

CHAPTER ~~10.1~~ 21.  
UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS  
JURISDICTION ACT.

**Drafting note: Existing Chapter 10.1 is based on the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act promulgated by the National Conference of Commissioners on Uniform State Laws in 2007. Virginia enacted the Act in 2011. There is little variation between the language of the Act as promulgated and as adopted in Virginia.**

Article 1.

General Provisions.

~~§ 37.2-1031. Short title.~~

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

**Drafting note: This section is deleted as unnecessary because of the title-wide application of § 1-244, which states that the caption of a subtitle, chapter, or article serves as a short title citation.**

~~§ 37.2-1032~~ 64.2-2100. 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 20~~ (~~§ 37.2-1000~~ 64.2-2000 et seq.).

"Conservatorship order" means an order appointing a conservator.

"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.

"Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under Chapter ~~10 20~~ (~~§ 37.2-1000~~ 64.2-2000 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 conservatorship~~ order has been issued.

~~"Protective order" means an order appointing a conservator.~~

"Protective proceeding" means a judicial proceeding in which a ~~protective conservatorship~~ 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 conservatorship~~ 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.

**Drafting note: The term "protective order," which is defined as an "order appointing a conservator," has been replaced with the term "conservatorship order" in order to avoid confusion with how the term "protective order" is typically used in the Code, i.e., an order issued to protect individuals from harassment. Moreover, current Virginia law does not refer to an order appointing a conservator as a protective order, but as an "order appointing a . . . conservator" (Va. Code § 37.2-1009) or a "conservatorship order" (Va. Code § 37.2-1022). There are also technical changes.**

~~§ 37.2-1033~~ 64.2-2101. International application of ~~Act~~ chapter.

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 ([§ 64.2-2105 et seq.](#)), 3 ([§ 64.2-2114 et seq.](#)), and 5 ([§ 64.2-2119 et seq.](#)).

**Drafting note: Technical changes.**

~~§ 37.2-1034~~ [64.2-2102](#). Communication between courts.

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

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

**Drafting note: Technical changes.**

~~§ 37.2-1035~~ [64.2-2103](#). Cooperation between courts.

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

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)~~ 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, a court of the Commonwealth has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

**Drafting note: Technical changes.**

~~§ 37.2-1036~~ [64.2-2104](#). Taking testimony in another state.

~~(a)~~ 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)~~ 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 cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

~~(e)~~ 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.

**Drafting note: Technical changes.**

Article 2.

Jurisdiction.

§ ~~37.2-1037~~ 64.2-2105. Definitions; significant connection factors.

~~(a)~~ A. In this article:

"Emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare, 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 conservatorship~~ order or the appointment of a guardian; 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.

"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)~~ B. In determining under § ~~37.2-1039~~ 64.2-2107 and subsection ~~(e)~~ E of § ~~37.2-1046~~ 64.2-2114 whether a respondent has a significant connection with a particular state, the court shall consider:

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; 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.

**Drafting note: Technical changes.**

§ ~~37.2-1038~~ 64.2-2106. Exclusive basis.

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

**Drafting note: Technical changes.**

§ ~~37.2-1039~~ 64.2-2107. Jurisdiction.

A court of the Commonwealth has jurisdiction to appoint a guardian or issue a ~~protective~~ conservatorship order for a respondent if:

1. The Commonwealth is the respondent's home state;
2. On the date the petition is filed, the Commonwealth is a significant-connection state

and:

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

~~(B)~~ 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, and, before the court makes the appointment or issues the order:

~~(i)~~ (1) A petition for an appointment or order is not filed in the respondent's home state;

~~(ii)~~ (2) An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

~~(iii)~~ (3) The court in the Commonwealth concludes that it is an appropriate forum under the factors set forth in § ~~37.2-1042~~ 64.2-2110;

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, and jurisdiction in the Commonwealth is consistent with the ~~constitutions~~ Constitutions of ~~the Commonwealth~~ Virginia and the United States; or

4. The requirements for special jurisdiction under § ~~37.2-1040~~ 64.2-2108 are met.

**Drafting note: Technical changes.**

§ ~~37.2-1040~~ 64.2-2108. Special jurisdiction.

~~(a)~~ A. A court of the Commonwealth lacking jurisdiction under the provisions of § ~~37.2-1039~~ 64.2-2107 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~~ conservatorship order with respect to real or tangible personal property located in the Commonwealth; 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~~ 64.2-2114.

~~(b)~~ 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.

**Drafting note: Technical changes.**

§ ~~37.2-1041~~ 64.2-2109. Exclusive and continuing jurisdiction.

Except as otherwise provided in § ~~37.2-1040~~ 64.2-2108, a court that has appointed a guardian or issued a ~~protective conservatorship~~ order consistent with this ~~Act~~ chapter 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.

**Drafting note: Technical changes.**

§ ~~37.2-1042~~ 64.2-2110. Appropriate forum.

