

UNIFORM GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE ARRANGEMENTS ACT

Prefatory Note

The Act replaces the Uniform Guardianship and Protective Proceedings Act (UGPPA) which was last comprehensively revised in 1997. It may be enacted either as a free-standing Act or as part of the Uniform Probate Code (UPC). States enacting the Act as part of the UPC should consult Article V of the UPC for the official text of the Act as conformed to the UPC's definitions and general provisions.

The Act covers guardianships and conservatorships for both minors and adults, as well as protective arrangements instead of guardianship for adults and protective arrangements instead of conservatorship for both adults and minors. It consists of seven articles. Article 1 contains definitions and general provisions applicable to guardianships, conservatorships, and protective arrangements instead of guardianship and conservatorship. Article 2 governs guardianships for minors. Article 3 governs guardianships for adults. Article 4 covers conservatorships for both minors and adults. Article 5 governs protective arrangements instead of guardianship or conservatorship. Article 6 contains optional forms that can be used by persons petitioning for guardianship, conservatorship, or a protective arrangement under Article 5. It also contains a form that can be used to notify adults subject to guardianship or conservatorship of their rights. Article 7 contains an effective date provision and boilerplate provisions common to Uniform Acts.

The Act is the result of the work of the Drafting Committee, which was charged with revising the UGPPA to implement recommendations of the Third National Guardianship Summit (NGS) held in 2011. The Drafting Committee's work built upon two earlier versions of the Act: the 1982 UGPPA which significantly advanced guardianship law by recognizing limited guardianship, and the 1997 UGPPA which further advanced the law by, among other things, adopting a functional definition of capacity and emphasizing that guardianship and conservatorship should be options of last resort. The 1982 UGPPA in turn build upon the provisions of Article V of the UPC as originally approved in 1969.

The Drafting Committee worked in close consultation with a broad range of participants representing numerous constituencies. In addition to the American Bar Association advisors listed above, national organizations providing significant input included AARP, The ARC, the American College of Trust and Estate Counsel, the National Academy of Elder Law Attorneys, the National Association to Stop Guardianship Abuse, the National College of Probate Judges, the National Center for State Courts, the National Disability Rights Network, and the National Guardianship Association.

The Act has three overarching aims.

First, it aims to reflect the person-centered philosophy endorsed by the NGS. The person-centered approach is evidenced in the Act's updated terminology. The terms "ward" and "incapacitated person," which were rejected by the NGS as demeaning and even offensive, are

eliminated and the more precise terms “adult subject to guardianship,” “minor subject to guardianship,” and “individual subject to conservatorship” are used instead. The person-centered approach is also evident in new provisions requiring that individuals subject to guardianship or conservatorship be given meaningful notice of their rights and how to assert them; provisions that require involving individuals subject to guardianship and conservatorship in decisions about their lives; requirements that guardians and conservators create person-centered plans; and provisions to facilitate court monitoring of compliance with those plans.

Second, the Act aims to create legal rules that advance key objectives embraced by the NGS, including respecting and protecting the rights and interests of both individuals alleged to need a guardian or conservator and individuals subject to guardianship or conservatorship. These include provisions designed to ensure that the least restrictive means are used to protect an individual alleged to need a guardianship or conservatorship, to provide better guidance to guardians and conservators, and to help courts monitor guardians and conservators.

Third, the Act aims to advance rules and systems that make it easier for all persons involved in the process—whether they be petitioners, individuals subject to guardianship or conservatorship, guardians or conservators, or judges—to achieve these objectives. It does this in a number of ways. These include creating new petition requirements to ensure that judges have the information needed to make appropriate decisions; creating an option for courts to enter orders instead of guardianship or conservatorship where such less restrictive alternatives would meet a respondent’s need; and offering model forms to make it easier for petitioners to seek limited appointments instead of full ones.

With these overarching objectives in mind, a number of more specific changes are likely to be particularly noteworthy to those considering the Act.

First, the Act includes clearer guidance to guardians and conservators, many of whom are lay people. Specifically, the Act clarifies how appointees are to make decisions, including decisions about particularly fraught issues such as medical treatment and residential placement. These clarifications are consistent with the person-centered approach embraced by the Act in that appointees are given specific guidance on involving the individual in decisions.

Second, the Act recognizes the role of, and encourages the use of, less restrictive alternatives, including supported decision-making and single-issue court orders instead of guardianship and conservatorship. To this end, the Act provides that neither guardianship nor conservatorship is appropriate where an adult’s needs can be met with technological assistance or supported decision-making. It also provides for protective arrangements instead of guardianship or conservatorship; the 1997 version, by contrast, only provided for such an arrangement as an alternative to conservatorship. These alternative arrangements have the potential to reduce the extent to which individuals in need of protection are deprived of liberties. They can also reduce the time and cost associated with meeting individuals’ needs. Unlike a guardianship or conservatorship, long-term monitoring and reporting will generally be unnecessary.

