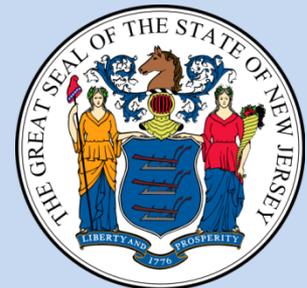


***New Jersey Revision of The Uniform Adult
Guardianship and Protective Proceedings
Jurisdiction Act***

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Law Revision Commission Approach To Uniform Law Commission Acts

- What is the problem to be solved?
- Does the problem exist in New Jersey?
 - Already addressed by statute?
 - Relevant here?
- Does the uniform act adequately address the problem?
- Is modification appropriate to tailor act to New Jersey?
- Will modification undermine uniformity?

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA)

- Recommended for enactment in all states by ULC in 2007
- Modeled after the Uniform Child Custody Jurisdiction Act (UCCJA) which was succeeded by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), adopted by New Jersey (2A:34-53 et seq.)
- Seeks to address problems that arise when an adult subject to guardianship proceedings in more than one state, or a state and foreign country, has contacts or property in each place
- Creates uniform mechanism for addressing multi-jurisdictional adult guardianship issues that have become time-consuming and costly for courts and families

What is the UAGGPJA and what is the problem to be solved?

Scenario 1: Multiple state jurisdiction-

Ralph and Alice reside in Morristown, New Jersey but spend six months a year at their rental apartment in Boca Raton, Florida. Alice has Alzheimer's Disease and Ralph is her primary caretaker. Ralph dies unexpectedly while the couple are in Florida. The couple's daughter Mimi arrives in Florida and soon realizes that her mother is incapable of making her own decisions. Mimi decides she must take her mother back home with her to Nebraska but, in the meantime, commences a guardianship proceeding in Florida. Mimi's younger brother, Roger, who was closer to their mother but on a business trip in Singapore at the time of their father's death, does not agree. When he arrives back in the US, he insists that his mother be brought back to New Jersey, where he also lives. He immediately commences a guardianship proceeding on behalf of his mother in New Jersey.

Which state court decides the guardianship issues? Florida or New Jersey?

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA)

- ensures that only one state exercises jurisdiction over the alleged incapacitated person at any time
- limited to adults, in part, because jurisdictional issues involving guardianships for minors are covered by the UCCJEA
- sets forth method by which a court can determine state with primary jurisdiction, usually the incapacitated person's "home state", but if not, then the "significant-connection" state
- sets forth emergency jurisdiction procedures to appoint temporary guardians for emergency purposes

What is the UAGGPJA and what is the problem to be solved?

Scenario 2: Recognition/ enforcement /transfer of guardianship and conservatorship between states

Darlene cares for her mother who has dementia in their home in Texas.¹ A Texas court appointed Darlene as her mother's legal guardian. Darlene's husband loses his job and Darlene and her family must move to Florida. Neither Texas nor Florida have enacted the UAGPPJA. Upon arriving in Florida, Darlene is told by the court that she must re-file for guardianship under Florida law because Florida does not recognize adult guardianship rights made in other states. This means that Darlene will have to find a Florida attorney, pay legal fees and court filing fees in order to remain as a guardian and to continue to have the legal right to care for her mother.

How would enactment of the UAGGPJA in Florida have made a difference for Darlene's Texas guardianship appointment?

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA)

- creates registration procedures to facilitate recognition of out-of-state orders
- provides mechanism to transfer/accept guardianship or conservatorship by one state to and from another state
- empowers courts in differing jurisdictions to communicate with each other and to allow parties to participate
- sets forth procedure for stay of one proceeding where proceedings have been commenced in more than one state

Getting from the UAGPPJA to the NJAGPPJA

- Aspects of NJ current practice for which consideration given when drafting proposed modifications to UAGPPJA:
 - NJ determination of “domicile”
 - Which state has jurisdiction requires court determination of “domicile”
 - “Domicile” is where person has true, fixed, permanent home and principle establishment to which, whenever absent, the person has intention of returning
 - “Domicile” may be determined by birth or place of origin, by choice of person with capacity to choose, or by operation of law in the case of a person who lacks capacity to acquire domicile by choice
 - Person in need of a guardian may have the capacity to change domicile

