

# Choctaw Nation of Oklahoma Tribal Guardianship and Conservatorship Act

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**Article I. General Provisions.**

**Section 1-101. Title of Chapter**

This chapter shall be known as the Tribal Guardianship and Conservatorship Act of the Choctaw Nation (“Act”).

**Section 1-102. Force of Common Law and Effect of Tribal Custom.**

The common law, as modified by constitutional and statutory law, judicial decisions and the condition and wants of the people, shall remain in force in aid of the general statutes of the Choctaw Nation of Oklahoma; but the rule of the common law, the statutes in derogation thereof, shall be strictly construed, shall not be applicable to any general statute of the Choctaw Nation of Oklahoma; but all such statutes shall be liberally construed to promote their object. In matters not covered by statute, traditional tribal customs and usages may be applied.

**Section 1-103. Legislative Purpose and Construction.**

It is the purpose of this Act to promote the general welfare of the members of the Choctaw Nation of Oklahoma by establishing a system of general and limited guardianships for minors and for incapacitated and partially incapacitated persons which provides for the protection of their rights and the management of their estate. This Code shall be construed so as to protect

and ensure the political integrity, the economic security, and the health and welfare of the tribe.

Section. XXXX. Jurisdiction and Applicable Law.

- A. Territorial jurisdiction, subject matter jurisdiction and personal jurisdiction shall be in accordance with Title 12 of the laws of the Choctaw Nation of Oklahoma.
- B. Applicable law shall be in accordance with Title 12 of the laws of the Choctaw Nation of Oklahoma.

**Section 1-104. Definition of Guardian.**

A guardian is a person appointed by the court to take care of the person or property of another. The term “guardian” includes persons appointed as general and limited guardians of the person, general and limited guardians of the estate, and emergency guardians. It does not include persons appointed as guardian ad litem.

**Section 1-105. Definition of Ward.**

A person over whom a guardian is appointed and a person over whose property a guardian or conservator is appointed is called a “ward”.

**Section 1-106. Classifications of Guardians.**

Guardians are either:

- 1. General;
- 2. Limited; or
- 3. Emergency.

**Section 1-107. General, Limited and Emergency Guardian.**

- A. A general guardian is a guardian of the person or of the estate of the ward within this jurisdiction or of both such person and property.
- B. A limited guardian is a person authorized by the court to exercise limited powers over the person of the ward, or over the estate of the ward within this jurisdiction, or over both such person and property.

- C. An emergency guardian is a guardian appointed by the court as set forth in Section 3-115. The procedures for obtaining the appointment of an emergency guardian are set forth in Section 3-115.

### **Section 1-108. Definitions.**

As used in the Act:

1. "Abuse" means the intentional infliction of physical pain, injury, or mental anguish or the deprivation of food, clothing, shelter, or medical care to an incapacitated person, partially incapacitated person, or a minor by a guardian or other person responsible for providing these services;
2. "Account Holder" means a tribe or an individual who owns funds in a tribal or Individual Indian Money (IIM) account maintained by the Secretary;
3. "Account" means trust fund records that are maintained by the Secretary for the benefit of a tribe or a person;
4. "Account Name" means the name on the tribal trust or IIM account. The name on the IIM account must be the legal name;
5. "Account Holder or Payee Signature" means the signature, thumb print or mark of the account holder, custodial parent, legal guardian, emancipated minor, power of attorney, person who the BIA recognizes as having control and custody of a minor, per capita recipient or other payee. The signature, thumb print or mark must be notarized by a certified and bonded notary public or witnessed by a DOI employee. The DOI witness must clearly indicate "witness," include their title and phone number, and their signature must be dated the same date as the signature being witnessed. Before the DOI employee witnesses the signature, thumb print or mark, the signer must show verifiable photo identification to the DOI employee. Signatures of unrestricted account holders who are incarcerated in a state, county or local detention facility may be certified by the detention facility warden or other official pursuant to state law. Signatures of unrestricted account holders who are incarcerated in a federal facility may be certified by a federal prison warden, superintendent, or other federal prison official.
6. "Administrative Law Judge (ALJ)" means an employee of the Department of the Interior's Office of Hearings and Appeals (OHA) upon whom the Secretary has conferred the authority to conduct hearings in accordance with 43 CFR Part 4 Subpart D.

7. "Adult" means an individual who has reached eighteen (18) years of age, except when the individual's tribe has determined the age for adulthood to be older than eighteen (18) for access to tribal trust fund per capita proceeds.
8. "Adult in Need of Assistance" means an individual who is determined to be "incapable of managing or administering his or her own property," including his or her financial affairs either through a(n):
  - a. BIA administrative process that is based on a finding by a licensed medical professional or licensed mental health professional; or
  - b. Order or judgment of a court of competent jurisdiction;
9. "Agency" means the agency or field office or any other designated office in the BIA having jurisdiction over trust or restricted assets;
10. "Appeal Bond" means a type of bond that guarantees payment of an amount that may be owed after the completion of an appeal process;
11. "Beneficiary" means any individual who owns a trust or restricted asset or received an interest in a trust or restricted asset, including restricted property in a decedent's will;
12. "Bureau of Indian Affairs" or "BIA" mean the Bureau of Indian Affairs, Department of the Interior;
13. "Bureau of Indian Affairs (BIA) Officer –in-Charge" means BIA Regional Director, Superintendent, or Field Representative with proper delegations;
14. "Business Day" means Monday through Friday, excluding federal and Tribal holidays;
15. "Certified Collection Officer" means the DOI employee authorized to receive funds and deposit the funds into a Treasury General Account (TGA);
16. "Collection" means the process of enforcing lease, permit and contract payment provisions. It does not include the duties of a certified collection officer;
17. "Compact" or "Contract" means an agreement between a tribe and the DOI authorized under Title I and III of the 1988 amendments to Pub. L. 93-638, 42 Stat. 208, Pub. L. 100-472 and Pub. L. 103-413;
18. "Confidential Information" means medical records, physical, psychological or other evaluations of a ward or subject of the proceeding, initial and subsequent guardianship plans, reports of guardians, limited guardians and conservators submitted to the court in connection with a proceeding pursuant to the provisions of the Act;



19. "Conservator" means a guardian, protector or preserver. A Conservator is appointed by a court to manage the affairs of an incompetent person or to liquidate business or to manage the estate of one who is unable to manage property and business affairs effectively.
20. "Court" means the District Court or the Court of Appeals of the Choctaw Nation of Oklahoma.
21. "Court of Competent Jurisdiction" means a federal or tribal court with jurisdiction over the subject matter at issue; however, if there is no tribal court with jurisdiction, then a state court with jurisdiction;
22. "Day" means a calendar day, unless otherwise specified (such as a business day);
23. "Deciding Official" means the official with the delegated authority to make a decision on a probate matter, and may include a BIA Regional Director, Superintendent, or Field Representative, or Attorney Decision Maker (BIA deciding official), or an OHA, ALJ, or other OHA designated official (OHA deciding official);
24. "Delegated Official" means the designated official or DOI employee of the agency delegated the authority to conduct business on behalf of the agency;
25. "Department" or "DOI" means the Department of the Interior;
26. "Deposits" means receiving funds, ordinarily through a Federal Reserve Bank, for credit to a trust fund account;
27. "Distribution Plan" means the document submitted by the Secretary to Congress, together with all pertinent records, for the use or distribution of judgment funds;
28. "Emancipated Minor" means a person under eighteen (18) years of age who is married or who is determined by a court of competent jurisdiction to be legally able to care for himself or herself;
29. "Estate" means all the real and personal property of the ward;
30. "Evaluation" means a profession assessment of:
  - a. The ability of an adult to receive and evaluate information effectively or communicate decisions,

- b. The impact of any impairment of these skills on the capacity of the individual to meet the essential requirements for his/her physical health or safety, or to manage his/her financial resources, and
  - c. The services necessary to provide for the ward;
31. "Exploitation" means an unjust or improper use of the resources of an incapacitated person, a partially incapacitated person, or a minor for the profit or advantage, pecuniary or otherwise, of a person other than an incapacitated person, a partially incapacitated person, or a minor through the use of undue influence, coercion, harassment, duress, deception, false representation, or false pretense;
  32. "Freedom of Information Act (FOIA)" means the Freedom of Information Act, 5 U.S.C. Sec. 552(b);
  33. "Guardian of an Incapacitated Person" means a person who has been appointed by a court to serve as the guardian of an incapacitated person to assure that the essential requirements for the health and safety of said person are met, to manage the estate or financial resources of said person, or both;
  34. "Guardian of the Person" means a person who is legally responsible for the care and management of the individual but does not have custody, care or management of that individual's estate;
  35. "Guardian Ad Litem" means, with respect to a guardianship proceeding, a person appointed by the court to assist the subject of the proceeding in making decisions with regard to the guardianship proceeding, or to make said decisions when the subject of the proceeding is wholly incapable of making said decisions even with assistance;
  36. "Guardianship Plan" means the plan for the care and treatment of a ward, the plan for the management of the financial resources of a ward, or both;
  37. "Guardianship Proceeding" means a proceeding for the appointment of a Guardian, or for other orders regarding the condition, care or treatment or for the management of the financial resources of a Ward;
  38. "Home Agency" means the agency where the account holder is enrolled. If the account holder is not enrolled or is a member of more than one tribe, then the home agency will be the agency where the account holder has the strongest association;
  39. "Immediate Family" means a spouse, brother, sister, lineal ancestor, lineal descendant, or member of the household of an individual Indian landowner;

40. "Incapacitated Person" or "Incompetent Person" means a person eighteen (18) years of age or older:
- a. Who is impaired by reason of:
    - i. Mental illness;
    - ii. Mental retardation or developmental disability;
    - iii. Physical illness or disability;
    - iv. Drug or alcohol dependency; or
    - v. Such other similar cause; and
  - b. Whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that said person:
    - i. Lacks the capacity to meet essential requirements for his physical health or safety; or
    - ii. Is unable to manage his financial resources.
  - c. Incapacitated person and incompetent person shall not include one who is a partially incapacitated person.
41. "Indian Land" means any tract of land in which any interest in the surface estate is owned by a tribe or individual Indian in trust or restricted status;
42. "Indian Landowner" means an Indian tribe or individual Indian who owns a surface or subsurface interest in trust or restricted lands or resources (e.g., minerals, timber, etc.);
43. "Individual Indian Money (IIM) Account" means an interest bearing account for trust funds held by the Secretary that belong to a person who has an interest in trust assets. These accounts are under the control and management of the Secretary. There are types of IIM accounts: unrestricted, restricted, and estate accounts;
44. "Individual Owned Indian Land" means any tract, or interest therein, in which the surface estate is owned by an individual Indian in trust or restricted status;
45. "Intangible Personal Property" means cash, stocks and bonds, mutual funds, money market accounts, certificates of deposit, insurance contracts, commodity accounts, IIM accounts, and other assets of similar nature;
46. "Interest" means investment income received in the trust account;
47. "Judgment Funds" means funds awarded by the Indian Claims Commission or the United States Court of Federal Claims, and authorized and appropriated by the Congress of the United States to be used or distributed based on a plan approved by Congress;

48. "Judgment Per Capita" means a congressionally approved distribution of funds among tribal members or to individual descendants identified in a settlement or a use and distribution plan;
49. "Judgment Per Capita IIM Account" means an IIM account established for a judgment per capita;
50. "Least Restrictive Dispositional Alternative" means the form of assistance that least interferes with the legal ability of an incapacitated or partially incapacitated person to act in his/her own behalf;
51. "Legal Disability" means the lack of legal capability to perform an act which includes the ability to manage or administer his or her financial affairs as determined by a court of competent jurisdiction or another federal agency where the federal agency has determined that the adult requires a representative payee and there is no legal guardian to receive federal benefits on his or her own behalf;
52. "Letters" means a document issued by the court subsequent to the appointment of a guardian which designates the name of the guardian and specifies the authority and powers of said guardian. Such document shall be endorsed thereon with the oath of the guardian that he will perform the duties of his office as guardian according to law;
53. A "Limited Guardian" means a person appointed by the court to serve as a guardian of a partially incapacitated person and who is authorized by the court to exercise only:
  - a. Some of the powers of a guardian of the person or whose power as guardian of the person extends only to certain matters pertaining to the care or control of the ward as specified by the court, or
  - b. Certain powers as guardian over the property or financial resources of the ward, or whose powers as guardian of the property extend only to some portion of the property or financial resources of the ward;
54. "Manage Financial Resources" or "Manage the Property" means those actions necessary to obtain, administer, and dispose of real property, business property, benefits and income, and to otherwise manage personal financial or business affairs;
55. "Master of Social Work (MSW)" means a social worker who possesses a Master of Social Work degree from an accredited college or university;

56. "Meet the essential requirements for physical health or safety" means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury is more likely than not to occur;
57. "Minor" means a person under eighteen (18) years of age;
58. "Neglect" means the failure to provide protection for an incapacitated person, a partially incapacitated person, or a minor who is unable to protect the person's own interest; or the failure to provide adequate shelter or clothing; or the harming or threatening with harm through action or inaction by either another individual or through the person's own inaction because of a lack of awareness, incompetence, or incapacity, which has resulted or may result in physical or mental injury;
59. "Non Compos Mentis" means a person who has been determined by a court of competent jurisdiction to be of unsound mind or incapable of managing his or her own affairs;
60. "Office of Hearings and Appeals" or "OHA" means the Hearings Division, Office of Hearings and Appeals, Department of the Interior;
61. "Office of Special Trustee" or "OST" or "Special Trustee" means the Office of the Special Trustee for American Indians, Department of the Interior, or its authorized representative;
62. "Office of Trust Funds Management" or "OTFM" means the Office of Trust Funds Management, within the Office of the Special Trustee for American Indians, Department of the Interior, or its authorized representative;
63. "Organization" means a corporation, trust, business trust, partnership, association, or other legal entity;
64. "Partially Incapacitated Person" means an incapacitated person whose impairment is only to the extent that without the assistance of a limited guardian said person is unable to:
- a. Meet the essential requirements for his physical health or safety, or
  - b. Manage all of his/her financial resources or to engage in all of the activities necessary for the effective management of his/her financial resources. A finding that an individual is a partially incapacitated person shall not constitute a finding that an individual is of legal incompetence. A partially incapacitated person shall be legally competent in all areas other than the area or areas specified by the court in its dispositional or subsequent orders. Such person shall retain all legal rights and abilities other than those expressly limited or curtailed in said orders;

