

Saginaw Chippewa Tribal Law

TITLE VI

Probate Code

As amended January 15, 2025

TITLE VI PROBATE CODE

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TITLE VI PROBATE CODE

Chapter 6.1

Purpose General Provisions and Definitions

- 6.101 Purpose. Purpose of Title VI is to provide the Saginaw Chippewa Indian Tribe with law relative to probate of member's estates, guardianships, conservatorship, protective proceedings, trusts and powers of Attorney; and to prescribe penalties liabilities and procedures.
- 6.102 Probate Court. For the purposes set out in 6.101 of this Code, there is hereby created a Court designated as the SAGINAW CHIPPEWA PROBATE COURT.
- 6.103 Officers of the Probate Court. The officers of the Probate Court shall include: the Chief and Associate Judges of the Community Court; The Magistrate/Court Clerk; and a Public Administrator who shall be appointed by the Tribal Council.
- 6.104 Definitions.
- (1). "Authenticated", means the genuineness and validity of the original or copy of public or official document, instrument or record as proved.
 - (2). "Beneficiary", means a person named or entitled to enforce a trust or the provisions of certain insurance policies.
 - (3). "Child", may include a biological child stepchild, foster child, adopted child, or a grandchild.
 - (4). "Claim", means some liability from the estate of decedent, disappeared persons, minors or legally in capacitated persons. Such liabilities may arise from contract, tort, last illness, death, funeral or burial expense.
 - (5). "Conservator" or "Guardian of Estate", means a person appointed by the Court to exercise powers over an estate or financial affairs of a person under this Code.
 - (6). "Tribal Conservator", shall mean a person selected by Tribal Council to serve as the Conservator for all Saginaw Chippewa Indian Tribal members who are over fifty years of age or judged mentally incompetent by a court of competent jurisdiction, where a proper petition has been filed and reviewed by the Court.
 - (7). "Tribal Public Administrator", means an official appointed by the Tribe, whose duty it shall be to administer estates of deceased persons who have no known heirs.
 - (8). "Devise", when used as a noun, includes legacy and means a testamentary disposition of real or personal property or both. "Devise" when used as a verb, means to dispose of real or personal property or both by will.

- (9). "Devisee", means a person designated in a will to receive a devise.
- (10). "Disappeared Person", means a person who meets all of the following:
- a. The person has been absent from his last known place of abode for at least 7 continuous years.
 - b. The person's whereabouts were unknown by those persons most likely to know of his whereabouts during the time required by subdivision (a).
 - c. The person has not communicated with any of those persons most likely to receive communication from him during the time required by subdivision (a).
- (11). "Distributee", means a person who received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed is considered a distributee of the personal representative.
- (12). "Estate", means the property of the decedent or other person whose affairs are subject to this act as the property is originally constituted and as it exists during administration.
- (13). "Fiduciary", includes a conservator, guardian, personal representative, or a successor fiduciary. The following are fiduciaries:
- (a) Conservator.
 - (b) Foreign personal representative.
 - (c) Guardian.
 - (d) Personal representative including an independent personal representative.
- (14). "GAL" shall mean the Tribal-Guardian Ad Litem, Tribal Lawyer-Guardian Ad Litem or a Guardian Ad Litem or Lawyer Guardian Ad Litem duly appointed for good cause pursuant to this Code.
- (15). "Guardian", means a person appointed by the Court (or designated as such in a will), to exercise powers over the person of a minor or of a legally incapacitated person.
- (16). "Heirs", means those persons, including the surviving spouse, who are entitled to the property of a decedent under the statutes of intestate succession.
- (17). "Independent Personal Representative", means a person administering an estate of

a deceased pursuant to subsection (16).

