

TRIBAL CODE
CHAPTER 33:
GUARDIANSHIPS

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HISTORY NOTE:

Current Ordinance:

Adopted August 18, 1992, Tribal Resolution No. 8-4-92-A, effective immediately.

Approved by the Area Director of the Bureau of Indian Affairs per Tribal Constitution Article VII, Sections 1 (f) and 2 on September 24, 1992.

Effective date: September 24, 1992.

Reenacted as part of the Tribal Code July 5, 1995, Resolution No. 95-89.

TRIBAL CODE
CHAPTER 33:
GUARDIANSHIPS

33.101 Purpose.

The Tribal Court, when it appears necessary in order to protect the best interests of a person, may appoint a guardian for the person and/or his or her property.

33.102 Jurisdiction.

(1) As used in this Chapter, the term, person means any person subject to the civil jurisdiction of the Tribal Code. Any such person, shall be subject to the provisions of this Chapter.

(2) By accepting appointment, a guardian personally submits to the jurisdiction of the Tribal Court in any proceeding relating to the guardianship that may be instituted by any interested person.

33.103 Types of Guardianship.

The Tribal Court may appoint a guardian of the person, which entails the responsibility for the care and custody of the person. The Tribal Court may appoint a guardian of the estate of a person, which entails responsibility for the administration and management of the person's property. Unless the Court appoints a separate individual as guardian of the estate, the guardian of the person shall also be the guardian of the estate.

33.104 Grounds for Appointment of Guardian.

The Tribal Court may appoint a guardian for an adult if:

- (1) the person is alleged to be incapable of caring for himself and such incapability is a significant impediment to his health and well-being, and such incapability is not a temporary condition; or
- (2) for purposes of appointment of a guardian of the estate, the person is alleged to be unable or unwilling to competently administer his financial affairs.

33.105 Standing to File Petition.

Any person, including tribal social services agencies, may file a petition for guardianship.

33.106 Contents of Guardianship Petition.

- (1) The petition for guardianship shall include the following, as best the petitioner is able to ascertain in good faith:
 - (a) the full name, sex, date and place of birth, residence, and Tribal affiliation of the proposed ward;
 - (b) the full name, address, age, relationship if any to the proposed ward, and interest if any in the proceeding of the petitioner;
 - (c) the names and addresses of other persons known to have an interest in the petition for appointment of guardian; if any such interested person is deceased, the petition shall include the relationship to the proposed ward and the date of death;
 - (d) the basis for the Court's jurisdiction;
 - (e) a statement of the reason(s) that the appointment of guardian is sought and specific examples of the person's conduct that demonstrate the need for the appointment of a guardian; whether the petitioner seeks the appointment of a guardian of the person, guardian of the estate, or both; and whom the petitioner recommends or seeks to have appointed as such guardian or guardians; and
 - (f) a full description and statement of value of the proposed ward's assets and liabilities, with an estimate of the value of any property owned, possessed or in

which the proposed ward has an interest, including any income and receivables to which the proposed ward is entitled.

(2) All petitions must be signed and dated by the petitioner, and must be notarized or witnessed by the Clerk of the Tribal Court.

33.107 Notice of Petition Filing.

A copy of the petition shall be mailed by the Clerk of the Tribal Court to all persons listed therein as having an interest in the matter, including the proposed ward.

33.108 Guardianship Report.

Upon the filing of a petition for guardianship, the Court shall immediately request that the Tribal Social Services Department or other qualified agency conduct a guardianship evaluation on the proposed guardian and the proposed ward. The resulting guardianship report shall contain all pertinent information necessary to assist the Court in determining the best interests of the proposed ward. The report shall be filed with the Court and a copy shall be provided to all parties who have received notice of the petition. The Court may order that a person alleged to be legally incapacitated be examined by a physician or mental health professional who shall submit a report to the Court.

33.109 Duration of Guardianship Appointment.

Unless specified otherwise in the Court's order of appointment, a guardian shall have the responsibilities of such position until the ward dies or until legally discharged by the Court.

33.110 Powers and Duties of a Guardian of the Person.

To the extent not inconsistent with any order of the Court, a guardian of the person has the following powers and duties:

(1) The guardian of the person is entitled to custody of the person of his ward and shall make provision for his ward's care, comfort and maintenance, and shall as appropriate to the ward's need, arrange for the ward's training, education, employment, rehabilitation or custodial care. The guardian shall take reasonable care of the ward's clothing, furniture, vehicles and other personal effects.

(2) The guardian of the person shall have authority to consent to any medical, legal, psychological or other professional care, counsel, treatment or service for the ward. The guardian may give any other consent or approval on the ward's behalf that may be required

or in the ward's best interest. The guardian may petition the Court for its concurrence in the consent or approval.

33.111 Liability of Guardian of the Person.

A guardian of the person, if he has acted within the limits imposed by this Chapter or the order of appointment or both, shall not be liable for damages to the ward or the ward's estate, merely due to the following actions of the guardian:

(1) authorizing or giving consent or approval necessary to enable the ward to receive legal, psychological, or other professional care, counsel, treatment, or service, in a situation in which damages result from the negligence of other acts of a third person; or

(2) authorizing medical treatment or surgery for his ward, if the guardian acted in good faith and was not negligent in providing the authorization.

33.112 Reimbursement of Guardian of the Person's Expenses.

A guardian of the person is entitled to reimbursement from the ward's estate for reasonable and proper expenditures incurred in the performance of his duties as guardian of the ward's person.