65. "Party" means the person or entity filing a petition, application, motion, acceptance of a testamentary nomination, or objection; the subject of a guardianship proceeding; and the guardian, the guardian ad litem and the conservator, if any such persons have been appointed;
66. "Person" means an individual;
67. "Privacy Act" means the Federal Privacy Act, 5 U.S.C. Section 552a;
68. "Property" means real property, personal property, income, any interest in such real or personal property and includes anything that may be the subject of ownership;
69. "Representative Payee" means an individual appointed by the Social Security Administration (SSA) or other federal agency to act as an agent for a person who is judged incapable of directing the management of his or her federal benefits;
70. "Council Bill" means the formal manner in which a tribal government expresses its legislative will;
71. "Restrictions on the legal capacity of a person to act in his own behalf" means powers of an incapacitated or partially incapacitated person which are assigned to a guardian;
72. "Restricted Account" means the DOI placed a restriction on an IIM account and the account holder does not have unlimited access to the account;
73. "Restricted Land" means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to federal law;
74. "Returned Per Capita Account" means a trust account for judgment fund or tribal per capita checks that have been returned to the Secretary as undeliverable to the account holder because the individual's whereabouts are unknown or the judgment fund per capita checks were not cashed by the account holder within twelve (12) months of issuance of the check, or the checks were not issued because the individual's whereabouts were unknown at the date of issuance;
75. "Secretary" means the Secretary of the Interior (DOI) or his or her designee authorized to act on the behalf of the Secretary as to the matter at hand;
76. "Signature" means the name, mark or writing used with the intention of authenticating a document;

77. "Special Deposit Account" means a temporary account for the deposit of trust funds that cannot be credited immediately to the rightful account holders;
78. "Statement of Performance" means a quarterly report that identifies the source, type and status of funds in a trust account; the beginning balance; the gains and losses; receipts and disbursements; and the ending balance;
79. "Subject of the Proceeding" means a minor or an adult:
- a. Who is the subject of a petition requesting the appointment of a guardian, limited guardian or special guardian,
  - b. For whom a guardian or limited guardian has been appointed by the court, or
  - c. An adult for whom a conservator is requested or appointed;
80. "Superintendent" or "Field Representative" means an authorized representative of the Secretary of the Interior who is the officer in charge of a BIA agency or field office;
81. "Supervised Account" means a restricted IIM account, from which all disbursements must be approved by the Bureau of Indian Affairs Officer-in-Charge;
82. "Surcharge" means the imposition of personal liability by a court on a guardian or limited guardian for willful misconduct in the administration of the property or other financial resources of a ward;
83. "Supervised Account" means a restricted IIM account, from which all disbursements must be approved by the BIA Officer-in-Charge, that is maintained for minors, emancipated minors, adults who are determined to be in need of financial assistance through an administrative process, adults who are under legal disability or adults who are determined to be non compos mentis;
84. "Tribal Account" or "Tribal Trust Account" generally means a trust fund account for a federally recognized tribe that is maintained and held in trust by the Secretary;
85. "Tribal Law" means the body of non-federal law that governs tribal lands and activities, and includes ordinances or other enactments by a tribe, tribal constitutions, tribal court rulings and tribal common law;
86. "Tribal Per Capita" means a distribution of tribal trust funds to individual tribal members pursuant to a tribal resolution;

87. "Tribe" means an Indian tribe, nation, band, pueblo, rancheria, colony or community, including any Alaska native village or regional or village corporation as defined or established under the Alaska Native Claims Settlement Act which is federally recognized by the U.S. government for special programs and services provided by the Secretary to Indians because of their status as Indians. Tribe also means two or more tribes joined for any purpose, the joint assets of which include funds held in trust by the Secretary;
88. "Trust Account" means a tribal account, an IIM account or a special deposit account for trust funds maintained by the Secretary;
89. "Trust Assets" means trust lands, natural resources, trust funds or other assets held by the federal government in trust for tribes and individual Indian;
90. "Trust Funds" means money derived from the sale or use of trust lands, restricted fee lands or trust resources and any other money that the Secretary must accept into a trust account for deposit into trust;
91. "Unrestricted Account" means an IIM account where the Indian account holder may determine the timing of and amount of disbursements from the trust account;
92. "Vendor" means any individual or entity who provides goods or services to an account holder and submits a claim for payment;
93. "Verifiable Photo Identification" means a valid driver's license, a government issued photo identification card such as a passport, security badge with photograph, etc., or a tribal photo identification card. A copy of the verifiable photo identification must be attached to any request if verifiable photo identification is required;
94. "Voluntary Hold" means a request by an Indian account holder with an unrestricted IIM account to keep his or her trust funds in a trust account instead of having the funds automatically disbursed.

#### **Section 1-109. Medical Treatment.**

- A. Nothing in this Act shall be construed to mean an incapacitated person, a partially incapacitated person or a minor is abused or neglected for the sole reason that a guardian or other person responsible, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of the person or minor in their trust, and, in the case of an adult, in accordance with the practices of or the express consent of the incapacitated or partially incapacitated person.



- B. Nothing contained in this section shall prevent a court from immediately assuming custody of a minor and ordering whatever action may be necessary, including medical treatment, to protect the minor's health or safety.

**Section 1-110. Applicability of the Act.**

- A. Except as otherwise specifically provided by law, the Act applies to:
  - 1. Minors;
  - 2. Incapacitated and partially incapacitated persons ;
  - 3. Property located in the Choctaw Nation of nondomiciliaries who are minors or incapacitated or partially incapacitated persons, or property coming into the control of a guardian who is subject to the laws of the Choctaw Nation of Oklahoma.
- B. No person, whether a parent or otherwise, has any power as a guardian, except by appointment by a court. The provisions of this Act shall not be construed to limit the parental rights of parents as the natural guardians of their children.

**Section 1-111. Appointment of Guardian – Exclusive Jurisdiction.**

- A. A guardian of the person or estate, or both, of a person residing in this jurisdiction, who is a minor, or an incapacitated or partially incapacitated person, may be appointed in all cases by the court as provided in this Act.
- B. After the service of notice in a proceeding seeking the appointment of a guardian or other order, in subsequent proceedings pertaining to the guardianship of a ward and until termination of the proceeding, the court in which the petition is filed has exclusive jurisdiction to determine:
  - 1. The need for a guardian or other order; and
  - 2. How the property of the ward shall be managed, expended or distributed to or for the use of the ward or the dependents of the ward.

**Section 1-112. Jurisdiction of Court over Guardians and Guardianship Proceedings.**

- A. The court making the appointment of a guardian has exclusive jurisdiction to control such guardian in the management and disposition of the person and property of the ward, and has the following powers, which must be exercised in the manner prescribed by this Act, to:
  - 1. Appoint and remove guardians;

2. Issue and revoke letters of guardianship;
3. Control the conduct of guardians with regard to the care and treatment provided to their wards and with regard to the management of the financial resources of their wards, including but not limited to the power to:
  - a. Compel guardians to submit plans, reports, inventories and accountings to the court,
  - b. Compel payment and delivery by guardians of property belonging to their wards,
  - c. Order the payment of debts, the sale of property, and order and regulate the distribution of property which has been placed under the control or management of a guardian, and
  - d. Settle the accounts of the guardians;
4. Appoint appraisers of the property of wards;
5. Compel the attendance of witnesses and the production of documents and property;
6. After a petition has been filed for appointment of a guardian for a minor, make or modify any temporary order of guardianship during the progress of the proceedings that would be in the best interest of the ward. Any such temporary order may be entered ex parte with written notice sent to all parties directing them to appear before the court, at a time and place therein specified, not more than twenty (20) days from the time of making such order, to show cause why the order should not be granted for temporary guardianship; and
7. Exercise all powers conferred by this Act and to make such orders as may be necessary for the exercise of said powers.

### **Section 1-113. Venue for Guardianship Proceedings.**

The venue for a guardianship proceeding is in the District Court of the Choctaw Nation of Oklahoma.

#### **Section 1-113(a) Judge May Act at Chambers or in Court; Practice.**

- A. The power conferred upon the Court in relation to guardians and wards may be exercised in chambers or elsewhere in the discretion of the Judge. Any hearing held pursuant to the provisions of this Act may be held at such place as the court directs.
- B. Any order appointing a guardian must be entered as and become a decree of the court.

- C. Except as otherwise specifically provided in this Act, the provisions of the laws of the Choctaw Nation of Oklahoma, so far as they relate to the practice in the court, apply to proceedings under this Act. The rules of civil procedure including the rules concerning discovery, vacation of orders and appellate review, govern proceedings subject to this Act.

**Section 1-114. Guardian of Property of a Person Not Residing Within the Choctaw Nation of Oklahoma.**

A guardian of the property of a person not residing within the Choctaw Nation of Oklahoma, who is not a minor, an incapacitated person or partially incapacitated person may be appointed by the court as provided by this Act.

**Section 1-115. Guardian Powers.**

A guardian has only those powers over the person or the property of the ward or both such person and property, as ordered by the court pursuant to this Act.

**Section 1-116. Confidential Information.**

- A. Confidential information filed with or submitted to the court in conjunction with any proceeding pursuant to the Act, shall not constitute a public record and shall be sealed by the court. Access to confidential information shall be strictly controlled. Except upon court order, no confidential information shall be disclosed to persons other than:
  - 1. The subject of the proceeding and the subject's attorney;
  - 2. The guardian ad litem;
  - 3. If the subject of the confidential information is a ward, the guardian or conservator of such ward;
  - 4. If the subject of the confidential information is the guardian or conservator, the ward and his/her attorney, and the attorney of such guardian or conservator;
  - 5. An authorized representative of a Tribal Social Services Department upon proper identification.
- B. The fact of the existence of a guardianship or conservatorship of a person or that person's property shall not be considered confidential information.

**Section 1-117. Guardianship Letters.**

Letters of guardianship are evidence of the transfer of the management or administration of all assets, or the part thereof specified in the letters, of a ward to the guardian. An order terminating a

guardianship is evidence of transfer of the management or administration of all assets subject to the guardianship from the guardian to the ward, or to successors of the ward.

**Section 1-118. Time Computation**

The time within which an act is to be done, shall be computed by excluding the first day and including the last day. If the last day is a legal holiday as defined by the tribe, or the Federal government it shall be excluded.

**Section 1-119. As Used in the Act the Following List of Acronyms Apply.**

- |            |  |
|------------|--|
| 1. ACH     | Automated Clearing House                       |
| 2. AKA     | Also Known As                                  |
| 3. ALJ     | Administrative Law Judge                       |
| 4. BIA     | Bureau of Indian Affairs                       |
| 5. CFR     | Code of Federal Regulations                    |
| 6. DOD     | Date of Death                                  |
| 7. DOI     | Department of the Interior                     |
| 8. E-FOIA  | Electronic Freedom of Information Act          |
| 9. EFT     | Electronic Funds Transfer                      |
| 10. ETA    | Electronic Transfer Account                    |
| 11. FOGSMA | Federal Oil and Gas Royalty Management Act     |
| 12. FOIA   | Freedom of Information Act                     |
| 13. FRC    | Federal Records Center                         |
| 14. FTSO   | Financial Trust Services Officer               |
| 15. IARM   | Indian Affairs Records Management Program      |
| 16. IIM    | Individual Indian Money                        |
| 17. MSW    | Masters of Social Work                         |
| 18. OHA    | Office of Hearings and Appeals                 |
| 19. OMB    | Office of Management and Budget                |
| 20. OST    | Office of Special Trustee for American Indians |
| 21. OTFM   | Office of Trust Funds Management               |
| 22. OTR    | Office of Trust Records                        |
| 23. SF     | Standard Form                                  |
| 24. SSA    | Social Security Administration                 |
| 25. SSI    | Supplemental Security Income                   |
| 26. TFAS   | Trust Funds Accounting System                  |
| 27. TIN    | Taxpayer Identification Number                 |
| 28. USC    | United States Code                             |
| 29. VA     | Veteran's Administration                       |

**Section 1-120. Guardians ad litem – Power to appoint – Appointment.**

- A. Nothing contained in this title affects or impairs the power of any court to appoint a guardian ad litem to defend the interests of any minor interested in any suit or matter pending therein.
- B. At any point in a guardianship proceeding, the subject of the proceeding, his attorney, the guardian of the subject of the proceeding or anyone interested in the welfare of the subject of the proceeding may file an application to have a guardian ad litem appointed by the court, or the court on its own motion may appoint a guardian ad litem. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons of interest.

**Section 1-121. Power of guardian of the person – Report of change of ward’s abode – Power of limited guardians.**

- A. A guardian, including a special guardian, of the person is charged with the custody of the ward, and must look to the support, health and education of the ward. Subject to limitations provided in the Order Appointing the Guardian, he may fix the place of abode of the ward at any place within the jurisdiction, but not elsewhere, without permission of the court and any change in the place of abode of a ward shall be reported to the court.
- B. Limited guardians of partially incapacitated persons shall not have custody of the person of the ward and shall have only those powers or controls over the person of the ward specifically ordered in a dispositional order or other order of the court.

**Section 1-122. Guardian of the Property – Power – Fiduciary Duty.**

- A. A guardian of the estate must keep safely the property of his/her ward. He/She must not permit any unnecessary waste or destruction of the real property, nor make any sale of such property without the order of the court, but must so far as it is in his/her power, maintain the same, with its buildings and appurtenances, out of the income or other property of the estate, and deliver it to the ward or the successors of the ward at the close of his/her guardianship, in as good condition as he/she received it.
- B. A guardian of the estate, in relation to powers conferred pursuant to the provisions of the Act shall act as a fiduciary and shall perform, diligently and in good faith, as a prudent person would in managing his/her own property, not with regard to speculation but with regard to conservation and growth, and the specific duties and powers assigned by the court.

## **Article II. Minors.**

### **Section 2-101. Appointment of Guardian of Minor.**

- A. The court, when it appears necessary or convenient, may appoint guardians for the persons and property, or either, or both of them, of minors.
- B. Such appointment may be made on the verified petition of a relative or other person in behalf of such minor.
- C. Before making the appointment, the court may make a determination as to whether a home study is necessary. In determining whether to require a home study, the court shall balance the need for a home study to protect the best interests of the minor.
- D. In addition, before making the appointment, the court must cause notice of the hearing on the petition for appointment of a guardian for a minor to be given in the form required by the court to the minor if the minor has attained the age of fourteen (14) as of the date the petition is filed. The court shall also cause notice to be sent to the following persons:
  - 1. The then-living parents of the minor and any other person having custody of the minor, if such parent or person is not one of the petitioners;
  - 2. If the minor has no then-living parent, then to one of the then-living grandparents who is not one of the petitioners; and
  - 3. If there is no such then-living grandparent, or if there is no such then-living grandparent whose address is known to the petitioner, then notice shall be given to an adult relative, if any, of the minor residing in the jurisdiction or state in which the petition was filed.
  - 4. Tribal Social Services.
- E. Such notice shall be mailed to each person, entitled to notice pursuant to this section, at that person's address as last-known to the petitioner, at least ten (10) days prior to the date set by the court for hearing on the petition. Provided the court may direct a shorter notice period if the court deems such shorter notice period to be appropriate under the circumstances. If there is no person other than the minor who is entitled to notice, or if the address of any person, other than the minor, who is entitled to notice is not known to the petitioner, the petition shall so allege. The court may direct that notice, other than notice to the minor if the minor has attained the age of fourteen (14), be waived or be given to any person or persons other than the minor in such manner as the court determines and directs.