- (18). "Independent Probate", means probate designed to operate without unnecessary intervention by the probate court.
- (19). "Interested Party", means an heir, devisee, beneficiary, a fiduciary of a legally incapacitated person who is an heir, devisee, or beneficiary, a fiduciary or trustee named in an instrument involved, or a special party.
- (20). "Interested Person", means an interested party, creditor, surety, or any other person having a property right in a trust estate or the estate of a decedent or ward which may be affected by the proceeding. Interested person includes a person nominated as a personal representative and a fiduciary representing an interested person. The meaning may vary as it relates to a particular person and shall be determined according to the particular purpose of, and matter involved in any proceeding.
- (21). "Intestate Succession", means succession by, through, or from a person, either by lineal or collateral descent, without benefit of a will.
- (22). "Issue" of a person, means all of the person's lineal descendants of all generations, except those who are descendants of a living descendant, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this act.
- (23). "Judge", means a judge of probate.
- (24). "Legally Incapacitated Person", means a person, other than a minor, who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause except minority, to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person.
- (25). "Minor", means a person who is less than 18 years of age.
- (26). "Net Estate", in respect to a decedent's estate, means the property of a decedent exclusive of homestead allowance, exempt property, family allowance, enforceable claims, and administration expenses against the estate.
- (27). "Nonresident Decedent", means a decedent who was domiciled outside of the Reservation at the time of his death.
- (28). "Notice", means notice prescribed by Tribal Code unless otherwise prescribed by law.
- (29). "Parent" for inheritance purposes, includes a person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this act by intestate succession from the child whose relationship is in question and excludes

any person who is only a stepparent, a foster parent, or a grandparent who is not so entitled to inherit.

- (30). "Paternity" means the biological relationship of a man to his child.
- (31). "Person" includes an individual or other legal entity.
- (32). "Personal Representative" includes executor, administrator, administrator with will annexed, administrator de bonis non, a temporary or successor personal representative, and a person who performs substantially the same functions in respect to the estate of a decedent under the law governing their status.
- (33). "Property" includes both real and personal property and means anything that may be the subject of ownership.
- (34). "Protective Proceeding", means a proceeding to determine that a person cannot effectively manage or apply the person's estate to necessary ends, because the person lacks the ability or is otherwise inconvenienced, or because the person is a minor, and to secure administration of his or her estate by a conservator or other appropriate relief.
- (35). "Registered Mail" includes certified mail, return receipt requested.
- (36). "Security " includes a note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under a title or lease, collateral trust certificate, transferable share, voting trust certificate, or in general, an interest or instrument commonly known as a security, or a certificate of interest or participation, a temporary or interim certificate, receipt or certificate of deposit for, or a warrant or right to subscribe to, or purchase any of the foregoing.
- (37). "Settlement" as to a decedent's estate, includes the full process of administration, distribution, and closing.
- (38). "Special Party", means any of the following persons which are required to be given notice pursuant to Tribal Code or Federal Law: attorney general; foreign consul; a county or state department of social services; guardian; GAL ; attorney of record of an interested party; or an attorney in fact or agent having durable power of attorney.
- (39). "Supervised Administration", means administration in a proceeding authorized by law or rule and designed to give court control of the acts of a personal representative.
- (40). "Testator or Testatrix", refers to a person who makes or has made a testament or a will: one who dies leaving a will.
- (41). "Tribal-Guardian Ad Litem" shall mean a trained adult person selected by Tribal

Council and appointed by the Tribal Court judge to represent the interests of an individual who the Court determines is unable to do so themselves. The Tribal-Guardian Ad Litem shall be subject to a background check as determined by Tribal Council, and shall have training, education, or experience working with children or vulnerable individuals.

- (42). "Tribal Lawyer-Guardian Ad Litem" shall mean a licensed attorney appointed by the Tribal Court judge to represent the interests of an individual who cannot do so themselves. The Tribal Lawyer-Guardian Ad Litem shall be an attorney licensed to practice before the courts of a state in the United States and shall be subject to a background check as determined by Tribal Council.
- (43). "Trust", means an express trust, private or charitable, with additions thereto, where created and whether created by will or other than by will. It includes a trust created by judgment or decree under which the trust is to be administered in the manner of an express trust. Trust excludes other constructive trusts, and it excludes resulting trusts, business trusts providing for certificates to be issued to beneficiaries, investment trusts, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts created for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.
- (44). "Verified", means a statement under oath or under penalties of perjury by the person attesting to the truth of the contents of the document or instrument.
- (45). "Ward", means a minor or a legally incapacitated person for whom a guardian is appointed or a person for whom a conservator is appointed. "Ward", also means only a person for whom a guardian is appointed and a "minor ward" is a minor for whom a guardian is appointed solely because of minority.
- (46.) "Will" includes codicil and any testamentary instrument which merely appoints an personal representative or revokes or revises another will.

