

CHAPTER XI - GUARDIANSHIP

Section 1. *Definition of guardian*

A guardian is an adult appointed to take care of the person or property of another. A "guardian of the person" shall be responsible for the care and custody of a minor or incapacitated person. A "guardian of the property" shall receive and administer the assets of the minor or incapacitated person in a reasonable and prudent manner. The same person may, but does not have to, assume both roles. The guardian must exercise the highest fiduciary standard of care for the ward, and is subject to regulation by the Tribal Court. For the purposes of this chapter, the term "guardian" includes both guardians of the person and guardians of the property, unless otherwise noted.

Section 2. *Definition of interested person.*

Unless otherwise defined more specifically, an "interested person" means (a) the minor or allegedly incapacitated person who is the subject of a guardianship petition, (b) any person nominated as a guardian, (c) any spouse, parent, adult children, siblings, or next of kin of the minor or allegedly incapacitated person, (d) any adult person who has lived with the minor or allegedly incapacitated person for a period of six months preceding the filing of the petition for guardianship, (e) any attorney or advocate for any person listed in this section, (f) any governmental agency paying, intending to pay, or planning to pay benefits to the minor or incapacitated person, and (g) any other person designated by the Court.

Section 3. *Persons to whom guardians may be appointed.*

(a) **Minors.** A guardian may be appointed for any person subject to the jurisdiction of the Court who is under eighteen (18) years of age and who has no living parent, whose parents have had their parental rights suspended or terminated, or whose parents are unwilling or unable to exercise their parental rights.

(b) **Incapacitated persons.** A guardian may be appointed for any person subject to the jurisdiction of the Court who, for reasons other than being a minor, is unable to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for health, safety, or self-care, even with appropriate technological assistance.

Section 4. *How guardians are appointed.*

(a) **By will.** The last surviving parent or spouse of a minor or incapacitated person may designate in a will the guardian for the minor or incapacitated person. Upon determination by the Court that the will is valid, that the individual for whom a guardian has been designated is in fact a minor or incapacitated person, and that the person designated is willing to accept the responsibilities of guardianship, the Court shall appoint the person designated; provided that for good cause shown, the Court may decline to appoint the person designated.

(b) By Court appointment. Where a minor or incapacitated person is in need of a guardian, and no guardian is appointed pursuant to a valid will, the Court may appoint a guardian to promote the best interests of the minor or incapacitated person. The Court may appoint a guardian on its own motion or at the petition of an interested party. A petition from an interested party must explain in detail the reasons a guardian is required, identify the relationship of the petitioner to the minor or incapacitated person, and contain a list of any other potentially interested persons and their addresses. In appointing guardians the Court shall give preference to relatives of the individual for whom a guardian is to be appointed, and secondary preference to tribal members, except that the Court shall not be bound by such preferences if it finds that such relative(s) or tribal member(s) would not act in the best interests of the minor or allegedly incapacitated person.

(c) Hearing. In each case where a guardian is to be appointed, either by will, or by Court appointment, a hearing shall be held following notice to all interested persons as provided in Section 4 of Chapter X and Section 2 of this Chapter. The issues to be determined at the hearing are whether the individual is in need of a guardian as set forth in Section 3 and if so, who is to be appointed guardian.

(d) Competency and Voting Rights. The appointment of a guardian of the person or guardian of property under this Code shall not constitute evidence of the incompetence of the incapacitated person, nor shall it result in the deprivation of the incapacitated person's right to vote, unless incompetence and voting rights are expressly addressed by the Court.

Section 5. *Duties of a guardian.*

A guardian of the person shall be responsible for the care and custody of the minor or incapacitated person, and must take reasonable steps to provide for the needs, care, and support of the minor or incapacitated person. A guardian of the property shall, subject to conditions imposed by the Court, receive and administer the assets of the minor or incapacitated person in a reasonable and prudent manner, for the best interests of such person, and shall use such assets, and any proceeds from those assets, only for the support, care, health and educational needs of the minor or incapacitated person. Any other use of the assets of the minor or incapacitated person shall be grounds for immediate termination of the guardianship. The Court, in appointing a guardian, shall specify if the guardian is to serve as a guardian of the person, guardian of the property, or both.

