapter [UAGPPJA § 103]**

36 1983. A court of this state may treat a foreign country as if it were a state for the  
37 purpose of applying this article and Articles 2, 3, and 5.

38 **Comment.** Section 1983 is the same as Section 103 of the Uniform Adult Guardianship and  
39 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”).

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

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

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

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

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

13 **§ 1984. Communication between courts [UAGPPJA § 104]**

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

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

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

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

31 **Background from Uniform Act**

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

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

46 ....

47 This section does not prescribe the extent of the record that the court must make, leaving that  
48 issue to the court. A record might include notes or transcripts of a court reporter who listened to a  
49 conference call between the courts, an electronic recording of a telephone call, a memorandum

1 summarizing a conversation, and email communications. No record need be made of relatively  
2 inconsequential matters such as scheduling, calendars, and court records.

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

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

8 **Note.** The Law Revision Commission seeks comment on any aspect of proposed Section  
9 1984, but would especially appreciate input on whether a court should charge any fees for the  
10 court services described in that section, and, if so, what fees to charge.

11 In seeking this input, the Commission notes that proposed Section 1984 is similar to Family  
12 Code Section 3410, which governs communications between courts in matters arising under the  
13 Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”). Comments describing  
14 experience under that section would be particularly helpful. Are any fees charged for court  
15 communications under that section? If a court makes a record of a communication under that  
16 section, is the record filed? If so, what is the filing fee, if any? Do the answers to these questions  
17 depend on whether a proceeding is pending before the court?

18 **§ 1985. Cooperation between courts [UAGPPJA § 105]**

19 1985. (a) In a conservatorship proceeding in this state, a court of this state may  
20 request the appropriate court of another state to do any of the following:

21 (1) Hold an evidentiary hearing.

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

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

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

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

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

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

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

40 **Comment.** Section 1985 is similar to Section 105 of the Uniform Adult Guardianship and  
41 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to  
42 conform to California terminology for the proceedings in question. See Section 1982 & Comment  
43 (definitions); see also Section 1980 Comment. For limitations on the scope of this chapter, see  
44 Section 1981 & Comment. For another provision on cooperation between courts, see Fam. Code  
45 § 3412 (cooperation between courts regarding child custody jurisdiction), which is similar to  
46 Section 112 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997).

**Background from Uniform Act**

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

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

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

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

**Note.** The Law Revision Commission seeks comment on any aspect of proposed Section 1985, but would especially appreciate input on whether a court should charge any fees for court services provided under subdivision (b), and, if so, what fees to charge.

In seeking this input, the Commission notes that proposed Section 1985 is similar to Family Code Section 3412, which governs cooperation between courts in matters arising under the UCCJEA. Subdivision (c) of that provision states that “[t]ravel and other necessary and reasonable expenses incurred under subdivisions (a) and (b) may be assessed against the parties according to the law of this state.” How does that rule work in practice? Should similar language be included in proposed Section 1985? Should the Commission take other steps to clarify what fees to charge or how to allocate expenses?

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

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

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

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

For further guidance on taking a deposition in another state for purposes of a proceeding pending in this state, see Code Civ. Proc. § 2026.010; Gov’t Code § 70626. For further guidance

1 on telephone depositions, see Code Civ. Proc. § 2025.310. For further guidance on audio or video  
2 recording of a deposition, see Code Civ. Proc. §§ 2020.310(c), 2025.220(a), 2025.330(c),  
3 2025.340, 2025.510(f), 2025.530, 2025.560. For the admissibility of secondary evidence  
4 (including secondary evidence of a deposition), see Evid. Code §§ 1520-1523 (proof of content of  
5 writing). For guidance on taking a deposition in this state for purposes of a proceeding pending in  
6 another state, see Code Civ. Proc. §§ 2029.100-2029.900 (Interstate and International Depositions  
7 and Discovery Act); Gov't Code § 70626; *Deposition in Out-of-State Litigation*, 37 Cal. L.  
8 Revision Comm'n Reports 99 (2007).

### 9 **Background from Uniform Act**

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

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

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

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

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

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

## 26 **Article 2. Jurisdiction**

### 27 **Background from Uniform Act**

28 The jurisdictional rules in Article 2 will determine which state's courts may appoint a ...  
29 conservator. Section [1991] contains definitions of "emergency," "home state," and "significant  
30 connection-state," terms used only in Article 2 that are key to understanding the jurisdictional  
31 rules under the Act. Section [1992] provides that Article 2 is the exclusive jurisdictional basis for  
32 a court of the enacting state to appoint a [conservator]. Consequently, Article 2 is applicable even  
33 if all of the [proposed conservatee's] significant contacts are in-state. Section [1993] is the  
34 principal provision governing jurisdiction, creating a three-level priority; the home state, followed  
35 by a significant-connection state, followed by other jurisdictions. But there are circumstances  
36 under Section [1993] where a significant-connection state may have jurisdiction even if the  
37 [proposed conservatee] also has a home state, or a state that is neither a home or significant-  
38 connection state may be able to assume jurisdiction even though the particular [proposed  
39 conservatee] has both a home state and one or more significant-connection states. One of these  
40 situations is if a state declines to exercise jurisdiction under Section [1996] because a court of that  
41 state concludes that a court of another state is a more appropriate forum. Another is Section  
42 [1997], which authorizes a court to decline jurisdiction or fashion another appropriate remedy if  
43 jurisdiction was acquired because of unjustifiable conduct. Section [1995] provides that once an  
44 appointment is made or order issued, the court's jurisdiction continues until the proceeding is  
45 terminated or the appointment order expires by its own terms.

46 Section [1994] addresses special cases. Regardless of whether it has jurisdiction under the  
47 general principles stated in Section [1993], a court in the state where the individual is currently  
48 physically present has jurisdiction to appoint a [conservator of the person] in an emergency, and a  
49 court in a state where an individual's real or tangible personal property is located has jurisdiction  
50 to appoint a [conservator of the estate]. In addition, a court not otherwise having jurisdiction



1 under Section [1993] has jurisdiction to consider a petition to accept the transfer of an already  
2 existing ... conservatorship from another state as provided in Article 3.

