



Ten Ways That a Model State Law Could Help to Reduce Guardianship Abuse

Guardiansⁱ are appointed by the court to make decisions about the health care, living arrangements, money and property of someone unable to make those decisions. The court appoints a guardian for an adult's protection, yet at the same time, the appointment strips away the person's basic rights.

Guardians and courts are guided by state laws. A model state guardianship law called the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA, or the Act)ⁱⁱ clarifies what courts and guardians should do. State legislatures can adopt the model law, or revise it to best fit what is needed in the state.

While most guardians are dedicated and caring, some take advantage of those they were named by the court to protect. One key theme throughout the model Act is safeguarding against any possible mistreatment or abuse by such guardians. The Act sets out ten ways to reduce opportunities for abuse or to respond when it occurs:

- 1 Grievance Procedure.** The Act creates a process for any interested person to make a complaint to the court about a guardian, without filing a formal petition. After getting the complaint, the court must conduct a review and must schedule a hearing if there is a reasonable chance that the guardian would be removed for breach of duty.
- 2 Notice of Key Changes in the Case.** Often family members and friends have information about the changing conditions and needs of a person subject to guardianship. They can provide the court with valuable information if they are regularly notified of key case events. The model Act requires the court appointing a guardian to name people who care about the adult's welfare so they will get copies of essential documents in the case.

ⁱ States use different terms to refer to guardians. In this fact sheet, the term "guardian" refers to those who manage a person's money and property, or their personal and health care decisions, or both. In the model Act, "guardian" refers to someone appointed by the court to make decisions about personal and health affairs of another, whereas "conservator" refers to someone appointed to make money and property decisions.

ⁱⁱ Uniform Law Commission, Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act.

- 3 Choosing Home.** Guardians have the power to decide where a person will live. Under the Act, guardians must try to select the place that the adult would pick if they could decide on their own. If the person cannot make that decision, the guardian should pick the place that's best for the person—someplace where they can continue to see family and friends. The Act requires guardians to tell the court, and family and friends important to the person, about a move. The court must pay special attention if the proposed move is to a nursing home or if the guardian wants to sell the person's home.
- 4 Powers of Attorney.** Many people name someone in a power of attorney document to make their health and/or financial decisions if they need help. The model Act states that the person named in the power of attorney can continue to make those decisions even after a guardian is appointed, unless the court says otherwise. This provision honors the person's choice of a trusted decision-maker.
- 5 Communication and Visits.** The Act protects the person's right to communicate and visit with others. If the guardian thinks that a person or group of people pose a threat, they can ask the court for an order to limit those communications or visits. Without a court order, the guardian can only keep a family member or friend away for seven days.
- 6 Court Monitoring.** Court monitoring of guardianship cases is crucial to ensure that the guardian does not mistreat or neglect the person, or mishandle their money and property. The model Act requires the guardian to file detailed reports with the court regularly. It tasks the court with actively reviewing the reports, and allows the court to send someone to check up on the person and to investigate possible bad behavior of the guardian.
- 7 Court Removal of Guardian.** Sometimes guardians mistreat the person in their care or don't do what they're supposed to do. The model Act spells out when the court should hold a hearing and decide whether to take away the guardian's power and appoint someone else. The Act makes it easy to trigger a hearing: anyone, including the person with a guardian, may informally share information with the court that might suggest the need to remove the guardian.
- 8 Conservator Bond.** Guardians who handle money and property—called conservators in many states—can be required to “furnish a bond.” The bond is like an insurance policy: if the conservator takes money they shouldn't or mismanages the money, the individual can be repaid. The model Act states that courts must require bonds or similar arrangements when appointing guardians, unless the court specifically determines that it isn't necessary in a given situation.



Determination of Reasonable Guardian Fees. Guardians are entitled to charge reasonable fees, if the court approves. Often, these fees are paid from the funds of the person the guardian is serving. But sometimes guardians overcharge, draining money away from the person's estate. The model Act sets out factors for the court to consider in determining whether the fee is reasonable.



Protective Arrangements. Sometimes a person may need a court to order a specific protective action, but does not need an ongoing guardianship that removes their rights. The model Act creates a “protective arrangement instead of a guardianship” that can target possible abuse or exploitation. For example, instead of a guardianship, the court may order that visitation with a family member, friend or someone else the person wants to see be allowed – or may restrict visits that could put the person at risk of harm. Instead of a conservatorship, the court may, for instance, confirm or revoke a contract, or limit access to property to prevent exploitation.

CONCLUSION

There are many reasons why a state might adopt provisions of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act. The Act is built on person-focused principles. It protects rights. It sets out clear guidance to guardians and courts. It puts a strong emphasis on use of less restrictive options. It also targets guardianship abuse, through the ten provisions described here. Enacting and fully implementing one or more of these provisions should help reduce abuse or exploitation by guardians – and passage of the Act as a whole, with enforcement, could bring about real change.