Third, the Act expands the procedural rights for respondents with the aim of ensuring that respondents’ rights are fully respected and that guardianships and conservatorships are only

imposed when less restrictive alternatives are not feasible. In expanding these protections, the Act strikes a balance between the need to provide meaningful procedural rights for individuals alleged to need a guardian or conservator, and the need to avoid making the appointment process overly complex or expensive. Key revisions include narrowing the exception to the general rule that the respondent must be present at the hearing, a requirement that explicit findings be made before certain fundamental rights are removed, and the elimination of provisions that would have allowed appointment of a guardian for an adult by will or other writing without prior judicial approval.

Fourth, the Act provides for enhanced monitoring of guardians and conservators to ensure that such appointees are complying with their fiduciary duties and that individuals subject to guardianship and conservatorship are protected against exploitation. One innovation in the Act is to allow the court to identify people who are to be given notice of certain key changes or suspect actions, and who can therefore serve as an extra set of eyes and ears for the court. Other revisions include a provision that makes bond a default option for conservators and the addition of provisions that clarify factors relevant in determining the reasonableness of fees for guardians and conservators.

Fifth, the Act provides enhanced procedural rights for individuals subject to guardianship and conservatorship. Key changes from the 1997 Act include a provision that the court provide such individuals with plain-language notice of key rights, the addition of provisions for attorney representation of individuals subject to guardianship and conservatorship, greater scrutiny of the guardian or conservator's ability to charge fees to oppose the individual's efforts to alter the appointment, and additional triggers for reconsideration of an appointment.

Sixth, recognizing that individuals subject to guardianship and conservatorship benefit from visitation and communication with third parties, the Act sets forth specific rights to such interactions. In recent years, some family members of individuals subject to guardianship have raised concerns that guardians have unreasonably restricted the ability of individuals subject to guardianship to receive visitors and communicate with others, and family advocates have encouraged legislative responses to address this concern. The Act includes a variety of provisions addressing this concern. These include a limitation on a guardian's ability to curtail communications, visits, or interactions between an adult subject to guardianship and third parties and a requirement that a guardian prioritize residential settings that allow the individual subject to guardianship to interact with those important to the individual. In a similar vein, it establishes a default that the adult children and spouse of an adult subject to guardianship or conservatorship are entitled to notice of key events, including a change in the adult's primary residence, the adult's death, or a significant change in the adult's condition.

Seventh, the Act creates a new mechanism for protecting individuals from exploitation. Section 503 of the Act allows a court, without imposing a guardianship or conservatorship or ruling on the individual's abilities, to restrict access to the respondent or the respondent's property by a specified person that the court finds by clear-and-convincing evidence: (1) through fraud, coercion, duress, or the use of deception and control, caused, or attempted to cause, an action that would have resulted in financial harm to the respondent or the respondent's property; and (2) poses a serious risk of substantial financial harm to the respondent or the respondent's property.

This allows courts to create tailored orders to protect vulnerable individuals at risk of substantial exploitation even though the individual might not have the level of limitation in abilities necessary to impose a conservatorship or guardianship. At the same time, it discourages courts from imposing a guardianship or conservatorship if a limited order would meet an individual's needs.

Eighth, the Act contains a variety of provisions designed to improve compliance with the Act's prohibition on courts establishing a full guardianship or conservatorship if a limited guardianship or conservatorship would meet the respondent's needs. The Drafting Committee recognized that, despite the best efforts of previous Committees, there is a lack of compliance with the prohibition even though it was included in the 1997 Act. In order to facilitate compliance, the Act includes a sample petition which makes it easier for a petitioner to seek a limited order. In addition, the Act requires petitioners seeking a full guardianship or conservatorship to do more to justify that approach, and courts imposing a full guardianship to provide findings to support that imposition.

Ninth, the Act modernizes and clarifies provisions related to minors subject to guardianship. For example, consistent with modern trends in the law, the Act provides for greater involvement of minors in decisions involving them. The age of involvement for a minor has been lowered from 14 to 12, the decision-making standard for guardians now calls on them to consider the minor's views, and an attorney must be appointed for a minor in certain situations. The Act also provides greater guidance to those petitioning for guardianship of a minor, to courts determining whether they have jurisdiction over guardianship for minors, and to guardians making decisions on behalf of minors. In addition, in consideration of the U.S. Supreme Court's ruling in *Troxel v. Granville*, 530 U.S. 57 (2000), the Act provides greater due process protections for parents of minors

Tenth, the Act contains updated provisions to govern property management for individuals subject to conservatorship. In updating property management protections, the Drafting Committee looked to the Uniform Prudent Investor Act and the Uniform Trust Code, among other sources of guidance.

Finally, the Act has been reorganized with the aim of making it easier to understand. Ease of use is important as many of those who need to comply with its directives are not attorneys, but are family members or friends responding to urgent or unstable circumstances, or are individuals with limited resources and significant functional challenges.