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

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

8 **§ 1991. Definitions and significant connection factors [UAGPPJA § 201]**

9 1991. (a) In this article:

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

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

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

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

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

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

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

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

35 **Comment.** Subdivision (a) of Section 1991 is similar to Section 201(a) of the Uniform Adult  
36 Guardianship and Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA"). Revisions have  
37 been made to conform to California terminology for the proceedings in question. See Section  
38 1982 & Comment (definitions); see also Section 1980 Comment.

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

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

43 **Background from Uniform Act**

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

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

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

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

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

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

35 The definition of “significant-connection state” [paragraph (a)(3)] is similar to Section  
36 201(a)(2) of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). However,  
37 [subdivision (b)] of this Section adds a list of factors relevant to [conservatorship] proceedings to  
38 aid the court in deciding whether a particular place is a significant-connection state. Under  
39 Section [2001(e)(1)], the significant connection factors listed in the definition are to be taken into  
40 account in determining whether a conservatorship may be transferred to another state.

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

42 **§ 1992. Exclusive basis [UAGPPJA § 202]**

43 1992. For a conservatorship proceeding governed by this article, this article  
44 provides the exclusive basis for determining whether the courts of this state, as  
45 opposed to the courts of another state, have jurisdiction to appoint a conservator of  
46 the person, a conservator of the estate, or a conservator of the person and estate.

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

- 49 (1) Conform to California terminology for the proceedings in question. See Section 1982  
50 & Comment (definitions); see also Section 1980 Comment.

- 1 (2) Make clear that this article only focuses on which state’s courts have jurisdiction to  
2 appoint a conservator. The article does not address other jurisdictional issues, such as  
3 whether an appellate court may make such an appointment.

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

5 **Background from Uniform Act**

6 Similar to Section 201(b) of the Uniform Child Custody Jurisdiction and Enforcement Act  
7 (1997), which provides that the UCCJEA is the exclusive basis for determining jurisdiction to  
8 issue a child custody order, this section provides that this article is the exclusive jurisdictional  
9 basis for determining jurisdiction to appoint a [conservator]. An enacting jurisdiction will  
10 therefore need to repeal any existing provisions addressing jurisdiction in [conservatorship  
11 proceedings]. The drafters of this Act concluded that limiting the Act to “interstate” cases was  
12 unworkable. Such cases are hard to define, but even if they could be defined, overlaying this Act  
13 onto a state’s existing jurisdictional rules would leave too many gaps and inconsistencies. In  
14 addition, if the particular case is truly local, the local court would likely have jurisdiction under  
15 both this Act as well as under prior law.

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

17 **§ 1993. Jurisdiction [UAGPPJA § 203]**

18 1993. (a) A court of this state has jurisdiction to appoint a conservator for a  
19 proposed conservatee if this state is the proposed conservatee’s home state.

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

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

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

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

32 (2) Before the court makes the appointment, no conservatorship petition is filed  
33 in the proposed conservatee’s home state, no objection to the court’s jurisdiction is  
34 filed by a person required to be notified of the proceeding, and the court in this  
35 state concludes that it is an appropriate forum under the factors set forth in Section  
36 1996.

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

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

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

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

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

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

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

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

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

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

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

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

#### 22 **Background from Uniform Act**

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

29 While this section is the principal provision for determining whether a particular court has  
30 jurisdiction to appoint a [conservator], it is not the only provision. As indicated in the cross-  
31 reference in Section [1993(f)], a court that does not otherwise have jurisdiction under Section  
32 [1993] may have jurisdiction under the special circumstances specified in Section [1994].

33 Pursuant to Section [1993(a)], the home state has primary jurisdiction to appoint a ...  
34 conservator .... This jurisdiction terminates if the state ceases to be the home state, if a court of  
35 the home state declines to exercise jurisdiction under Section [1996] on the basis that another  
36 state is a more appropriate forum, or, as provided in Section [1995], a court of another state has  
37 appointed a [conservator] consistent with this Act. The standards by which a home state that has  
38 enacted the Act may decline jurisdiction on the basis that another state is a more appropriate  
39 forum are specified in Section [1996]. Should the home state not have enacted the Act, Section  
40 [1993(a)] does not require that the declination meet the standards of Section [1996].

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

48 A significant-connection state has jurisdiction under [these] possible bases: Section [1993(b),  
49 (c), and (d)]. Under Section [1993(b)], a significant-connection state has jurisdiction if the  
50 individual does not have a home state .... [Under Section 1993(c), a significant-connection state

1 has jurisdiction] if the home state has declined jurisdiction on the basis that the significant-  
2 connection state is a more appropriate forum.

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

15 There is nothing comparable to Section [1993(d)] in the Uniform Child Custody Jurisdiction  
16 and Enforcement Act (1997). Under Section 201 of the UCCJEA a court in a significant-  
17 connection state acquires jurisdiction only if the child does not have a home state or the court of  
18 that state has declined jurisdiction. The drafters of this Act concluded that cases involving adults  
19 differed sufficiently from child custody matters that a different rule is appropriate for adult  
20 proceedings in situations where jurisdiction is uncontested.

21 Pursuant to Section [1993(e)], a court in a state that is neither the home state or a significant-  
22 connection state has jurisdiction if the home state and all significant-connection states have  
23 declined jurisdiction or the [proposed conservatee] does not have a home state or significant-  
24 connection state. The state must have some connection with the proceeding, however. As Section  
25 [1993(e)] clarifies, jurisdiction in the state must be consistent with the state and United States  
26 constitutions.

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

28 **§ 1994. Special jurisdiction [UAGPPJA § 204]**

29 1994. (a) A court of this state lacking jurisdiction under subdivisions (a) to (e),  
30 inclusive, of Section 1993 has special jurisdiction to do any of the following:

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

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

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

42 (b) If a petition for the appointment of a conservator of the person in an  
43 emergency is brought in this state and this state was not the home state of the  
44 proposed conservatee on the date the petition was filed, the court shall dismiss the  
45 proceeding at the request of the court of the home state, if any, whether dismissal

1 is requested before or after the emergency appointment of a temporary conservator  
2 of the person.

