

Title 7 – Domestic Relations

Chapter 10 – Guardianship

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Legislative History

Enacted:

Domestic Relations, Ord. 188 (11/10/03), BIA (11/25/03).

Repealed or Superseded:

Juvenile Code, Ord. 68 (12/89), Enacting Res. 89-12-98 (repealing Ord. 40 and all other previous youth ordinances).
Youth Code, Ord. 40 (2/8/83), Enacting Res. 83-2-20, BIA (rescinded 5/5/83, approved 6/25/83) (repealing all previous youth ordinances).

Noted:

Domestic Relations, Ord. 101 (4/6/93), BIA (5/3/93) (reserving a Chapter for guardianship).

7-10.010 Title.

This Chapter shall be referred to as the “Adult Guardianship Code.”

[History] Ord. 188 (11/10/03).

7-10.020 Purpose and Scope.

Guardianship for an incapacitated person shall be used only as is necessary to promote and protect the well-being of the person, shall be designed to encourage the development of maximum self-reliance and independence of the person, and shall be ordered only to the

extent necessitated by the person's actual mental and physical limitations. An incapacitated person for whom a guardian has been appointed is not presumed to be incompetent and retains all legal and civil rights except those that have been expressly limited by court order or have been specifically granted to the guardian by the Tribal Court.

[History] Ord. 188 (11/10/03); Ord. 68 (12/89).

7-10.030 Authority.

This Chapter is enacted pursuant to Article VI, Section 1(k), (l), and (o) of the Swinomish Constitution.

[History] Ord. 188 (11/10/03); Ord. 68 (12/89).

7-10.040 Definitions.

For purposes of this Chapter, unless otherwise expressly provided, the following definitions shall apply:

- (A) **“Essential requirements for physical health or safety”** means the health care, food, shelter, clothing, personal hygiene, and protection without which serious physical injury or illness is more likely than not to occur;
- (B) **“Family services representative”** are employees of the Tribe provided for in Chapter 8-03;
- (C) **“Full guardian”** means a guardian who possesses all legal duties and powers;
- (D) **“Guardian”** includes full guardian and partial guardian;
- (E) **“Incapacitated person”** means a person whose ability to receive and evaluate information or to communicate decisions is impaired for reasons other than minority to the extent that the person lacks the ability to provide the essential requirements for the person's physical health or safety without court-ordered assistance;
- (F) **“Partial guardian”** means a guardian who possesses fewer than all of the legal duties and powers of a full guardian, and whose rights, powers, and duties have been specifically enumerated by court order;
- (G) **“Protective proceeding”** means a proceeding under the provisions of Section 7-10.080 to determine that a person cannot effectively manage or apply the person's estate to necessary ends, either because the person lacks the ability or is otherwise inconvenienced, or because the person is a minor, and to secure administration of the estate by a conservator or other appropriate relief;

- (H) **“Respondent”** means a person who, in a guardianship proceeding under this Chapter, is alleged to be an incapacitated person and for whom the appointment of a guardian or alternative assistance is sought; "respondent" includes a person seeking the appointment of a guardian or alternative assistance for oneself; and
- (I) **“Ward”** means a person for whom a guardian has been appointed; a **“minor ward”** is a minor for whom a guardian has been appointed solely because of minority.

[History] Ord. 188 (11/10/03).

7-10.050 Petition for Guardianship.

- (A) Any person may petition the Tribal Court for a finding of incapacity and the appointment of a guardian for oneself or for another person.
- (B) The petition for guardianship shall include:
 - (1) the name, date of birth, residence, and Indian status of the respondent;
 - (2) the name, date of birth, residence and Indian status of the prospective guardian;
 - (3) a statement of the specific facts that form the basis for the Tribal Court’s jurisdiction;
 - (4) a statement of the nature and degree of the alleged incapacity;
 - (5) a statement of the particular type and duration of appointment and the protection and assistance being sought;
 - (6) a statement of the facts supporting the allegations of incapacity and the need for appointment of a guardian; and
 - (7) a description of any previous Court hearings concerning the respondent.
- (C) Upon receipt of the petition, the Tribal Court shall distribute the petition to the Family Services Representative and all parties and the Tribal Court shall schedule a protective hearing on the matter.

