

Guardianships

§1. Citation

This Title may be cited as the “Delaware Tribe of Indians Guardianship Act.”

§101. Purpose

It is the purpose of this Chapter to promote the general welfare of minor Delaware tribal citizens or minors eligible to be Delaware tribal citizens by establishing a system of general and limited guardianships for minors which provides for the protection of their rights and the management of their financial resources.

§102. Definitions

As used in this Chapter:

- (a) “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, and financial records and information submitted to the Court in connection with a proceeding pursuant to this Chapter.
- (b) “Estate” means the property of the person whose affairs are subject to a guardianship proceeding.
- (c) “Guardian” means a person appointed as general or limited guardian of the person, general or limited guardian of the property, special guardian and temporary guardian, but does not include a person appointed as guardian ad litem.
- (d) “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.
- (e) "Guardianship of the person" means legal custody or the duty and authority vested by law to make major decisions affecting a child including, but not limited to:
 - (1) The authority to consent to marriage, enlistment in the armed forces, and to extraordinary medical and surgical treatment;
 - (2) The authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning a child;

- (3) The authority to consent to the adoption of a child when the parent-child relationship has been terminated by judicial decree or the death of the parents;
 - (4) The rights and responsibilities of the physical and legal care, custody, and control of a child when legal custody has not been vested in another person, or agency, or institution; and
 - (5) The duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for the child. Guardianship of the person of a child, or legal custody of a child, may be taken from its parents only by Court action, notwithstanding the emergency protection of a child.
- (f) “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.
 - (g) “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 minor, or an individual alleged or found to be an incapacitated or partially incapacitated person.
 - (h) “Guardianship report” means any report required by the provisions of §116 of this Chapter.
 - (i) “Initial review hearing” means the first hearing held by the Court for review of the guardianship proceeding after entry of the Order appointing a guardian for a minor.
 - (j) “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.
 - (k) “Minor” means a person under eighteen (18) years of age.
 - (l) “Person” means an individual.
 - (m) “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.
 - (n) “Subject of the proceeding” means a minor:
 - (1) who is the subject of a petition requesting the appointment of a guardian, limited guardian, or temporary guardian, or

- (2) for whom a guardian or limited guardian has been appointed by the Court.
- (o) “Ward” means the person over whom, or over whose property, a guardian is appointed.

§103. Types of Guardianships

There are four types of guardianships, general, limited, temporary and special.

- (a) A general guardian is a guardian of the person or of all the property of the ward, or both.
- (b) A limited guardian is a person authorized by the Court to exercise limited powers over the person of the ward, or over the property of the ward, or both.
- (c) A temporary guardian is a person appointed by the Court in accordance with §115 of this Chapter
- (d) A special guardian is all other guardians who may be appointed by the Court for a situation not covered by this Chapter and appointed in the same manner as for the appointment of a temporary guardian.

§104. Jurisdiction

- (a) The District Court shall have the authority, whenever it appears necessary, to appoint a guardian for the person and/or property of any child who is subject to the jurisdiction of the Juvenile Court.
- (b) The District Court in connection with the probating of an estate may refer matters concerning the guardianship of a child to the Juvenile Court for appointment of a guardian.
 - (1) In the probate of an estate for which there is a valid will, which names a guardian for a minor child, the Court may appoint the person designated as guardian of the child involved without the necessity of a separate guardianship hearing.
 - (2) If the person named in the will is unable or unwilling to serve or if such person's appointment is objected to by any child over twelve (12) years of age, by a relative or by the Indian Child Welfare Department, or if the Court determines it to be in the minor's best interest, a separate guardianship hearing shall be held.

§105. Powers of Court

- (a) In all cases 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.
- (b) The Court has jurisdiction over guardianship proceedings and cases, and has the following powers, which must be exercised in the manner prescribed by this Chapter, to:
 - (1) Appoint and remove guardians for minors;
 - (2) Issue and revoke letters of guardianship;
 - (3) Control the conduct of guardians with regard to the care and treatment provided to their wards;
 - (4) Control the conduct of guardians with regard to the management of the financial resources of their wards;
 - (5) Compel guardians to submit plans, reports, inventories and accountings, to the Court;
 - (6) Compel payment and delivery by guardians of property belonging to their wards;
 - (7) 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;
 - (8) Settle the accounts of guardians;
 - (9) Appoint appraisers of the property of wards;
 - (10) Compel the attendance of witnesses and the production of documents and property; and
 - (11) Exercise all powers conferred by this Chapter and to make such orders as may be necessary for the exercise of said powers.

§106. Guardians ad litem

- (a) Nothing contained in this Chapter affects or impairs the power of the 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.