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

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

### 10 **Background from Uniform Act**

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

21 When an emergency arises, action must often be taken on the spot in the place where the  
22 [proposed conservatee] happens to be physically located at the time. This place may not  
23 necessarily be located in the [proposed conservatee’s] home state or even a significant-connection  
24 state. [Paragraph] (a)(1) assures that the court where the [proposed conservatee] happens to be  
25 physically located at the time has jurisdiction to appoint a [conservator of the person] in an  
26 emergency but only for a limited period .... As provided in [paragraph] (b), the emergency  
27 jurisdiction is also subject to the authority of the court in the [proposed conservatee’s] home state  
28 to request that the emergency proceeding be dismissed. The theory here is that the emergency  
29 appointment in the temporary location should not be converted into a de facto permanent  
30 appointment through repeated temporary appointments.

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

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

45 [Paragraph] (a)(3) is closely related to and is necessary for the effectiveness of Article 3, which  
46 addresses transfer of a ... conservatorship to another state. A “Catch-22” arises frequently in such  
47 cases. The court in the transferring state will not allow the [conservatee] to move and will not  
48 terminate the case until the court in the transferee state has accepted the matter. But the court in  
49 the transferee state will not accept the case until the [conservatee] has physically moved and  
50 presumably become a resident of the transferee state. [Paragraph] (a)(3), which grants the court in

1 the transferee state limited jurisdiction to consider a petition requesting transfer of a proceeding  
2 [from] another state, is intended to unlock the stalemate.

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

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

7 **§ 1995. Exclusive and continuing jurisdiction [UAGPPJA § 205]**

8 1995. Except as otherwise provided in Section 1994, a court that has appointed a  
9 conservator consistent with this chapter has exclusive and continuing jurisdiction  
10 over the proceeding until it is terminated by the court or the appointment expires  
11 by its own terms.

12 **Comment.** Section 1995 is similar to Section 205 of the Uniform Adult Guardianship and  
13 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to  
14 conform to California terminology for the proceedings in question. See Section 1982 & Comment  
15 (definitions); see also Section 1980 Comment.

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

17 **Background from Uniform Act**

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

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

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

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

1 § 1996. Appropriate forum [UAGPPJA § 206]

2 1996. (a) A court of this state having jurisdiction under Section 1993 to appoint  
3 a conservator may decline to exercise its jurisdiction if it determines at any time  
4 that a court of another state is a more appropriate forum.

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

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

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

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

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

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

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

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

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

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

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

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

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

36 Revisions have also been made to:

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

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

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



**Background from Uniform Act**

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

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

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

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

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

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

(1) Decline to exercise jurisdiction.

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

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

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

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

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

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

1 assess fees, costs, or expenses of any kind against this state or a governmental  
2 subdivision, agency, or instrumentality of this state unless authorized by law other  
3 than this chapter.

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

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

9 **Background from Uniform Act**

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

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

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

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

37 **§ 1998. Notice of proceeding [UAGPPJA § 208]**

38 1998. If a petition for the appointment of a conservator of the person,  
39 conservator of the estate, or conservator of the person and estate is brought in this  
40 state and this state was not the home state of the proposed conservatee on the date  
41 the petition was filed, in addition to complying with the notice requirements of this  
42 state, notice of the petition or of a hearing on the petition must be given to those  
43 persons who would be entitled to notice of the petition or of a hearing on the  
44 petition if a proceeding were brought in the home state of the proposed  
45 conservatee. The notice must be given in the same manner as notice is required to  
46 be given in this state.

47 **Comment.** Section 1998 is similar to Section 208 of the Uniform Adult Guardianship and  
48 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to

1 conform to California terminology for the proceedings in question. See Section 1982 & Comment  
2 (definitions); see also Section 1980 Comment. Revisions have also been made to reflect that some  
3 states require notice of a hearing on a petition, as opposed to notice of a petition.

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

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

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

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

#### 17 **§ 1999. Proceedings in more than one state [UAGPPJA § 209]**

18 1999. Except for a petition for the appointment of a conservator under paragraph  
19 (1) or paragraph (2) of subdivision (a) of Section 1994, if a petition for the  
20 appointment of a conservator is filed in this state and in another state and neither  
21 petition has been dismissed or withdrawn, the following rules apply:

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

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

31 **Comment.** Section 1999 is similar to Section 209 of the Uniform Adult Guardianship and  
32 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to  
33 conform to California terminology for the proceedings in question. See Section 1982 & Comment  
34 (definitions); see also Section 1980 Comment. For limitations on the scope of this chapter, see  
35 Section 1981 & Comment.

#### 36 **Background from Uniform Act**

37 Similar to Section 206 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997),  
38 this section addresses the issue of which court has the right to proceed when proceedings for the  
39 same [proposed conservatee] are brought in more than one state. The provisions of this section,  
40 however, have been tailored to the needs of [conservatorship] proceedings and the particular  
41 jurisdictional provisions of this Act. Emergency [conservatorship] appointments [Section  
42 1994(a)(1)] and [conservatorships] with respect to property in other states [Section 1994(a)(2)]  
43 are excluded from this section because the need for dual appointments is frequent in these cases;  
44 for example, a petition will be brought in the [proposed conservatee’s] home state but emergency  
45 action will be necessary in the place where the [proposed conservatee] is temporarily located, or a  
46 petition for the appointment of a [conservator of the estate] will be brought in the [proposed  
47 conservatee’s] home state but real estate located in some other state needs to be brought under  
48 management.

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

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

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

## 21 Article 3. Transfer of Conservatorship

### 22 Background from Uniform Act

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

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

32 A transfer begins with the filing of a petition by the conservator as provided in Section  
33 [2001(a)].... Assuming the court in the transferring state is satisfied that the grounds for transfer  
34 stated in Section [2001(d) (conservatorship of the person)] or [2001(e) (conservatorship of the  
35 estate)] have been met, one of which is that the court is satisfied that the court in the other state  
36 will accept the case, the court must issue a provisional order approving the transfer. The  
37 transferring court will not issue a final order dismissing the case until, as provided in Section  
38 [2001(f)], it receives a copy of the provisional order from the accepting court accepting the  
39 transferred proceeding.