[History] Ord. 188 (11/10/03); Ord. 68 (12/89).

7-10.060 Notice of Protective Hearing.

The Tribal Court shall give at least ten (10) days notice of the date, time, place, and purpose of the protective hearing to the respondent, the Family Services Representative, the petitioner, and such other persons as the Tribal Court deems appropriate.

[History] Ord. 188 (11/10/03); Ord. 68 (12/89).

7-10.070 Guardianship Report.

(A) The Tribal Court shall appoint a Family Services Representative to perform a guardianship report and present other evidence to the court in order to assist the court in making a final decision. The Family Services Representative shall prepare and present a written report to the Tribal Court at least three (3) days before the protective hearing. The report shall contain:

- (1) information on the qualifications of the proposed guardian;
- (2) a list of persons consulted that have a significant, continuing interest in the welfare of the alleged incapacitated person;
- (3) a description of the needs for care and treatment, abilities, and functional capacity of the alleged incapacitated person;
- (4) a summary of all collected existing data such as doctor's reports, evaluations, assessments, and treatment records;
- (5) a discussion of the basis of the guardianship, including a medical determination and/or recommendation from the respondent's physician;
- (6) the alleged incapacitated person's position in regards to the guardianship and the proposed guardian;
- (7) information on all interviews taken and any other observations made; and
- (8) the Family Services Representative's recommendations.

(B) Copies of the report shall be given to all parties.

[History] Ord. 188 (11/10/03); Ord. 68 (12/89).

7-10.080 Hearing and Determination.

- (A) At the protective hearing, the respondent has the right to:
 - (1) present evidence on the respondent's own behalf;
 - (2) cross-examine adverse witnesses;
 - (3) remain silent;
 - (4) have the protective hearing open or closed to the public as the respondent elects; and
 - (5) be present unless the Tribal Court determines that the respondent's conduct in the courtroom is so disruptive that the proceedings cannot reasonably continue with the respondent present.
- (B) The burden of proof by clear and convincing evidence is upon the petitioner, and a determination of incapacity shall be made before consideration of proper disposition.
- (C) If the respondent is found to be incapacitated, the Tribal Court shall determine the extent of the incapacity and the feasibility of alternatives to guardianship to meet the needs of the respondent.
- (D) If it is found that alternatives to guardianship are feasible and adequate to meet the needs of the respondent, the Tribal Court may dismiss the action and order an alternative form of protection.
- (E) If it is found that the respondent is able to perform some, but not all, of the functions necessary to care for the respondent, and alternatives to guardianship are not feasible or adequate to provide for the needs of the respondent, the Tribal Court may appoint a partial guardian, but may not appoint a full guardian.
- (F) If it is found that the respondent is totally without capacity to care for the respondent and that a combination of alternatives to guardianship and the appointment of a partial guardian is not feasible or adequate to meet the needs of the respondent, the Tribal Court may appoint a full guardian.
- (G) If it is necessary to appoint a guardian, the Tribal Court shall consider the ward's preference.

- (H) At the time a guardian is appointed, the Tribal Court shall make a reasonable effort to acquaint the ward with the ward's right to request, at a later time, the guardian's dismissal or a modification of the guardianship order. The Tribal Court shall provide a written statement to the ward, explaining the ward's rights and specifying the procedures to be followed in petitioning the Tribal Court.

[History] Ord. 188 (11/10/03).

7-10.090 Court Appointing Guardian.

The Tribal Court shall state the following in all orders appointing guardians: the powers and duties of the guardian(s), the duration of the guardianship, the frequency of review hearings, if any, any accounting requirements that may be imposed on the guardian regarding the ward's funds or property, and a requirement that the guardian(s) shall advise the Tribal Court of any change in his or her address.

[History] Ord. 188 (11/10/03); Ord. 68 (12/89).

7-10.100 Repealer.

This Chapter repeals and supersedes Swinomish Indian Tribal Community Ordinance Nos. 40, 68 and all previous provisions relating to guardianship for incapacitated person.

[History] Ord. 188 (11/10/03); Ord. 68 (12/89).

7-10.110 Severability.

[Reserved]

7-10.120 Effective Date.

This Chapter shall be effective upon approval by the Secretary of the Interior or the Secretary's designee.

[History] Ord. 188 (11/10/03).