

It's Jurisdictional: The Virginia Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

I. General.

A. Purpose of the Virginia Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.¹

1. The Virginia General Assembly declares the purpose of the Act is to establish “a mechanism for resolving multistate jurisdictional disputes regarding adult guardianships and conservatorships,” and to provide procedures “for determining which jurisdiction is the ‘home state’ having primary jurisdiction, transferring a guardianship or conservatorship to another state, registering orders, and addressing emergency situations.”²

2. The Uniform Law Commission states that the “objective of the new uniform act is simple: to ensure that only one state has jurisdiction at any one time. To that end, the act contains specific guidelines to specify which court has jurisdiction to appoint a guardian or conservator for an incapacitated adult. The act does this by prioritizing the states which might claim jurisdiction. The state with primary jurisdiction is the ‘home state,’ defined as the state in which the adult has lived for at least six consecutive months immediately before the beginning of the adult guardianship or protective proceeding. The second is the ‘significant-connection state,’ which is broadly defined to include the location of the individual’s family, a state where the individual might have lived for many years, or the state where the individual’s property is located. The act provides that once a court has jurisdiction, this jurisdiction continues until the proceeding is terminated or transferred.”³

B. Structure.

1. New definitions, Va. Code § 37.2 -1032.

a) Persons.

(1) Incapacitated person is an adult for whom a guardian has been appointed.

¹ Herein “UAGPPJA,” or the Act.

² Legislative Information Services’ summary of Senate Bill 750, 2011 Virginia General Assembly, <http://leg1.state.va.us/cgi-bin/legp504.exe?111+sum+SB750>.

³ Brief comment, “Uniform Adult Guardianship And Protective Proceedings Jurisdiction Act,” August 3, 2007, apparently printed November 30, 2007,

www.nccusl.org/Shared/Docs/Finals_NC/UAGPPJA_Final_Dec07_NC.doc, accessed 4/19/2011 10:34 AM.

- (2) Protected person is an adult for whom a conservator has been appointed.
- (3) A party is the respondent, petitioner, guardian, conservator, or anyone else allowed by the court to participate in a guardianship or protective proceeding.
- b) Proceedings.
 - (1) A guardianship proceeding is a judicial proceeding for which a guardianship order is sought / issued.
 - (2) A protective proceeding is a judicial proceeding for which a conservatorship order is sought / issued.
- c) Orders.
 - (1) A guardianship order is an order appointing a guardian.
 - (2) A protective order is an order appointing a conservator.
- d) States subject to the Act.
 - (1) Includes all states and any territory of the United States, Va. Code § 37.2 - 1032.
 - (2) Foreign countries may be treated as states for most purposes of the Act, Va. Code § 37.2 -1030.
 - (3) Home state, Va. Code § 37.2-1039.
 - (4) Significant-connection state, Va. Code § 37.2 -2039.
- 2. Exclusivity in jurisdiction, Va. Code § 37.2 -1001 (B), 1039 – 1045. 1040, 1041, 1042.
- C. Structure of the Virginia Uniform Act.⁴
 - 1. General Provisions, Title 37.2, Chapter 10.1, Article 1.
 - a) Short Title
 - b) Definitions
 - c) International Application
 - d) Communication and Cooperation between Virginia and other Courts.
 - e) Out of state testimony.
 - 2. Jurisdiction, Title 37.2, Chapter 10.1, Article 2.
 - a) Full jurisdiction.
 - (1) Home state
 - (2) Significant-contact state
 - (3) “*Common Consent*”⁵ state
 - (a) When home state and significant-contact states have declined jurisdiction because Virginia is the more appropriate forum, and
 - (b) Jurisdiction is consistent with Virginia and U.S. constitutions.
 - (4) Special jurisdiction.
 - (a) Emergency guardianship order for no more than 90 days.

⁴ Part II contains the statute with the writer’s detailed annotations.

⁵ The phrase is the writer’s, not the Act’s.

- (b) Protective proceeding order (not limited in time) for real estate in Virginia and tangible personal property in Virginia.
 - (c) Provisional order when another state is transferring an extant guardianship / conservatorship to Virginia.
- b) Declination of jurisdiction.
 - (1) “Unjustifiable conduct” of any person seeking to invoke the Virginia court’s jurisdiction.
 - (2) *Forum non conveniens*.
- c) Special notice requirements when Virginia is not the Respondent’s home state, Va. Code § 37.2 -1044.
 - (1) Parties *entitled* to notice include all persons entitled to notice pursuant to both Virginia statute⁶ **and the applicable statute of the home state.**⁷
 - (2) The *manner* of giving notice is the same as in Virginia.⁸
- d) The Confusing Case Of Simultaneous Proceedings In Multiple States, Va. Code § 37.2 -1045 (1) and (2).
 - (1) Va. Code § 37.2 -1045 (1), **Race to the Courthouse**
 When protective or guardianship proceedings are pending in Virginia and another state *other than for an emergency guardianship or a protective proceeding relating to Virginia real estate or tangible personal property*:
 - (a) If the Virginia court has jurisdiction under Va. Code § 37.2 -1039, “it may proceed with the case **unless** another state acquires jurisdiction under similar provisions before the appointment or issuance of the [guardianship / conservatorship] order.”⁹
 - (b) If another state acquires jurisdiction under provisions similar to Va. Code § 37.2 -1039, the statute does not specify what the Virginia court is required to do.¹⁰
 - (2) Va. Code § 37.2 -1045 (2), **The Twilight Zone**

⁶ Va. Code § 37.2 -1004.

⁷ Virginia counsel must determine what the home state is, if there is one, and if there is, determine what the law of the home state is with respect to persons who must be notified of the hearing. Google reported, sadly, “No results found for “Notice Requirements for United States Guardianships,” but took only 0.19 seconds to corral 6,120,000 responses to the query, “Notice Requirements for Guardianships” without the quotes; with the quotes, only 7 replies (wonderfully helpful if the home state is [Florida](#), [South Carolina](#), and (possibly) the foreign sovereign of [Indonesia](#). For the other 47 states (as each reader will have memorized the Virginia rules), only about 6,119,993 links to go. Happy hunting!