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

48 .... Pursuant to Section [2001(f)], the provisional order from the accepting court must be filed  
49 in the transferring court. The transferring court will then issue a final order terminating the  
50 proceeding, subject to local requirements such as filing of a final report or account and the release  
51 of any bond. Pursuant to Section [2002(e)], the final order terminating the proceeding in the

1 transferring court must then be filed in the accepting court, which will then convert its provisional  
2 order accepting the case into a final order appointing the petitioning ... conservator as ...  
3 conservator in the accepting state.

4 Because ... conservatorship law and practice will likely differ between the two states, the court  
5 in the accepting state must within 90 days after issuance of a final order determine whether the ...  
6 conservatorship needs to be modified to conform to the law of the accepting state. Section  
7 [2002(f)]. The number “90” is placed in brackets to encourage states to coordinate this time limit  
8 with the time limits for other required filings such as ... conservatorship plans. This initial period  
9 in the accepting state is also an appropriate time to change the ... conservator if there is a more  
10 appropriate person to act as ... conservator in the accepting state. The drafters specifically did not  
11 try to design the procedures in Article 3 for the difficult problems that can arise in connection  
12 with a transfer when the ... conservator is ineligible to act in the second state, a circumstance that  
13 can occur when a financial institution is acting as [conservator of the estate] or a government  
14 agency is acting as [conservator of the person]. Rather, the procedures in Article 3 are designed  
15 for the typical case where the ... conservator is legally eligible to act in the second state. Should  
16 that particular ... conservator not be the best person to act in the accepting state, a change of ...  
17 conservator can be initiated once the transfer has been secured.

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

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

30 **§ 2001. Transfer of conservatorship to another state [UAGPPJA § 301]**

31 2001. (a) A conservator appointed in this state may petition the court to transfer  
32 the conservatorship to another state.

33 (b) Notice of a hearing on a petition under subdivision (a) must be given to the  
34 persons that would be entitled to notice of a hearing on a petition in this state for  
35 the appointment of a conservator.

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

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

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

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

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

1 (e) The court shall issue a provisional order granting a petition to transfer a  
2 conservatorship of the estate, and shall direct the conservator of the estate to  
3 petition for acceptance of the conservatorship in the other state, if the court is  
4 satisfied that the conservatorship will be accepted by the court of the other state  
5 and the court finds all of the following:

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

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

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

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

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

20 (1) A provisional order accepting the proceeding from the court to which the  
21 proceeding is to be transferred which is issued under provisions similar to Section  
22 2002.

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

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

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

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

34 Subdivision (b) corresponds to Section 301(b) of UAGPPJA. Revisions have been made to  
35 conform to California practice, under which a party is required to give notice *of a hearing* on a  
36 motion or petition, not just notice *of a petition*.

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

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

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

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

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

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

14 **Note.** Under Section 301(d)(2) of UAGPPJA, if a person objects to a transfer, the court must  
15 find that “*the objector has not established* that the transfer would be contrary to the interests of  
16 the incapacitated person ...” (Emphasis added.) Section 301(e)(2) of UAGPPJA is similar.

17 In contrast, proposed Section 2001(d)(2) would require the court to determine that the transfer  
18 would not be contrary to the interests of the conservatee. Proposed Section 2001(e)(2) is similar.

19 The Commission seeks comment on any aspect of proposed Section 2001, but would especially  
20 appreciate input on which standard it should use in paragraphs (d)(2) and (e)(2).

## 21 **§ 2002. Accepting conservatorship transferred from another state [UAGPPJA § 302]**

22 2002. (a)(1) To confirm transfer of a conservatorship transferred to this state  
23 under provisions similar to Section 2001, the conservator must petition the court in  
24 this state to accept the conservatorship.

25 (2) The petition must include a certified copy of the other state’s provisional  
26 order of transfer.

27 (3) On the first page of the petition, the petitioner must state that the  
28 conservatorship is eligible for transfer and does not fall within the limitations of  
29 Section 1981.

30 (b) Notice of a hearing on a petition under subdivision (a) must be given to those  
31 persons that would be entitled to notice if the petition were a petition for the  
32 appointment of a conservator in both the transferring state and this state. The  
33 notice must be given in the same manner as notice is required to be given in this  
34 state.

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

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

38 (1) An objection is made and the court determines that transfer of the proceeding  
39 would be contrary to the interests of the conservatee.

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

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

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

1 (e)(1) The court shall issue a final order accepting the proceeding and appointing  
2 the conservator as a conservator of the person, a conservator of the estate, or a  
3 conservator of the person and estate in this state upon its receipt from the court  
4 from which the proceeding is being transferred of a final order issued under  
5 provisions similar to Section 2001 transferring the proceeding to this state. In  
6 appointing a conservator under this paragraph, the court shall comply with Section  
7 1830.

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

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

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

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

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

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

19 (3) When a transfer to this state becomes effective, the conservatorship is  
20 subject to the law of this state and shall thereafter be treated as a conservatorship  
21 under the law of this state.

22 (4) When it issues a final order under paragraph (1), the court shall appoint a  
23 court investigator under Section 1454, who shall promptly commence an  
24 investigation under Section 1851.1.

25 (f)(1) Not later than [90] days after issuance of a final order accepting transfer of  
26 a conservatorship, the court shall determine whether the conservatorship needs to  
27 be modified to conform to the law of this state. The court may take any step  
28 necessary to achieve compliance with the law of this state, including, but not  
29 limited to, striking or modifying any conservator powers that are not permitted  
30 under the law of this state.

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

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

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



1       **Comment.** Section 2002 is similar to Section 302 of the Uniform Adult Guardianship and  
2 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to  
3 conform to California terminology for the proceedings in question. See Section 1982 & Comment  
4 (definitions); see also Section 1980 Comment. For limitations on the scope of this chapter, see  
5 Section 1981 & Comment. For guidance regarding the fee for filing a petition under this section,  
6 see Gov’t Code § 70655.

7       Paragraphs (1) and (2) of subdivision (a) correspond to Section 302(a) of UAGPPJA.  
8 Paragraph (3) of subdivision (a) serves to facilitate compliance with Section 1981 (scope of  
9 chapter).