~~(a)~~ A. A court of the Commonwealth having jurisdiction under § ~~37.2-1039~~ 64.2-2107 to appoint a guardian or issue a ~~protective conservatorship~~ 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)~~ B. If a court of the Commonwealth declines to exercise its jurisdiction under subsection ~~(a)~~ 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 conservatorship~~ order be filed promptly in another state.

~~(c)~~ 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.

**Drafting note: Technical changes.**

§ ~~37.2-1043~~ 64.2-2111. Jurisdiction declined by reason of conduct.

~~(a)~~ A. If at any time a court of the Commonwealth determines that it acquired jurisdiction to appoint a guardian or issue a ~~protective conservatorship~~ 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 to 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 conservatorship~~ order is filed in a court of another state having jurisdiction; or

3. Continue to exercise jurisdiction after considering:

~~(A)~~ 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)~~ b. Whether it is a more appropriate forum than the court of any other state under the factors set forth in subsection ~~(e)~~ C of § ~~37.2-1042~~ 64.2-2110; and

~~(C)~~ 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~~ 64.2-2107.

~~(b)~~ B. If a court of the Commonwealth determines that it acquired jurisdiction to appoint a guardian or issue a ~~protective conservatorship~~ 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 ~~Aet~~ chapter.

**Drafting note: Technical changes.**

§ ~~37.2-1044~~ 64.2-2112. Notice of proceeding.

If a petition for the appointment of a guardian or issuance of a ~~protective conservatorship~~ 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.

**Drafting note: Technical changes.**

§ ~~37.2-1045~~ 64.2-2113. Proceedings in more than one state.

Except for a petition for the appointment of a guardian in an emergency or issuance of a protective conservatorship order limited to property located in the Commonwealth under subdivision ~~(a) (1) A 1~~ or ~~(a) (2) A 2~~ of § ~~37.2-1040 64.2-2108~~, if a petition for the appointment of a guardian or issuance of a protective conservatorship 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 64.2-2107~~, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to § ~~37.2-1039 64.2-2107~~ before the appointment or issuance of the order.

2. If the court in the Commonwealth does not have jurisdiction under § ~~37.2-1039 64.2-2107~~, 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.

**Drafting note: Technical changes.**

### Article 3.

#### Transfer of Guardianship or Conservatorship.

§ ~~37.2-1046 64.2-2114~~. Transfer of guardianship or conservatorship to another state.

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

~~(b) B.~~ Notice of a petition under subsection ~~(a) 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) 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) A~~.

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

~~(2) 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) 3.~~ Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.



~~(e)~~ 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 of the other state and the court finds that:

~~(1)~~ 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)~~ B of § ~~37.2-1037~~ 64.2-2105;

~~(2)~~ 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)~~ 3. Adequate arrangements will be made for management of the protected person's property.

~~(f)~~ 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~~ 64.2-2115; and

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

**Drafting note: Technical changes.**

§ ~~37.2-1047~~ 64.2-2115. Accepting guardianship or conservatorship transferred from another state.

~~(a)~~ A. To confirm transfer of a guardianship or conservatorship transferred to the Commonwealth under provisions similar to § ~~37.2-1046~~ 64.2-2114, 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)~~ B. Notice of a petition under subsection ~~(a)~~ 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 conservatorship~~ 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.

~~(c)~~ 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)~~ A.

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

~~(1)~~ 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)~~ 2. The guardian or conservator is ineligible for appointment in the Commonwealth.

~~(e)~~ 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~~ 64.2-2114 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~~ laws of the Commonwealth.

~~(f)~~ 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)~~ 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 20~~ (~~§ 37.2-1000~~ 64.2-2000 et seq.) if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

**Drafting note: Technical changes.**

#### Article 4.

##### Registration and Recognition of Orders from Other States.

~~§ 37.2-1048~~ 64.2-2116. 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 city of the Commonwealth, certified copies of the order and letters of office.

**Drafting note: No change.**

~~§ 37.2-1049~~ 64.2-2117. Registration of ~~protective conservatorship~~ orders.

If a conservator has been appointed in another state and a petition for a ~~protective conservatorship~~ 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 conservatorship~~ 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.

**Drafting note: Technical changes.**

~~§ 37.2-1050~~ 64.2-2118. Effect of registration.

~~(a)~~ A. Upon registration of a guardianship or ~~protective conservatorship~~ 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)~~ B. A court of the Commonwealth may grant any relief available under this ~~Act~~ chapter and other ~~law~~ laws of the Commonwealth to enforce a registered order.

**Drafting note: Technical changes.**

#### Article 5.

##### Miscellaneous Provisions.

§ ~~37.2-1051~~ 64.2-2119. 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.

**Drafting note: No change.**

§ ~~37.2-1052~~ 64.2-2120. Relation to electronic signatures in global and national commerce act.

This ~~Act~~ chapter 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 delivery of any of the notices described in ~~Section §~~ 103(b) of that act, (15 U.S.C. ~~Section §~~ 7003(b)).

**Drafting note: Technical changes.**