⁸ *Id.* (C) “A copy of the notice, together with a copy of the petition, shall be mailed by first class mail by the petitioner at least seven days before the hearing to all adult individuals and to all entities whose names and post office addresses appear in the petition. For good cause shown, the court may waive the advance notice required by this subsection. If the advance notice is waived, the petitioner shall promptly mail by first class mail a copy of the petition and any order entered to those individuals and entities.”

⁹ Va. Code § 37.2 -1045 (1).

¹⁰ If a Virginia court may proceed only in the absence of a sister state’s acquisition of jurisdiction, presumably the Virginia court loses jurisdiction.

When protective or guardianship proceedings are pending in Virginia and another state other than for an emergency guardianship or a protective proceeding relating to Virginia real estate or tangible personal property:

(a) If the Virginia court does not have jurisdiction under Va. Code § 37.2 -1039, “the [Virginia] court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in the Commonwealth shall dismiss the petition unless the court in the other state determines that the court in the Commonwealth is a more appropriate forum.”

(b) Problems.

(i) The Act posits jurisdiction in only six categories, specified in two statutes, Va. Code §§ 37.2 -1039 and 1040.

(ii) Va. Code § 37.2 -1039 specifies the only three jurisdictional bases of complete jurisdiction for full protective and guardianship proceedings, which are based upon a finding that:

(a) Virginia is the home state

(b) Virginia is the significant-contact state

(c) Virginia is the common consent state (when all other states have demurred).

(iii) Va. Code § 37.2 -1040 specifies three sources of temporary, limited or provisional guardianship or protective orders.

(a) The emergency guardianship order for no more than 90 days.¹¹

(b) The protective order relating to Virginia tangible personal property or real estate.

(c) A guardianship order for an incapacitated person or a conservatorship order for a protected person for whom a provisional order to transfer the proceeding from another state has been issued.

(iv) A Virginia court without jurisdiction under Va. Code § 37.2 -1039 lacks any jurisdiction except for emergency guardianship, conservatorship over Virginia tangible personal property and real estate, and authority to appoint a guardian / conservator in a transfer proceeding.

¹¹ Va. Code § 37.2 -1040 (A)(1).

- (a) Va. Code § 37.2 -1045 limits itself to cases other than emergency guardianships and Virginia conservatorships for Virginia real estate and tangible personal property.
 - (b) The only other basis for any jurisdiction in Virginia is conferred in Va. Code § 37.2 -1040 (3), for the appointment in a transfer proceeding .
 - (c) It is unclear why the Virginia Court would have to stay its proceeding in this appointment to communicate with the Court in the other state when the only basis for the jurisdiction in the first place is the foreign court’s transfer of the proceeding to Virginia under provisions analogous to Va. Code § 37.2 -1046.
- 3. Transfer Of Guardianship Or Conservatorship.
 - a) Transfer From Virginia to another state, Va. Code § 37.2 -1046.
 - b) Acceptance of Foreign guardianship or conservatorship by Virginia, Va. Code § 37.2 -1047.
- 4. Registration of Foreign Orders.
 - a) Guardianship order, Va. Code §§ 37.2 -1048.
 - b) Conservatorship order, Va. Code §§ 37.2 -1049.
 - c) Effect of registration, Va. Code § 37.2 -1050.
 - (1) Compliance with Va. Code § 26-59 is required.
 - (a) Nomination of Virginia resident for service of process / notices.
 - (b) Surety on the bond of a non-resident conservator is required in all cases unless
 - (i) a resident Virginia fiduciary qualifies at the same time or
 - (ii) the court or clerk waives surety because the amount coming into the hands or possession of the conservator does not exceed \$15,000.¹²
- 5. Miscellaneous, Va. Code § 37.2 -1051, 1052.
 - a) Construction should be made with a view to uniformity among the states which have adopted the Act.
 - b) Limitations and supersession of Federal Electronic Signatures in Global and National Commerce Act.

D. States Adopting the Act; A Special Note Concerning the Virginia Version.

- 1. The official Virginia summary of the Act states that as of the date of its introduction in November, 2010, the Act had “been adopted in 19 states and the District of Columbia.”¹³

¹² The court may waive surety for a Virginia resident serving as conservator, Va. Code § 37.2 -1011 and Va. Code § 26-4.

¹³ See <http://leg1.state.va.us/cgi-bin/legp504.exe?111+sum+SB750> (4/19/2011 8:27 AM).

2. The Uniform Law Commission¹⁴ reports 27 States have adopted the Act, being: Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, District of Columbia, Idaho, Illinois, Iowa, Kentucky, Maryland, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, and West Virginia.

3. The Act as adopted in Virginia has the express support of the American Bar Association, the Virginia Bar Association, the Boyd-Graves Conference, and other worthy groups interested in the improvement of the law.

“The Uniform Act was considered by a subcommittee of the VBA Wills, Trusts and Estates Legislative Committee and included members of the Elder Law Section and Wills, Trusts and Estates Section. The legislation was also supported by the Boyd-Graves Conference, members of the Virginia Guardianship Association, the Alzheimer's Association and others. We had been asked to try to stick as closely to the uniform act as possible since the objective would be to have all states be as uniform as possible in order for the act to be implemented more easily. If each state made significant changes to the act, then this would seem to thwart the objective of the Act. There was certainly no intent to impede a ‘normal’ guardianship proceeding but merely to provide a way to resolve jurisdictional questions that may arise. While I understand that you may want to point out some potential pitfalls of the Act, I hope you will also feel like you can strongly promote the merits of the Act. If you think there are some changes that should be made to the Act in next year's General Assembly and would like for the VBA to consider them, please let me know.”¹⁵

II. Annotated Statutes.¹⁶

§ [24.2-410](#). Clerks of circuit courts to furnish lists of incompetents.