§107. Duties and Powers of Guardians

- (a) Except as otherwise ordered or limited by the Court:
 - (1) A guardian of a child shall have the right to take or provide for his physical custody and shall be required to care for his health, safety and welfare, and provide for his education and medical care.
 - (2) In a legal action, the guardian shall have the authority to represent the interests of the child in actual, threatened or contemplated litigation or other proceedings of a legal nature. The guardian may employ counsel and settle or compromise suits or claims subject to the approval of the Court.
 - (3) A guardian of the property of the child shall have the authority to invest, manage and dispose of the child's property in a prudent and reasonable manner. The guardian may expend such portions of the property, income and principal as shall be reasonably necessary for the education of the child and care of the child, including medical care, unless the guardianship order states that the child's property may not be used for the child's care and support, but rather that it be managed for the child until he reaches the age of eighteen (18) or an emancipation occurs.
- (b) A guardian may petition the Court at any time for authority to do any act, if he is uncertain of his authority. The Court may grant such authority, after notice and hearing, if this appears to be consistent with the best interests of the child.
- (c) A guardian shall report to the Court any change in the residence of a ward within ten (10) days following such change unless a prior order of approval of such change has been entered by the Court.
- (d) Every guardian, whether of the person and/or property of a child, shall:
 - (1) Stand in a fiduciary relationship to the child;
 - (2) Exercise a high degree of care in managing the child's property;
 - (3) Derive no personal benefit of any kind from the management of the child's property; and

- (4) Shall be liable to the child for any losses attributable to breach of these duties.
- (e) Any action to enforce liability against the guardian may be brought by the child or a subsequently appointed guardian on behalf of the child within two (2) years after the appointment of a new guardian, or the discovery of the breach of duties, or attainment of the age of eighteen (18) by the child.
- (f) The Court shall hold annual review hearings in guardianship cases. Every guardian, whether of the person and/or property of a child shall file a progress report with the Court annually, at least thirty days prior to the annual review hearing.

§108. Confidential Information Filed with Court

Confidential information filed with or submitted to the Court in conjunction with any proceeding pursuant to this Chapter shall not constitute a public record. Access to confidential information shall be strictly controlled. Except upon Court order, no confidential information shall be disclosed to persons other than:

- (a) The subject of the proceeding and his attorney;
- (b) The guardian ad litem;
- (c) If the subject of the confidential information is a ward, the guardian or conservator of such ward;
- (d) If the subject of the confidential information is the guardian or conservator, the ward and his attorney, and the attorney of such guardian or conservator; and
- (e) Tribal or Bureau of Indian Affairs governmental entities necessary to provide services to the ward.

§109. Letters of Guardianship

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.

§110. Filing of Petition and Eligibility

- (a) Guardianship proceedings shall be started by the filing of a petition. Any person eighteen (18) years of age or older, the child if he/she is twelve (12) years of age or older, or any representative of the Indian Child Welfare Department may file a petition.

- (b) Any person eighteen (18) years of age or older and subject to the jurisdiction of the Juvenile Court may serve as guardian.
- (c) Preference shall be given to relatives and to the person preferred by a child twelve (12) years of age or older; however, in all cases, the Court shall determine the guardian on the basis of the best interests of the child.

§111. Contents of Petition

The petition shall set forth the following:

- (a) The basis for the Court's jurisdiction;
- (b) The full name, address and tribal affiliation of the petitioner;
- (c) The full name, sex, date of birth, residence and tribal affiliation of the child;
- (d) The petitioner's relationship to the child;
- (e) The name and address of the person or agency having custody of the child;
- (f) The names and addresses of all known relatives of the child, insofar as these are known to the petitioner;
- (g) The type of guardianship requested;
- (h) A full description and statement of the value of all property, real or personal, owned or possessed or in which the child has an interest, wherever it is located;
- (i) The circumstances which require the appointment of a guardian; and
- (j) A request that a guardianship order be issued to the petitioner or some suitable person.

§112. Notice

- (a) Before making the appointment of a guardian, 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 himself 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 person or persons:
 - (1) The then-living parents of the minor and any other person having care of the minor, if such parent or person is not the petitioner or one of the petitioners;

- (2) If the minor has no then-living parent, then to one of the minor's then-living grandparents who is not the petitioner or one of the petitioners and who is not married to the petitioner or 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.
- (b) 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 that person 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.

§113. Nomination of Guardian

- (a) A guardian of the person or estate, 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 or has been judicially or administratively determined to be the father of the child at a paternity proceeding, 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 shall have no effect.

§114. Minor Ward Age Fourteen (14) or Older

- (a) 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.
- (b) 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.

- (c) 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.

§115. Temporary Guardianship

- (a) The Court may appoint a temporary guardian under such terms and conditions as the Court deems appropriate.
- (b) Temporary guardianship shall be for a limited duration, and the length of the guardianship shall be set forth in the court order along with such other terms and conditions as the Court finds appropriate.
- (c) A temporary guardianship may be terminated if the Court determines that it is in the child's best interests to change guardians or to return the child to the parent(s) or custodian(s).
- (d) The child's parents, grandparents and other family members shall have rights of reasonable visitation unless the Court finds that the visitation would endanger the child or significantly impair his emotional development.