Chapter 6.2

Jurisdiction

6.201 Exclusive Jurisdiction. The Court has exclusive jurisdiction of all of the following:

- (1) Matters relating to the settlement of an estate of a deceased Tribal member, or other Indian person whether this person died testate or intestate, who at the time of death were domiciled within the territorial jurisdiction of the Reservation or were at the time of death domiciled without the jurisdiction leaving an estate within the tribal jurisdiction to be administered.
- (2). Exclusive jurisdiction shall extend to:

- (a) Personal property;
 - (b) Real property not held in trust or at restricted fee status.
- (3). Trusts and trustees in the execution of wills and administration of estates of deceased persons.
- (4). Proceedings concerning the internal affairs of trusts including proceedings concerning the administration and distribution of trusts and the declaration of rights or the determination of other matters involving trustees and beneficiaries of trusts, including proceedings to:
 - (a) Appoint or remove a trustee;
 - (b) Review the fees of a trustee;
 - (c) Review and settle interim or final accounts;
 - (d) Ascertain beneficiaries; and
 - (e) Determine any question arising in the administration or distribution of any trust, including questions of construction of wills and trusts; instruct trustees, and determine relative thereto the.

6.202 Concurrent Jurisdiction.

- (1). Except where exclusive jurisdiction is given in the Tribal Constitution or in this Code, or where the Tribal Probate Court is denied jurisdiction by Federal Statute or Case Law, the Tribal Probate Court has the concurrent jurisdiction with State of Michigan and the Federal Government over any of the following, when ancillary to the settlement of an estate of a deceased person, ward or trust:
 - (a) To determine the validity of and resolve claims involving title to personal property;
 - (b) Authorize partition of personal property;
 - (c) Authorize specific performance of a contract in a joint or mutual will or a contract to lease property by will;
 - (d) To ascertain survivorship of parties;
 - (e) To continue a will as determine heirs; and
 - (f) To hear and decide an action or proceeding against distributors of an estate.
- (2). In any action that might be considered concurrent the Tribal Probate Judge may refuse to consider the action and order removal to State or Federal jurisdiction.

Chapter 6.3

Probate of Estates

- 6.301 Petition. All action for probate of estates for deceased members or other American Indians within the jurisdiction of the Saginaw Chippewa Tribe, shall commence with a petition for probate, which shall be filed by an heir at law, beneficiary named in the will, creditor, other persons claiming an interest in the estate, or Tribal Public Administrator.
- 6.302 Petition Contents. The petition shall be in writing and shall provide the following information:
- (1) Date of Death;
 - (2). Age of deceased person at Death;
 - (3). Domicile of deceased person;
 - (4). (4).Tribal member, descendant or other American Indian; and
 - (5). Names and addresses of probate heirs.
- 6.303 Wills. If decedent executed a will, a petition for probate shall include the date the will was executed. Such will must be signed, dated and witnessed by at least two competent persons.
- 6.304 Allowances to Spouse. When any person dies testate, or intestate:
- (1). The surviving spouse shall be allowed from the personal property of which the decedent was possessed or entitled to at the time of death, the wearing apparel, and, as selected, furniture and household goods not exceeding \$1,000 in value, and other personal property not exceeding \$500 in value.
 - (2). During the period of probate, but not exceeding 18 months, unless an extension shall have been granted by the Court, or , if the estate be insolvent, not exceeding 12 months, the spouse or children, or both, constituting the family of the decedent shall be allowed such reasonable maintenance as the Court may determine.
- 6.305 Action on the Petition. On the filing of the petition the Court shall set a date for a hearing and cause a written notice to be served on the persons named in the petition as known or made known to the Court. Notices may be served by mail on persons not living on the Reservation. In addition to the personal service and mailing of the notice the notice shall be posted in at least five places on the Reservation for 20 days before the hearing date. In care of a will the notices shall so state.
- 6.306 Proof of Service. The person serving, mailing and posting the notices shall file with the Court before the hearing date a statement showing the name of persons personally served, name of persons served by mail, and the number posted and their location.
- 6.307 Care of Property. Pending the hearing the Court may make a temporary order authorizing some person to care for the property. Reasonable cost for such service shall be a preferred