### **Section 2-102. Guardian Nominations.**

- A. A guardian of the person or property, or of both, of a child born, or likely to be born, may be nominated by will or by other written instrument, to take effect upon the death of the parent so nominating:
  - 1. If the child is born in wedlock, by either parent or by both parents.
  - 2. If the child is born out of wedlock, by the mother of the child or by the natural father of the child, if said natural father has acknowledged paternity pursuant to state law or tribal law if the tribe has adopted paternity proceedings, or has been judicially determined to be the father of the child at a paternity proceeding pursuant to state law or tribal law, or by both such mother and father.
- B. A nomination made by a parent who has relinquished parental rights pursuant to an adoption proceeding or whose parental rights have been terminated by a court of competent jurisdiction shall not be considered and will have no effect.

### **Section 2-103. Nomination and Appointment of Minor – Age of Minor.**

If the minor is under the age of fourteen (14) years, the court may name and appoint his guardian. If the minor has attained the age of fourteen (14) years, the minor may nominate his own guardian, who, if approved by the court, must be appointed accordingly.

### **Section 2-104. Minor at 14 Years of Age May Nominate Guardian Subject to Approval of Court.**

When a guardian has been appointed by the court for a minor under the age of fourteen (14) years, the minor, at any time after he has attained age fourteen (14), may nominate his own guardian, subject to the approval of the court.

### **Section 2-105. Appointment of Guardian When Minor has Attained 14 Years of Age.**

If a guardian nominated by a minor who has attained the age of fourteen (14) years is not approved by the court or if, after being notified by the court, the minor neglects for ten (10) days to nominate a suitable person, the court may name and appoint a guardian in the same manner as if the minor was under the age of fourteen (14) years.

### **Section 2-106. Appointment of Parents as Guardians.**

A minor's parent who is competent to transact his or her own business and not otherwise unsuitable or disqualified by law to serve as the guardian of said minor, shall be entitled to the guardianship of the minor until the minor has attained the age of fourteen (14) years. The parent petitioning the court for appointment as guardian of the minor must have endorsement or nomination of the other parent, if the natural parents of the minor are married and living together. In cases where both parents are separately seeking appointment as guardian of the minor, the court may, upon full investigation,

appoint the parent who in the judgment of the court is the most competent to look after the interest of said minor.

**Section 2-107. Appointed Guardian in Charge of Education.**

If the minor has no father or mother living who is competent to have charge of the education of the minor, the guardian appointed by the court shall have the same.

**Section 2-108. Expenses of Education and Maintenance of Minor May Be Defrayed Out of Minor's Property.**

- A. If a minor, having a parent or parents living, has property, the income of which is sufficient for his maintenance and education in a manner more expensive than such parent or parents can reasonably afford, regard being had to all of the circumstances of the case, the expenses of the education and maintenance of such minor may be defrayed out of the income of the property of the minor in whole or in part, as judged reasonable and as directed by the court. The charges therefore may be allowed accordingly in the settlement of the accounts of the guardian of the minor.
- B. Except as provided in subsection A of this section:
  - 1. Any order appointing a guardian of the minor who has a parent living or other person legally responsible for the support of the child shall:
    - a. Provide for the payment of child support, and
    - b. Contain an income assignment.
  - 2. The provisions of this subsection shall not apply to parents whose rights and responsibilities have been terminated to the child unless the termination order requires payment of child support.

**Section 2-109. Appointment Conditions.**

- A. When any person is appointed guardian of a minor, the court may include in the order of appointment conditions providing for the care, treatment, education and welfare of the minor.
- B. The performance of such conditions shall be part of the duties of the guardian, for the faithful performance of which he and the sureties on his bond are responsible.

**Section 2-110. When Power of Guardian Appointed for Minor Ceases.**

The power of a guardian appointed for a minor ceases upon:

- 1. The removal of the guardian;



2. The solemnization of marriage of the ward; or
3. The ward attaining majority.

**Section 2-111. Minor Ward at Majority – Release of.**

After a minor ward has come to majority, such ward may settle accounts with his/her guardian and give the guardian a release, which is valid, subject to approval of the court, if attained fairly and without undue influence.

**Section 2-112. Discharge of Guardian by Court.**

A guardian of a minor appointed by the court is not entitled to discharge until one (1) year after the majority of the ward unless the court determines that the minor has earlier validly released said guardian after a final accounting.

**Article III. Adults.**

**Section 3-101. Appointment of Guardian Petition.**

- A. Any person interested in the welfare of a person believed to be an incapacitated person or partially incapacitated person may file a petition alleging that such person is an incapacitated or partially incapacitated person, and request the appointment of a guardian.
- B. The petition shall be verified and shall specify:
  1. The names and addresses of persons entitled to notice pursuant to this Act and to the attorney of the subject of the proceeding, if any, and if known to the petitioner;
  2. The nature and degree of the alleged incapacity;
  3. The relief requested and the facts and reasons supporting the need for such relief including, where applicable, a description of any acts or behavior of the subject of the proceeding which gave rise to the allegations; and
  4. The estimated value of all intangible personal property of the ward.
- C. A copy of the results of any physical, psychological or other appropriate professional evaluation of the condition of the subject of the proceeding which has been completed within sixty (60) days prior to the filing of the petition, may be attached to the petition at the time it is filed.

- D. A guardianship plan or plans substantially in the form required by this Act, as appropriate, may be attached to the petition at the time it is filed or may be submitted to the court at the time of the hearing.

**Section 3-102. Nomination of Guardian by Person 18 years of Age – Priorities of Nominations.**

- A. Every person eighteen (18) years of age or older who is of sound mind and not acting under, duress, menace, fraud or undue influence, may nominate a guardian of his person and property, or of either, as provided by this section. Such nomination shall, in the event of the incapacity or partial incapacity of said person be proved in the same manner as any other writing. The nomination shall be binding on any court having jurisdiction of said guardianship subject to the disqualification of the nominee by the court.
- B. Such nomination shall be in writing and shall be signed by the person making such nomination. The nomination shall be substantially in the following form:

Nomination of Guardian by an Adult

I, \_\_\_\_\_, (name) being of sound mind and not acting under any duress, menace, fraud or other undue influence do hereby nominate (Name, current residence, and relationship, if any, of the nominee) \_\_\_\_\_ to serve as the guardian of my (person, property, both) in the event that after the date of this instrument I become incapacitated.

Executed at \_\_\_\_\_ (location) on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

Signature

- C. In such nomination, the person making it may nominate an alternate guardian or guardians to act in the event a previously named nominee is unable or unwilling to act as guardian.
- D. If the same person has executed more than one nomination of a guardian:
  - 1. The most recent nomination shall control; or
  - 2. If two or more nominations bear the same most recent date the court may appoint one of the nominees or may appoint more than one of the nominees as co-guardians upon determining the nominator to be an incapacitated or partially incapacitated person.
  - 3. This section shall not be construed as amending or in any manner affecting special powers of attorney, durable powers of attorney or express trusts.

### **Section 3-103. Nomination of Guardian or Limited Guardian by Will for Incapacitated Person.**

A parent of an unmarried incapacitated or partially capacitated person, the spouse of a married incapacitated or partially capacitated person, or an adult child of such person who is serving as guardian or limited guardian may nominate by will, or by other writing executed by the nominating parent or parents, spouse or adult child, an individual to serve as guardian or limited guardian upon the death or incapacity of the nominator.

### **Section 3-104. Priorities for Selection of Guardian or Limited Guardian – Appointment of Organization – Inquiry as to Suitability of Guardian – Appointment of Public Agency.**

- A. The following priorities shall guide the selection by the court of a guardian or limited guardian of an incapacitated or partially capacitated person from among those eligible:
1. The individual or individuals nominated by the subject of the proceeding pursuant to Section 3-102 of this Act;
  2. The current guardian or limited guardian appointed or recognized by the appropriate court of any other jurisdiction in which the incapacitated person or partially incapacitated person resides;
  3. An individual nominated by the will or by other writing of a deceased parent, spouse or an adult child who was serving as the guardian or limited guardian of the subject of the proceeding;
  4. The spouse of the subject of the proceeding;
  5. An adult child of the subject of the proceeding;
  6. A parent of the subject of the proceeding;
  7. A sibling of the subject of the proceeding; or
  8. Any individual approved by the court with whom the subject of the proceeding has been living for more than six (6) months prior to the filing of the petition.
- B. When the guardian or limited guardian of an incapacitated or partially capacitated person is the guardian of property only, the court may appoint an organization which is eligible to manage the financial resources of an individual and has fiduciary powers, or its successor in interest when:
1. Such organization is nominated by the subject of the proceeding pursuant to Section 3-102 of this Act; or

2. Such organization is nominated by a person eligible to make such nomination pursuant to Section 3-103 of this Act; or
  3. The appointment of such organization is in the best interest of the subject of the proceeding.
- C. The court shall make reasonable inquiry to determine whether the person or organization proposed to serve as the guardian or limited guardian of an incapacitated or partially incapacitated person is suitable and will exercise the powers and carry out the duties and responsibilities of guardian or limited guardian in the best interest of the ward. The court shall also inquire of the proposed guardian of the person of the ward as to how the guardian proposed to provide for the care of the ward, and of the proposed guardian of the property of the ward as to how the guardian proposes to manage the property of the ward and to provide for the ward's financial care. The court shall make such orders with respect thereto as the court deems to be in the best interest of the ward.

**Section 3-105. Nominee Unable or Unwilling to Serve.**

In the event the person nominated is unable, unwilling or cannot qualify to so serve, the court shall made a finding of such fact and shall proceed to the appointment of a guardian as if such nomination had not been made, taking into account any alternative guardian named in the nomination.

**Section 3-106. Rights of Incapacitated or Partially Incapacitated Person – Confidentiality – Relief from Costs and Fees – Record.**

- A. In all hearings conducted pursuant to this Act an individual who is alleged to be or found to be an incapacitated or partially incapacitated person shall have a right to:
1. Notice as provided in Section 3-110 of this Act;
  2. Be present at such hearings;
  3. Compel the attendance of witnesses;
  4. Present evidence;
  5. Cross-examine witnesses;
  6. Appeal adverse orders and judgments;
  7. Representation by counsel; and
  8. Request that the proceedings be closed to the public.

- B. The requirement of notice to the subject of the proceeding shall not be waived. The requirement that the subject of the proceeding be present at the hearing may be waived only for good cause shown. The court shall make inquiries to determine whether there is sufficient cause to waive the right to be present. Whenever the requirement that the subject of the proceeding be present is waived, the court shall make a finding on the record as to the reason the subject of the proceeding is not present at the proceeding and the alternatives which were considered to enable the subject of the proceeding to be present.
- C. Any person may apply for permission to participate in a proceeding or to be admitted to a proceeding which has been closed to the public. The court may grant the request to participate upon determining that the best interest of the subject of the proceeding will be served thereby. The court may, for good cause shown, grant the request of such person for permission to be admitted to the closed proceeding upon determining that said person has a legitimate interest in the proceedings. In granting either request, the court may impose any appropriate conditions it deems necessary.
- D. If the subject of the proceeding is under the influence of psychotropic medication during any judicial hearing held pursuant to the Guardianship and Conservatorship Act the court shall be advised of this fact, the purpose of the medication and the effect which it may have on the individual's action, demeanor and participation at the hearing.

**Section 3-107. Appointment of Attorney and Guardian Ad Litem – Explanation and Inquiry by Court if Subject not Represented – Record.**

- A. If at or prior to a hearing on a petition alleging a person to be an incapacitated or partially incapacitated person, or if at any point in the course of a proceeding pursuant to said petition, the subject of the proceeding is not represented by counsel, the court may appoint an attorney as provided in this section, and the court may at any time subsequent to the filing of said petition appoint a guardian ad litem to assist the court in making a determination as to whether or not an attorney should be appointed for the subject of the proceeding. Where available, an attorney appointed by the court may be a public defender.
- B. If the subject of the proceeding is present at the hearing on the petition and is not represented by counsel at said hearing:
  - 1. The court shall explain on the record:
    - a. The purpose and potential consequences of the proceeding; and



- D. Whenever the court determines that the appointment of counsel is not in the best interest of the subject of the proceeding, or if the subject of the proceeding does not request the appointment of an attorney and the court determines that the subject of the proceeding is capable of making an informed decision regarding the appointment of counsel, the court shall explain on the record the reason for such determination.
- E. Court appointed attorneys:
1. If an attorney is appointed, the court shall delay the hearing on the petition only for the period of time necessary for the attorney to prepare the case for hearing but in no event less than five (5) days after such appointment.
  2. The attorney appointed by the court shall be replaced by another attorney if:
    - a. The subject of the proceeding prefers the services of an attorney other than the one initially appointed for him/her;
    - b. The preferred attorney agrees to accept the responsibility; and
    - c. The subject of the proceeding or the attorney whom he/she prefers notifies the court of the preference and the attorney's acceptance of employment.
  3. An attorney appointed pursuant to this section shall contact the subject of the proceeding promptly after receiving notification of his/her appointment.
- F. Terms of appointment:
1. Except as provided by paragraph 2 of this subsection or as otherwise ordered by the court, the responsibility of an attorney appointed pursuant to the provisions of this section ceases upon the appointment of a guardian or limited guardian of the subject of the proceeding or when a determination not to appeal the decision is made. The court may appoint an attorney to represent a ward at any subsequent proceeding.
  2. Whenever there is an appeal of a decision made subsequent to a hearing on a petition requesting the appointment of a guardian or limited guardian, the responsibility of an attorney appointed pursuant to this subsection continues with respect to the appeal until the conclusion of the appeal proceedings. Upon application of the attorney, the court may allow the attorney to withdraw from the case and shall appoint another attorney to represent the subject of the proceeding in any appeal proceedings.
- G. In all cases where independent counsel is retained by or on behalf of the subject of the proceeding, the court shall make independent inquiry to determine whether counsel is

independent and whether any conflict of interest exists which would preclude proper representation of the subject of the proceeding or which would be detrimental to the best interest of the subject of the proceeding. The court shall appoint other counsel where retained counsel is found not to be independent.

- H. Proceedings brought pursuant to the provisions of this section shall be made a part of the record in the guardianship proceeding.