Getting from the UAGPPJA to the NJAGPPJA

- Aspects of NJ practice for which consideration given when drafting (cont'd):
 - NJ recognizes other types of protections for persons with incapacity and limited capacity
 - NJ law provides for a guardian of the person or of the estate of an incapacitated adult, or of both
 - NJ law provides for a conservator who may be appointed for a person who is not incapacitated so long as the conservatee does not object to the appointment
 - NJ protects vulnerable adults with limited capacity, illness, disability or deficiency under *Adult Protective Services Act* (52:27D-406 et seq.)
 - NJ has *Winberry v. Salisbury* limitations which preclude the adoption of uniform act provisions that dictate court procedure

Getting from the UAGPPJA to the NJAGPPJA

- Aspects of NJ practice for which consideration given when drafting (cont'd):
 - NJ gives full, faith and credit to determination of incapacity made in other states
 - NJ law provides for transfer into NJ of a guardianship established in another state by the out-of-state's guardian filing in NJ of a summary action for transfer and appointment as guardian (3B:12-66.2c.)
 - NJ permits transfer of a guardianship appointed here to another state if the court is satisfied it will serve best interests of incapacitated person (3B:12-66.1)
 - NJ provides for mechanism by which court may appoint guardian for NJ property of a nonresident who has been declared incapacitated in that person's state of residence (3B:12-29)

So why do we need the uniform law in New Jersey?

- **Let's go back to Scenarios 1 and 2:**

Roger soon learns that New Jersey has adopted the NJAGPPJA. That means that the New Jersey court, applying a formula that is uniform among all states that have adopted the UAGPPJA, will determine which state court has jurisdiction by first determining whether New Jersey or Florida is the “home state”. The court will consider where Roger’s mother was physically present during at least six consecutive months immediately before the filing of Roger’s petition for guardianship. But Florida has not adopted the NJAGPPJA so that makes the issues more complicated.

If Mimi had brought the guardianship proceeding in Nebraska (which has adopted the uniform law) then the New Jersey and Nebraska courts, applying the uniform law, could communicate with each other, involve the parties in the communications, and work together to avoid duplication of effort and unnecessary delays. Either state also could stay or dismiss its own proceeding depending upon where jurisdiction is determined.

So why do we need the uniform law in New Jersey?

As for Darlene, *if both Texas and Florida had adopted the uniform law*, then Darlene (already appointed her mother's guardian in Texas) would not have to re-file to be appointed guardian again in Florida. Darlene would be able to petition the Texas court to transfer the guardianship to Florida. After appropriate notices and a hearing, Texas could issue a final order confirming the transfer. Darlene then would petition the Florida court to recognize and accept the Texas guardianship with similar notice and hearing provisions.

Darlene might also have the option, if no application for appointment of a guardian was pending in Florida, of registering the Texas order of guardianship by filing with the Florida court certified copies of the order and any bond, as appropriate. Once registered, Darlene would be able to exercise in Florida (and any other state that had adopted the UAGPPJA) all powers authorized in the order of appointment except as prohibited under Florida law.

Proposed Modifications to Uniform Act Consistent with New Jersey Law

- References to “conservator” are modified to reflect NJ distinction between appointment for guardian of the person or the estate, or both, and a separate proceeding to address conservatorship
- NJ version of uniform law is made applicable to conservatorships, as well as to protective arrangements for vulnerable adults
- NJ version provides for out-of-state conservator to have option of applying for a conservatorship in accordance with NJ law
- Distinctions made between rulemaking and statutory enactment in accordance with *Winberry v. Salisbury*

Proposed Modifications to Uniform Act Consistent with New Jersey Law

- NJ version retains uniform features of act within above limitations
- Application of act is limited to jurisdictional matters and the act expressly provides that the appointment of a guardian shall continue to be governed by 3B:12-1 et seq. and the appointment of a conservator shall continue to be governed by 3B:13A-1 et seq.
- Recommendations made to repeal current conflicting NJ law

Will modifications undermine the uniformity of the uniform law?