claim against the estate.

6.308 Inventory and Appraisal. When the Court deems it necessary, three competent, disinterested persons shall be appointed to take inventory and appraise the property of decedent. Reasonable cost for such service shall be a preferred claim against the estate.

6.309 Hearing. On the date and time set the Court shall proceed to hear the case, giving an opportunity to all interested persons to be heard.

6.310 Judgment without a Will. The assets of the estate shall be given to the surviving husband or wife of the decedent, his or her children and issue of deceased children:

- (1). If a husband or wife survives and there is no issue, the husband or wife shall take the entire estate.
- (2). If a husband or wife survives and only one child, or the issue of a deceased child survive, the surviving husband or wife shall take one-half. The balance goes to the child or is divided equally between the issue of the deceased child.
- (3). If a husband or wife survive and more than one child, or one child and the issue of one or more deceased children survive, the husband or wife shall take one-third. The remainder shall go in equal shares to the surviving children by right of representation, that is, the issue of a deceased child divide equally the share their parents would have taken if living.
- (4). Issue is any direct descendant of a deceased person, whether child, grandchild, great grandchild or more remote descendant.
- (5). If no husband or wife survives, the children, or children and issue of deceased children will take the entire estate in equal shares to surviving children and to the issue of deceased children by right of representation, that is, the issue of a deceased child divide equally the share their parent would have taken if living.
- (6). If neither husband or wife or issue survives, the parents of the decedent will take all of the estate, sharing it equally if both survive, or the survivor taking all if but one survives.
- (7). If no spouse, issue of father or mother survives, the brothers and sisters and their issue shall inherit, taking in the same manner as children and issue of deceased children.
- (8). If no spouse, issue, father or mother, brother or sister or nephew or niece of the deceased person survives, the estate shall escheat to the Saginaw Chippewa Indian Tribe of Michigan.
- (9). An illegitimate child shall inherit from his mother the same as if born in lawful wedlock, and also from the person who in writing and before a competent attesting witness shall have declared himself to be his father.

- 6.311 Judgment with a Will. When the decedent leaves a will, it shall be admitted to probate and recognized when it appears that person making the will was of sound mind when he made it and that it was made of his own free will, he not being induced to do so by fraud, force, threat, or undue influence. A will must be in writing, signed by the testator or by some person in his presence and by his express direction and subscribed in his presence by two or more competent witnesses.
- 6.312 Exceptions. Where the estate of the decedent includes any interest in restricted allotted lands or other property held in trust by the United States, over which the Examiner of Inheritance would have jurisdiction, the Tribal Probate Court may distribute only such property as does not come under the jurisdiction of the Examiner of Inheritance.
- 6.313 Preferred Claims. In any estate that has cash funds to its credit claims may be allowed for last illness and funeral expenses before the estate is probated and shall be considered preferred claims.

Chapter 4

Appeals

- 6.401 Tribal Appellate Court. The provision set out in 1.513 shall apply to this section.
- 6.402 Appeals, Procedure. The provisions set out in 1.514 shall apply to this section.