**Section 3-108. Evaluations of Subject of Proceeding in Connection with Proceeding.**

- A. After the filing of the petition, the court may, on its own motion or at the request of any party to the proceeding, if the court determines it to be for the best interest of the ward, order an evaluation of the subject of the proceeding in connection with any proceeding pursuant to the provisions of this Act where the capacity of said person is a material issue.
- B. Any evaluations made pursuant to this Act, as appropriate for the condition or alleged condition of the person being evaluated, shall be performed by:
  - 1. A physician;
  - 2. A psychologist;
  - 3. A social worker with a graduate degree in social work and field training or experience in working with incapacitated or partially incapacitated persons; or
  - 4. Other expert with knowledge of the particular incapacity or disability which the individual is alleged or has been found to have, or knowledge of the skills required to meet the essential requirements for the individual's health or safety or to manage that individual's financial resources.
- C. An evaluation report prepared and signed by the person performing the evaluation shall be submitted to the court prior to the hearing at which the court shall consider the report. The report shall include, but not be limited to:
  - 1. A description of the nature and extent of the incapacity of the person, if any;
  - 2. A description of the mental, emotional and physical condition of the person, his/her ability to function in the ordinary activities of daily life and, if appropriate, the educational condition, adaptive behavior and social skills of the person;
  - 3. An opinion regarding the kind and extent of assistance, if any, required by the person;



4. An assessment and review of any services necessary to provide for the well-being of the person in the following areas:
  - a. Physical health,
  - b. Mental health,
  - c. Social skills, and
  - d. Adequate and appropriate living conditions;
5. An opinion regarding;
  - a. The probability that the extent of the incapacity, if any, of the person may significantly lessen or increase, and
  - b. The type of services or treatment, if any, appropriate for the subject of the proceeding or which could facilitate improvement in the condition of the subject of the proceeding; and
6. A description of any tests or other evaluative techniques used.

**Section 3-109. Petitions for Guardians of Incapacitated or Partially Incapacitated Person – Notice.**

When it is represented to the court in a petition filed pursuant to this act alleging that a person is an incapacitated person or partially capacitated person, the court shall set a date for a hearing on the petition which date shall be no more than thirty (30) days after the filing of the petition. The court shall cause notice to be served pursuant to the provisions of Section 3-110 of this Act and to the attorney of the subject of the proceeding, if any, and if known to the petitioner.

**Section 3-110. Notice of Hearing on Petition Requesting Appointment of Guardian for Incapacitated or Partially Incapacitated Person.**

- A. The court shall cause notice to be served of the time and place of the hearing on the petition requesting the appointment of a guardian for an incapacitated or partially incapacitated person on:
  1. The subject of the proceeding; and
  2. The following person, other than the petitioner, who are known to the petitioner or whose existence and address can be ascertained by the petitioner with reasonable diligent efforts:

- a. The subject of the proceeding,
  - b. The attorney, if any, of the subject of the proceeding,
  - c. All adult children of the subject of the proceeding,
  - d. If there is no such adult child, the then living parent or parents of the subject of the proceeding; or
  - e. If there is no such parent, all adult brothers and sisters of the subject of the proceeding and all adult grandchildren of the subject of the proceeding;
3. In case no person listed in paragraph 2 of this subsection is given notice, notice shall be given to at least one and not more than three of the nearest adult relatives of the subject of the proceeding who are known to the petitioner or whose existence and address can be ascertained with reasonably diligent efforts;
  4. If not the petitioner, any person or organization which, in the petition, is proposed to serve as guardian or limited guardian or, to the extent such nomination is known to the petitioner, who is nominated by will or other writing to serve as guardian or limited guardian;
  5. To the extent known to the petitioner:
    - a. The person or facility having care or custody of the subject of the proceeding, and
    - b. The Tribe and any Tribal social service program that could or is providing services to the subject of the proceeding;
  6. Any other person(s) as directed by the court.
- B. A copy of the pleading which gave rise to the notice shall be attached to any notice served pursuant to this section.
- C. Except for actions appointing an emergency guardian:
1. Notice shall be served personally on the individual who is the subject of the proceeding at least ten (10) days before the time set for hearing. Such personal service may be made by the attorney for the petitioner, any tribal law enforcement officer, or licensed process server. The person making such services shall make proper return thereof;
  2. Notice to other persons entitled to notice of a hearing on the original petition requesting the appointment of a guardian shall be mailed by regular first-class mail at least ten (10)

days before the time set for the hearing. Such service by mail may be made by the court clerk, deputy court clerk or attorney for the petitioner.

- D. The notice to the subject of the proceeding shall set forth the date, time, place and purpose of the hearing to which the notice refers. Such notice shall be substantially in the following form:

NOTICE OF HEARING TO:

\_\_\_\_\_ (Name of subject of proceeding)

Service Address \_\_\_\_\_

You are hereby notified that a petition had been filed alleging that you are an \_\_\_ incapacitated, \_\_\_ partially incapacitated person and are incapable of \_\_\_ caring for yourself, \_\_\_ managing your property. The petition requests that a \_\_\_ guardian, \_\_\_ limited guardian be appointed by the court to make decisions for you regarding \_\_\_ yourself, \_\_\_ your property. A copy of the petition is attached. The hearing on the petition will be held on \_\_\_\_\_. (date, time and place of the hearing) At the hearing a \_\_\_ guardian, \_\_\_ limited guardian may be appointed for your \_\_\_ person, \_\_\_ property. The judge will explain to you the nature, purpose and effect of the proceedings. You have the right to attend the hearing. You may confront and cross-examine all witnesses and present your own witnesses. You have the right to request that your hearing be closed to the public. You may request that an expert be appointed to examine you and if the judge believes that an examination is necessary, the judge will order an evaluation to be done. You have the right to hire an attorney of your choice to represent you. If you do not have an attorney and you wish to be represented by an attorney at the hearing, the court will appoint one for you. You may request the appointment of an attorney orally or in writing prior to the hearing or at the hearing. If you are able, you will be required to pay the cost of an attorney appointed by the court.

**Section 3-111. Guardian Appointed, When.**

- A. At the hearing on the petition the court shall determine whether or not it is necessary to appoint a guardian of the person, property or both. If a guardian is needed, the court shall determine:
1. When a general or limited guardian, of the person of the subject of the proceeding is requested, the essential requirements for the health and safety of the subject of the proceeding and the skills and knowledge necessary to meet those requirements;
  2. When a general or limited guardian of the property of the subject of the proceeding is requested, the type and amount of the financial resources of the subject of the proceeding, the essential requirements for managing the financial resources, and the skills and knowledge necessary to manage the financial resources;

3. The nature and extent of the incapacity of the subject of the proceeding if any; and
  4. Whether by clear and convincing evidence the subject of the proceeding is an incapacitated or partially incapacitated person.
- B. If after a full hearing and examination upon such petition, the court finds by clear and convincing evidence that the subject of the proceeding is:
1. An incapacitated person, the court shall appoint:
    - a. A general guardian of the person; and
    - b. As the court determines to be necessary and appropriate, a guardian of the property of the ward;
  2. A partially incapacitated person the court shall appoint, as necessary and appropriate for said person:
    - a. A limited guardian of the person; or
    - b. A general or a limited guardian of the property of said person; or
    - c. A limited guardian of the person and a general or limited guardian of the property of said person.

The court shall explain on the record the facts and reasons supporting the decision not to impose any less restrictive alternatives.

- C. The court may appoint the same or separate persons to serve as the guardian or limited guardian of the person and guardian or limited guardian of the property of a ward.

**Section 3-112. Reserved.**

**Section 3-113. Contents of Order Appointing Guardian – Specific Determinations Regarding Capacity – Guardianship Plan.**

- A. The order appointing a guardian, based upon evidence adduced, shall set forth:
1. The determinations made by the court at the hearing;

2. The name and address of the individual, if any, appointed to serve as the limited guardian or guardian;
  3. The specific limitations imposed upon the ward, if the ward is a partially incapacitated person;
  4. Any authority granted a guardian of the person of the ward to change the place of abode of the ward outside the jurisdiction or county without the prior permission of the court; and
  5. Whenever the court determines a review hearing is necessary or desirable, the date of the review hearing.
- B. In establishing the specific limitations on the legal activities of the ward for whom a limited guardian of the person is appointed, the court shall make specific determinations regarding the capacity of the subject of the proceeding, including but not limited to determining whether the ward retains sufficient capacity:
1. To vote;
  2. To serve as a juror;
  3. To operate a motor vehicle;
  4. To be licensed or continue to practice any profession of the ward; and
  5. To make personal medical decisions including but not limited to decisions to withhold or withdraw life-sustaining procedures, to donate organs, to undergo elective surgery or to consent to routine or necessary medical or other professional care, treatment or advice.
- C. In establishing the specific limitations on the legal abilities of the ward for whom a limited guardian of the property is appointed, the court shall make specific determination regarding the capacity of the subject of the proceeding, including but not limited to determining whether the ward retains sufficient capacity to:
1. Appoint an agent to act on his/her behalf;
  2. Enter into contracts;
  3. Grant conveyances; or
  4. Make gifts of property.

- D. If not submitted with the petition or at the hearing, the guardian or limited guardian shall submit a guardianship plan as required by Section 3-118 or 3-120 of this Act, or both, as appropriate and a copy of said plan shall be mailed to those persons entitled to notice pursuant to paragraphs 1, 2, 3 and 7 of subsection A of Section 3-110 of this title. The guardianship plan as approved by the court shall be made a part of the order of the court. Said plan may be modified as provided by this Act.
  
- E. The court may, in its discretion, make such further orders as the court deems necessary for the best interest of the ward for care of the ward and maintenance or management of the ward's property, including but not limited to:
  - 1. Order the guardian of the property of the ward to provide the ward from such property with specified amounts of money, monthly, or from time to time, which the ward may dispose of as the ward shall determine and for which, other than a showing of the amounts paid to the ward, the guardian will not be required to account. Such order may be modified upon application of the guardian or any interested person, and a hearing conducted thereon, with notice of the hearing on such application to be given to those persons entitled to notice pursuant to paragraphs 1, 2, 3 and 7 of subsection A of Section 3-110 of this Act and shall be given as provided in Section 3-110 of this Act; and
  
  - 2. The amount of the bond as required by Section 4-103 of this Act.

**Section 3-114. Assignment of Powers and Duties to Limited Guardian – Creation of Limited Guardianship – Limitation or Specification of Assets.**

- A. The court may assign to a limited guardian of the person any portion of the powers and duties of a general guardian of the person except the power to take custody of the person of the ward. The court may also assign to the limited guardian the duty to assist the ward in those particular areas in which the capacity of the ward is impaired including, but not limited to, the duty to assist the ward in:
  - 1. Meeting the requirements for his/her health or safety;
  
  - 2. Protecting his/her rights;
  
  - 3. Obtaining necessary services;
  
  - 4. Fulfilling his/her civic duties; and
  
  - 5. Any other areas as determined necessary by the court and which are not specifically prohibited by this Act.

- B. An order specifying that only part of the property or assets of the ward is under the control or management of the guardian creates a limited guardianship of the property.
  - 1. The court may assign to a limited guardian of property any of the duties and powers of a general guardian of the property regarding the management of financial resources which the partially incapacitated person lacks the capacity to perform; or
  - 2. The court may assign to a limited guardian of property the duty of assisting the ward to perform any of such functions with regard to any financial resource of the ward.
  
- C. If the court limits any power conferred on the guardian of property or specifies that management of some but not all assets of the ward be placed under the control of a guardian of the property, the limitation or specification of assets subject to the guardianship must be endorsed upon the letters of guardianship.

**Section 3-115. Appointment of Emergency Guardian in Certain Instances – Notice – Powers – Duration – Removal.**

- A. The court may appoint an emergency guardian for a person who appears to be or has been found to be an incapacitated or partially incapacitated person when it appears:
  - 1. There is imminent danger that the health or safety of said person will be seriously impaired or that the financial resources of said person will be seriously damaged or dissipated unless immediate action is taken; and
  - 2. No other person appears to have authority to act in the circumstances or the guardian previously appointed is unable to or refuses to take action.
  
- B. The request for appointment of a special guardian may be included in the petition to appoint a guardian or by separate petition, either of which must be verified.
  
- C. The court may appoint an attorney, separate and apart from the petitioner's attorney, for the subject of the proceedings who does not have legal representation and either cannot afford a private attorney or cannot retain counsel due to incapacity and may proceed to hear the petition as same pertains to appointment of a special guardian with or without notice. If notice is required, the notice shall set a time for hearing on the petition within seventy-two (72) hours. Notice shall be served on:
  - 1. The subject of the proceeding;
  - 2. The attorney of the subject of the proceeding, if any;

3. The spouse of the subject of the proceeding, if any, and if the spouse is not the petitioner;  
and
4. At least one other adult relative of the subject of the proceeding or any other person who is not the petitioner, as directed by the court.

Notice shall be personally served in the manner as the court directs on the subject of the proceeding and on other persons receiving notice as directed by the court.

D. The court may without notice appoint an emergency guardian upon the filing of the petition, upon presentation of evidence of the incapacity of the subject of the proceeding, upon a showing that an immediate or reasonably foreseeable serious physical harm to the subject of the proceeding or serious impairment of the financial resources of said person will result from a delay, and upon presentation of a proposed emergency plan of care for the subject of the proceeding. Whenever an emergency guardian is immediately appointed as provided by this subsection, the court shall cause a copy of the petition, order and letters of special guardianship to be served on:

1. The subject of the proceeding;
2. The spouse of the subject of the proceeding, if any, and if the spouse is not the petitioner;  
and
3. At least one other adult relative of the subject of the proceeding, if such relative is known or can be ascertained with reasonable diligence, or by any other person who is not the petitioner as directed by the court.

The notice shall be served in the manner the court directs.

E. The court shall grant the emergency guardian only those powers necessary to act with respect to the particular emergency, as determined by the court. The emergency guardian shall be granted only powers to accomplish acts that are both supported by the proposed emergency plan of care and found necessary by the court. Power to change the place of residence of the subject of the proceeding shall be specifically granted by the court upon a showing that the needs of the subject of the proceeding cannot be met within such subject's present residential arrangements. The court's approval shall be required for any changes in either the emergency plan of care or the specified powers of the emergency guardian. The letters for an emergency guardian shall state that the person is an emergency guardian, the date of the expiration of the special guardianship and the specific power or powers of the special guardian.

F. The appointment of an emergency guardian shall be effective from the date of appointment until a guardian is appointed pursuant to this Act, or for thirty (30) days, whichever is less.



- G. The court shall not require a bond if the appointment is over the person only, and may require or waive bond if the appointment is as to the property of the ward.
- H. The authority of any guardian or limited guardian previously appointed by the court is suspended with regard to the powers granted to the emergency guardian, but not otherwise, for as long as an emergency guardian has authority as provided by this section.
- I. The court may remove an emergency guardian at any time. The emergency guardian shall file a report showing all actions taken during the emergency guardianship and shall make any other report the court requires.

**Section 3-116. Proceedings to Determine Restoration to Capacity.**

- A. Any person who has been judicially determined to be an incapacitated or partially incapacitated person, the guardian or limited guardian, any relative of the ward or any friend of the ward may apply by petition to the court in which such person was declared incapacitated or partially incapacitated, to have the fact of the ward's restoration to capacity judicially determined. The petition shall be verified, and shall state that such person is no longer incapacitated or partially incapacitated.
- B. Upon receiving the petition, the court shall appoint a day for the hearing. Such hearing shall be set within thirty (30) days after the date of the filing of the petition. The court shall cause notice to be served as provided by Section 3-110 of this Act and to the attorney of the subject of the proceeding, if any, and if known to the petitioner. At the hearing, the guardian or relative of the petitioner, and in the discretion of the court, any other person, may contest the right of the petitioner to the relief demanded. Witnesses may be required to appear and testify, as in all other civil matters, and may be called and examined by the judge on his own motion. If it is found that the petitioner is no longer incapacitated or partially incapacitated and capable of taking care of himself/herself or his/her property, or both, his restoration to capacity shall be adjudged, and the guardianship of such person shall cease.