The clerk of each circuit court shall furnish monthly to the State Board a complete list of all persons adjudicated incapacitated pursuant to Chapter 10 (§ [37.2-1000](#) et seq.) of Title 37.2 or whose incapacity has been recognized pursuant to § [37.2-1047](#),¹⁷ and therefore

¹⁴ 2010 Legislative Fact Sheet - Adult Guardianship and Protective Proceedings Jurisdiction Act, [http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Adult Guardianship and Protective Proceedings Jurisdiction Act](http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Adult%20Guardianship%20and%20Protective%20Proceedings%20Jurisdiction%20Act), [http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Adult Guardianship and Protective Proceedings Jurisdiction Act](http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Adult%20Guardianship%20and%20Protective%20Proceedings%20Jurisdiction%20Act) (April 18, 2011).

¹⁵ Email correspondence to the writer from Newnie Rogers, Esq., a principal in Virginia Estate Plans, PLC, and Virginia Fiduciary, PLC, and Virginia Bar Association Wills, Trusts and Estates Section Representative, April 21, 2011, and reprinted with the kind permission of Ms. Rogers.

¹⁶ Statutes derived from 2011 Acts of Assembly, Ch. 518.

¹⁷ Va. Code § 37.2-1047 Refers to a domesticated guardianship / conservatorship order from another state. Note the interesting constitutional issue: a sister state which declares itself to be a home state or a significant-contact state (whether or not a party to the Act, apparently) may disenfranchise a Virginia resident who is not present in the sister state of the right to cast a vote in Virginia, presumably as to both federal and state elections. Whether this occurs in

"mentally incompetent" for purposes of this title unless the court order specifically provides otherwise, during the preceding month or a statement that no adjudications have occurred that month. The list shall contain each such person's name; address; county, city, or town of residence; social security number, if any; date and place of birth; and date of adjudication. The Board shall transmit the information from the list to the appropriate general registrars.

§ [26-30](#). Expenses and commissions allowed fiduciaries.

The commissioner, in stating and settling the account, shall allow the fiduciary any reasonable expenses incurred by him as such; and also, except in cases in which it is otherwise provided, a reasonable compensation, in the form of a commission on receipts, or otherwise. Unless otherwise provided by the court, any guardian appointed pursuant to Chapter 10 (§ [37.2-1000](#) et seq.) or Chapter 10.1 (§ [37.2-1031](#) et seq.) of Title 37.2 shall also be allowed reasonable compensation for his services. If a committee or other fiduciary renders services with regard to real estate owned by the ward or beneficiary, compensation may also be allowed for the services rendered with regard to the real estate and the income therefrom or the value thereof. Notwithstanding the foregoing provisions or any provision under Chapter 31 (§ [55-541.01](#) et seq.) of Title 55, where the compensation of an institutional fiduciary¹⁸ is specified under the terms of the trust or will by reference to a standard published fee schedule, the commissioner shall not reduce the compensation below the amount specified, unless there is sufficient proof that i) the settler or testator was not competent when the trust instrument or will was executed or ii) such compensation is excessive in light of the compensation institutional fiduciaries generally receive in similar situations.

§ [26-59](#). Nonresident fiduciaries.

A. A natural person, not a resident of this Commonwealth, may be appointed or allowed to qualify or act as personal representative, or trustee under a will, of any decedent, or appointed as guardian of an infant's estate, or guardian or conservator of the property of an incapacitated person under Chapter 10 (§ [37.2-1000](#) et seq.) or Chapter 10.1 (§ [37.2-1031](#) et seq.) of Title 37.2.

Qualification of such person as a personal representative, or trustee under a will of any decedent shall be subject to the provisions of Article 1 (§ [64.1-116](#) et seq.) of Chapter 6 of Title 64.1.

At the time of qualification or appointment each such person shall file with the clerk of the circuit court of the jurisdiction wherein such qualification is had or appointment is made, his consent in writing that service of process in any action or proceeding against

Virginia or anywhere else on the planet will depend entirely and only upon the care with which the court in the sister jurisdiction has studied the law of Virginia, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States, and for good measure, international sovereigns, see Va. Code §§ 37.2 -1032, 1033.

¹⁸ See note regarding non-qualified foreign sovereign banking / trust entities.

him as personal representative, trustee under a will, conservator or guardian, or any other notice with respect to the administration of the estate, trust, or person in his charge in this Commonwealth may be by service upon the clerk of the court in which he is qualified or appointed, or upon such resident of this Commonwealth and at such address as he may appoint in the written instrument. In the event of the death, removal, resignation or absence from this Commonwealth of a resident agent or any successor named by a similar instrument filed with the clerk, or if a resident agent or any such successor cannot with due diligence be found for service at the address designated in such instrument, then any process or notice may be served on the clerk of such circuit court. Notwithstanding §§ [37.2-1011](#) and [64.1-121](#), where any nonresident qualifies, other than as a guardian, pursuant to this subsection, bond with surety shall be required in every case, unless a resident personal representative, trustee, or fiduciary qualifies at the same time or the court or clerk making the appointment waives surety under the provisions of § [26-4](#).¹⁹

B. No corporation shall be appointed or allowed to qualify or act as personal representative, or trustee under a will, or as one of the personal representatives or trustees under a will, of any decedent, or appointed or allowed to qualify or act as guardian of an infant, or as one of the guardians of an infant, or guardian of the person or property of an incapacitated person under Chapter 10 (§ [37.2-1000](#) et seq.) or Chapter 10.1 (§ [37.2-1031](#) et seq.) of Title 37.2, or as one of such guardians or conservators, unless such corporation is authorized to do business in this Commonwealth. Nothing in this section shall be construed to impair the validity of any appointment or qualification made prior to January 1, 1962, nor to affect in any way the other provisions of this chapter or of § [64.1-130](#). The provisions of this section shall not authorize or allow any appointment or qualifications prohibited by § ~~[6.2-803](#)~~ ~~[6.1-5](#)~~ ~~[6.2-803](#)~~.²⁰

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§ [37.2-1001](#). Filing of petition; jurisdiction; instructions to be provided.