Chapter 5

Guardianship

- 6.501 Jurisdiction.
- (1). The Saginaw Chippewa Probate Court shall have authority, whenever it appears necessary or convenient, to appoint guardians for the persons and/or estates, or for the purpose of actual or contemplated litigation (guardian ad litem) of either minors or person incompetent by reason of physical or mental sickness or deficiency, advanced age, or chronic use of drugs or alcohol.
 - (2). The Saginaw Chippewa Probate Court shall have authority to appoint guardians when the person for whom the guardianship is sought is a member of the Tribe or the child of a member of the Tribe, whether or not he lives on the Reservation.
 - (3). The Saginaw Chippewa Probate Court shall have the authority to adjudicate Petitions regarding paternity of a minor child who is the subject of a guardianship established by the Probate Court. The Probate Court shall utilize the procedures set forth in §3.1718 of the Tribal Code when adjudicating paternity matters. The Probate Court may, in its discretion, refer matters concerning paternity to the Tribal Community Court.

- (4). The Probate Court may, in its discretion, refer matters concerning the guardianship of a minor to the Tribe Juvenile Court.

6.502 Appointment of Guardian in Connection With Probating an Estate.

- (1). The Court may, in the process of administering an estate for which there is a valid will containing a designation of a guardian for minor children if orphaned by the deceased's death, appoint the person therein designated as guardian of the minors involved without the necessity of a separate guardianship hearing.
- (2). If the person so designated is unable or unwilling to serve, or if such person's appointment is objected to by any child over 14 years of age, or if the Court deems such to be in the minor's best interest, a separate guardianship hearing shall be held as provided herein.

6.503 Protective Proceedings Petition.

- (1). Except as provided in the preceding section, guardianship proceedings shall be initiated by the filing of a petition by a relative or other person on behalf of the minor or incompetent, or by a minor himself if over 14 years of age. The Court may initiate proceedings to appoint a guardian if such appointment reasonably appears necessary and no other person has initiated such proceedings provided that the Court has reasonable belief that the person for whom a guardian is being appointed is legally incapacitated.
- (2). The petition shall set forth the name of the petitioner; the petitioner's relationship to the minor or incompetent; shall list all known relatives of the minor or incompetent and their addresses, relationships and ages insofar as is known to petitioners; shall list all property of the minor or incompetent, real and personal, known to petitioner; shall list in detail the present conditions and circumstances which warrant the appointment of a guardian; shall pray that Letters of Guardianship be issued to himself or some other suitable person to act as guardian of the minor or incompetent.

6.504 GAL Appointment, Substitution and Notice.

- (1). The petitioner, or the Clerk of the Court, if a minor or the Court itself initiates the proceeding, shall cause notice of the hearing to be given by mail or personal service to all known interested persons listed on the petition not less than five days before scheduled hearing. Such notice need not be given in the case of a minor whose parents appear and consent to waive such notice prior to the hearing or in the case of an adult where the spouse and children living on the Reservation appear and waive such notice. An appearance and waiver may be made personally or by affidavit to the Court.
- (2). Hearing for Minor. At a hearing conducted to appoint a guardian for a minor, the Court shall: examine the petition; determine the need to have a guardian

appointed; examine the minor (if over 14 years of age) to determine who he would prefer to have as his guardian; determine which person, either the petitioner or some other person, is most suitable to act as guardian, and that person's willingness to act as such; and make an order appointing a guardian, setting forth the scope of the guardian's authority, whether or not security for his performance is to be required, and the duration of such appointment.