**Section 3-117. Guardian of Incompetent – Discharge – Presumed Competent.**

Whenever a guardian or limited guardian who has been appointed for an incapacitated person has been discharged by the final order of a court having jurisdiction thereof, and no other guardian has been appointed for said person by a court of competent jurisdiction, the person for whom said guardian had been appointed shall be presumed to be fully restored and shall be presumed to be fully capable and competent to make contracts and transact any and all business as though said person had never been declared to be incapacitated or partially incapacitated.

**Section 3-118. Proposed Guardianship Plan for Care and Treatment of Ward.**

A. If not filed with the petition or submitted to the court at the time of the hearing, within ten (10) days after his appointment, the guardian or limited guardian of the person of an incapacitated or partially incapacitated person shall file with the court, for its approval, a proposed plan for the care and treatment of the ward and shall submit subsequent or modified plans as required in this Act. Upon the application of the guardian or limited guardian, the court may extend the time for filing the plan for not more than thirty (30) days. The court may approve a plan acceptable to the court without notice or hearing or may, as necessary, order the modification of the plan at the initial review hearing.

B. Proposed guardianship plans:

1. The proposed guardianship plan and any subsequent guardianship plans for the care and treatment of the ward shall state:
  - a. The services which are necessary to meet the essential requirements for the physical health or safety of the ward taking into account the contents and recommendations of an evaluation report made with respect to the ward, if any;
  - b. The means for obtaining those services;
  - c. The manner in which the guardian or limited guardian, the ward and the guardian of the property of the ward or the conservator, or if an organization or another person has been appointed to serve in that capacity, will exercise and share decision-making authority; and
  - d. Such other services necessary to assist in fulfilling the needs of the ward, the terms of the most recent dispositional order applying to such guardian or limited guardian, and the duties of such guardian or limited guardian.

2. Each such plan shall be substantially in the following form:

Plan for the Care and Treatment of a Ward

I, \_\_\_\_\_, the (guardian, limited guardian) for \_\_\_\_\_  
\_\_\_\_\_ (name and current place of abode of the ward) hereby submit  
this (initial, annual or as ordered by the court) Guardianship Plan for the care and treatment of said  
ward.

1. I believe the services necessary for the physical health and safety of the ward are:

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2. Those services will be obtained or provided as follows:

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3. The guardian (or conservator) of the property (Name or indicate as not applicable) of the ward, the ward, and I plan to cooperate and share decision-making authority with regard to the ward within the provisions of the dispositional order as follows:

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4. I believe the following services will assist in fulfilling the needs of the ward, implementing the terms of the most recent dispositional order applying to me as (guardian or limited guardian):

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(Date and Signature of guardian or limited guardian)

C. If ordered by the court, the plan for the care and treatment of the ward shall be prepared with the assistance of any person designated by the court to provide such assistance.

**Section 3-119. Duty to Keep Property of Ward Safe – Fiduciary Duties.**

A. A guardian of the property must keep safe the property of his/her ward and shall act as a fiduciary as provided by Section 1-122 of this Act. Subject to the order and the guardianship plan for the management of the financial resources of the ward, a guardian or limited guardian of the property of the ward:

1. Shall expend or distribute, authorize the expenditure or distribution of, and assist in the expenditure or distribution of, the principal of or income from the financial resources placed under his supervision and control to assure that:
  - a. The essential requirements for the physical health or safety of the ward are met,
  - b. The property rights of the ward are protected,

- c. The financial resources of the ward which are subject to the guardianship are prudently managed, and
    - d. The guardian or limited guardian of the person of the ward, if any, or if other than the guardian or limited guardian of the property, is able to perform the duties and powers assigned by the court;
  2. May expend funds of the property for the support of persons legally dependent on the ward and others who are members of the ward's household who are unable to support themselves, and who are in need of support;
  3. May, subject to prior approval by the court, make gifts to charity, persons, which may include the guardian or limited guardian, or both such charity and persons, as the ward might have been expected to make, based upon an established pattern of giving made by the ward prior to the appointment of a guardian or limited guardian or if the court finds it is in the best interest of the subject of the proceeding on the basis of tax or property planning. The court may approve gifts of small amounts for holidays, birthdays or similar occasions and shall specify in the order the maximum amount which may be expended for such purpose and the person or persons to whom such gifts can be made, which may include the guardians or limited guardians.
- B. Limited guardians of property shall consider the size of the financial resources of the ward which have not been under their supervision or control.
- C. If satisfied that the incapacity or partial incapacity of the ward has ceased, the guardian or limited guardian of the property shall file a petition requesting a determination on the restoration to capacity of the ward and the termination of the guardianship.

**Section 3-120. Plans for Management of Financial Resources of Ward – Form.**

- A. If not filed with the petition or submitted to the court at the time of the hearing, within two (2) months after his/her appointment, a guardian or limited guardian of the property of an incapacitated or partially incapacitated person shall file with the court for its approval a proposed plan for the management of the financial resources of the ward that are under his management or administration, and an inventory as required by Section 4-301 of this Act. Said guardian or limited guardian shall submit subsequent or modified plans as required by this Act.
- B. Initial and subsequent guardianship plans for the management of the financial resources of the ward shall state:
  1. The services which are necessary to manage the property of the ward are placed under the control of the guardian or limited guardian;

2. The means for obtaining those services;
3. The manner in which the guardian or limited guardian of the property of the ward, the ward and the guardian or limited guardian of the person, or if another individual has been appointed to serve in that capacity, will exercise and share decision-making authority;
4. Such other services necessary to assist in the management of the property placed under the guardian or limited guardian in fulfilling the needs of the ward and the duties of such guardian or limited guardian, and the terms of the most recent dispositional order.
5. In the case of a minor, the guardian shall review the minor's account file and conduct an assessment sixty (60) calendar days prior to the date that the minor will reach the age of majority (generally 18 years old) to determine whether the account holder needs supervision as an adult. For minors who are wards of the court and who will not require supervision as adults advise that the minor is reaching the age of majority and that the Department of the Interior currently holds funds for the minor and will continue to hold funds as long as the individual remains a ward of the court.
6. The guardian, with the approval of the court, shall determine whether the account of the minor needs supervision as an adult. If the guardian determines that the account holder remain a ward of the court as an adult the account holder shall be notified in writing that the account shall be supervised. The account shall remain restricted but the restriction must be changed from supervised minor to supervised adult.

C. Each such plan shall be substantially in the following form:

Plan for the Management  
of the Property of the Ward

I, \_\_\_\_\_, the (petitioner, guardian or limited guardian) for \_\_\_\_\_  
\_\_\_\_\_ (name and current place of abode) hereby submit this (initial,  
annual or as ordered by the court) Guardianship Plan.

1. I believe the services necessary to manage the property of the ward which is subject to this Plan are as follows:

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2. Those services will be provided in the following manner:

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3. The guardian (or limited guardian) of the person, (Name, or indicate as not applicable) the ward, and I plan to cooperate and share decision-making authority with regard to the ward within the provisions of the dispositional order as follows:
- 
- 

4. I believe the following services will assist in the management of the property of the ward subject to my control, implementing the terms of the most recent dispositional order applying to me as (guardian or limited guardian) of the property:
- 
- 

5. The Guardian must provide the information listed in paragraphs a through e as set forth below.

I, \_\_\_\_\_, hereby provide the following:

- a. Date of birth and a copy of the ward's birth certificate;
  - b. Address of the ward;
  - c. Tribal enrollment or membership certificate if available;
  - d. Disbursement interactions and, if applicable, must include "SUPERVISED INDIVIDUAL INDIAN MONEY (IIM) ACCOUNTS DISTRIBUTION PLAN;" and
  - e. An order from the court declaring that the minor is no longer a ward of the court, if applicable.
- 

(Date and signature of the guardian or limited guardian)

**Section 3-121. Duties and Powers of Guardian or Limited Guardian.**

- A. A guardian or limited guardian of the person of an incapacitated or partially incapacitated person is responsible for the care and control of the ward pursuant to the provisions of this Act and the orders of the court, and the guardianship plan approved by the court and shall perform diligently and in good faith any specific duties and powers assigned by the court.
- B. Minimum requirements:

1. A guardian or limited guardian of the person of an incapacitated or partially incapacitated person shall:
  - a. Become or remain sufficiently acquainted with the ward and maintain sufficient contact with the ward to know of the capacities, limitations, needs, opportunities and physical and mental health of the ward;
  - b. Assure that the ward has a place of abode in the least restrictive, most normal setting consistent with the requirements for his health or safety; and
  - c. Provide any required consents or approvals on behalf of the ward as authorized by the court.
  
2. A guardian or limited guardian of the person, if consistent with the terms of an order of the court, may:
  - a. If no guardian of the property or conservator for the estate of the ward has been appointed, institute proceedings, including administrative proceedings, or take other appropriate action to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward; and
  - b. Consent to routine medical or other professional care, treatment or advice for the ward without liability by reason of the consent for injury to the ward resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstance.
  
- C. If satisfied that the incapacity or partial incapacity of the ward has ceased, the guardian or limited guardian shall file a petition requesting a determination on the restoration to capacity of the ward and the termination of the guardianship.

### **Section 3-122. Limitation of Powers of Guardian**

A guardian shall have no powers except as provided by this Act or given to such guardian in the orders in the guardianship proceeding. This limitation of powers includes but is not limited to the following:

1. No guardian shall have the power to consent on behalf of the ward to the withholding or withdrawal of life-sustaining procedures from the ward, except:
  - a. With specific authorization of the court having jurisdiction over the guardianship proceedings. Such authorization must be granted in a separate order and only at such time when the ward is in need of life-sustaining treatment,

- b. As authorized by an advance directive executed pursuant to tribal law, or
  - c. As authorized by a consent not to resuscitate made pursuant to tribal law;
2. No guardian or court having jurisdiction of the guardianship proceeding shall have the power to consent on behalf of the ward or order the consent on behalf of the ward to the termination or relinquishment of parental rights of the ward;
  3. Except in an emergency and only as necessary to preserve the life of the ward, no guardian shall have the power to consent on behalf of the ward to an abortion, psychosurgery, removal of a bodily organ, performance of any experimental biomedical or behavioral procedure, or participation in any biomedical or behavioral experiment, except with specific authorization of the court having jurisdiction of the guardianship proceeding;
  4. No guardian shall have the power to prohibit the marriage or divorce of a ward except with specific authorization of the court having jurisdiction of the guardianship proceeding; and
  5. No guardian shall have the power to consent on behalf of the ward to placement of the ward in a facility or institution to which a person without a guardian would have to be committed pursuant to the laws of the the tribe absent formal commitment proceedings in which the ward has independent counsel.

**Section 3-123. Establishment by Reason of Physical Disability – Consent – Notice – Hearing.**

When it is represented to the court upon verified petition of any person, any relative, or friend that:

1. A person is an inhabitant or resident of this jurisdiction or is not a resident of this jurisdiction but has property within this jurisdiction;
2. That such person is, by reason of physical disability only, unable to manage his/her property; and
3. That such person voluntarily consent to the establishment of a conservatorship and the appointment of a conservator, the court must cause notice to be served personally on the person so alleged to be unable to manage his property and on such other persons and in such manner as the court directs, of the time and place of hearing such petition, not less than five (5) days before the time so appointed, and such person, if able to attend, must be produced before the court at the hearing.

**Section 3-124. Appointment of Conservator After Full Hearing and Examination – Consent.**

If, after a full hearing and examination upon such petition, it appears to the court that the person in question is, by reason of physical disability, unable to manage his/her property and the person consent to the appointment of a conservator, the court shall appoint a conservator of the property of such



person. A conservator shall not be appointed if the person in question does not consent to the appointment.

### **Section 3-125. Conservator's Power and Duties – Jurisdiction.**

A conservator shall have the same powers and duties, including the submission of plans and reports, as a guardian or limited guardian of the property of an incapacitated or partially incapacitated person as required by this Act. All laws relative to the jurisdiction of the court over the property of a person under guardianship as an incapacitated or partially incapacitated person, including the investment, management, sale or mortgage of his/her property and the payment of his/her debts, shall be applicable to the property of a person under conservatorship.

### **Section 3-126. Discharge and Accounting.**

A conservator may be discharged by the court upon the application of the ward or otherwise upon such notice to the conservator and next of kin of said ward as the court may determine reasonable and proper, when it appears that the conservatorship is no longer necessary. In the event of the death, resignation or removal of a conservator, the court, on the application of the former ward and upon such notice to the next of kin of said ward as the court may order, may certify that said ward is discharged by operation of law if it appears that the conservatorship of said ward is no longer necessary. Upon the termination of a conservatorship, a conservator shall account to the court as otherwise provided by the Guardianship and Conservatorship Act for guardians of property.

### **Section 3-127. Reserved.**

### **Section 3-128. Subsequent Appointment of Guardian of Said Ward.**

Any subsequent appointment of a guardian of said ward as an incapacitated or partially incapacitated person shall be an appointment as guardian of the person only of said ward and shall not include the appointment of such guardian of the property of said ward or in any manner affect the custody, management and the handling of the property of said ward by the conservator so long as such conservatorship proceedings are pending.

### **Section 3-129. Limitation on Power to Contract.**

Upon the appointment of a conservator, the ward shall not thereafter have the power to enter into any contract creating an obligation against the property.

## **Article IV. Miscellaneous.**

#### **Section 4-101. Disqualification by Financial Relations with Judge.**

No natural person shall be eligible to act as a guardian of an estate under the jurisdiction of any judge, if said judge is under any financial obligation whatsoever to such person. If any judge, while holding the office of judge of a Tribal Court or CFR Court, becomes pecuniarily liable to any guardian of any minor or incapacitated or partially incapacitated person, such liability shall operate to disqualify such guardian. It is hereby made the duty of the judge to enter on the court docket such disqualifying conditions. The disqualification shall also apply if such person, except a parent to who is guardian of his or her own child or children has rendered financial aid to said judge, in securing his nomination and election to the office of judge or his appointment as judge. Persons who have heretofore been appointed guardians, who are not eligible to act under this section shall be removed by the judge and successors appointed, as provided by law. If any person not eligible to act under this section continues to act as guardian, after such ineligibility has been legally determined, such person and the surety upon his bond shall be liable to the estate of the minor or incapacitated or partially incapacitated person for all money unlawfully paid by such ineligible guardian out of the estate of such minor or incapacitated person, and if a judge knowingly permits an ineligible person to act, he shall be removed from office.

