

# **TITLE 51**

# **ADULT GUARDIANSHIP**

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## TITLE 51 – ADULT GUARDIANSHIP

### Section 51.01 – Definitions and Purpose

#### 51.01.01 Definitions

- (a) “Adult” means a person who is either eighteen (18) years of age or older, married or emancipated.
- (b) “Child” or “Minor” means a person under the age of 18 or a person over the age of 18 for whom a court order to support exists.
- (c) “Claims” means liabilities of the protected person, whether arising in contract, tort, or otherwise, including expenses of administration.
- (d) “Court” means the Nisqually Tribal Court.
- (e) “Estate” means the property of the person whose affairs are subject to this chapter.
- (f) “Extended family” means relationships based on bloodlines and marriage. An extended family includes grandparents, great grandparents, aunts, uncles, siblings, cousins, in-laws, and step relations.
- (g) “Guardian” means a person who has qualified as a guardian of a minor or incapacitated person but excludes guardian ad litem.
- (h) “Incapacitated person” means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication or other cause (except minority) to the extent of lacking sufficient understanding or capacity to make or communicate decisions.
- (i) “Indian Tribe” or “tribe” means a federally recognized Indian tribe, band or an Alaska Native village or corporation.
- (j) “Petition” means a written request to the Court for an order.
- (k) “Property” means both real and personal property or any interest therein and anything that may be the subject of ownership.
- (l) “Nisqually Indian Reservation” means those lands within the exterior boundaries of the Nisqually Indian Reservation and trust land outside the exterior boundaries of the Nisqually Indian Reservation owned or leased by the Nisqually Indian Tribe or a member of the Nisqually Indian Tribe.
- (m) “Ward” means a person for whom a guardian has been appointed.

#### HISTORICAL AND STATUTORY NOTES

Title originally created by Resolution 85-2013, April 23, 2013.

## **Section 51.02 – Service/Summons**

### **51.02.01 Service**

After any petition is filed in any action under this Title, the petitioner shall serve a copy of the petition and summons to the respondent and other parties entitled to service as provided in Nisqually Tribal Code § 24.22.03.

### **51.02.02 Summons/Content**

A summons shall contain the date of the hearing and notify the respondent that failure to appear or respond within twenty (20) days from the date of service.

### **51.02.03 Initial Hearing**

When any petition is filed, the Court shall set an initial hearing not more than thirty (30) days from the date the petition was filed, unless otherwise provided in this Title or unless continued for good cause.

### **51.02.04 Response**

Except in the case of joint or agreed petitions, the respondent shall file a written response within twenty (20) calendar days after the respondent is served with a copy of the summons.

## **Section 51.03 – General Procedure**

### **51.03.01 Jurisdiction**

The Court has jurisdiction over guardianship proceedings involving incapacitated persons who are:

- (a) enrolled or are eligible for enrollment in a Federally recognized Indian Tribe and are residing within the boundaries of The Nisqually Indian Reservation, or
- (b) enrolled or are eligible for enrollment in the Nisqually Indian Tribe, regardless of location.

### **51.03.02 Evidence/Burden of Proof**

Incapacity must be established by clear, cogent, and convincing evidence.

### **51.03.03 Hearings/Trials**

Any trial or hearing under any provision in this Title shall be to the Court without a jury.

## **Section 51.04 – Guardianship**

### **51.04.01 Procedure for Appointment**

- (a) The Nisqually Indian Tribe or any person who is at least eighteen years of age and who has an interest in an allegedly incapacitated person may petition for the appointment of a guardian, limited or general, if jurisdiction exists and if the Tribe has the ability to present clear, cogent, and convincing evidence that a person is incapacitated.
- (b) After the petition is filed, regardless of whether counsel represents the allegedly incapacitated person, the Court shall appoint a guardian ad litem to represent the person in the proceeding.

- (c) The Court shall order that the person alleged to be incapacitated must be examined by a qualified mental health professional who shall submit a report in writing to the Court.
- (d) A person alleged to be incapacitated is entitled to be present at the hearing, represented by counsel, present evidence, and cross-examine witnesses. The proceedings may be closed at the discretion of the Court.
- (e) Any person may apply for permission to participate in the proceeding, and the Court may grant the request, with or without hearing, upon determining that it is in the best interest of the alleged incapacitated person. The Court may attach appropriate conditions to the permission.