A. A petition for the appointment of a guardian or conservator **shall be filed with the circuit court of the county or city**²¹ in which the respondent is a resident or is located or in which the respondent resided immediately prior to becoming a patient, voluntarily or involuntarily, in a hospital, including a hospital licensed by the Department of Health pursuant to § [32.1-123](#), or a resident in a nursing facility or nursing home, convalescent home, assisted living facility as defined in § [63.2-100](#), or any other similar institution or,

¹⁹ See discussion above regarding qualified persons and bonding requirements for non-resident fiduciaries, and the likely intersection of conflict with a foreign sovereign conservator's sale of real estate under local rules passed in accordance with Va. Code § 37.2 -1023 (B) in many courts (including all in which the writer routinely practices) requiring additional oversight by the Commissioner of Accounts, surety, etc.

²⁰ In a domesticated order from a sister sovereign appointing a bank or trust company not qualified to conduct a banking or similar business in this Commonwealth will be required to obtain a resident entity or individual to serve , see Va. Code § 6.2-803 (A).

²¹ If the Respondent is a non-resident who is not physically located in Virginia, but whose home state is Virginia, and one who owns no real estate in Virginia, and is not in a listed congregate care facility, the law does not provide a statement of which Court in Virginia shall hear the case for the appointment of a guardian / conservator.

if the petition is for the appointment of a conservator for a nonresident with property in the state, in the city or county in which the respondent's property is located.

Article 2 (§ [37.2-1037](#) et seq.) of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act provides the exclusive jurisdictional basis for a court of the Commonwealth to appoint a guardian or conservator for an adult.

C. Where the petition is brought by a parent or guardian of a respondent who is under the age of 18, the petition may be filed no earlier than six months prior to the respondent's eighteenth birthday. Where the petition is brought by any other person, the petition may be filed no earlier than the respondent's eighteenth birthday.²²

€ D. Instructions regarding the duties, powers, and liabilities of guardians and conservators shall be provided to each clerk of court by the Office of the Executive Secretary of the Supreme Court, and the clerk shall provide that information to each guardian and conservator upon notice of appointment.

∅ E. The circuit court in which the proceeding is first commenced may order a transfer of venue if it would be in the best interest of the respondent.

§ [37.2-1014](#). Clerk to index findings of incapacity or restoration; notice to Commissioner, commissioner of accounts, Secretary of Board of Elections, and CCRE.

A. A copy of the findings of the court, if the person is found to be incapacitated or restored to capacity, or a copy of any order appointing a conservator or guardian pursuant to § [37.2-1047](#), shall be filed by the judge with the clerk of the circuit court. The clerk shall properly index the findings in the index to deed books by reference to the order book and page whereon the order is spread and shall immediately notify the Commissioner in accordance with § [37.2-1029](#), the commissioner of accounts in order to ensure compliance by a conservator with the duties imposed pursuant to §§ [37.2-1022](#) through [37.2-1024](#) and § [37.2-1027](#), and the Secretary of the State Board of Elections with the information required by § [24.2-410](#). If a guardian is appointed, the clerk shall forward a copy of the court order to the local department of social services of the jurisdiction where the person then resides. If a guardianship is terminated or otherwise modified, the clerk shall forward a copy of the court order to the local department of social services to which the original order of appointment was forwarded and, if different, to the local department of social services in the jurisdiction where the person then resides.

B. The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any order adjudicating a person incapacitated under this article, any order appointing a conservator or guardian

²² Consider the issues in a transitioning special needs 17.5 year old Virginian with developmental disabilities whose parent wishes to move the child to a sister state. The law in Virginia permits the appointment of an adult guardian / conservator but unless the law of the sister jurisdiction does likewise, the Virginia order will be compromised because the definition of "adult" in the receiving state may be more restrictive.

pursuant to § [37.2-1047](#), and any order of restoration of capacity under § [37.2-1012](#).²³ The copy of the form and the order shall be kept confidential in a separate file and used only to determine a person's eligibility to possess, purchase, or transfer a firearm.

§ [37.2-1030](#). Application to guardians and conservators appointed pursuant to § [37.2-1047](#).

Except as otherwise provided in an order entered pursuant to § [37.2-1047](#), a guardian or conservator appointed pursuant to § [37.2-1047](#) shall be subject to the provisions of §§ [37.2-1011](#)²⁴ and [37.2-1012](#) and this article.

CHAPTER 10.1.

UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT.

Article 1.

General Provisions.

§ [37.2-1031](#). Short title.

This act may be cited as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

§ [37.2-1032](#). Definitions.

In this chapter:

“Adult” means an individual who has attained 18 years of age.

“Conservator” means a person appointed by the court to administer the property of an adult, including a person appointed under Chapter 10 (§ [37.2-1000](#) et seq.).

"Court" means a court of competent jurisdiction as determined by otherwise applicable Virginia law to establish, enforce, or modify a guardianship or conservatorship order or an entity authorized under the law of another state to establish, enforce, or modify a guardianship or conservatorship order.

²³ This preserves control of a Virginia court over an incapacitated or protected person, and the fiduciary for him, under Va. Code § 37.2 -1012. Without it, Va. Code § 37.2 -1041 provides that “[e]xcept as otherwise provided in § [37.2-1040](#) [emergency 90 day guardianship, real estate and tangible personal property conservatorship, and orders from transferring sister sovereigns], a court that has appointed a guardian or issued a protective order consistent with this Act has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.” Note that Va. Code § 37.2 -1012 (A) preserves the right to litigate anew the incapacity issue and the suitability of the foreign sovereign appointed fiduciary; the petition may be filed “by the incapacitated person, the guardian or conservator, *or any other person* or upon motion of the court.”

²⁴ Qualification (bonding, surety, etc.).

“Guardian” means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under Chapter 10 (§ [37.2-1000](#) et seq.).

“Guardianship order” means an order appointing a guardian.

“Guardianship proceeding” means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

“Incapacitated person” means an adult for whom a guardian has been appointed.

"Individually identifiable health information" means health information, including demographic information, collected from an individual that (i) is created or received by a health care provider, health plan, employer, or health care clearinghouse and (ii) identifies the individual or there is a reasonable basis to believe that the information can be used to identify the individual and relates to (a) the past, present, or future physical or mental health or condition of the individual, (b) the provision of health care to the individual, or (c) the past, present, or future payment for the provision of health care to the individual.

“Party” means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.