#### **Section 4-102. Inquiry into Suitability of Person Proposed to Serve as Guardian.**

- A. In conducting an inquiry to determine whether a person is suitable to serve as a guardian, the court shall determine if:
1. The person proposed to serve as guardian is a minor or an incapacitated or partially incapacitated person;
  2. The person proposed to serve as guardian is a convicted felon;
  3. The person proposed to serve as guardian is insolvent or has declared bankruptcy during the five (5) years prior to the filing of the pleading proposing such person to serve as guardian;
  4. The person proposed to serve as guardian is not under any financial obligation to the ward; or
  5. There exists a conflict of interest which would preclude or be substantially detrimental to the ability of the person to act in the best interest of the subject of the proceeding if such person is appointed.
- B. No minor or incapacitated person shall be appointed guardian of an incapacitated or partially incapacitated person.

- C. If the person proposed to serve is a convicted felon, the court shall make further inquiry into the nature of the felony and the circumstances surrounding the conviction. The court shall appoint such person proposed to serve only upon determining that the facts underlying the conviction do not give rise to a reasonable belief that the person proposed to serve will be unfaithful to or neglectful of his/her fiduciary responsibilities, and that the appointment is in the best interest of the ward.
  
- D. If the person proposed to serve as guardian or limited guardian of the property of an incapacitated or partially incapacitated person is insolvent or has declared bankruptcy within five (5) years prior to the filing of the pleading proposing that such person serve, the court shall appoint such person only after giving due consideration to the nature and extent of the property of the ward and the anticipated actions necessary to manage the estate of the ward, and only upon a determination that such appointment is in the best interest of the ward, and only upon a determination that such appointment is in the best interest of the ward. Insolvency or bankruptcy shall not automatically preclude a person proposed to serve as guardian or limited guardian of the person of an incapacitated or partially incapacitated person.
  
- E. If the person proposed to serve as guardian or limited guardian of the property of an incapacitated or partially incapacitated person is under any financial obligation to the ward, the court shall make further inquiry into the nature and extent of such obligation. The court shall appoint the person proposed to serve only after a determination that such obligation will not impair the ability of the person proposed to serve to discharge his fiduciary responsibilities, and that the appointment is in the best interest of the ward. Being under financial obligation to the ward shall not automatically preclude a person proposed to serve as guardian or limited guardian of the person of an incapacitated or partially incapacitated person.
  
- F. A current or potential conflict of interest which is not substantial and not likely to preclude or impair the ability of a person proposed to serve as a guardian acting in the best interest of his ward shall not, by itself, disqualify such person from appointment.
  
- G. The following is a suggested Petition for Guardianship:

**PETITION FOR APPOINTMENT OF A GUARDIAN**

**COMES NOW** \_\_\_\_\_, and petitions this Court for the appointment of a guardian of \_\_\_\_\_, and in support of his/her Petition, represents and shows to the Court:

1. That \_\_\_\_\_ is a resident of \_\_\_\_\_ County, State of Oklahoma, and located within the territorial jurisdiction of the Choctaw Nation of Oklahoma.
2. That Petitioner is a person interested in the welfare of \_\_\_\_\_, is the (spouse, son, daughter, friend), and therefore, is entitled to petition this Court for appointment of a guardian.

3. That \_\_\_\_\_ is impaired by reason of \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

A letter from (doctor, psychologist, social worker) is attached hereto, marked Exhibit "A" and incorporated herein by reference thereto.

4. That this impairment results in his/her inability to receive and evaluate information effectively and meet the essential requirements for his/her physical health and safety, and manage his/her financial resources.

5. That \_\_\_\_\_ impairment is evidenced by his/her \_\_\_\_\_  
 \_\_\_\_\_

6. That notice of this Petition shall be given to the following individuals:

<b>NAME</b>	<b>RELATIONSHIP</b>	<b>ADDRESS</b>
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7. That Petitioner asserts that the subject of the guardianship (is married, is not married), and has the following children:

8. That Petitioner knows of no persons or organizations nominated by will or other writing to serve as guardian, or limited guardian, of \_\_\_\_\_.

9. That \_\_\_\_\_ (is, is not) receiving services from the Department of Children and Family Services.

10. That this Petition is not presented pursuant to the provisions of the any Revised Uniform Veterans Guardianship Act, so notice to the Veterans Administration is not required.

11. That Petitioner is unaware of the existence or identity of any attorney representing \_\_\_\_\_  
 \_\_\_\_\_.

12. That Petitioner is qualified as guardian of \_\_\_\_\_, and the Petitioner is not a minor, incapacitated, or partially incapacitated, nor a convicted felon, is not bankrupt, nor is he/she insolvent, or under any financial obligation to the Ward or subject to a conflict of interest which would preclude, or be substantially detrimental to his/her ability to act in the best interest of \_\_\_\_\_.

**WHEREFORE**, Petitioner respectfully requests that this Court set a date for hearing this Petition, order such notice as required by law and upon hearing this Petition, appoint Petitioner guardian of \_\_\_\_\_.

\_\_\_\_\_  
Signature of Petitioner

\_\_\_\_\_  
Name of Attorney

Bar #

Address

Phone #

**STATE OF OKLAHOMA** )

) **ss.**

**COUNTY OF** \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared \_\_\_\_\_, of lawful age, being first duly sworn upon oath, state:

That \_\_\_\_\_ is the Petitioner above named; that he/she has read the above and foregoing Petition for Appointment of Guardian and understand the same; that the facts contained therein are true and correct.

\_\_\_\_\_  
Name of Petitioner

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

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(SEAL & COM. #)

#### **Section 4-103. Guardian's Bond – Letters to Issue on Filing**

- A. Before the entry of an order appointing a person or organization as a guardian of the person and before the letters issue, the court may require the person or organization to be appointed to provide a bond to the court or the tribe or the United States (for CFR courts), with sufficient sureties, to be approved by the court, and in such sum as the court shall order, conditioned that the guardian will faithfully execute the duties of the trust according to law.
  
- B. Bond requirements:
  - 1. Before the entry of an order appointing a person or organization as the guardian of a minor or as the guardian or limited guardian of the property of an incapacitated or partially incapacitated person takes effect, and before the letters issue, the court shall require the person or organization to be appointed to provide a bond, in an amount not less than the value of intangible personal property as alleged in the petition or otherwise determined by the court at the hearing on the petition, to the court or the tribe or the United States as the court shall order, conditioned that the guardian will faithfully execute the duties of the trust according to law.
  
  - 2. Upon a finding by the court that the anticipated annual income to a ward for one (1) year plus the value of the personal property of the ward is less than Forty Thousand Dollars (\$40,000.00), the court may order that a bond is not necessary.
  
- C. In the event the intangible personal property of the ward, as determined by the inventory, is in a greater amount than as alleged in the petition or determined by the court at the hearing on the petition, the guardian shall file at the time the inventory is filed a bond sufficient for the full amount of the intangible personal property, which bond will be in substitution for the bond originally filed on the appointment of the guardian. The amount of the bond in the future may be adjusted up or down in an amount based upon the intangible personal property shown in future annual accountings; provided, however, no bond shall be reduced except upon order of the court.

#### **Section 4-104. Petition Requesting Further Security – Suspension of Powers – Order.**

When a petition is presented praying that a guardian be required to give further security, or to give bond where, by order of the court no bond was originally required, and it is alleged on oath that such is necessary to serve the best interest of the ward or his property, the judge may, by order, suspend his/her powers until the matter can be heard and determined. If the judge determines a bond or other security is in the best interest of the ward or his property, the judge shall order the same to be posted, and if it is not given within a reasonable time, to be fixed by the judge, the guardian shall be removed.

#### **Section 4-105. Court May Require New Bond – Discharging Sureties.**

The court may require a new bond to be given by a guardian whenever the court deems it necessary, and may discharge the existing sureties from further liability, after due notice is given as the court may direct, when it shall appear that no injury can result therefrom to those interested in the property.

#### **Section 4-106. Bonds to be Preserved – Breach of Condition – Actions on Bonds.**

Every bond given by a guardian must be filed and preserved in the office of the court clerk, and in case of a breach of a condition thereof, may be prosecuted for the use and benefit of the ward or of any person interested in the person or property of the ward.

#### **Section 4-107. Statute of Limitation of Action – Effect of Disability.**

No action can be maintained against the sureties on any bond given by a guardian, unless it be commenced within three (3) years from the discharge or removal of the guardian; but if at the time of such discharge a person entitled to bring such action is under any legal disability to sue, the action may be commenced by such person at any time within three (3) years after such disability is removed.

#### **Section 4-108. Inventory and Account of Ward's Estate.**

- A. Every guardian or limited guardian of the estate of a ward shall file an inventory of the estate of his/her ward within two (2) months after his/her appointment. The time to file an inventory may be extended by the court for good cause shown. The court may, upon application made for that purpose by an interested person, compel the guardian or limited guardian of the property of a ward to render a revised inventory or account to the court of the property of the ward. Each inventory and account returned or rendered must be sworn to by the guardian or limited guardian.
- B. The guardian shall state his/her opinion of the value of the estate of the ward described in the first inventory. Such inventory shall be filed with the court clerk. Whenever any other property of the estate of any ward is discovered, not included in the inventory of the estate already returned, and whenever any other property has been succeeded to or acquired by any ward, or for his benefit, like proceedings must be had for the return thereof. If requested by the ward, judge or any interested person, such property must be appraised by appraisers appointed,

sworn and acting in the manner provided for regulating the settlement of the property of decedents.

- C. The court shall not waive any inventory of the estate of the ward which is required by this section.

**Section 4-109. Account Settlement and Allowance – Reports – Consolidation of Reports – Accounting Information.**

- A. Except as otherwise provided by subsection B of this section, a guardian or limited guardian of the estate shall, upon the expiration of a year from the time of appointment, and at least annually thereafter, present accounts to the court for settlement and allowance as part of the guardianship report as required by Section 4-111 of this Act.
- B. Annual accountings:
  - 1. In addition, a guardian or limited guardian of the estate shall:
    - a. Present accounts whenever the court requires that such report or accounts be presented, and
    - b. With the annual report of accounts, report any changes of property listed on the inventory. The report shall state the compensation requested by the guardian and for the attorneys.
  - 2. If there has been a significant change in the physical or mental condition of the ward, of the ward's financial resources, the details thereof shall be set forth in the annual report required by subsection A of this section.
  - 3. Except as otherwise directed by the court the provisions of this subsection regarding the filing of an annual accounting and annual plan shall not apply to any guardianship of the estate of a ward if the ward's financial resources or assets, other than a homestead, are worth less than Forty Thousand Dollars (\$40,000.00) regardless of whether or not a bond has been posted, and if the guardian or limited guardian of the property is the spouse or a relative of the ward within the fourth degree of consanguinity.
- C. In addition to the reports required by subsections A and B of this section, a guardian or limited guardian shall submit a report:
  - 1. If the ward is an incapacitated or partially incapacitated person, when there is a significant change in the capacity of the ward to meet the essential requirements for the physical health or safety of the ward or to manage the financial resources of the ward;



2. If the ward is a minor, any significant change in the condition of the minor or in the condition of the property of the minor;
3. When the guardian or limited guardian resigns or is removed; and
4. When the guardianship is terminated.

D.

1. Unless waived at the discretion of the court, a guardian or limited guardian of the person of an incapacitated or partially incapacitated person shall file a report on the guardianship of the person pursuant to Section 4-111 of this Act.
2. A guardian of the person of a minor ward shall not be required to file annual reports of the guardianship of the person of the ward unless ordered by the court.
3. A guardian or limited guardian of the estate of a ward shall file a report on the guardianship of the estate pursuant to Section 4-111 of this title.

E. The court shall not waive the filing of any report for a period in excess of five (5) years.

F. If the same person or organization is required to file reports as to both the person and the estate of a ward, the reports may be consolidated.

G. In addition to other specified information, any order of the court approving an annual guardianship plan and report shall include the date certain by which the guardian shall file the next annual report.

#### **Section 4-110. Account Rendered by Two or More Joint Guardians.**

When an account is rendered by two or more joint guardians, the judge of the district court may allow the same upon oath of any of them.

#### **Section 4-111. Report on Guardianship of Incapacitate or Partially Incapacitated Person.**

- A. A report on the guardianship of the person of an incapacitated or partially incapacitated person shall set forth:
1. The name and place of abode of the ward and the name and address of the guardian or limited guardian;

2. Any significant change in the capacity of the ward to meet the essential requirements for his/her physical health and safety;
3. The services being provided to the ward and the relationship of those services to the individual guardianship plan;
4. Any significant actions taken by the guardian or limited guardian or guardian during the reporting period;
5. Any significant problems relating to the guardianship which have arisen during the reporting period;
6. The reasons, if any, why the appointment should be continued; and
7. The reasons, if any, why no less restrictive alternative will permit the incapacitated or partially incapacitated person to meet the essential requirements for his/her physical health or safety.

B. The report shall be substantially in the following form:

Report on the Guardianship of the Person, (Name) the (Guardian/Limited Guardian of the person) for (Name), an (incapacitated/partially incapacitated) person hereby submit this (annual, court-ordered) Guardianship Report.

1. The present place of abode of the ward is: \_\_\_\_\_  
\_\_\_\_\_
2. The type of home or facility in which the ward lives is \_\_\_\_\_  
and the name of the person in charge of the home or facility is \_\_\_\_\_  
\_\_\_\_\_.
3. My present street address and telephone number is: \_\_\_\_\_  
\_\_\_\_\_
4. During the last year, I have seen the ward \_\_\_\_\_ times. I otherwise or also have become or remained familiar with the needs and care of the ward as follows: \_\_\_\_\_  
\_\_\_\_\_
5. The nature of my visits to the ward have been: \_\_\_\_\_  
\_\_\_\_\_
6. The following services are currently being provided to the ward: \_\_\_\_\_  
\_\_\_\_\_
7. These services (are, are not) provided for in the current Guardianship Plan. The reason they are not shown in the current Guardianship Plan is: \_\_\_\_\_  
\_\_\_\_\_

8. The ward was last seen by a physician on: \_\_\_\_\_. The purpose of the visit was: \_\_\_\_\_  
\_\_\_\_\_
9. I (have, have not) observed any major change in the ward's physical or mental condition during the last year. (If so,) these are my observations: \_\_\_\_\_  
\_\_\_\_\_
10. I (have, have not) taken any significant action for or on behalf of the ward since the last time I submitted a Guardianship Report. (If so,) I took the following actions: \_\_\_\_\_  
\_\_\_\_\_
11. There (have, have not) been any significant problems relating to the ward or to my guardianship of the ward since the last time I submitted a Guardianship Report or, if this is an initial report, since the issuance of my letters. (If so,) I have observed these problems: \_\_\_\_\_  
\_\_\_\_\_
12. It is my opinion that the guardianship (should, should not) be continued. (If so,) the basis for my belief is as follows: \_\_\_\_\_  
\_\_\_\_\_
13. I believe the ward (would, would not) be able to manage essential requirements for physical health and safety with fewer restriction on the ward's ability to act for himself or herself. (If so,) the basis for my belief is as follows: \_\_\_\_\_  
\_\_\_\_\_
14. My opinion of the present care being provided to the ward is as follows: \_\_\_\_\_  
\_\_\_\_\_
15. The place of abode of the ward (has, has not) changed since the last Guardianship Report. (If so,) the place of abode of the ward has changed for the following reasons: \_\_\_\_\_  
\_\_\_\_\_

I hereby swear that the answers set forth above are true and correct to the best knowledge and belief of the undersigned, subject to the penalties of making a false affidavit or declaration.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Telephone: \_\_\_\_\_

- C. Whenever there are changes or proposed changes to the guardianship plan, an individual guardianship plan, substantially in the same form as provided in Section 3-120 of this act, shall be submitted with the guardianship report and shall show any such changes or proposed changes in the guardianship plan since submitted to and approved by the court.