- (3). Hearing for Incompetent. At a hearing conducted to appoint a guardian for an incompetent, the Court shall: examine the petition; determine the need to have a guardian appointed by taking such testimony as any interested party wishes to present, but including not less than two doctor's reports, written or oral, under oath, to the effect that the incompetent is not presently able to handle his property or affairs, the anticipated duration of the incapacity, and that the best interests of the incompetent will be served by having a guardian appointed; determine which person, either the petitioner or some other person, is most suitable to act as guardian, and that person's willingness to act as such; and make an order appointing a guardian, setting forth the authority of the guardian, whether or not security for his performance is to be required, and the duration of such appointment.
- (4). Upon a decision of the Court that a Conservator is needed, the Tribal Court shall appoint the Tribal Conservator to serve as conservator for any Tribal member over the age of fifty, or declared mentally incompetent by a court of competent jurisdiction when a proper petition has been filed. The Tribal Court may appoint a Conservator that is not the Tribal Conservator if good cause is shown for such alternative appointment. Good cause not to appoint the Tribal Conservator shall be at the discretion of the Tribal Court and shall include but not be limited to appointment of a qualified family member as Conservator.
- (5). Qualifications of the Tribal Conservator. The Tribal Conservator shall pass a background check as determined by Tribal Council, shall have experience in the areas of tax preparation, accounting, financial services, or law and estate planning. The Tribal Conservator must have at least a high school degree or GED to serve. The Tribal Conservator must meet the requirements of this code including but not limited to the surety requirements of Section 6.506.
- (6). Upon a decision of the Court that a Guardian Ad Litem is needed, the Tribal Court judge shall appoint the GAL.
- (7). The Court shall appoint a Tribal-Guardian Ad Litem or a Tribal Lawyer-Guardian Ad Litem in all cases where a GAL is needed unless there is good cause for an alternative appointment as provided in this subsection. Good cause under this subsection shall be established by a finding of the Court that such appointment is necessary for the protection of the health, safety or welfare of the minor or incompetent or in the event of a conflict of interest.
- (8). The Court shall substitute the appointment of any GAL for the Tribal-Guardian Ad Litem or Tribal Lawyer-Guardian Ad Litem on all current cases where a GAL

was appointed prior to the adoption of this provision. Such substitution shall be completed by the Court not less than 30 days after notice to the Court by the Tribe of its selection of a Tribal-Guardian Ad Litem(s) or Tribal Lawyer-Guardian Ad Litem(s) absent a finding of good cause by the Court as provided in subsection 6.504(7).

- (9). Notice shall be provided to the Tribe of any hearing conducted pursuant to subsection 6.504(7) and 6.504(8) by the Court for the appointment or retention of a GAL for good cause. Such notice shall be provided no later than 72 hours before the hearing. The Tribe shall be entitled to attend and present evidence and briefing in opposition or support of the appointment. The Court shall consider all evidence, testimony and briefing prior to its decision.

6.505 Who May Serve As Guardian. Any adult person 21 years of age or older and subject to the jurisdiction of the Saginaw Chippewa Probate Court may serve as a guardian. Preference shall be given to relatives of the minor or incompetent in order of their closeness of relationship and some preference shall also be given to a person with whom the minor or incompetent is living at the time of the guardianship hearing. Preference shall be given to the person preferred to act as his guardian by a minor or incompetent over 14 years of age, but in all cases, the Court shall determine the best interests of the minor or incompetent in selecting a guardian.

6.506 Security for Faithful Performance of Duties. The Court may, but need not, require a guardian to provide security in the form of a bond or otherwise to assure the faithful performance of the guardian's duties. Any surety of any such security will be deemed to have consented to the jurisdiction of the Saginaw Chippewa Probate Court for the purposes of action against such security.

6.507 Oath; Letters of Guardianship.

- (1). The guardian appointed by the Court shall be required to take an oath, the form of which to be prescribed by the Court, to the effect that he will faithfully perform his duties as guardian.
- (2). Upon taking the oath and filing with the Court such security, if any, as may have been required, the guardian shall be issued Letters of Guardianship, issued by the Clerk under the seal of the Court, as evidence of his appointment. Any limitations in the authority of the guardian shall be set forth on the Letters so issued.

6.508 Inventory and Appraisement.

- (1). Within 45 days after the appointment of general guardian or guardian of the property or estate of a minor or incompetent, the guardian shall prepare and submit to the Court an inventory and appraisement of the estate.
- (2). The appraisement shall be made by three disinterested persons who shall certify under oath to their appraisement and may receive reasonable compensation for their services.

- (3). No appraisalment shall be required of items of obvious, readily ascertainable value; e.g. bank account assets, or where the value of the estate is reasonably believed by the guardian to be less than \$1,000.00. If no appraisalment is required, the guardian shall certify under oath to the obvious or estimated value of the assets not appraised.