33.113 Reimbursement of Guardian by the Tribe.

The Court may order monthly reimbursement payments to the person or agency appointed as guardian of the person, provided that sufficient funds have been appropriated by the Tribal Board. Such payments must be used by the guardian for the sole purpose of covering expenses incurred in the care and custody of the ward and shall not be used for any other purpose. The use of such payment for any purpose other than that described in this Section shall subject the guardian to contempt of court proceedings and any other criminal or civil penalties provided by the Tribal Law and Order Code, Tribal Code Chs. 70 through 81.

33.114 Guardian of the Estate.

The Court may appoint a guardian of the property of award under such terms and conditions as the Court sets forth in its written order of appointment. The guardianship may

cover all property or it may be limited to only specific property or a specific legal action, as set forth in the written order. A limited guardianship person may also include guardianship of the ward's property, if set forth in the written order.

33.115 Bond of Guardian of the Estate.

The Court may require a guardian of the estate to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it shall specify. Unless otherwise directed, the bond shall be in the amount of the aggregate capital value of the property of the estate.

33.116 Powers of Guardian of the Estate.

The guardian of the property has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the ward's estate to accomplish the desired result of administering the ward's best interest, including but not limited to the following specific powers:

- (1) take possession, in the ward's name, all the ward's property (estate);
- (2) receive assets due the ward from any source;
- (3) maintain any appropriate action or proceeding to obtain support to which the ward is legally entitled, to recover possession of any of the ward's property, to determine the title thereto, or to recover damages for any injury done to any of the ward's property, and to compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle any claims in favor of or against the ward;
- (4) abandon or relinquish all rights in any property when, in the guardian's opinion, acting reasonably and in good faith, it is valueless, or is so encumbered or is otherwise in such condition that it is of no benefit or value to the ward or his estate;
- (5) vote share of stock or other securities in person or by general or limited proxy, and to pay sums chargeable or accruing against or on account of securities owned by the ward;
- (6) insure the ward's assets against damage or loss, at the expense of the ward's estate;
- (7) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise;

(8) expend estate income on the ward's behalf and to petition the Court for prior approval of expenditures from estate principal; provided that neither the existence of the estate or guardian's authority to make expenditures shall terminate or suspend the legal duty that a parent or other person may have to support and provide for the ward;

(9) pay from the ward's estate necessary expenditures of administering the estate;

(10) employ persons, such as attorneys, auditors, investment advisors, appraisers, or agents to advise or assist the guardian in the performance of his duties as guardian of the estate;

(11) continue any business operation in which the ward was engaged, where such continuation is reasonably necessary to preserve the value, including good will, of the ward's interest in such business;

(12) acquire, retain and sell every kind of investment, including but not limited to bonds, debentures, and other corporate or governmental obligations; stocks, preferred or common; real estate mortgages; shares in building and loan associations or savings and loan associations; annual premium or single premium life, endowment, or annuity contracts; and securities of any management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as it may be from time to time amended;

(13) without a Court order, lease any of the ward's real estate for a term of not more than three years, or to sell, lease, or exchange any of the ward's personal property including securities; provided that the aggregate value of all items of the ward's tangible personal property sold without Court order over the duration of the estate shall not exceed three thousand dollars (\$3,000), and that any other sale in excess of such amount shall be conducted only with authorization from the Court as provided in Subsection 14;

(14) a guardian who is required under Subsection 13 shall, and any other guardian who so desires may, by motion to the Court, request issuance of an order to lease any of the ward's real estate or to sell any item or items of the ward's personal property. Notice of the motion and the time, date and place of hearing thereon shall be served upon all parties of record and upon such conditions as the Court may require; provided that the power granted in this Subsection shall not affect the power of the guardian to petition the Court for prior approval of expenditures from estate principal under Subsection 8;

(15) foreclose, as an incident to the collection of any bond, note or other obligation, any mortgage, deed of trust, or other lien securing such bond, note or other obligation, and to bid

in the property as such foreclosure sale, or to acquire the property by deed from the mortgagor or obligor without foreclosure; and to retain the property so bind in or taken over without foreclosure;

(16) borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewal, and security as the guardian shall deem advisable, including the power of a corporate guardian to borrow from its own banking department, for the purpose of paying debts, taxes, and other claims against the ward, and to mortgage, pledge or otherwise encumber such portion of the ward's estate as may be required to secure such loans(s); and

(17) execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the guardian of the estate.

33.117 Reports to the Court.

Any guardian shall make such reports to the Court, and with such frequency, as the Court shall require in its order of appointment, which shall detail all actions taken by the guardian on behalf of the ward from and after the last report.

33.118 Resignation of Guardian.

Any guardian who wishes to resign may apply in writing to the Court, setting forth the reasons for the desire to resign. If a guardian of the estate or a guardian both of the person and of the estate shall, at the time of the application, exhibit his final account for settlement, and if the Court is satisfied that the guardian has fully accounted, the Court may accept the resignation of the guardian and discharge him and appoint a successor guardian, but the guardian so discharged and his sureties are still liable for all matters connected with the guardianship before discharge.

33.119 Appointment of Successor Guardian.

Upon the removal, death, or resignation of a guardian, the Court shall appoint a successor guardian following the same criteria that would apply to the initial appointment of a guardian.

33.120 Removal of Guardian.

The Court shall remove as guardian any person who is found, after hearing, to have negligently managed the affairs of his ward, or has intentionally caused the ward personal or financial harm. Any person with personal information as to the actions of the guardian may petition for his removal.

33.121 Emergency Exercise of Power by the Court; Temporary Guardian for Legally Incapacitated Person.

If a person does not have a guardian, an emergency exists, and no other person appears to have authority to act in the circumstances, the Court shall provide reasonable notice consistent with the exigencies of the situation to the person alleged to be legally incapacitated and shall hold a hearing. Upon a showing that the person is legally incapacitated, the Court may exercise the power of a guardian, or appoint a temporary guardian.