§116. Guardianship Report

- (a) Upon the filing of a guardianship petition, the Court shall immediately request that the Indian Child Welfare Department conduct, or arrange to have conducted, a guardianship report. The report shall contain information necessary to determine the best interests of the child, including data pertaining to the child, the biological parent(s), the extended family and the circumstances requiring the appointment of a guardian.
- (b) The guardianship report shall be submitted to the Court and copies shall be furnished prior to the hearing to all interested parties no later than five (5) days before the hearing.

§117. Permanent Guardianship

- (a) A permanent guardianship awards permanent care and control of a child to a person other than the child's parent, although there is no termination of parental rights.
- (b) The Court may appoint a permanent guardian for a child under such terms and conditions as the Court deems appropriate.

- (c) The child's parents, grandparents and other family members shall have rights of reasonable visitation unless the Court finds that the visitation would endanger the child or significantly impair his emotional development.
- (d) There shall be a presumption of continued permanent guardianship in order to provide stability for the child. A permanent guardianship shall be terminated only upon the grounds that the permanent guardian is no longer suitable rather than the competence or suitability of the parent.
- (e) The Court shall not terminate the guardianship unless it finds that a change has occurred in the circumstances such that a termination of the guardianship is necessary to serve the best interests of the child. The Court shall retain the current guardian unless:
 - (1) The guardian agrees to the termination;
 - (2) The child has been integrated into the family of another with the consent of the current guardian; or
 - (3) The child's present environment endangers his health or significantly impairs his emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.

§118. Order of Guardianship

The Court shall specify in writing the facts, grounds and code sections upon which it relied in making its decision. The terms and conditions of the guardianship shall be clearly set forth, together with any bond requirements. Copies of the order shall be furnished to all parties.

§119. Guardianship Plan

A plan for the care and treatment of a ward and/or the plan for the management of the financial resources of a ward shall be filed by the guardian at the initial review hearing.

§120. Setting of Initial Review Hearing

- (a) In the order appointing the guardian of a minor, the Court shall set the date for the initial review hearing, which shall be not more than two (2) months following the date of entry of the order appointing such guardian.
- (b) When any person is appointed guardian of a minor, the Court may include in the order of appointment conditions not otherwise obligatory providing for the care, treatment, education and welfare of the minor.

§121. Inventory and Appraisal

- (a) Within ten (10) days after the appointment of a general guardian, or guardian of the property of a child, the guardian shall prepare and file with the Court an inventory and appraisal of the child's property.
- (b) The appraisal shall be made by a disinterested person, who shall certify under oath to his appraisal and may receive reasonable compensation for this service.
- (c) No appraisal shall be required of items of obvious value, where the value of the estate is reasonably believed to be less than Three Thousand Dollars (\$3,000.00). If no appraisal is required, then the guardian shall certify under oath to the estimated value of the child's property.

§122. Compensation

- (a) No guardian shall receive any compensation for acting as such without prior approval of the Court.
- (b) The guardian of any estate valued in excess of Five Thousand Dollars (\$5,000.00) may receive reasonable annual compensation for actual services in an amount approved by the Court.
- (c) The right to receive compensation shall be deemed waived for any year in which it is not requested and received.

§123. Bond

In the event a guardian receives any funds or property of the child at the time of appointment or during the term of his guardianship, he shall be required by the Court to post a bond with sufficient surety in such amount as the Court may order to assure the guardian's faithful performance of the duties of his trust. Any surety of such bond must consent to the jurisdiction of the Court for purposes of an action against the bond.

§124. Trust Property

The guardian may be appointed to manage trust property of a child. Any sale of an interest in trust property belonging to the child must be for an adequate and fair price and must be authorized by the Court and approved by the Superintendent of the BIA. The Court may approve the sale if it is in the best interests of the child.

§125. Annual Accounting

The guardian of property valued in excess of Five Thousand Dollars (\$5,000.00) shall submit an annual accounting which shall be verified under oath to the Court for approval. The accounting shall be required for every year in which the value of the estate is over Five Thousand

Dollars (\$5,000.00), and shall contain information on all additions to and withdrawals from the property. All supporting documentation, including canceled checks, vouchers, receipts and bank statements, shall be attached to the accounting.

§126. Power of Guardian Appointed by Parent Ceases

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

- (a) The removal of the guardian;
- (b) The solemnized marriage of the ward; or
- (c) The ward's attaining majority.

§127. Release of Minor Ward at Majority

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

§128. Discharge of Guardian

- (a) Every guardian shall serve until discharged by the Court.
- (b) A guardian of a minor appointed by the Court is not entitled to his 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.
- (c) The removal of the guardian;
- (d) The solemnized marriage of the ward; or
- (e) The ward's attaining majority.