D. Attached to the report shall be:

1. An accounting of any monies received by the guardian or limited guardian on behalf of the ward including any IIM accounts;
2. Any expenditures made by the guardian or limited guardian on behalf of the ward;
3. Any compensation requested by the guardian or limited guardian; and
4. Copies of any appropriate medical records, evaluations or other similar documentation pertinent to the reporting period.

**Section 4-112. Mailing of Copies of Annual Report Upon Filing – Hearing – Report Without Notice – Compensation – New Bond – Appointment of Counsel to Represent Ward.**

A.

1. Upon the filing of an annual report the court shall immediately cause a copy of the report to be mailed by first-class mail to:
  - a. The persons entitled to notice pursuant to Section 2-101 of this Act for minors, or
  - b. Those persons entitled to notice pursuant to paragraphs 1, 2, 3 and 7 of subsection A of Section 3-110 of this Act for adults, and
  - c. The attorney of the ward, if any.
2. Attached to the copy of the report shall be a statement notifying the person receiving copies of said report that any objection to the report must be filed within fifteen (15) days after the date of the filing of the annual report with the court.
3. Any person entitled to receive a copy of the annual report may file an objection to said report within fifteen (15) days after the filing of the annual report with the court.

B.

1. After notice, the court may on its own motion hold a hearing on an annual report and shall hold a hearing:
  - a. Upon the filing of an objection to the annual report; or

- b. When the court is considering issuing an order other than an order accepting the report and granting the relief requested.
  2. Notice for a hearing on the annual report shall be given, by mail, to the persons entitled to notice pursuant to paragraphs 1, 2, 3 and 7 of subsection A of Section 3-110 at least ten (10) days prior to the date set for the hearing. Notice shall be in such form as the court may direct and shall be sent by regular first-class mail.
- C. The court may enter an order granting the relief requested in the report without notice if the court determines that such relief should be granted immediately. In that event, the court shall grant such relief on a temporary basis pending a hearing on the report or the expiration of the fifteen (15) days within which an objection to the report may be filed.
- D. When no objection to an annual report is filed and no hearing on the annual report is held as otherwise provided by this section, the court shall issue an order accepting the annual report and granting the relief requested.
- E. The compensation for the guardian, the guardian's attorney and any other person entitled to compensation from the property of the ward shall be determined by the court in the manner required by the provisions of the Guardianship and Conservatorship Act. Such order, whether issued at the expiration of the fifteen (15) days within which an objection to the annual report may be filed or after hearing on the report, shall be final with respect to all persons given copies of the annual report or notice of such hearing, except with regard to any such person who may be determined to have been subject to a legal disability at the time such notice was given. Such order shall be final with respect to the guardian except with respect to challenge by the ward upon the removal of the ward's legal disability.
- F. With regard to an annual report of a guardian of the property of a ward, the court shall examine the changes, if any to the property of the ward as set forth in the report. If the guardian was required to submit a bond, and if the total value of the ward's property which is subject to the proceeding differs significantly from the total value of the ward's property as last disclosed to the court:
  1. The court shall direct such guardian to obtain a new bond of such lesser or greater penal amount as will adequately protect the ward's property which is subject to the proceeding;
  2. Such new bond shall be filed with the district court clerk within thirty (30) days following the date of the order; and
  3. If the court requires a new bond of a greater penal amount than the bond previously submitted, failure of the guardian to submit such new bond within the thirty (30) day period

set forth in this subsection shall constitute grounds for removal of such guardian or limited guardian.

G. At any hearing held upon an annual report:

1. If required by the court, the guardian or limited guardian shall be present;
2. The court shall review the annual report and consider any objection made thereto, and thereupon enter such order as the court deems appropriate; and
3. The court may make any order which the court deems to be in the best interest of the ward or the property of the ward. The court may also set for further hearing, with prior notice to be given as provided in this section, any other matter which the court deems should be considered in the best interest of the ward or the property of the ward. Subject to appeal or vacation within the time permitted, an order entered after the hearing of an annual report after notice adjudicates as to liabilities concerning the matters considered in connection with said hearing.

H. At a hearing upon an annual report the court may appoint an attorney to represent the ward who is an incapacitated or partially capacitated person, in the same manner and with the same compensation as provided in this Act for appointment of an attorney for the subject of the proceeding following the filing of a petition for appointment of a guardian or limited guardian of the person or property of an alleged incapacitated or partially incapacitated person. The appointment of such attorney shall cease:

1. Upon the entry by the court of an order pertaining to the matters considered at such hearing, unless the court otherwise directs, either in the order appointing such attorney or in the order pertaining to the matters considered at such hearing;
2. Unless an appeal is taken from the order of the court pertaining to the matters considered at such hearing, in which event such attorney shall continue to represent the ward until final disposition of the appeal or as otherwise ordered by the court; or
3. Upon application of said attorney, the court may allow the attorney to withdraw from the case and shall appoint another attorney to represent the subject of the proceeding in any appeal proceeding.

**Section 4-113. Applications to Court for Relief – Contents for Application – Notice and Hearing – Order – Appointment of Counsel – Joinder – Evaluation of Ward – Hearing Without Notice.**

- A. After the appointment of a guardian, the ward, any person interested in the welfare of the ward or the guardian may make application to the court for:
  - 1. Termination of the guardianship;
  - 2. Removal of the guardian;
  - 3. Resolution of a dispute pertaining to the guardianship plan;
  - 4. If the ward is an incapacitated or partially incapacitated person, the imposition of additional restrictions upon the legal capacity of the ward to act on his own behalf or the removal of one or more existing restrictions; or
  - 5. A review hearing.
  
- B. Such application shall set forth:
  - 1. The names and addresses of the individuals and entities entitled to notice;
  - 2. The relief requested; and
  - 3. The alleged facts and reasons supporting the request.
  
- C. Any person entitled to notice of the hearing on an application filed pursuant to this section may object to the relief requested in the application. If the ward is a minor notice shall be as provided by this Act.
  
- D. The court shall set an application filed pursuant to this section for hearing on a date certain and shall cause notice to be given to the persons entitled thereto by regular first-class mail at least ten (10) days prior to such date. However, except for an order terminating a guardianship, the court may enter an order granting the relief requested in the application without notice if the court determines that such relief should be granted immediately. In that event, the court may grant such relief on a temporary basis and proceed to set the application for further hearing following the giving of notice as provided by this subsection. At the hearing, based upon the evidence adduced, the judge may continue, modify or vacate his temporary order.
  
- E. At the hearing held upon an application filed pursuant to this section for which notice is required, the court may, based upon the evidence adduced, enter an order granting or denying the relief

requested. At such hearing, the court also may make any other order which the court deems to be in the best interests of the ward or the property of the ward. The court may also set for hearing, with prior notice to be given as provided in this section, any other matter which the court deems should be considered in the best interest of the ward or the property of the ward.

- F. With respect to any matter set for hearing pursuant to this section, the court may appoint an attorney to represent a ward at such hearing who is an incapacitated or partially incapacitated person, in the same manner and with the same compensation as provided in the Guardianship and Conservatorship Act for appointment of an attorney for the subject of the proceeding following the filing of a petition for appointment of a guardian or limited guardian of the person or property of an alleged incapacitated or partially incapacitated person. The appointment of such attorney shall cease:
1. Upon the entry by the court of an order pertaining to the matters considered at such hearing, unless the court otherwise directs, either in the order appointing such attorney or in the order pertaining to the matters considered at such hearing;
  2. Unless an appeal is taken from the order of the court pertaining to the matters considered at such hearing, in which event such attorney shall continue to represent the ward until final disposition or as otherwise ordered by the court; or
  3. Upon application of said attorney, the court may allow the attorney to withdraw from the case and shall appoint another attorney to represent the subject of the proceeding in any appeal proceeding.
- G. After notice, the court may join the issues raised in separate applications or separate objections for determination at a single hearing, unless the court determines joinder would be prejudicial to the interest of the ward.
- H. As necessary and appropriate, the court may order an evaluation of the ward in connection with any guardianship proceeding subsequent to the appointment of a guardian.
- I. The court may hear an application other than with respect to the matters set forth in subsection A of this section, with or without notice as the court determines. If the court requires notice to be given, the court shall specify the persons to whom notice shall be given, and the manner and time in which such notice shall be given.

#### **Section 4-114. Appointing More than One Guardian – Bond.**

The court may appoint more than one guardian of any person or property subject to guardianship. Such guardians shall be governed and liable in all respects as a sole guardian. Such guardians shall give bond in like manner and with like conditions as prescribed for sole guardians unless waived.



#### **Section 4-115. Two or More Guardians.**

- A. If there are two guardians who are residents of this jurisdiction, the act of one alone shall be effectual:
  - 1. If a co-guardian is laboring under any legal disability from serving, said co-guardian in such case shall be relieved from official liability; provided however, proper finding and valid order of the district court having jurisdiction therein is first obtained; or
  - 2. If a co-guardian has given the other co-guardian authority in writing to act for both.
- B. If there are more than two guardians, the act of a majority of them is valid.

#### **Section 4-116. Death of One of Two or More Joint Guardians.**

On the death of one of two or more joint guardians, the power continues to the survivor until a further appointment is made by the court.

#### **Section 4-117. Payment of Just Debts.**

Every guardian appointed under the provisions of this Act shall pay all just debts due from the ward out of the personal property and income from the real property of the ward, if sufficient. If said property and income is not sufficient, then payment shall be made out of the real property of the ward, upon obtaining an order for the sale thereof, the proceeds of such sale shall be disposed of in the manner provided by law for the sale of real property of decedents.

#### **Section 4-118. Collection and Settlement of Accounts – Appearance for Ward.**

A guardian must settle all accounts of the ward, and demand, sue for and receive all debts due to the ward, or may, with approval of the court, compromise or compound for the same and give discharges to the debtors on receiving a fair and just settlement of such claim. A guardian shall appear for and represent the ward in all legal suits and proceedings, unless another person is appointed for that purpose as guardian or next friend. A guardian, with the approval of the court exercising jurisdiction in the suit or proceeding, may compromise and settle any claim made by, on behalf of or against the ward in such suit or proceeding.

#### **Section 4-119. Discharge and Release.**

The person making payment, delivery, transfer or issuance of property or evidence thereof to the person designated by such court under this section is discharged and released to the same extent as if such payment, delivery, transfer or issuance was made to a guardian of the minor or incapacitated or partially incapacitated person, and he/she is not required to see to the application thereof. A person making payment, delivery, transfer or issuance of property, or evidence thereof, to a next friend or

guardian ad litem may be discharged and released as provided for in the Guardianship and Conservatorship Act.

**Section 4-120. Service upon Guardian Equivalent to Service upon Ward – Duty of Guardian.**

Whenever a minor or an incapacitated or partially incapacitated person has a guardian of his/her property residing in this jurisdiction, personal service upon the guardian of any process, notice or order of the court concerning the property of the deceased person, in which the ward is interested, is equivalent to service upon the ward. It is the duty of the guardian to attend to the interests of the ward in the matter. Such guardian may also appear for his/her ward, and waive process, notice or order to show cause which an adult or a person of sound mind might do.

**Section 4-121. Credit in Settlement for Maintenance and Support of Ward – Payment by Third Person.**

When a guardian has advanced for the necessary maintenance, support and education of his ward, an amount not disproportionate to the value of the property or condition of life of the ward and the same is made to appear to the satisfaction of the court, by proper supporting documents and proofs, the guardian must be allowed credit in his/her settlement. Whenever a guardian fails, neglects or refuses to furnish suitable and necessary maintenance, support or education for his/her ward, the court may order the guardian to do so and enforce such order by proper process. Whenever any third person, at the request of the ward, supplies a ward with such suitable and necessary maintenance, support or education which is shown to have been done after refusal or neglect of the guardian to supply the same, the court may direct the guardian to pay out of the property of the ward, and may enforce such payment by due process.

**Section 4-122. Execution of Waivers or Consents for Wards.**

The duly appointed and acting guardian, limited guardian, conservator, attorney in fact or other person legally authorized to act on behalf of any minor or incapacitated or partially incapacitated heir, devisee or legatee may execute waivers or consents for his/her ward as authorized by the court. There shall be attached to each waiver or consent a certified copy of the instrument authorizing him/her to perform such act.

**Section 4-123. Sale of Property.**

When it appears to the satisfaction of the court, upon the petition of the guardian, that for the benefit of the ward or the real or personal property of the ward or some part of said property, should be sold, and the proceeds thereof invested, the guardian may sell the same for such purpose upon obtaining an order.

#### **Section 4-124. Petition – Facts and Circumstances.**

To obtain an order for such sale, the guardian must present to the court a verified petition, setting forth the condition of the property of the ward and the facts and circumstance on which the petition is founded.

#### **Section 4-125. Sale of Ward’s Property – Hearing – Notice – Order.**

If it appears to the court, from the petition, that it is necessary or would be beneficial to the ward or the property of the ward that the real or personal property, or some part of such property, should be sold, the court shall thereupon make an order directing all persons entitled to notice pursuant to Section 3-110 of this Act to appear before the court, at a time and place therein specified in the order and notice, not less than ten (10) nor more than thirty (30) days from the time of making such order, unless notice is waived, to show cause why an order should not be granted for the sale of such property. If it appears that it is necessary or would be beneficial to the ward to sell the personal property or some part of it, the court must order the sale to be made.

#### **Section 4-126. Mailing or Publication of Order – Waiver of Notice.**

The court shall cause copies of said order to be mailed to the persons entitled to notice of the proceeding at least ten (10) days before the hearing on the petition. If the mailing address of any such person is unknown, a copy of the order must be published one time in some newspaper in the county where the property was located at the time of filing the petition and the hearing of said petition shall not be less than ten (10) days from the date of the first publication of such notice. If written consent to making the order of sale is given by all persons entitled to notice, except the ward if the ward has been adjudicated to be fully incapacitated, said order of sale may be made at once without giving the notice.

#### **Section 4-127. Hearing Petition upon Order.**

The court, at the time and place appointed in the order, or such other time to which the hearing is postponed, upon proof of the service or publication of the order, must hear the petition and examine the proofs and allegations of the petitioner and any objections made by persons entitled to notice of the proceeding.