6.509 Annual Accounting.

- (1). The guardian of every estate in value over \$1,000.00 shall submit an annual account of the estate to the Court for approval, on such notice as the Court may direct, in each year in which the value of the estate is or is reasonably believed to be in excess of \$1,000.00.
- (2). Such account shall be verified on the oath of the guardian and shall contain an accounting of all additions to and withdrawals from the estate, and shall be accompanied by supporting canceled checks, vouchers, receipts, statements, etc.
- (3). The Tribal Court shall hold a review hearing not less than once per calendar year to review the status of the Conservatorship and/or Guardianship. A detailed accounting shall be provided in writing to the Court at the review hearing or more frequently if required by the Court. During the Annual Review Hearing, the Tribal Court shall dismiss any previously appointed Conservator and shall appoint the Tribal Conservator to the case, absent good cause shown not to make such appointment. Good cause not to appoint the Tribal Conservator shall be at the discretion of the Tribal Court and shall include but not be limited to appointment of a qualified family member as Conservator.

6.510 Guardian's and Conservator's Compensation.

- (1). No guardian shall receive any compensation for acting as such without the prior approval of the Court.
- (2). The guardian of an estate in excess of \$1,000.00 in value may receive annual compensation for acting as such in amount not less than \$25.00 nor greater than 10% of the gross income of the estate.
- (3). The guardian of an estate less than \$1,000.00 in value shall receive no compensation unless specifically ordered by the Court for extraordinary service to the estate.
- (4). The right to receive compensation as guardian of an estate shall be deemed waived for any year in which such is not requested and received.

6.511 Powers and Responsibilities of Guardian and GAL.

- (1). Except as otherwise specifically ordered or limited by the Court:

- (a). A general guardian or guardian of the person of a minor or incompetent shall have the right to take or provide for the custody of the person of the minor or incompetent and shall be required to care for the health, safety and welfare of such minor or incompetent and provide for their education and medical care as needed or appropriate.
 - (b). A general guardian or guardian of the estate or property of a minor or incompetent shall have authority to invest, manage and dispose of the property of the minor or incompetent in a prudent and reasonable manner and expend such portions of the estate, income and then principle, as he shall deem reasonably necessary for the support, care, including medical care, and education of the minor or incompetent given the size and nature of the estate and the station in life and needs of the minor or incompetent.
 - (c). A GAL shall have power and authority to represent a minor or incompetent's best interests in actual, threatened or contemplated litigation or other proceedings of a legal nature (other than of a criminal nature and/or under the Juvenile Code), and to employ counsel, and settle or compromise suits or claims, subject to the approval of the Court.
- (2). A guardian of any kind may petition the Court for authority to do any act about which he is uncertain of his authority, and the Court may grant such authority, after such notice and hearing, if any, as the Court may direct, if such appears to be consistent with the best interests of the minor or incompetent.
- (3). A guardian of any kind shall stand in a fiduciary relationship to the minor or incompetent ward; shall exercise a high degree of care in managing the estate of his ward; shall derive no personal benefit of any kind from his management of the estate of his ward; and shall be civilly liable to said wards for any losses to the estate attributable to a breach of these duties. Action to enforce such liability may be brought by the ward or a subsequently appointed guardian on behalf of the ward within two years after the appointment of a new guardian or the removal of the incompetency or the arriving at the age of majority.
- (4). Role and duties of the GAL.
 - (a) The role of GAL is to represent the best interests of the minor or incompetent person. However, the GAL must ascertain the expressed interests of the minor or incompetent person to the extent possible and inform the Court of the expressed interests of the minor or incompetent person.
 - (b) The duties of the GAL include the following:
 - 1. Appear at all hearings to competently represent the best interests of the minor or incompetent person in proceedings before the Court;

2. Meet with the individual and explain the purpose of the guardianship, their rights, and the hearing procedure;
3. Conduct an independent investigation, including interviewing the proposed guardians to learn about their relationship with the individual and their reasons for seeking guardianship;
4. Review any medical and mental health records for the individual;
5. Consult with other professionals, social workers, school personnel, care providers, and other persons to properly ascertain the facts and circumstances underlying the need for a guardian;
6. Consult with other professionals in identifying the minor or incompetent person's interests, current and future placements, and necessary services;
7. Make recommendations to the court about the guardianship and the proposed guardian;
8. Submit a report to the court with their recommendations;
9. Monitor compliance with court orders related to the individual; and
10. Attend training programs as recommended and/or provided by the Court.