“Person,” except in the term "incapacitated person" or "protected person," means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Protected health information" means individually identifiable health information that is (i) transmitted in electronic media, (ii) maintained in electronic media, or (iii) transmitted or maintained in any other form or medium. Protected health information excludes individually identifiable health information in (a) education records covered by the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g); (b) records of any student who is 18 years of age or older, or is attending a postsecondary school, that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and that are made, maintained, or used only in connection with the provision of treatment to the student and are not available to anyone other than persons providing such treatment, except that such records may be personally reviewed by a physician or other appropriate professional of the student's choice; and (c) employment records held, in its role as employer, by a health plan, health care clearinghouse, or health care provider that transmits health information in electronic form.

“Protected person” means an adult for whom a protective order has been issued.

“Protective order” means an order appointing a conservator.

“Protective proceeding” means a judicial proceeding in which a protective order is sought or has been issued.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Respondent” means an adult for whom a protective order or the appointment of a guardian is sought.

“State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

§ [37.2-1033](#). International application of Act.

A court of the Commonwealth may treat a foreign country as if it were a state for the purpose of applying this article and Articles 2, 3, and 5.

§ [37.2-1034](#). Communication between courts.²⁵

(a) A court of the Commonwealth may communicate with a court in another state concerning a proceeding arising under this Act. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (b), the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(b) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

§ [37.2-1035](#). Cooperation between courts.

(a) In a guardianship or protective proceeding in the Commonwealth, a court in the Commonwealth may request the appropriate court²⁶ of another state to do any of the following:

²⁵ “Communication” is not a defined term in the Act. As such, “communication” must take its ordinarily accepted meaning in Virginia, which as Hamlet knew, is apparently speech by a Virginia judge with a judge (or, in a world of cellular phones, one trembles to think, a person in the ether who *asserts* s/he is a judge) of some foreign sovereign. Whatever else the statute intended by communicate, the Virginia Supreme Court has long held that “a trial court ‘speaks only through its written orders,’ *Rose v. Jaques*, [268 Va. 137, 147](#), 597 S.E.2d 64, 70 (2004), and an order is entered when it is signed by the trial judge. [Rule 1:1](#); *Morgan v. Russrand Triangle Assocs.*, [270 Va. 21, 26](#), 613 S.E.2d 589, 591 (2005); *Peyton v. Ellyson*, [207 Va. 423, 430](#)-31, 150 S.E.2d 104, 110 (1966).” *Dillard's Inc. v. Judkins*, 276 Va. ___ 071303, 661 S.E.2d 487 (2008). This safeguard is impossible to square with the chilling last sentence of (a), “[t]he record [of the communication] may be limited to the fact that the communication occurred.”

²⁶ The phrase “appropriate court” is not defined. The Act defines a court to be a “court of competent jurisdiction as determined by otherwise applicable Virginia law to establish, enforce, or modify a guardianship or conservatorship order or an entity authorized under the law of another state to establish, enforce, or modify a guardianship or

1. Hold an evidentiary hearing;
2. Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;
3. Order that an evaluation or assessment be made of the respondent;
4. Order any appropriate investigation of a person involved in a proceeding;
5. Forward to the court of the Commonwealth a certified copy of the transcript or other record of a hearing under subdivision 1 or any other proceeding, any evidence otherwise produced under subdivision 2, and any evaluation or assessment prepared in compliance with an order under subdivision 3 or 4;
6. Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for either court to make a determination, including the respondent or the incapacitated or protected person; and
7. Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information.

(b) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (a), a court of the Commonwealth has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

§ [37.2-1036](#). Taking testimony in another state.

(a) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in the Commonwealth for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(b) In a guardianship or protective proceeding, a court in the Commonwealth may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court in the Commonwealth shall

conservatorship order.” Va. Code § 37.2 -1032. Unless the Virginia court is entering a special order (emergency guardianship, limited tangible personal property order), or an order in which it is receiving a guardianship / conservatorship from another jurisdiction, if the Virginia Court has jurisdiction, it has exclusive jurisdiction (Va. Code § 37.2 -1041). Apparently an “appropriate court” is one which, but for the Act, could have entertained the proceedings; it is clear that unless the Virginia court is acting without jurisdiction, the foreign sovereign court has no jurisdiction in the case *sub judice* in Virginia, at least if the foreign sovereign court is one which has adopted the Act. A listing of these foreign sovereigns is given *ante*.

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cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.²⁷

(c) Documentary evidence transmitted from another state to a court of the Commonwealth by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.²⁸

Article 2.

Jurisdiction.

§ [37.2-1037](#). Definitions; significant connection factors.

(a) In this article:

“Emergency” means a circumstance that likely will result in substantial harm to a respondent’s health, safety, or welfare,²⁹ and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent’s behalf.

“Home state” means the state in which 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 a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present,

²⁷ This works well in Chapter 8 and 10 proceedings on the issue of civil commitment and medical consent. See Va. Code § 37.2 -804.1 and Va. Code § 37.2 -1109.

²⁸ The rule says nothing of the hearsay objection, a different rule altogether. “[T]he best evidence rule requires that, to prove the contents of a document, the ‘original must be produced unless it be shown that the original is unavailable, in which case secondary evidence may be introduced.’” *Mostyn v. Commonwealth*, 14 Va. App. 920, 923, 420 S.E.2d 519, 521 (1992) (quoting *Myrick v. Commonwealth*, 13 Va. App. 333, 339, 412 S.E.2d 176, 179 (1991)). However, if a copy can properly be treated as a ‘duplicate original,’ the copy is admissible without regard to the availability of the original. See *Petit Frere v. Commonwealth*, 19 Va. App. 460, 466-67, 452 S.E.2d 682, [Page 580] 686-87 (1995) (treating a photocopy as a duplicate original and admitting it into evidence without requiring proof that the original was unavailable); 4 John H. Wigmore, *Wigmore on Evidence* 548 (1972) (‘[A] duplicate . . . may be used without accounting for the nonproduction of [the original].’) (emphasis omitted). This Court has noted that proper circumstances exist to treat a photocopy as a duplicate original when the accuracy of the photocopy is not disputed. See *Frere*, 19 Va. App. at 466, 452 S.E.2d at 686-87 (emphasizing that the appellant never asserted that the photocopy was inaccurate); *Myrick*, 13 Va. App. at 339, 412 S.E.2d at 179; *Wigmore on Evidence* at 434 (‘Production of the original may be dispensed with, in the trial court’s discretion, whenever in the case in hand the opponent does not bona fide dispute the contents of the document and no other useful purpose will be served by requiring production.’) (emphasis omitted).” *Allocca v. Allocca*, 23 Va. App. 571,579-580, 478 S.E.2d 702 (1996)