10       Subdivision (b) corresponds to Section 302(b) of UAGPPJA. Revisions have been made to  
11 conform to California practice, under which a party is required to give notice *of a hearing* on a  
12 motion or petition, not just notice *of a petition*.

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

16       Paragraph (1) of subdivision (d) corresponds to Section 302(d)(1) of UAGPPJA, but modifies  
17 the procedure that applies if a person objects to transfer of a conservatorship of the person. In that  
18 circumstance, the objector does not bear the burden of establishing that the transfer would be  
19 contrary to the interests of the conservatee. Rather, the requirement of paragraph (d)(1) is  
20 satisfied only if the court determines that the transfer would not be contrary to the interests of the  
21 conservatee.

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

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

35       Paragraph (1) of subdivision (e) corresponds to Section 302(e) of UAGPPJA. A second  
36 sentence is included to make clear that a final order accepting a proceeding and appointing the  
37 conservator to serve in California must meet the same requirements as an order appointing a  
38 conservator in a proceeding that originates in California.

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

44       Paragraph (3) of subdivision (e) underscores that once a conservatorship is transferred to  
45 California, it is henceforth subject to California law and will be treated as a California  
46 conservatorship. For example, if a conservatorship is transferred to California and the conservator  
47 wishes to exercise the powers specified in Section 2356.5 (conservatee with dementia), the  
48 requirements of that section must be satisfied.

49       Paragraph (4) of subdivision (e) directs the court to appoint a court investigator at the same  
50 time that it issues a final order accepting transfer of a conservatorship. The court investigator  
51 must promptly conduct an investigation similar to the investigation for establishing a new  
52 conservatorship in California. See Section 1851.1 (investigation & review of transferred  
53 conservatorship).

1 Paragraph (1) of subdivision (f) corresponds to Section 302(f) of UAGPPJA, but includes an  
2 additional sentence that expressly authorizes the court to take any steps necessary to conform a  
3 conservatorship to California law, including elimination or reduction of the conservator’s powers.

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

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

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

13 **Notes.**

14 (1) Under Section 301(d)(1) of UAGPPJA, if a person objects to a transfer, the court must find  
15 that “*the objector has not established* that the transfer would be contrary to the interests of the  
16 incapacitated person ...” (Emphasis added.) In contrast, proposed Section 2002(d)(1) would  
17 require the court to determine that the transfer would not be contrary to the interests of the  
18 conservatee. The Commission seeks comment on any aspect of proposed Section 2002, but would  
19 especially appreciate input on which standard it should use in paragraph (d)(1).

20 (2) Under proposed Probate Code Section 2002(f) (corresponding to UAGPPJA § 302(f)), a  
21 court that issues a final order accepting a transfer would have ninety days from the date of its  
22 order to determine whether the transferred proceeding needs to be modified to conform to  
23 California law. At the same time that the court makes that determination, it would also have to  
24 conduct a review of the conservatorship. The Commission would particularly appreciate  
25 comments on whether the proposed ninety-day time period is appropriate.

26 **Article 4. Registration and Recognition of Orders from Other States**

27 **Background from Uniform Act**

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

37 Article 4 provides for such recognition. The key concept is registration. Section [2011]  
38 provides for registration of [an order appointing a conservator of the person], and Section [2012]  
39 for registration of [an order appointing a conservator of the estate]. Following registration of the  
40 order in the appropriate county of the other state, and after giving notice to the [supervising] court  
41 of the intent to register the order in the other state, Section [2014] authorizes the ... conservator to  
42 thereafter exercise all powers authorized in the order of appointment except as prohibited under  
43 the laws of the registering state.

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

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

1    **§ 2011. Registration of order appointing conservator of person [UAGPPJA § 401]**

2       2011. If a conservator of the person has been appointed in another state and a  
3 petition for the appointment of a conservator of the person is not pending in this  
4 state, the conservator of the person appointed in the other state, after notifying the  
5 court supervising the conservatorship of an intent to register, may register the  
6 conservatorship order in this state by filing certified copies of the order and letters  
7 of office, together with a cover sheet approved by the Judicial Council, in the  
8 superior court of any appropriate county of this state.

9       **Comment.** Section 2011 is similar to Section 401 of the Uniform Adult Guardianship and  
10 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to  
11 conform to California terminology for the proceedings in question. See Section 1982 & Comment  
12 (definitions); see also Section 1980 Comment. Revisions have also been made to clarify the  
13 proper filing procedure under California law. The reference to the “appointing court” has been  
14 replaced with a reference to the “court supervising the conservatorship,” because the court  
15 currently supervising a conservatorship might not be the same court that originally appointed the  
16 conservator. See Article 3 (transfer of conservatorship).

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

23    **§ 2012. Registration of order appointing conservator of estate [UAGPPJA § 402]**

24       2012. If a conservator of the estate has been appointed in another state and a  
25 petition for a conservatorship of the estate is not pending in this state, the  
26 conservator appointed in the other state, after notifying the court supervising the  
27 conservatorship of an intent to register, may register the conservatorship order in  
28 this state by filing certified copies of the order and letters of office and of any  
29 bond, together with a cover sheet approved by the Judicial Council, in the superior  
30 court of any county of this state in which property belonging to the conservatee is  
31 located.

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

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

1    **§ 2013. Registration of order appointing conservator of person and estate**

2    2013. If a conservator of the person and estate has been appointed in another  
3 state and a petition for a conservatorship of the person, conservatorship of the  
4 estate, or conservatorship of the person and estate is not pending in this state, the  
5 conservator appointed in the other state, after notifying the court supervising the  
6 conservatorship of an intent to register, may register the conservatorship order in  
7 this state by filing certified copies of the order and letters of office and of any  
8 bond, together with a cover sheet approved by the Judicial Council, in the superior  
9 court of any appropriate county of this state.

10    **Comment.** Section 2013 is included for the sake of completeness. It serves to clarify the  
11 registration procedure applicable to a conservatorship of the person and estate.

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

18    See Section 1982 (definitions).

19    **§ 2014. Effect of registration [UAGPPJA § 403]**

20    2014. (a) Upon registration of a conservatorship order from another state, the  
21 conservator may, while the conservatee resides out of this state, exercise in any  
22 county of this state all powers authorized in the order of appointment except as  
23 prohibited under the laws of this state, including maintaining actions and  
24 proceedings in this state and, if the conservator is not a resident of this state,  
25 subject to any conditions imposed upon nonresident parties.