#### **51.04.02 Who May Be Guardian of Incapacitated Persons**

- (a) The following are entitled to consideration for appointment in the order listed:
  1. The spouse of the incapacitated person or a person nominated by will of a deceased spouse or by other writing signed by the spouse and attested to by at least two witnesses;
  2. An adult child of the incapacitated person;
  3. A parent of the incapacitated person, or a person nominated by will of a deceased parent or by other writing signed by a parent and attested by at least two witnesses;
  4. Any relative of the incapacitated person with whom the person has resided for more than 6 months prior to the filing of the petition;
  5. A person nominated by the person who is caring for or paying for the care of the incapacitated person; or
  6. A suitable person or agency of or appointed by the Nisqually Indian Tribe.
- (b) If persons have equal priority, the Court shall select the one it deems best qualified to serve. The Court, acting in the best interest of the incapacitated person, may pass over a person having priority and appoint a person having a lower or no priority.
- (c) All portions of a durable power of attorney are void upon the appointment of a guardian.

#### **51.04.03 Findings**

- (a) The Court shall appoint a guardian only to the extent necessitated by the incapacitated person's mental and adaptive limitations or other conditions.
- (b) The Court may appoint a guardian as requested if it finds by clear, cogent and convincing evidence that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the incapacitated person and/or the incapacitated person's finances. The Court shall enter detailed findings of fact and conclusions of law and may enter any other appropriate order, or dismiss the proceedings.
- (c) The Court at the time of appointment or later, on its own motion or on appropriate petition or motion of the incapacitated person or other interested person, may limit the powers of a guardian and or create a limited guardianship.

#### **51.04.04 Acceptance of Appointment**

By accepting appointment, a guardian submits personally to the jurisdiction of the Court in any proceeding relating to the guardianship. Notice of any proceeding must be delivered or mailed to the guardian at the address listed in the Court records and at the address as then known to the petitioner.

#### **51.04.05 Temporary Guardians of Incapacitated Persons**

- (a) If an incapacitated person has no guardian, an emergency exists and no other person appears to have authority to act, on appropriate petition the Court may appoint a temporary guardian whose authority may not extend beyond thirty (30) days and who may exercise only those powers granted in the order.
- (b) If the Court finds by a preponderance of the evidence, based on affidavits or declarations, that an appointed guardian is not effectively performing their duties and the welfare of the incapacitated person requires immediate action, it may appoint, with or without notice, a temporary guardian for the incapacitated person having the powers of a general guardian until the Court conducts a hearing on the guardian's removal. The authority of the appointed guardian is suspended upon appointment of a temporary guardian.
- (c) The Court may remove a temporary guardian at any time and without notice. A temporary guardian shall make any report the Court requires.

#### **51.04.06 General Powers and Duties**

Except as limited by Court order, a guardian of an incapacitated person is responsible for the care, custody and control of the ward but is not liable to third persons by reason of that responsibility for acts of the ward. In particular and without qualifying the foregoing, a guardian has the same duties, powers and responsibilities as a guardian for a minor.

#### **51.04.07 Termination of Guardianship**

The authority and responsibility of a guardian of an incapacitated person terminates upon the death of the guardian or the ward, the determination of incapacity of the guardian, or upon removal or resignation. Termination does not affect a guardian's liability for prior acts or the obligation to account for funds and assets of the ward.

#### **51.04.08 Removal or Resignation**

- (a) On petition of the ward, or any person interested in the ward's welfare, the Court, after hearing, may remove a guardian if in the best interest of the ward. On petition of the guardian, the Court, after hearing, may accept a resignation.
- (b) When a person is found incapacitated, the Court may specify a period, not exceeding one year, during which a petition requesting the Court find the ward is no longer incapacitated may not be filed without special leave. Subject to that restriction, the ward or any person interested in the welfare of the ward may petition for an order that the ward is no longer incapacitated and for termination of the guardianship.
- (c) Upon removal, resignation or death of the guardian, or if the guardian is determined to be incapacitated, the Court may appoint a successor guardian and make any other appropriate order. Before appointing a successor guardian, or ordering that a ward's incapacity has

terminated, the Court shall follow the same procedure to safeguard the rights of the ward that apply to a petition for appointment of a guardian.

### **Section 51.05 – Appeals/Contempt**

#### **51.05.01 Right to Appeal**

Any order entered pursuant to this Title may be appealed under the appellate rules and procedures in Title 24 of the Nisqually Tribal Code.

#### **51.05.02 Contempt of Court**

Any willful violation of any order entered pursuant to this Title shall constitute contempt of court and may be punished civilly or criminally.

### **Section 51.06 – Severability/Pending Actions**

#### **51.06.01 Savings Clause/Severability**

If any part of this Title shall be declared invalid, or declared invalid as applied to any person or circumstance, such decision shall not affect the validity of the remaining parts of the Title, and those parts are declared severable.

#### **51.06.02 Pending Actions**

This Title shall become effective on the date determined by Nisqually Tribal Council resolution and shall govern any action pending on that date.