



THE UNIFORM GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE ARRANGEMENTS ACT

- A Summary -

History. The first uniform law on guardianship was released in 1969 as Article V of the Uniform Probate Code. A few years later, it was re-published as the Uniform Guardianship and Protective Proceedings Act for states that preferred to enact only the UPC’s guardianship provisions.

Guardianship law has advanced dramatically since 1969 to better protect the rights and interests of persons legally determined to need help caring for themselves. The Uniform Law Commission has encouraged the trend toward greater independence for persons under guardianship by revising its guardianship act three times in 1982, 1997, and most recently with the approval of the newly renamed Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA) in 2017. Some version of the uniform guardianship law has been adopted in nineteen states.

The modernization of guardianship law. In 2011, the National Guardianship Network organized the Third National Guardianship Summit. Held at the University of Utah, the summit brought together representatives from twenty national organizations concerned with issues of aging, intellectual impairments, mental illness, and the effective practice of guardianship law.

The summit produced a set of 70 recommendations and standards approved by the participants and published the following year in the *Utah Law Review*. The Uniform Law Commission formed a study committee to determine which of these recommendations and standards could be codified into a statute, and in 2014 approved a drafting committee to update the existing uniform law. The drafting committee was joined by participants from most of the same national organizations that attended the 2011 summit. UGCOPAA is the result of their two-year drafting effort.

A note about terminology. Throughout UGCOPAA, the term “guardian” refers to a person appointed by a court to make decisions about the care and well-being of another person. The term “conservator” refers to a person appointed by a court to manage the property of another person. Some states use other terms, and the act can be adapted to conform to local practices.

UGCOPAA introduces the term “protective arrangement instead of guardianship or conservatorship” to describe a less-restrictive alternative to guardianship or conservatorship. Instead of imposing a guardianship or conservatorship for a person who would otherwise need one, a court can instead enter a limited order to address a specific need. The aim is to preserve an individual’s legal autonomy to the greatest extent possible.

Structure. UGCOPAA is organized into seven articles. Article 1 contains definitions and general provisions applicable to all types of court proceedings involving the protection of an individual. Article 2 addresses the guardianship of minors who do not have a parent able to provide care. Article 3 addresses the guardianship of adults who are unable to make decisions for themselves. Article 4 applies to conservatorships for both minors and adults who have money or property and are unable to manage it. Article 5 is entirely new and authorizes courts to enter single orders for less restrictive protective arrangements as an alternative to guardianship or conservatorship. Article 6 contains a set of optional forms intended to help a petitioner for a guardianship or conservatorship conduct a thorough assessment of an individual’s capabilities and needs, which will in turn help courts craft appropriate orders for each individual. The act also provides a sample notice for someone who is the

subject of a guardianship or conservatorship proceeding. Article 7 is a set of miscellaneous provisions to help with implementation and interpretation of the uniform act.

Innovations.

- ***Person-centered planning.*** Under UGCOPAA, each guardianship and conservatorship will have an individualized plan that considers the person's preferences and values. Courts will monitor guardians and conservators to ensure compliance and approve updates to the plan in response to changing circumstances.
- ***Express decision-making standard.*** UGCOPAA clarifies that a guardian/conservator is a fiduciary and must always act for the benefit of the person subject to guardianship or conservatorship. A guardian for an adult must make decisions the guardian reasonably believes the adult would make if able, unless doing so would cause harm to the adult. To the extent feasible, a guardian for an adult must promote the adult's self-determination, encourage the adult's participation in decisions, and take into account the values and preferences of the adult.
- ***Enhanced notice.*** UGCOPAA enhances protection for individuals subject to guardianship or conservatorship without greatly increasing the costs of monitoring by allowing the court to identify other persons to receive notice of certain suspect actions, and who can therefore serve as extra sets of eyes and ears for the court.
- ***Guaranteed visitation and communication.*** Without a court order, a guardian under UGCOPAA may not restrict a person under guardianship from receiving visits or communications from family and friends for more than seven days, or from anyone for more than sixty days. Unless the court orders otherwise, close family members must be notified of any change in residence.
- ***Less-restrictive alternatives.*** UGCOPAA prohibits courts from issuing guardianship or conservatorship orders when a less-restrictive alternative is available, such as supported decision-making, technological assistance or an order authorizing a single transaction.
- ***Enhanced procedural rights.*** UGCOPAA requires notice of key rights to individuals subject to guardianship or conservatorship, including the right to independent legal representation. The act allows any interested party to petition a court for reconsideration of an appointment and places limits on a guardian or conservator's ability to charge fees for opposing the efforts to alter the terms of appointment.
- ***Updated terminology.*** The terms "ward," "incapacitated person," and "disabled person" are increasingly viewed as demeaning and offensive. UGCOPAA uses neutral terms such as "respondent" for the subject of a guardianship hearing, and "individual subject to guardianship" once a court order has been issued.

Conclusion. UGCOPAA modernizes the law and protects the rights of individuals who are subject to guardianship and conservatorship. It encourages courts to impose the least-restrictive orders possible to adequately protect vulnerable minors and adults, and to monitor the protective arrangement to continuously adapt to an individual's changing capabilities and needs. It imposes clear duties upon guardians and conservators charged with protecting others and requires regular monitoring to ensure compliance. It allows courts to address specific problems with limited orders and preserve individual rights when possible. UGCOPAA is a guardianship statute suitable for the twenty-first century and should be considered for enactment in every state as soon as possible.

For further information about the UGCOPAA, please contact ULC Chief Counsel Benjamin Orzeske at (312) 450-6621 or borzeske@uniformlaws.org.