#### **Section 4-128. Partition of Real Property.**

The guardian may join in and assent to a partition of the real property of the ward with the written approval of the judge of the district court, whenever such assent may be given by any person.

#### **Section 4-129. Order for Sale Either Public or Private.**

If, after a full examination, it appears necessary or for the benefit of the ward that the real or personal property of the ward, or some part thereof, should be sold, the court may grant an order, specifying therein the causes or reasons why the sale is necessary or beneficial, and may, if the same has been prayed for in the petition, order such sale to be made either at public or private sale.

#### **Section 4-130. Time Expiration on Order of Sale.**

No order of sale granted continues in force more than one (1) year after granting the same, without a sale being had.

#### **Section 4-131. Terms of Sale – Security.**

All sales of real property of wards must be for cash, or for part cash and part deferred payments not to exceed ten (10) years, bearing interest from the date of sale as, in the discretion of the court, is most beneficial to the ward. A guardian making a sale of real property sold, with such additional security, if any, as the court deems necessary and sufficient to secure the faithful payment of the deferred payments and the interest thereon.

#### **Section 4-132. Time Limitation of Action for Recovery of Property Sold – Disability and Removal Thereof.**

No action for the recovery of any property sold by a guardian can be maintained by the ward, or by any person claiming under him/her, unless it is commenced within three (3) years immediately following the termination of the guardianship or, when a legal disability to sue exists by reason of minority or otherwise, at the time when the cause of action accrues, within three (3) years immediately following the removal of such disability.

#### **Section 4-133. Perishable Property Sale – Report – Determination of Perishability.**

- A. Notwithstanding any other provision contained in the Guardianship and Conservatorship Act, a guardian or limited guardian of the property of a ward may sell, at public or private sale, without obtaining prior court authorization for sale, without filing a return of sale and without obtaining court confirmation of sale, any personal property of the ward which is perishable, is otherwise likely to depreciate in value, or would cause the property of the ward to incur loss or expense if kept.
- B. With respect to a limited guardian of the property, this section shall apply only to property of the ward which is subject to such limited guardian's control pursuant to a dispositional order.
- C. Any sale of property made by a guardian or limited guardian of the property of a ward pursuant to this section shall be reported in the accounting next filed by such guardian or limited guardian after the making of the sale. If the court determines the property sold was not perishable or was not otherwise likely to depreciate in value and would not have caused the property of the ward to incur loss or expense if kept, the guardian or limited guardian who made such sale shall not be surcharged or otherwise held liable with respect to such sale if he/she made a reasonable determination in good faith that the property sold was perishable, was otherwise likely to depreciate in value, or would have cause the property of the ward to incur loss or expense if kept.

#### **Section 4-134. Causes for Removal of Guardians.**

A guardian may be removed by the court for any of the following causes:

1. For abuse of his/her fiduciary responsibility.
2. For continued failure to perform his/her duties.
3. For incapacity to perform his/her duties.
4. For gross immorality.
5. For having an interest adverse to the faithful performance of his/her duties.
6. If the instrument in which the person was nominated as guardian is judicially determined to be invalid.
7. In the case of guardian of the property, for insolvency.
8. When it is no longer proper that the ward should be under guardianship.

#### **Section 4-135. Power of Guardian Suspension upon Certain Factors – Effect of Marriage of Incapacitated or Partially Incapacitated Person.**

A. The power of a guardian is suspended only:

1. By order of the court;
2. If the appointment was made solely because of the ward's minority, by his/her obtaining majority; or
3. The guardianship over the person only of a minor ward, by the marriage of the ward.

B. Whenever a person who has been found by the court to be an incapacitated or partially incapacitated person marries, the court may, upon application of an interested person, hold a review hearing to determine whether:

1. The guardianship should be terminated;
2. A successor guardian should be appointed;
3. The limitations on the ward, or the powers and duties of the guardian should be altered; or

4. The guardianship should be continued unchanged.

**Section 4-136. Removal or Resignation of Guardian.**

- A. The authority and responsibility of a guardian terminates upon the death of the guardian, conservator, or the ward, the determination of incapacity of the guardian or conservator, or upon removal or resignation of the guardian or conservator. Termination does not affect the liability of a guardian or conservator for prior acts or the obligation to account for any funds and assets of the ward under the control of the guardian or conservator. The authority and responsibility of a guardian of a minor also terminates upon the marriage or majority of the ward.
- B. The court, after notice and hearing, may remove a guardian or conservator for cause if the guardian or conservator has failed for thirty (30) days, after he/she is required to do so, to render an account or make a report, and compel him/her to surrender the property of the ward to the person found to be lawfully entitled thereto.
- C. Every guardian or conservator may resign when it appears proper to allow the same and upon resignation or removal of a guardian or conservator the court may appoint a successor guardian or conservator in the place of the guardian or conservator who has resigned or has been removed or make other appropriate orders pursuant to the provisions of the Oklahoma Guardianship and Conservatorship Act.
- D. Upon termination of the disability of the ward or upon his/her death or upon the resignation or removal of the guardian or conservator, a guardian or conservator or the guardian's or conservator's personal representative or if the guardian or conservator is incapacitated or deceased and there is no personal representative, then some suitable person appointed by the court shall file the guardian's or conservator's final account and request for final compensation with the court within thirty (30) days after such event.
  1. The court shall set the final account for hearing on a date not less than fifteen (15) days after the filing thereof. Notice of such hearing shall be given at least ten (10) days prior to the date set for hearing, by mailing a copy of the notice of the hearing by first-class mail:
    - a. If the guardianship was established for a minor or a minor's property, to the persons entitled to notice pursuant to this Act if the ward is still a minor, or to the ward only if the ward has attained majority or has married, or if the ward is deceased, to the persons entitled to notice pursuant to this Act and to the personal representative of the ward's property if such representative has been appointed and the representative's appointment is known to or ascertainable by reasonably diligent efforts of the person rendering the final account; or

- b. If the guardianship was established for an adult or an adult's property, or if the proceeding is a conservatorship action, to those whose persons entitled to notice pursuant to paragraph 1, unless the ward is deceased, and paragraphs 2, 3 and 7 of subsection A of 3-110 of this Act and, if the ward is deceased, to the personal representative of the ward's property if such representative has been appointed and the representative's appointment is known to or ascertainable by reasonably diligent efforts of the person rendering the final account.
2. Any person to whom notice is given in accordance with this subsection may appear at the hearing on the final account and file his exception in writing to the final account and contest the same.
3. The settlement of the account and the allowance thereof by the court shall be conclusive against all persons interested in the property of the ward, except as to persons subject to a legal disability at the time the notice of hearing is given.
4. Upon approval of the final account, the guardian or conservator and his sureties, if any, shall be discharged.

#### **Section 4-137. Discharge of Unnecessary Guardianship.**

The guardian of an incapacitated or partially incapacitated person or minor may be discharged by the court when it appears to the court, on the application of the ward or otherwise, that the guardianship is no longer necessary.

#### **Section 4-138. Distribution of Personal Property of Intestate Ward.**

When an adult ward shall die intestate leaving only personal property and his total property does not exceed Ten Thousand Dollars (\$10,000.00), the guardian shall proceed to probate and distribute his property in the same manner as if he had been appointed personal representative of such property, and the surety or sureties on his bond shall be responsible for his faithful administration and distribution of such property.

#### **Section 4-139. Report of Abuse or Incapacitated Person or Minor – Failure to Report – Immunity from Liability – False Report.**

- A. Any person having reasonable cause to believe that an incapacitated person, partially incapacitated person or a minor is suffering from abuse, neglect or exploitation shall make a report to Tribal Social Services in which the suspected abuse, neglect or exploitation occurred, or the tribal police department as soon as such person is aware of the situation.
- B. Any person participating in good faith and exercising due care in the making of a report pursuant to the provisions of this section shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

- C. Any person who willfully or recklessly makes a false report or a report without a reasonable basis in fact for such a report pursuant to the provisions of this section shall be civilly liable for any actual damages suffered by the person or persons being reported and for any punitive damages set by the court which may be allowed in the discretion of the court.

## **Article V. Supervised Accounts.**

### **Section 5-101. IIM Accounts.**

This section of the Act addresses the relationship between the Indian Ward, his/her guardian and their relationship as concerns management of individual Indian monies, particularly as concern 25 CFR Part 20 and Part 115 and the Office of Trust Funds Management (OTFM) Rules and Regulations.

### **Section 5-102. Persons Covered by Act.**

The following persons who have individual Indian money accounts are covered by this Act:

1. A minor;
2. An emancipated minor;
3. An adult in need of financial management assistance;
4. An adult under legal disability.
5. An adult non compos mentis.

### **Section 5-103. Preparation of Distribution Plan.**

Guardians for minors and adults shall work with Tribal or BIA Social Services to prepare a distribution or spending plan. No funds may be withdrawn from individual Indian money account without consultation with social services and approval by the BIA line officer with jurisdiction over the account.

### **Section 5-104. Distribution Plans.**

- A. The guardian must cooperate with Tribal or BIA Social Services in determining an annual distribution plan on behalf of an individual Indian when his or her trust account is supervised.
- B. No funds from an individual Indian money account that is supervised will be disbursed without an approved distribution plan.



- C. Distribution plans cannot exceed twelve (12) months and disbursements must be in the best interest of the account holder.

#### **Section 5-105. Signatory Prohibited.**

The BIA or a tribally contracted or compacted social service program may not be a signatory on an IIM account holder's private sector bank account.

#### **Section 5-106. Provisions in Distribution Plans.**

The distribution plan shall include:

1. A copy of any custodial order or guardianship order from a court of competent jurisdiction;
2. A list of the amounts, the purposes and the dates for which disbursements will be made;
3. The names of the person to whom disbursements may be made, to include as applicable:
  - a. Custodial parent;
  - b. Legal guardian;
  - c. Person who is recognized by the BIA as having control and custody of the minor;
  - d. Emancipated minor; and/or
  - e. Any third parties and the addresses of the third parties to whom the direct payment will be made for goods and services provided to the account holder and supported by an invoice or bill of sale where applicable.
4. The date the distribution plan was approved and the expiration date of the distribution plan; and
5. The date of approval and the signature of the BIA official approving the distribution plan with a certification that the distribution plan is in the best interest of the IIM account holder.

#### **Section 5-107. Rules for Fund Distribution.**

The following rules for fund distribution are established:

1. Funds cannot be disbursed directly to a minor as payee, except for an emancipated minor, and then only pursuant to a distribution plan.

2. Payment cannot be made directly to an adult who has been determined to be incapacitated.
3. No BIA employee, tribally contracted or compacted trust employee, BIA Social Services or tribally contracted or compacted Social Services program may be named payee for IIM funds of an account holder.
4. No checks may be sent “care of” the Superintendent or BIA Social Services without prior written approval of the Deputy Commissioner of Indian Affairs.
5. Utility expenses shall be prorated based on the number of adults in the household, when practicable.

#### **Section 5-108. Minor Attaining Majority Rule.**

When a minor who is a ward of the court attains majority, an order from the court declaring that the minor is no longer a ward of the court must be received before the minor may have unrestricted access to his or her IIM account.

Until an order from the court for a minor of the court is received, the account remains supervised and all disbursements must be in accordance with the distribution plan.

#### **Section 5-109. Review of Minor’s File Before Attaining Majority.**

The guardian in consultation with the tribal or appropriate BIA Social Service office shall review the minor’s account file and conduct any assessment sixty (60) days prior to the date that the minor will reach the age of majority, to determine whether the account holder needs supervision as an adult.

For minors who are wards of the court and who will not require supervision as an adult, the guardian must advise the court that the minor will reach the age of majority, and that his/her funds are currently being held and will continue to be held as long as the individual remains a ward of the court.

If the minor is a ward of the court and will remain a ward of the court as an adult, the account holder must be notified in writing that the account will be supervised, but will be changed from guardianship of a minor to guardianship of an incapacitated adult. Minors who object to their account remaining supervised shall be entitled to a hearing to determine the same.

#### **Section 5-110. Judgment Per Capita Accounts.**

Judgment per capita accounts for minors, emancipated minors or persons determined to be non compos mentis shall be subject to the following rules:

1. Withdrawals from judgment fund accounts may be made only for the account holder’s health, education, welfare or for emergencies pursuant to a distribution plan approved by the BIA and the tribal governing body of the Indian tribe involved.

2. When approved, funds may be disbursed only to the parents or the legal guardian of the minor or the legal guardian of the person determined to be incapacitated.
3. To gain access to the funds, the use and distribution plan for the judgment award must include a tribal provision that allows access to the funds for the purpose requested.
4. Said use and distribution plan requires approval by the Secretary prior to the issuance of the per capita payments.
5. The guardian must work with Tribal or BIA Social Services to prepare a supervised account distribution plan as concerns said funds.

### **Section 5-111. IIM Account – Supervised Account.**

For an IIM account to become a supervised account the following criteria must be met:

1. There must be a court order from a court of competent jurisdiction finding that an adult account holder is non compos mentis;
2. A recommendation by a licensed medical professional or licensed mental health professional finding that an account holder is in need of assistance; or
3. A determination by another federal agency that an account holder must have a representative payee.

### **Section 5-112. Removal of Restrictions on IIM Accounts.**

A restriction on an IIM account may be removed under the following circumstances for supervised accounts:

1. Recommendation by a mental health professional or a licensed medical professional stating that an adult account holder is no longer in need of assistance;
2. Court order restoring an account holder to competency or vacating a prior order finding incapacity; or
3. Notice from another federal agency removing the need for a representative payee.

### **Section 5-113. Individual Rights of Individuals/Guardians**

Any individual and/or his/her guardians are entitled to be notified of certain rights before his/her IIM account may be restricted whether encumbered or supervised. These rights include:

1. The right to a hearing;
2. The right to present evidence as to why the account should not be restricted;

3. The right to present witnesses on his/her behalf;
4. The right to question opposing witnesses; and
5. The right to be represented by an attorney.

**Section 5-114. Notice Necessary to Restrict IIM Account.**

In order to restrict an IIM account, written notice must be provided which shall be served on the account holder and his/her guardian by certified mail or personal delivery. The notice must contain:

1. The name of the IIM account;
2. The reason for the restriction;
3. The amount to be encumbered, if applicable;
4. A statement that the IIM account will be restricted five (5) days after the date of the notice was sent via certified mail to request a hearing or one (1) day after personal delivery to the address of record;
5. An explanation that the parties notified have forty (40) days from the date the notice was sent via certified mail to request a hearing challenging the decision to restrict the IIM account;
6. An explanation of how to request a hearing;
7. A statement that the BIA will conduct a hearing and that the account holder is assured a fair hearing;
8. A copy of the fair hearing guidelines;
9. A statement that the parties notified may contact the BIA to authorize immediate payment from the IIM account to pay the claim, if applicable; and
10. The address and phone number of the BIA office that made the decision to restrict the IIM account.

**Section 5-115. Appeals.**

Appeals from determinations or decisions made by the District Court Judge shall be pursuant to the provisions of tribal law as provided by statutes and/or court rules as in other civil cases.