²⁹ Note “welfare” is broader than mere health and safety; one’s health or safety would mean a protective proceeding to prevent a person incapacitated by reason of bi-polar disorder from taking his own life while depressed; his welfare could be protected by removing the checkbook when he wants to buy ten cars today for the guys in the bar. **As noted below, unless Virginia is demonstrably the home state or the significant-contact state, a Virginia court cannot enter a generally applicable protective proceeding order (for conservatorship); the special jurisdiction which is predicated on health, safety or welfare does not allow a conservatorship order for anything other than real estate in Virginia or tangible personal property in Virginia.**

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including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.³⁰

“Significant-connection state” means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(b) In determining under § [37.2-1039](#) and subsection (e) of § [37.2-1046](#) whether a respondent has a significant connection with a particular state, the court shall consider³¹:

1. The location of the respondent’s family and other persons required to be notified of the guardianship or protective proceeding;
2. The length of time the respondent **at any time** was physically present in the state and the duration of any absence;
3. The location of the respondent’s property;³² and
4. The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver’s license, social relationship, and receipt of services.

§ [37.2-1038](#). Exclusive basis.

This article provides the exclusive jurisdictional basis for a court of the Commonwealth to appoint a guardian or issue a protective order for an adult.

§ [37.2-1039](#). Jurisdiction.

A court of the Commonwealth has jurisdiction to appoint a guardian or issue a protective order for a respondent [**ONLY**] if:

1. The Commonwealth is the respondent’s **home state**;

³⁰ There are people who have no home state. The writer has had experience with cases, often involving PTSD veterans, who have no home state. They ride the modern rails – busses – and come to rest in different places, often served by V.A. hospitals, and enter into treatment for brief intervals. They are poor historians and there will not be place in which they have at any point within the six or twelve months set down roots for six consecutive months.

³¹ If the Court can get this information from anyone. The barriers this will raise in ordinary cases of dementia and other forms of mental illness, especially involving substance abuse, will be enormous.

³² Property is not defined in the Act; thus it must subsume real estate and personal property as a part of the estate of the Respondent. Va. Code § 37.2 -1000. It would thus include intangible personal property; where is the property interest “located” in respect of a stock security? A bank account - in a national bank or a regional bank? A partnership? And all others, *ad astra*?

2. On the date the petition is filed, the Commonwealth is a **significant-connection state** **and:**

(A) The respondent **does not have a home state**³³ or a court of the respondent's home state has declined to exercise jurisdiction because the Commonwealth is a more appropriate forum; **or**

(B) The respondent has a home state, a petition for an appointment or order **is not pending in a court of that state or another significant-connection state,**³⁴ and, before the court makes the appointment or issues the order:

(i) A petition for an appointment or order **is not filed**³⁵ in the respondent's home state;

(ii) An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding;³⁶ and

(iii) The court in the Commonwealth concludes that it is an appropriate forum under the factors set forth in § [37.2-1042](#);

3. The Commonwealth does not have jurisdiction under either subdivision 1 or 2, the respondent's home state and **all significant-connection states have declined to exercise jurisdiction because the Commonwealth is the more appropriate forum,**³⁷ and jurisdiction in the Commonwealth is consistent with the constitutions of the Commonwealth and the United States;³⁸ or

³³ This statute requires the petitioner to allege and prove a negative (here, there is no home state), or that *any* court in the home state (under the law of that state, which every Virginia practitioner will presumably have to know) has been presented with and declined to hear a proceeding in that home state.

³⁴ This presents even more trouble. The petitioner must allege and prove negatives, here at two different times, and for an almost unlimited constellation of foreign sovereigns. First, at the time of the filing, that no petition is pending in either the home state or in any foreign sovereign state which *could* be a significant-contact state. Next, for the home state and each of the unknown (and the writer suggests, unknowable) significant-contact states, no other foreign sovereign has pending before it a petition for relief, or has entered an order for relief. *Sic itur ad astra.*

³⁵ *Id.*

³⁶ As noted above, the Virginia lawyer representing a petitioner when Virginia is not the home state (if that is possible to discern) must identify the Respondent's home state, secure an opinion from local counsel there as to the tribunal(s) in which a proceeding could be filed, and then determine the persons entitled to notice under the law of the foreign sovereign. But that is not enough; unfortunately, the operative phrase upon which Virginia's jurisdiction hangs depends on whether an objection is *filed*, not whether it has been received by the petitioner. It is thus possible that an objection is filed in some tribunal in the Respondent's home state, but notice of the objection is not received by the Virginia petitioner before entry of the Virginia order. Some comfort exists by reason of Va. Code § 37.2 -1004 (A), which limits the necessity of service of the pleadings to the Respondent, and allows for the Court to dispense with notice to other persons entitled to be noticed, at least where the petitioner alleges that the known family members consistent with Virginia law have been notified to the extent possible.

³⁷ See discussion above regarding what is, and what may be, a significant-contact state. Unless Virginia is the home state, the UAGPPJA could be read to require counsel to determine all possible foreign sovereigns which could be

³⁸ In other words, there is no home state and every foreign sovereign has made it clear that it was the Respondent of whom the ancient poet gave tongue, "nobody likes me, everybody hates me, guess I'll go eat worms."

4. The requirements for special jurisdiction under § [37.2-1040](#) are met.

§ [37.2-1040](#). Special jurisdiction.

(a) A court of the Commonwealth lacking jurisdiction under the provisions of § [37.2-1039](#) has special jurisdiction to do any of the following:

1. Appoint a **guardian in an emergency for a term not exceeding 90 days for a respondent who is physically present in the Commonwealth**;

2. Issue a protective order with respect to **real or tangible personal property located in the Commonwealth**;³⁹ or

3. Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to § [37.2-1046](#).

