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N.J. Enacts Law to Prevent 'Granny Snatching'

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The New Jersey Adult Guardianship and Protective Proceedings Jurisdiction Act was codified under P.L. 2012, Chapter 36, and will appear in the New Jersey statutes at N.J.S.A. 3B:12B-1 to 22. Although approved by the state legislature on Aug. 7, it went into effect on Dec. 5. There was bipartisan support for the act, which was unanimously approved by both houses of the legislature. The act is based on the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). The purpose of the law is to eliminate jurisdictional issues when families in different states feud over guardianship.

Because guardianship is a creature of state law, the laws governing guardianships in different states may result in courts in those states concluding that they have jurisdiction over the same alleged incapacitated person, leading to

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conflicts among states in addition to conflicts among family members. This is because some states, like New Jersey, base guardianship jurisdiction on domicile, while others base jurisdiction on residence or physical presence in the state. The three most common interstate guardianship issues are: 1) the exercise of jurisdiction over a guardianship matter by two or more states; 2) the acceptance of a guardianship in another state; and 3) the transfer of guardianships to and from other states. While family conflicts over relatives with diminished capacity are nothing new, in our increasingly mobile society it has become more common for family members engaged in such disputes to move relatives with diminished capacity across state lines. This often is referred to as "granny snatching."

In order to address this very real problem, a drafting committee on UAGPPJA, appointed by the National Conference of Commissioners on Uniform State Laws (NCCUSL), developed uniform laws addressing interstate and international adult guardianship jurisdiction issues. In 2007, NCCUSL approved the final uniform act and recommended enactment. The final uniform act can be found at the NCCUSL website, www.uniformlaws.org. In addition to New Jersey, a form of UAGPPJA has

been enacted in 33 other states and the District of Columbia and has been introduced in other states as well.

The act addresses jurisdictional issues only and does not change the substantive guardianship law in New Jersey. UAGPPJA addresses jurisdiction based on the connection the alleged incapacitated person ("respondent") has to the state. New Jersey has jurisdiction if: (1) New Jersey is the respondent's home state; (2) on the date the petition is filed, New Jersey is a significant-connection state and the respondent has no home state or a court in the home state has refused to exercise jurisdiction in favor of New Jersey; or (3) the respondent has a home state but there is no other petition pending in another jurisdiction and, before New Jersey acts, a petition is not filed in the home state, no objection to jurisdiction is filed and the court determines it is an appropriate forum.

The "home state" is the state where:

the respondent 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 respondent 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.

If the respondent has no home state

or if the home state has refused jurisdiction in favor of New Jersey, then New Jersey may have jurisdiction as a significant-connection state. This is meant to prevent dueling applications in two different jurisdictions. A “significant-connection state” is a state “with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.” The act provides factors to apply in determining a significant connection, which include the location of the respondent’s family and the length of time the respondent has been physically present in the state. The respondent’s ties to the state, such as voting registration and the payment of state or local taxes, are also factors.

Lastly, New Jersey may have jurisdiction under the act if it is an appropriate forum. Again, there can be no pending petition in the respondent’s home state and no objection to jurisdiction. The act lists several factors to apply in determining whether New Jersey is an appropriate forum. The factors are fairly pragmatic in nature, such as the distance of the respondent from the court in each state and the location and nature of the evidence. Notably, any expressed preference of the respondent is also a factor. The court can also look at whether there was abuse, neglect or exploitation and which state can best protect the respondent. The New Jersey court can decline to exercise jurisdiction at any time if it determines that a court of another state is a more appropriate forum.

The act recognizes that emergency situations arise and provides that even when New Jersey lacks jurisdiction as set forth in the act, it does have emergency jurisdiction to do the following: (1) appoint a guardian or issue a protective order under N.J.S.A. 3B:12-24.1(c), in an emergency, for a respondent who is physically in New Jersey; (2) appoint a guardian of real or tangible personal property located in New Jersey in

which the respondent has an ownership interest; (3) issue a protective order with respect to real or tangible personal property in New Jersey; or (4) appoint a guardian or conservator for an incapacitated person or protected person for whom a provisional order to transfer the proceeding from another state has been issued. If the court in the respondent’s home state requests that an emergency application for a guardian or a protective order be dismissed, then New Jersey shall do so.

Recognizing that forum shopping occurs, particularly in “granny snatching” situations, the act specifically provides that New Jersey may decline jurisdiction if it determines that it acquired jurisdiction because of unjustifiable conduct. In this situation, New Jersey may exercise jurisdiction for the limited purpose of fashioning an appropriate order or remedy “to ensure the health, safety and welfare of the respondent or to protect the respondent’s property.” New Jersey may even retain jurisdiction after considering whether there has been acquiescence to jurisdiction, whether New Jersey is a more appropriate forum and whether another state would have jurisdiction under the act. The act gives the court the authority to assess costs and fees if jurisdiction was acquired because of a party’s unjustifiable conduct. These fees go beyond just attorney fees and can include investigative fees, court costs, communication expense, witness fees/expenses and travel expenses.

The act specifically permits New Jersey courts to communicate with another state court regarding the proceeding. There must be a record of the communication unless it is for strictly administrative matters, such as scheduling. In addition to having the benefit of potentially preventing dueling litigations in two states, there is also a practical application. The act provides that New Jersey may request the appropriate court of another state (or be requested) to, among

other things, hold an evidentiary hearing or issue certain orders, such as requiring a person in that state to produce evidence or give testimony, or requiring an evaluation of the respondent.

The act provides specific procedures for transferring a guardianship either into or out of New Jersey. The steps avoid the possible situation of a standoff between states wherein one state won’t relinquish the guardianship until another state accepts it, but that state won’t accept the guardianship until the original state relinquishes it. The act provides for a two-step process when transferring a guardianship. First, a petition is filed in the original state, which will issue an order provisionally granting transfer if: (1) the respondent is physically present or is expected to permanently move to the second state; (2) no objection is made and the transfer would not be against the respondent’s best interest; and (3) plans for the care of the respondent’s person and property are made. A petition is then filed in the second state, which shall include a certified copy of the original state’s provisional order of transfer. The original state may then issue a final order of transfer once the second state has issued a provisional order accepting the guardianship. Finally, the second state issues a final order upon receipt of the original state’s final order of transfer.

The act provides a mechanism to register guardianship orders from other states. The effect of registration is that the out-of-state guardian may exercise in New Jersey all powers authorized in the order of appointment, except as may be prohibited by New Jersey law. This will allow guardians to more easily manage or sell real property located out of state.

The act addresses significant issues impacting guardianships in New Jersey. However, as with any uniform law, it is most effective when the “competing” state has also enacted a version of UAGPPJ. ■