Section 6. *Accounting by the guardian.*

Within 60 days after appointment, the guardian shall report to the Court on the condition of the minor or incapacitated person. A guardian shall report at least annually thereafter, and whenever order to report by the Court. A report must state:

(a) the current mental, physical, and social condition of the minor or incapacitated

person;

(b) the living arrangements and all addresses for the minor or incapacitated person during the reporting period; and

(c) the medical, vocational, educational, and other services provided to the minor or incapacitated person.

As a part of these reports, the Court shall also require that the guardian account for his/her handling of the ward's assets. The guardian must keep a written record of expenditures, investments, and any other transactions involving the assets of his/her ward, and to the extent possible must keep receipts and other papers as evidence of these transactions. All of the guardian's written record and all other papers shall be presented to the Court at the time of the reports required by this section.

Section 7. *Termination of guardianship.*

(a) Upon motion of any person, or the Tribe, the Court may provide notice under Section 4 of this Chapter 10 and hold a hearing on whether to terminate a guardianship. Grounds for termination shall include, but not be limited to, personal use by the guardian of the assets of the ward, failure to provide a reasonable level of care for the ward, and the marriage of a minor ward. Unless the guardianship is a voluntary guardianship under Section 8 of this Chapter, the person moving for termination of the guardianship bears the burden of showing, by clear and convincing evidence that such termination is in the best interest of the minor or incapacitated person.

(b) Guardianship, including for guardians of the property, and the control over the ward's assets, shall terminate automatically upon a minor being adopted, reaching age eighteen (18), or upon an incapacitated person being adjudged by the Court to have regained legal capacity.

Section 8. *Voluntary Guardianship.*

A custodial parent may voluntarily petition the Tribal Court to appoint a guardian for a minor or incapacitated person on a temporary basis. The terms of such a temporary appointment must be detailed in the petition. After notice and a hearing under Sections 4 of Chapter X and Section 3(c) of this Chapter, unless good cause is shown, such a petition shall be approved by the Court. A temporary guardianship under this section may be terminated by the occurrence of the condition(s) in the original petition, or earlier if the petitioning parent so requests. A request for termination under the previous sentence shall be approved by the Tribal Court after notice and a hearing under Section 4(c) of this Chapter, unless good cause is shown.

Section 9. *Liability of a Guardian.*

A guardian owes a duty of care as a fiduciary to the minor or incapacitated person. A guardian is not liable to a third person for acts of the minor or incapacitated person solely by reason of the relationship. A guardian of a minor or incapacitated person is not liable for injury to the minor or incapacitated person for injury resulting from the negligence or acts of a third person providing medical or other care or treatment, except to the extent that a parent would be liable under the circumstances.

Section 10. *Right to Counsel.*

A person who is the subject of a guardianship petition under this chapter has a right to be represented by counsel, and the Court, on its own motion or on a motion from any party, may appoint such counsel. Such a minor or allegedly incapacitated person shall pay the costs of counsel out of assets of, or available to the minor or allegedly incapacitated person. If the minor or incapacitated person is indigent, the Tribe shall pay the cost of counsel. Upon the filing of a petition for guardianship, the person who is the subject of the petition shall be notified in writing and by verbally, whether by telephone or in person, that they are the subject of a petition and shall be informed of the content of the petition and their right to counsel under this Section.

The Tribal Court may, in its discretion, order that a petitioning party pay the attorney's fees and court costs incurred by a person contesting a guardianship petition, if the Court finds that the petition has been filed in bad faith or is otherwise without factual or legal basis.

Section 11. *Bond.*

The Court, on its own motion, or on motion by any interested party, may require a guardian or guardian of property to post an appropriate bond to insure compliance with this title.