(b) If a petition for the appointment of a guardian in an emergency is brought in the Commonwealth and the Commonwealth was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

§ [37.2-1041](#). Exclusive and continuing jurisdiction.

Except as otherwise provided in § [37.2-1040](#),⁴⁰ a court that has appointed a guardian or issued a protective order consistent with this Act has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

§ [37.2-1042](#). Appropriate forum.

³⁹ These orders are slim reeds. A non-resident Respondent who has suffered a stroke in a Virginia hospital, and whose family cannot be located, or having been located, refuse to cooperate with his discharge, will find scant help in them, and the caretaker hospital, even less. Yes, the hospital can secure a guardianship for medical consent to treat, but no conservator will have power to access the intangible personal property of the Respondent (or to have access to it) in order to file for Medicaid or other entitlements. The conservator would have access to the wallet, but not the bills, notes, and winning lottery tickets in its maw; if Virginia real estate were in the estate, once under contract for sale, he would have the duty of its sale but no power to collect and apply its proceeds. "The doctrine of equitable conversion is a pure creature of equity, unknown to the law, and is a mere incident or application of the maxim that equity treats that as done which ought to be done. Under it, land which is directed to be converted into money is treated as money, and money which is directed to be invested in land is treated as land. * *.' *Moore v. Kernachan*, 133 Va. 206, 211, 112 S.E. 632, 633; *Marcy v. Graham*, 142 Va. 285, 293, 128 S.E. 550, 553." *Robinson v. Lee*, 205 Va. 363, 366-366, 136 S.E.2d 860 (1964).

⁴⁰ What the Act takes away here is restored by Va. Code § 37.2 -1030, which holds that unless the Virginia Court enters an order accepting a foreign order with other language, the Virginia Court will have the power to modify, revoke, and otherwise supervise the conservatorship / guardianship on the petition of any person (or sua sponte) as permitted in Va. Code § 37.2 -1012.

(a) A court of the Commonwealth having jurisdiction under § [37.2-1039](#) to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(b) If a court of the Commonwealth declines to exercise its jurisdiction under subsection (a), it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(c) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

1. Any expressed preference of the respondent;
2. Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;
3. The length of time the respondent was physically present in or was a legal resident of the Commonwealth or another state;
4. The distance of the respondent from the court in each state;
5. The financial circumstances of the respondent's estate;
6. The nature and location of the evidence;
7. The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;
8. The familiarity of the court of each state with the facts and issues in the proceeding;
and
9. If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

§ [37.2-1043](#). Jurisdiction declined by reason of conduct.

(a) If at any time a court of the Commonwealth determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court may:

1. Decline to exercise jurisdiction;
2. Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the

respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

3. Continue to exercise jurisdiction after considering:

(A) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(B) Whether it is a more appropriate forum than the court of any other state under the factors set forth in subsection (c) of § [37.2-1042](#); and

(C) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of § [37.2-1039](#).

(b) If a court of the Commonwealth determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against the Commonwealth or a governmental subdivision, agency, or instrumentality of the Commonwealth unless authorized by law other than this Act.

§ [37.2-1044](#). Notice of proceeding.

If a petition for the appointment of a guardian or issuance of a protective order is brought in the Commonwealth and the Commonwealth was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of the Commonwealth, notice of the petition shall be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice shall be given in the same manner as notice is required to be given in the Commonwealth.

§ [37.2-1045](#). Proceedings in more than one state.

Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in the Commonwealth under subdivision (a) (1) or (a) (2) of § [37.2-1040](#), if a petition for the appointment of a guardian or issuance of a protective order is filed in the Commonwealth and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

1. If the court in the Commonwealth has jurisdiction under § [37.2-1039](#), it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to § [37.2-1039](#) before the appointment or issuance of the order.

2. If the court in the Commonwealth does not have jurisdiction under § [37.2-1039](#), whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in the Commonwealth shall dismiss the petition unless the court in the other state determines that the court in the Commonwealth is a more appropriate forum.

Article 3.

Transfer of Guardianship or Conservatorship.

§ [37.2-1046](#). Transfer of guardianship or conservatorship **to** another state.

(a) A guardian or conservator appointed in the Commonwealth may petition the court to transfer the guardianship or conservatorship to another state.

(b) Notice of a petition under subsection (a) shall be given to the persons that would be entitled to notice of a petition in the Commonwealth for the appointment of a guardian or conservator.

(c) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection (a).

(d) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(1) The incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(2) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and

(3) Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

(e) The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the

other state **if the court is satisfied that the conservatorship will be accepted by the court**⁴¹ of the other state and the court finds that:

(1) The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in subsection (b) of § [37.2-1037](#);

(2) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(3) Adequate arrangements will be made for management of the protected person's property.⁴²

(f) The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

1. A provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to § [37.2-1047](#); and

2. The documents required to terminate a guardianship or conservatorship in the Commonwealth.

§ [37.2-1047](#). Accepting guardianship or conservatorship transferred from another state.

(a) To confirm transfer of a guardianship or conservatorship transferred to the Commonwealth under provisions similar to § [37.2-1046](#), the guardian or conservator shall petition the court in the Commonwealth to accept the guardianship or conservatorship. The petition shall include a certified copy of the other state's provisional order of transfer.

(b) Notice of a petition under subsection (a) shall be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and the Commonwealth. The notice shall be given in the same manner as notice is required to be given in the Commonwealth.

⁴¹ Presumably this is the communications between judges (or persons claiming to be judges) taking place among the judges.

⁴² Virginia creditors are not entitled to consideration in the decision to transfer the Virginia incapacitated or protected person to another state. The nursing home / hospital / milk man will have to travel to Alaska or (as has been the case in two of the writer's more colorful cases), Korea and Mexico, or lick their wounds. In cases of substance, they will sharpen their knives for the negligently endorsed contract or supervised incapacitated person to impose liability on the hapless fiduciary. See Va. Code § 37.2 -1020 (A), pertaining to a guardian's liability for the incapacitated person's tort; Va. Code § 37.2-1022 (D), pertaining to the general rule that the conservator is personally liable for contracts he enters into on behalf of the protected person *unless* he reveals the representative capacity and identifies the estate in the contract.

