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## **NEW JERSEY ENACTS THE ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT**

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In August 2012, the New Jersey Legislature unanimously passed and the Governor signed into law The New Jersey Adult Guardianship and Protective Proceedings Jurisdiction Act (“Act”). It is New Jersey’s version of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act endorsed by the National Conference of Commissioners on Uniform State Laws (“NCCUSL”), which, with the inclusion of New Jersey, has been adopted in 34 states and the District of Columbia. The Act will appear in the New Jersey statutes at N.J.S.A. 3B:12B-1 to 22, but it does not go into effect until 120 days from its enactment, December 5, 2012.

As the name suggests, the Act addresses jurisdictional issues with respect to adult guardianships and other protective proceedings (conservatorships, protective arrangements, etc.). The Act expressly does not change the substantive guardianship law in New Jersey. It is intended to avoid dueling matters in two separate courts and in our mobile society, ease the transfer of guardianships among states and the recognition of an out-of-state guardianship judgment. The Act also should reduce the incidents of “granny snatching” across state lines to gain a personal advantage.

Under the Act, New Jersey has jurisdiction if:

1. New Jersey is the alleged incapacitated person’s home state OR
2. On the date the petition is filed, New Jersey is a significant connection state AND
  - a. The alleged incapacitated person has no home state or a court in the home state has refused to exercise jurisdiction in favor of New Jersey; OR

- b. The alleged incapacitated person has a home state, but there is no other petition pending in another jurisdiction AND before New Jersey acts:
  - i. A petition is not filed in the home state;
  - ii. No objection to jurisdiction is filed; AND
  - iii. The court determines it is an appropriate forum

“Home state” is the state in which the alleged incapacitated person “was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for the appointment of a guardian or a protective order; or if none, the state in which the [alleged incapacitated person] was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.”

Factors, other than mere physical presence, used to determine a “significant-connection state” include the following:

- The location of the alleged incapacitated person’s family and other persons required to be notified of the proceeding;
- The length of time the alleged incapacitated person at any time was physically present in the state and the duration of any absence;
- The extent to which the alleged incapacitated person has ties to the state (voting registration, etc.)

The factors that are used to determine an “appropriate forum” are fairly pragmatic and include the distance to the respective courthouses, the location of the evidence and whether the alleged incapacitated person has expressed a preference.

The Act specifically permits New Jersey courts to communicate with another state court regarding the proceeding. New Jersey courts may request the appropriate court of another state (or be requested) to do certain things such as hold an evidentiary hearing or require a person in that state to produce evidence.

The Act also sets forth procedures to transfer guardianships or conservatorships to another state or from another state. This provides clarity and prevents having to file another action in the new state. Out-of-state orders may also be registered in New Jersey and this has the effect that the out-of-state guardian may exercise in New Jersey all powers authorized by the order of appointment, except as may be prohibited by New Jersey law.

The Act is most effective when the “competing” state has also enacted a version of the uniform law. The states near New Jersey that have a form of the uniform law include Connecticut, Pennsylvania, and Delaware.

This Alert is meant simply to give you some highlights of The New Jersey Adult Guardianship and Protective Proceedings Jurisdiction Act. If you have any questions, please contact any member of Schenck, Price, Smith & King’s Elder and Special Needs Law Practice Group: Regina M. Spielberg, Shirley B. Whitenack, Meredith L. Grocott, Gary Mazart, and Crystal West Edwards.

DISCLAIMER: This Legal Alert is designed to keep you aware of recent developments in the law. It is not intended to be legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of the client. If someone you know would like to receive this Legal Alert, please send a message to Meredith L. Grocott, Esq. at [mlg@spsk.com](mailto:mlg@spsk.com). Ms. Grocott is a member of the Elder and Special Needs Law Practice Group at Schenck, Price, Smith & King, LLP.

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