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

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

31    **Comment.** Subdivision (a) of Section 2014 is similar to Section 403(a) of the Uniform Adult  
32 Guardianship and Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have  
33 been made to conform to California terminology for the proceedings in question. See Section  
34 1982 & Comment (definitions); see also Section 1980 Comment. Revisions have also been made  
35 to:

- 36    (1) Emphasize that registration of an out-of-state conservatorship in one county is  
37 sufficient; it is not necessary to register in every county in which the conservator seeks  
38 to act.
- 39    (2) Make clear that a registration is only effective while the conservatee resides in another  
40 jurisdiction. If the conservatee becomes a California resident, the conservator cannot  
41 act pursuant to a registration under Section 2011, 2012, or 2013, but can petition for  
42 transfer of the conservatorship to California under Article 2.

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

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

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



1 among states that enact it, consistent with the need to protect individual civil rights  
2 and in accordance with due process.

3 **Comment.** Section 2021 is similar to Section 501 of the Uniform Adult Guardianship and  
4 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). A clause has been added to  
5 underscore the importance of protecting a conservatee’s civil rights, particularly the constitutional  
6 right of due process, which is deeply implicated in conservatorship proceedings. See U.S. Const.  
7 amend. XIV; Cal. Const. art. I, §§ 7, 15; see also 2012 Conn. Pub. Act No. 12-22, § 22.

8 **§ 2022. Relationship to Electronic Signatures in Global and National Commerce Act**  
9 **[UAGPPJA § 502]**

10 2022. This chapter modifies, limits, and supersedes the federal Electronic  
11 Signatures in Global and National Commerce Act, Title 15 (commencing with  
12 Section 7001) of the United States Code, but does not modify, limit, or supersede  
13 subdivision (c) of Section 101 of that act, which is codified as subdivision (c) of  
14 Section 7001 of Title 15 of the United States Code, or authorize electronic  
15 delivery of any of the notices described in subdivision (b) of Section 103 of that  
16 act, which is codified as subdivision (b) of Section 7003 of Title 15 of the United  
17 States Code.

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

21 **§ 2023. Court rules and forms**

22 2023. (a) On or before January 1, 2016, the Judicial Council shall develop court  
23 rules and forms as necessary for the implementation of this chapter.

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

26 (1) A cover sheet for registration of a conservatorship under Section 2011, 2012,  
27 or 2013. The cover sheet shall explain that a proceeding may not be registered  
28 under Section 2011, 2012, or 2013 if the proceeding relates to a minor. The cover  
29 sheet shall further explain that a proceeding in which a person is subjected to  
30 involuntary mental health care may not be registered under Section 2011, 2012, or  
31 2013. The cover sheet shall require the conservator to initial each of these  
32 explanations. The cover sheet shall also include a prominent statement that the  
33 conservator of a conservatorship registered under Section 2011, 2012, or 2013 is  
34 subject to the law of this state while acting in this state, is required to comply with  
35 that law in every respect, including, but not limited to, all applicable procedures,  
36 and is not authorized to take any action prohibited by the law of this state. In  
37 addition, the cover sheet shall prominently state that the registration is effective  
38 only while the conservatee resides in another jurisdiction and does not authorize  
39 the conservator to take any action while the conservatee is residing in this state.  
40 Directly beneath these statements, the cover sheet shall include a signature box in  
41 which the conservator attests to these matters.

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

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

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

13 **§ 2024. Transitional provision [UAGPPJA § 504]**

14 2024. (a) This chapter applies to conservatorship proceedings begun on or after  
15 January 1, 2016.

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

19 **Comment.** Section 2024 is similar to Section 504 of the Uniform Adult Guardianship and  
20 Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to  
21 conform to California terminology for the proceedings in question. See Section 1982 & Comment  
22 (definitions); see also Section 1980 Comment. For limitations on the scope of this chapter, see  
23 Section 1981 & Comment.

24 **Background from Uniform Act**

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

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

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

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UNCODIFIED

**Operative date [UAGPPJA § 505]**

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

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

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

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

Usually the operative date is the same as the effective date. *People v. Henderson*, 107 Cal. App. 3d 475, 488, 166 Cal. Rptr. 20 (1980). In some instances, the Legislature exercises its discretion to specify a different operative date. See, e.g., *Preston v. State Bd. of Equalization*, 25 Cal. 4th 197, 223-24, 19 P.3d 1148, 105 Cal. Rptr. 2d 407 (2001); *Cline v. Lewis*, 175 Cal. 315, 318, 165 P. 915 (1917); *Johnson v. Alexis*, 153 Cal. App. 3d 33, 40, 199 Cal. Rptr. 909 (1984). The delayed operative date in this uncodified section is an example of that practice.

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

KEY CONFORMING REVISIONS

CODE OF CIVIL PROCEDURE

**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.*).



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GOVERNMENT CODE

**Gov't Code § 70662 (added). Registration under California Conservatorship Jurisdiction Act**

70662. The fee for registering a conservatorship under Article 4 (commencing with Section 2011) of Chapter 8 of Part 3 of Division 4 of the Probate Code is thirty dollars (\$30). Subject to subdivision (b), amounts collected shall be distributed to the Trial Court Trust Fund under Section 68085.1.

(b) From the operative date of this section to June 30, 2017, inclusive, ten dollars (\$10) of each fee collected pursuant to subdivision (b) shall be used by the Judicial Council for the expenses of the Judicial Council in implementing and administering the civil representation pilot program under Section 68651.

**Comment.** Section 70662 is added to specify the fee for registering a conservatorship order from another jurisdiction under the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

PROBATE CODE

**Prob. Code § 1834 (amended). Conservator's acknowledgment of receipt**

SEC. \_\_\_\_\_. Section 1834 of the Probate Code is amended to read:

1834. (a) Before letters are issued in a conservatorship that originates in this state or a conservatorship that is transferred to this state under Chapter 8 (commencing with Section 1980), the conservator (other than a trust company or a public conservator) shall file an acknowledgment of receipt of (1) a statement of duties and liabilities of the office of conservator, and (2) a copy of the conservatorship information required under Section 1835. The acknowledgment and the statement shall be in the form prescribed by the Judicial Council.

