

UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT



The Problem of Multiple Jurisdiction

- Guardianship is controlled by state law. Because there are 50 individual states, there are 50 different state guardianship laws, plus the District of Columbia and American Indian reservations.
- By contrast, the next closest competitor, Canada, has 12 guardianship laws, Australia has six, the UK has three, and most other countries have only one guardianship law.



Uniform Law Conference

- To minimize the difference in state laws, the Uniform Law Conference of the US was formed over 100 years ago.
- Its objective is to promulgate model laws for states to enact.
- The Uniform Guardianship and Protective Proceedings Act [UGPPA], which dates back to 1969 and was last comprehensively revised in 1997, has been enacted in about 20 states.

The Problem of Terminology

- States differ on terminology for the person appointed by the court to handle the affairs of a minor or incapacitated adult.
- In a majority of American states and under the UGPPA, a “guardian” is appointed to make personal care decisions for the ward. A “conservator” is appointed in a so-called “protective proceeding” to manage the person’s property.
- But in many states, only a “guardian” is appointed, either a guardian of the person or guardian of the estate, and in a few states, a conservator is appointed for an adult and a guardian is appointed for minors.
- This presentation will use the uniform law terminology.

The Issue of Jurisdiction

- Because the US has 50 plus guardianship systems, problems of jurisdiction are frequent.
- Questions of which state has jurisdiction to appoint a guardian or conservator can arise between an American state and another country.
- But more frequently, problems arise because the individual has contacts with more than one American state.



Current Law

- In nearly all American states, a guardian may be appointed by a court in a state in which the individual is domiciled or is physically present.
- In nearly all American states, a conservator may be appointed by a court in a state in which the individual is domiciled or has property.
- But this system of dual jurisdiction leads to problems.

The Problem of Multiple Jurisdiction

- Cases where jurisdiction is claimed by more than one court are increasing. Domestic matters in dispute or an appointment is made in a state where the individual is present but not domiciled.
- No effective mechanism for resolving disputes if courts in more than one state claim jurisdiction.
- Basing jurisdiction on physical presence invites “parent snatching” in order to establish jurisdiction in another state.

The Problem of Transfer



- To protect rights, a proceeding to appoint a guardian or conservator is necessarily expensive and time consuming.
- Should an individual under guardianship or conservatorship move permanently to another state, it may become necessary to appoint a guardian or conservator in another state.
- Few states have streamlined procedures for making such a second appointment.
- In most states, all of the procedures for an original appointment must be repeated.

The Problem of Court Cooperation

- Should guardianship or conservatorship proceedings be instituted in more than one state, cooperation between the courts involved is essential.
- Unfortunately, such cooperation is infrequent.
- Guidance is needed on which court is to decide the question of jurisdiction and the standard that court is to apply.

The Full Faith and Credit Problem

- ▶ The US Constitution generally requires that court judgments in one state be honored in another state.
- But there are exceptions to the full faith and credit doctrine, of which guardianship and conservatorship is one.
- Sometimes guardianship and conservatorship proceedings must be initiated in a second state because of the difficulty of implementing a court order entered in another state.
- Examples of out-of-state enforcement issues include sale of real estate or a residential placement in another state.

The New Uniform Law

- To address these problems, the Uniform Law Conference in 2005 appointed a committee to draft a new uniform law.
- The work of the committee is expected to be completed in late 2007.
- The act will be known as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA).

The Child Custody Analogy

- Similar problems of jurisdiction existed for many years in the US in connection with child custody determinations.
- If one parent lived in one state and the other parent lived in another state, frequently the courts in more than one state had jurisdiction to enter custody orders.
- To minimize these disputes, the Uniform Law Conference approved the Uniform Child Custody Jurisdiction Act, which was subsequently enacted in all 50 states.
- This act was substantially revised in 1997 in the form of the Uniform Child Custody Jurisdiction and Enforcement Act, which has been enacted in 40+ states.
- The drafters of UAGPPJA have elected to model much of their Act after the child custody law.

Limitation to Adults

- The UAGPPJA applies only to adult proceedings.
- The act is limited to adults because nearly all jurisdictional issues involving guardianships for minors are adequately addressed by the uniform law on child custody.
- But the uniform acts on child custody only applies to minors, not adults.

The UAGPPGA: Objectives

- The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act has the following general objectives:
- To provide that except in cases of emergency, jurisdiction to appoint a guardian or conservator will usually be fixed in the courts of one and only one state.
- To provide a procedure for transferring a case from one state to another.
- To provide that guardianship and conservatorship orders entered in one state can be enforced in another state.



Key Concepts

- To determine which court has primary jurisdiction, key concepts are to determine the individual's "home state" and "significant connection state."
- A "home state" is the state in which the individual was physically present for at least six consecutive months immediately before the commencement of the guardianship or protective proceeding.
- "Significant connection state," which is a potentially broader concept, means a state other than the home state in which the individual has a significant connection other than mere physical presence, and where substantial evidence concerning the individual is available.

General Rule

- **General rule is that the home state has primary jurisdiction to appoint a guardian or conservator. This primary jurisdiction continues to apply for up to six months following a move to another state.**
- **Subsidiary rule is that a significant connection state may assume jurisdiction if (1) the individual does not have a home state or (2) the home state has declined jurisdiction on the basis that the significant connection state is a more appropriate forum.**
- **A court in another state has jurisdiction if the home state and all significant connection states have declined jurisdiction or the individual does not have a home state or significant connection state.**

The Uncontested Case

- To facilitate appointments in the average case where jurisdiction is not in dispute, a significant connection state also has jurisdiction if (1) no proceeding has been commenced in the respondent's home state or another significant connection state, (2) no objection to the court's jurisdiction has been filed, and (3) the court concludes that it is a more appropriate forum than the court in another place.

Special Cases

- **Whether or not the state is a home state or significant connection state, a state in which the individual is physically present has jurisdiction to appoint an emergency guardian if an urgency exists.**
- **A court where property is located has jurisdiction to appoint a conservator or enter another protective order with respect to property located in the state.**

Court Cooperation

- The UAGPPJA includes provisions re:
 - Communication between courts in different states.
 - Taking testimony in another state.
 - Specifying which court has jurisdiction to decide jurisdiction if proceedings have been commenced in more than one state.

Transfer to Another State

- The UAGPPJA contains a procedure for transferring a proceeding to another state.
- To make the transfer, two court orders are necessary, one by the court giving up the case, and a second by the court in the other state that will be receiving the case.
- The court receiving the case must give full faith and credit to the order from the sending state, including the determination of the individual's incapacity and the identity of the guardian or conservator appointed.

Out of State Enforcement

- **To facilitate enforcement of guardianship and conservatorship orders in other states, the UAGPPJA authorizes registration of the order in other states, and requires that the courts of the other state give the registered order full faith and credit.**

International Application

- Under the UAGPPJA, an American state that has enacted the Act must recognize and enforce a guardianship or conservatorship order of a foreign country made under factual circumstances in substantial conformity with the Act except to the extent such order violates fundamental principles of human rights.

More Information

- This presentation has been necessarily brief.
- More detail concerning the UAGPPJA, including provisions not discussed in this presentation, may be found at www.nccusl.org.