Sometimes, as is the case here, the nuances of New Jersey practice require the Commission to recommend modifications to the uniform law as adopted in New Jersey. Even with modifications that make the law less uniform, the Commission determined that the benefits to adopting a uniform set of procedures for deciding these difficult issues far outweighed any detriments. The modifications were tailored in such a way that uniform application of the law was not detrimentally affected.

Input sought for NJAGPPJA report

- Staff outreach:
 - Elder law and estate planning attorneys
 - Members of New Jersey State Bar Association
 - Other state guardianship law advocates such as the National Academy of Elder Law Attorneys
 - Organizations that represent older persons such as the AARP and the Alzheimer's Association
 - Administrative Office of the Courts
 - Office of the Ombudsman for the Institutionalized Elderly
 - *Anyone else who wanted to talk to us about the UAGPPJA!*



Voices Heard



- Commenters (formal and informal) included:
 - Members of the New Jersey State Bar Association, Elder Law Section and Real Property, Trust and Estate Law Section
 - Members of the New Jersey Chapter of the National Academy of Elder Law Attorneys
 - Representatives of the Alzheimer's Association, Greater New Jersey and Delaware Valley Chapters
 - Representatives of the AARP, New Jersey Chapter
 - Representatives of the Administrative Office of the Courts



From Commission Project to Enactment in New Jersey

- Commission released Final Report recommending adoption of NJAGPPJA in February 2011
- Commission Staff worked closely with AOC and other commenters to address concerns as bill drafting was ongoing
- Commission Staff worked closely with OLS staff in drafting bill
- Bill introduced in Assembly and Senate in March of 2012
- Bill passed by Senate on 5/31/2012
- Bill passed by Assembly on 6/21/2012
- Bill approved and signed into law on 8/7/12
(P.L. 2012, c. 36)

UAGPPJA In Other States

- When the Commission issued its final report in February of 2011, the uniform law had been enacted in 20 jurisdictions.
- Almost two years later, in January 2013, the uniform law has been enacted in 37 jurisdictions:

- | | |
|------------------------|------------------|
| - Alabama | - Maryland |
| - Alaska | - Minnesota |
| - Arizona | - Missouri |
| - Arkansas | - Montana |
| - Colorado | - Nebraska |
| - Connecticut | - Nevada |
| - Delaware | - New Jersey |
| - District of Columbia | - New Mexico |
| - Hawaii | - North Dakota |
| - Idaho | - Ohio |
| - Illinois | - Oklahoma |
| - Indiana | - Oregon |
| - Iowa | - Pennsylvania |
| - Kentucky | - Puerto Rico |
| - Maine | - South Carolina |
| | - South Dakota |
| | - Tennessee |
| | - Utah |
| | - Vermont |
| | - Virginia |
| | - Washington |
| | - West Virginia |





References

- ¹ Adopted from materials from the Alzheimer's Association
For more information on the Alzheimer's Association, see its website, www.alz.org
- For more information on the UAGPPJA, see the Uniform Law Commission website, www.uniformlaws.org

Speaker Bio

Now retired from law practice after more than 28 years as an attorney, Ms. Brown is Counsel to the New Jersey Law Revision Commission in Newark, New Jersey. In her role as Counsel, Ms. Brown drafts proposed legislation and makes recommendations to the Commission regarding the revision of current New Jersey statutes.

Before retiring from law practice, Ms. Brown managed her own law firm in East Brunswick, New Jersey for twelve years, during which time she represented individuals and small business in connection with real estate and corporate transactional matters and related litigation. For an interim period before commencing her own practice, she also worked as a Director of Professional Development at two prominent New York law firms. In that capacity, she trained young lawyers, organized and taught legal writing programs, and also designed and implemented law firm policy for the mentoring and evaluation of more than 200 associate attorneys.

During her legal career, Ms. Brown worked for both large and small law firms, in New Jersey and New York, including McCarter & English, in Newark, and Cahill Gordon & Reindel in Manhattan. Ms. Brown also taught Legal Writing as an adjunct Professor at New York Law School, where she graduated *magna cum laude* in 1983.

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