(c) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (a).

(d) The court shall issue an order provisionally granting a petition filed under subsection (a) unless:

(1) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(2) The guardian or conservator is ineligible for appointment in the Commonwealth.

(e) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in the Commonwealth upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to § [37.2-1046](#) transferring the proceeding to the Commonwealth.

The final order accepting transfer of a guardianship or conservatorship shall contain a determination of whether the guardianship or conservatorship needs to be modified to conform to the law of the Commonwealth.

(f) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

(g) The denial by a court of the Commonwealth of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in the Commonwealth under Chapter 10 (§ [37.2-1000](#) et seq.) if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

Article 4.

Registration and Recognition of Orders from Other States.

§ [37.2-1048](#). Registration of guardianship orders.

If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in the Commonwealth, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in the Commonwealth by filing as a foreign judgment in a court, in

any appropriate county or city⁴³ of the Commonwealth, certified copies of the order and letters of office.⁴⁴

§ [37.2-1049](#). Registration of protective orders.

If a conservator has been appointed in another state and a petition for a protective order is not pending in the Commonwealth, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in the Commonwealth by filing as a foreign judgment in a court of the Commonwealth, in any county or city in which property belonging to the protected person is located, certified copies of the order and letters of office and of **any bond**.⁴⁵

§ [37.2-1050](#). Effect of registration.

(a) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in the Commonwealth all powers authorized in the order of appointment except as prohibited under the laws of the Commonwealth, including maintaining actions and proceedings in the Commonwealth and, if the guardian or conservator is not a resident of the Commonwealth, subject to any conditions imposed upon nonresident parties.

(b) A court of the Commonwealth may grant any relief available under this Act and other law of the Commonwealth to enforce a registered order.

Article 5.

Miscellaneous Provisions.

§ [37.2-1051](#). Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ [37.2-1052](#). Relation to electronic signatures in global and national commerce act.

This Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic

⁴³ The “appropriate” county or city is likely the county or city where the incapacitated or protected person will reside. The act does not specify the same.

⁴⁴ The Uniform Enforcement of Foreign Judgments Act, §§ 8.01-465.1 — 8.01-465.5, provide the procedure for filing such orders.

⁴⁵ See above regarding the Virginia requirements for bond with surety in every case in which there is more than \$15,000 at issue.

delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).⁴⁶

III. Forms You Will Need To Update.⁴⁷

A. Data form to determine where the Respondent has resided for the twelve months before the petition is to be filed.

B. Complaint jurisdictional clause.

The writer suggests an alternate pleading allegation⁴⁸ which will recite that Virginia is the home state, unless the Respondent has not lived in Virginia during and for the time required; but if Respondent did not, Virginia is a significant-contact state because the Respondent is here, and all that is known of him is here, and no objection has been received by counsel.

Suggestion:

_____. On the date this petition is filed, this Court has jurisdiction to appoint a plenary conservator, a limited guardian, or both, for _____ because, to the best knowledge of the Petitioner, pursuant to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act:

A. this Commonwealth is the home state of _____ or, if it is not,

B. this Commonwealth is a significant connection state of _____ and _____ does not have a home state or,

C. this Commonwealth is not the home state of _____, she has a home state other than this Commonwealth, but a court in such state has declined to exercise jurisdiction because the Commonwealth is a more appropriate forum or, if not, no petition for an appointment or order in a guardianship or protective proceeding is pending in a court in such state or any other significant-connection state.

Without limitation of the preceding allegations of this numbered paragraph, Petitioner has been served with no notice of any guardianship or protective proceeding pending in this Commonwealth or any other jurisdiction on the date this proceeding is commenced.

C. Guardian ad litem order.

If the guardian *ad litem* does not include a specific provision requiring the guardian *ad litem* to report as to jurisdiction, to avoid delay at the hearing,

⁴⁶ Sturdier lads and lassies than the writer will find stimulation in the unexpurgated joy of this fascinating topic at this link, <http://uscode.house.gov/download/pls/15C96.txt>.

⁴⁷ It's jurisdictional. **It's important.** Failure to have jurisdiction means the acts of the client conservator / guardian are void; acts predicated upon consent or direction of the void appointment are, one speculates, equally void.

⁴⁸ Rules of the Supreme Court of Virginia, Rule 1:4 (k), being mindful of brevity, (j).

consider inserting a provision instructing the guardian *ad litem* to determine whether Virginia is the home state and if not whether she is the significant-contact state.⁴⁹

D. The Order.

A finding that Virginia is the home state or if not, the significant-contact state based upon all of the evidence, and that at the time of the filing, and at the time of the entry of the order, no objection has been received by any person entitled to object to the exercise of jurisdiction in Virginia.

Suggested sample:

#. On the date the complaint and petition herein was filed, and at all times since, this Commonwealth has had jurisdiction to appoint a limited guardian and plenary conservator for the person and estate of _____ pursuant to the provisions of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.



Wreck of U.S. Huron⁵⁰

⁴⁹ Note that the extant duty of the guardian *ad litem* to report as to jurisdiction at Va. Code § 37.2 -1003 (C)(i) already requires this result.

⁵⁰ Looking from a rented cottage awash in sand and sun, an easy walk to the site of *The Wreck of the Huron*, a proving ground of heroism by the writer's [forebears](#), his taste for bookish things has given over to the briny. The succor of family and friends at the 6th annual Elder Law Retreat awaits in the easy Spring of the Outer Banks. The

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sun has crested the yardarm, God is in His right and holy Heaven, the lark (and gulls) are on the wing, and the sound of countless snails munching sea oats and preparing for whoopee beckon. *Image:* USS Huron (1875-1877); Line engraving from "Fag Ends", 1881, depicting the ship's loss near Nag's End, North Carolina, on 24 November 1877; U.S. Naval Historical Center Photograph, with grateful acknowledgment to <http://www.wrecksite.eu/imgBrowser.aspx?2277>.

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