6.512 Discharge of Guardian.

- (1). Every guardian appointed as provided herein shall serve until discharge by the Court.
- (2). A guardian of a minor, not otherwise incompetent, or the minor himself, may petition the Court on or after the date the minor reaches the age of majority to have the guardian discharged and the state turned over to the minor. The Court shall grant such discharge with or without notice and hearing, upon the receipt of sufficient, competent evidence that the minor has reached the age of majority unless the minor appears to be otherwise incompetent, in which case a hearing with notice, shall be held to determine such fact.
- (3). A person, other than a minor, who has had a guardian appointed for reasons of incompetency, or the guardian or a relative of such incompetent may petition the Court for a determination of his restoration to capacity and for the discharge of the guardian. The Court shall hold a hearing, after such notice to known interested persons as the Court shall direct, and receive evidence, both of a medical nature and otherwise, of the ward's competency. If it be found that the ward is of sound mind and capable of taking care of himself and his property, his restoration to

capacity shall be adjudged and his guardianship and guardian discharged.

- 6.513 Guardianship Records. The clerk shall keep a separate, permanent file for each guardianship proceeding and shall file all papers relevant thereto, including petitions, notices, orders for hearings, etc. Any guardian duly appointed shall be entitled to receive, without charge, three certified copies of the Letters of Guardianship. Certified copies of filed papers shall be otherwise available at a fee per copy to be established by the Clerk of Courts.
- 6.514 Guardianship of Trust Property. The Court is hereby authorized to appoint a Guardian of the trust estate of minors or incompetents using the procedures and safeguards outlined herein for the purpose of conveying or consenting to the conveyance of an interest in trust property owned by such minor or incompetent if it appears that the price to be paid is reasonable and adequate and that such sale is in the best interests of said minor or incompetent. All actions taken by such guardian consenting to or conveying trust property shall be subject to the approval of the Superintendent.
- 6.515 Temporary Guardianship and Custody. The Court shall have the power to entertain and grant or deny petitions for temporary guardianship and custody when it determines it to be in the best interest of the child, incompetent or not-competent person involved; provided, that full notice and opportunity to be heard be given to all interested parties within ten (10) days thereafter, and further provided that no guardian so appointed shall sell, dispose of, convey or otherwise alienate title to or interest in the ward's property during such temporary guardianship period.

Legislative History

Enacted by Resolution L & O-01-83 approved on February 7, 1983 (approved by BIA on February 16, 1983). Amended by Resolution L&O-13-86 approved on November 10, 1986 (approved by BIA on December 5, 1986). Amended by _____, Resolution. _____. Subsections 6.401 and 6.402 amended by Resolution 99-024 approved on December 22, 1998. Subsection 6.104(28) and Subsection 6.501(3) added by Resolution 12-048 on February 10, 2012. Subsection 6.104(32). deleted; Subsections 6.104(5)., 6.104(42)., 6.502(2)., 6.503(1). amended; new Subsections 6.104(6)., 6.504(4)., 6.504(5). and 6.509(3). added by Resolution 15-034 approved on June 3, 2015. Section 6.104(14). added; Section 6.104(37). renumbered; Sections 6.104(41) and (42) added; Section 6.504 title amended; Sections 6.504.(6)., (7)., (8)., and (9). added; Section 6.511 title amended; Section 6.511(1).(c) amended; Section 6.511(4). added by Resolution 25-043 approved on January 15, 2025.