(b) The court may by local rules require the acknowledgment of receipt to include the conservator's birth date and driver's license number, if any, provided that the court ensures their confidentiality.

(c)The statement of duties and liabilities prescribed by the Judicial Council shall not supersede the law on which the statement is based.

**Comment.** Section 1834 is amended to make clear that it applies to a conservatorship that is transferred to California under the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*), as well as one that originates in California.

**Prob. Code § 1851.1 (added). Investigation and review of transferred conservatorship**

SEC. \_\_\_\_\_. Section 1851.1 is added to the Probate Code, to read:

1851.1. (a) When a court investigator is appointed pursuant to Section 2002, the investigator shall promptly commence an investigation of the transferred conservatorship.

(b) In conducting an investigation and preparing a report under this section, the court investigator shall do all of the following:

- 1 (1) Comply with the requirements of Section 1851.
- 2 (2) Conduct an interview of the conservator.
- 3 (3) Conduct an interview of the conservatee’s spouse or registered domestic  
4 partner, if any.
- 5 (4) Inform the conservatee of the nature, purpose, and effect of the  
6 conservatorship.
- 7 (5) Inform the conservatee and all other persons entitled to notice under  
8 subdivision (b) of Section 2002 of the right to seek termination of the  
9 conservatorship.
- 10 (6) Determine whether the conservatee objects to the conservator or prefers  
11 another person to act as conservator.
- 12 (7) Inform the conservatee of the right to attend the hearing under subdivision  
13 (c).
- 14 (8) Determine whether it appears that the conservatee is unable to attend the  
15 hearing and, if able to attend, whether the conservatee is willing to attend the  
16 hearing.
- 17 (9) Inform the conservatee of the right to be represented by legal counsel if the  
18 conservatee so chooses, and to have legal counsel appointed by the court if the  
19 conservatee is unable to retain legal counsel.
- 20 (10) Determine whether the conservatee wishes to be represented by legal  
21 counsel and, if so, whether the conservatee has retained legal counsel and, if not,  
22 the name of an attorney the conservatee wishes to retain.
- 23 (11) If the conservatee has not retained legal counsel, determine whether the  
24 conservatee desires the court to appoint legal counsel.
- 25 (12) Determine whether the appointment of legal counsel would be helpful to  
26 the resolution of the matter or is necessary to protect the interests of the  
27 conservatee in any case where the conservatee does not plan to retain legal counsel  
28 and has not requested the appointment of legal counsel by the court.
- 29 (13) Consider each of the categories specified in paragraphs (1) to (5), inclusive,  
30 of subdivision (a) of Section 1821.
- 31 (14) Consider, to the extent practicable, whether the investigator believes the  
32 conservatee suffers from any of the mental function deficits listed in subdivision  
33 (a) of Section 811 that significantly impairs the conservatee’s ability to understand  
34 and appreciate the consequences of the conservatee’s actions in connection with  
35 any of the functions described in subdivision (a) or (b) of Section 1801 and  
36 identify the observations that support that belief.
- 37 (c) The court shall review the conservatorship as provided in Section 2002. The  
38 conservatee shall attend the hearing unless the conservatee’s attendance is excused  
39 under Section 1825. In conducting its review, the court shall make an express  
40 finding on whether continuation of the conservatorship is the least restrictive  
41 alternative needed for the protection of the conservatee. The court may take  
42 appropriate action in response to the court investigator’s report under this section.

1 (d) The court investigator’s report under this section shall be confidential as  
2 provided in Section 1851.

3 (e) Except as provided in paragraph (2) of subdivision (a) of Section 1850, the  
4 court shall review the conservatorship again one year after the review conducted  
5 pursuant to subdivision (c), and annually thereafter, in the manner specified in  
6 Section 1850.

7 (f) The first time that the need for a conservatorship is challenged by any  
8 interested person or raised on the court’s own motion after a transfer under Section  
9 2002, whether in a review pursuant to this section or in a petition to terminate the  
10 conservatorship under Chapter 3 (commencing with Section 1860), the court shall  
11 presume that there is no need for a conservatorship. This presumption is  
12 rebuttable, but can only be overcome by clear and convincing evidence.

13 (g) If a duty described in this section is the same as a duty imposed pursuant to  
14 the amendments to Section 1826 or 1851 enacted by Chapter 493 of the Statutes of  
15 2006, a superior court shall not be required to perform that duty until the  
16 Legislature makes an appropriation identified for this purpose.

17 **Comment.** Section 1851.1 is added to provide guidance on the nature of the investigation and  
18 review that is required when a conservatorship is transferred to California from another state  
19 under the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*). In conducting a  
20 review under this section, the court investigator might be able to use some evidence or other  
21 resources from the proceeding that was transferred to California, particularly if the transferring  
22 court recently conducted a review of that proceeding.

23 The court investigator’s fee for conducting an investigation under this section is to be paid in  
24 the same manner as if the conservatorship was originally established in California. See Section  
25 1851.5 (assessment of conservatee for cost of conducting court investigation).

26 **Prob. Code § 2200 (amended). Jurisdiction**

27 SEC. \_\_\_\_\_. Section 2200 of the Probate Code is amended to read:

28 2200. (a) The superior court has jurisdiction of guardianship and  
29 conservatorship proceedings.

30 (b) Chapter 8 (commencing with Section 1980) of Part 3 governs which state  
31 has jurisdiction of a conservatorship proceeding.

32 **Comment.** Section 2200 is amended to direct attention to the jurisdictional provisions in the  
33 California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

34 **Prob. Code § 2300 (amended). Oath and bond**

35 SEC. \_\_\_\_\_. Section 2300 of the Probate Code is amended to read:

36 2300. Before the appointment of a guardian or conservator is effective,  
37 including, but not limited to, the appointment of a conservator under Section 2002,  
38 the guardian or conservator shall:

39 (a) Take an oath to perform the duties of the office according to law, ~~which~~. The  
40 oath obligates the guardian or conservator to comply with the law of this state, as  
41 well as other applicable law, at all times, in any location within or without the  
42 state. If the conservator petitions for transfer of the conservatorship to another  
43 state pursuant to Section 2001, the conservator shall continue to comply with the

1 law of this state until the court issues a final order confirming the transfer and  
2 terminating the conservatorship pursuant to Section 2001. The oath shall be  
3 attached to or endorsed upon the letters.

4 (b) File the required bond if a bond is required.

5 **Comment.** Section 2300 is amended to reflect the enactment of the California Conservatorship  
6 Jurisdiction Act (Section 1980 *et seq.*), particularly Article 3 (transfer of conservatorship) and  
7 Article 4 (registration and recognition of orders from other states).

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

9 2352. (a) The guardian may establish the residence of the ward at any place  
10 within this state without the permission of the court. The guardian shall select the  
11 least restrictive appropriate residence that is available and necessary to meet the  
12 needs of the ward, and that is in the best interests of the ward.

13 (b) The conservator may establish the residence of the conservatee at any place  
14 within this state without the permission of the court. The conservator shall select  
15 the least restrictive appropriate residence, as described in Section 2352.5, that is  
16 available and necessary to meet the needs of the conservatee, and that is in the best  
17 interests of the conservatee.

18 (c) If permission of the court is first obtained, a guardian or conservator may  
19 establish the residence of a ward or conservatee at a place not within this state.  
20 Notice of the hearing on the petition to establish the residence of the ward or  
21 conservatee out of state, together with a copy of the petition, shall be given in the  
22 manner required by subdivision (a) of Section 1460 to all persons entitled to notice  
23 under subdivision (b) of Section 1511 or subdivision (b) of Section 1822.

24 (d)(1) An order under subdivision (c) relating to a ward shall require the  
25 guardian or conservator either to return the ward or conservatee to this state, or to  
26 cause a guardianship or conservatorship proceeding or its equivalent to be  
27 commenced in the place of the new residence, when the ward or conservatee has  
28 resided in the place of new residence for a period of four months or a longer or  
29 shorter period specified in the order.

30 (2) An order under subdivision (c) relating to a conservatee shall require the  
31 conservator to do one of the following when the conservatee has resided in the  
32 other state for a period of four months or a longer or shorter period specified in the  
33 order:

34 (A) Return the conservatee to this state.

35 (B) Petition for transfer of the conservatorship to the other state under Article 3  
36 (commencing with Section 2001) of Chapter 8 of Part 3 and corresponding law of  
37 the other state.

38 (C) Cause a conservatorship proceeding or its equivalent to be commenced in  
39 the other state.

40 (e)(1) The guardian or conservator shall file a notice of change of residence with  
41 the court within 30 days of the date of the change. The guardian or conservator  
42 shall include in the notice of change of residence a declaration stating that the

1 ward's or conservatee's change of residence is consistent with the standard  
2 described in subdivision (b).

3 (2) The guardian or conservator shall mail a copy of the notice to all persons  
4 entitled to notice under subdivision (b) of Section 1511 or subdivision (b) of  
5 Section 1822 and shall file proof of service of the notice with the court. The court  
6 may, for good cause, waive the mailing requirement pursuant to this paragraph in  
7 order to prevent harm to the conservatee or ward.

8 (3) If the guardian or conservator proposes to remove the ward or conservatee  
9 from his or her personal residence, except as provided by subdivision (c), the  
10 guardian or conservator shall mail a notice of his or her intention to change the  
11 residence of the ward or conservatee to all persons entitled to notice under  
12 subdivision (b) of Section 1511 and subdivision (b) of Section 1822. In the  
13 absence of an emergency, that notice shall be mailed at least 15 days before the  
14 proposed removal of the ward or conservatee from his or her personal residence. If  
15 the notice is served less than 15 days prior to the proposed removal of the ward or  
16 conservatee, the guardian or conservatee shall set forth the basis for the emergency  
17 in the notice. The guardian or conservator shall file proof of service of that notice  
18 with the court.

19 (f) This section does not apply where the court has made an order under Section  
20 2351 pursuant to which the conservatee retains the right to establish his or her own  
21 residence.

22 (g) As used in this section, "guardian" or "conservator" includes a proposed  
23 guardian or proposed conservator and "ward" or "conservatee" includes a  
24 proposed ward or proposed conservatee.

25 (h) This section does not apply to a person with developmental disabilities for  
26 whom the Director of the Department of Developmental Services or a regional  
27 center, established pursuant to Chapter 5 (commencing with Section 4620) of  
28 Division 4.5 of the Welfare and Institutions Code, acts as the conservator.

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

31 **Prob. Code § 2650 (amended). Grounds for removal**

32 SEC. \_\_\_\_\_. Section 2650 of the Probate Code is amended to read:

33 2650. A guardian or conservator may be removed for any of the following  
34 causes:

35 (a) Failure to use ordinary care and diligence in the management of the estate.

36 (b) Failure to file an inventory or an account within the time allowed by law or  
37 by court order.

38 (c) Continued failure to perform duties or incapacity to perform duties suitably.

39 (d) Conviction of a felony, whether before or after appointment as guardian or  
40 conservator.

41 (e) Gross immorality.

1 (f) Having such an interest adverse to the faithful performance of duties that  
2 there is an unreasonable risk that the guardian or conservator will fail faithfully to  
3 perform duties.

4 (g) In the case of a guardian of the person or a conservator of the person, acting  
5 in violation of any provision of Section 2356.

6 (h) In the case of a guardian of the estate or a conservator of the estate,  
7 insolvency or bankruptcy of the guardian or conservator.

8 (i) In the case of a conservator appointed by a court in another jurisdiction,  
9 removal because that person would not have been appointed in this state despite  
10 being eligible to serve under the law of this state.

11 ~~(i)~~ (j) In any other case in which the court in its discretion determines that  
12 removal is in the best interests of the ward or conservatee; but, in considering the  
13 best interests of the ward, if the guardian was nominated under Section 1500 or  
14 1501, the court shall take that fact into consideration.

15 **Comment.** Section 2650 is amended to reflect the enactment of the California Conservatorship  
16 Jurisdiction Act (Section 1980 *et seq.*).