

WYANDOTTE NATION
TITLE 25
GUARDIANSHIPS AND PROTECTION OF VULNERABLE PERSONS CODE
(APPROVED BY THE BOARD OF DIRECTORS 10-10-2023)

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**WYANDOTTE NATION
TITLE 25
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INTRODUCTION

Section 1. Citation.

This Title may be cited as the "Wyandotte Nation Guardianship Act."

Section 2. Purpose.

The purpose of this Title is to promote the general welfare of Wyandotte Nation citizens or persons eligible to be Wyandotte tribal citizens by establishing a system of general and limited guardianships for incapacitated or partially incapacitated individuals and minors, which provides for the protection of their rights and the management of their financial resources.

Section 3. Definition of Guardian.

A guardian is a person appointed by the Court to take care of the person or property of another.

Section 4. Persons Included as Guardians.

The term "guardian" includes persons appointed as general and limited guardians of the person, general and limited guardians of property and special guardians; however, it does not include guardian ad litem.

Section 5. Definition of Ward.

A person over whom a guardian is appointed and a person over whose property a guardian is appointed is called a ward.

Section 6. Definitions.

Unless the context otherwise requires, as used in this Title, the term:

(a) "Abuse" means the intentional infliction of physical pain, injury, or mental anguish or the deprivation of food, clothing, shelter or medical to an incapacitated person, partially incapacitated person, or a minor by a guardian or other person responsible for providing these services;

(b) "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 or limited guardians submitted to the Court in accordance with the provisions of this Title.

(c) "Estate" means the property of the person whose affairs are subject to a guardianship proceeding.

(d) "Evaluation" means a professional assessment of:

(i) the ability of an individual to receive and evaluate information effectively or communicate decisions;

(ii) the impact of any impairment of these skills on the capacity of the individual to meet the essential requirements for the individual's physical health or safety, or to manage the individual's financial resources; and

(iii) the services necessary to provide for the ward.

(e) "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 the incapacitated person, partially incapacitated person or minor, through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense.

(f) A "guardian of the person" means an individual who has been appointed by the Court to serve as the guardian of an incapacitated person to assure that the essential requirements for the health and safety of the person are met.

(g) A "guardian of the estate" means an individual who has been appointed by the Court to serve as the guardian of the incapacitated person's estate or financial resources.

(h) "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 the decisions when the subject of the proceeding is wholly incapable of making the decisions even with assistance.

(i) "Guardianship plan" means the plan for the care and treatment of the ward, the plan for the management of the estate of the ward, or both.

(j) "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 resources of the ward.

(k) "Guardianship report" means any report required of the guardian to the Court in accordance with this Title.

(l) "Incapacitated person" means a person eighteen (18) years of age or older:

(1) who is impaired by reason of:

- (i) mental illness;
- (ii) intellectual or developmental disability;
- (iii) physical illness or disability;
- (iv) drug or alcohol dependency;
- (v) such other similar cause; and

(2) whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that the person:

- (i) lacks the capacity to meet the essential requirements for physical health or safety; or
- (ii) is unable to manage their own financial resources.

(m) "Incompetent person" means a person who is impaired by mental or physical disability or a person who is unable to fully comprehend the nature of circumstances or legal consequences due to insufficient age.

(n) "Initial review hearing" means the first hearing held by the Court for review of the guardianship proceeding after the entry of the Order appointing a guardian for an individual.

(o) "Intangible personal property" means cash, stocks and bonds, mutual funds, money market accounts, certificates of deposit, insurance contracts, commodity accounts, and other assets of a similar nature.

(p) "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 such 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.

(q) A "limited guardian" means a person appointed by the Court to serve as the guardian of a partially incapacitated person and who is authorized by the Court to exercise only:

(1) 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

(2) certain powers of a guardian of the property over the estate or financial resources of the ward, or whose powers as guardian of the property extend only to some portion of the estate or financial resources of the ward.

(r) "Manage financial resources" or "manage the estate" means those actions necessary to obtain, administer and dispose of real property, business property, benefits and income, and to otherwise manage personal finances or business affairs.

(s) "Meet the essential requirements for physical health or safety" means those actions necessary to provide for the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury is more likely than not to occur.

(t) "Minor" means a person under eighteen (18) years of age.

(u) "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 person's own action or inaction because of a lack of awareness, incompetence or incapacity, which has resulted or may result in physical or mental injury.

(v) "Partially incapacitated person" means an incapacitated person whose impairment is only to the extent that without the assistance of a limited guardian, the person is unable to:

(1) meet all of the essential requirements for physical health or safety; or

(2) manage all of the person's financial resources or to engage in all of the activities necessary for the effective management of the person's financial resources.

(w) "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.

(x) "Restrictions on the legal capacity of a person to act in the person's own behalf" means powers of an incapacitated or partially incapacitated person which are assigned to a guardian.

(y) "Subject of the proceeding" means an individual, adult or 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.

(z) "Supported decision making" means assistance from one or more persons chosen by an individual in understanding the nature and consequences of potential personal and financial decisions to enable the individual to make such decisions, and in communicating such decisions if consistent with the wishes of the individual.

CHAPTER ONE GENERAL PROVISIONS

Section 101. Jurisdiction.

(a) The District Court shall have authority, whenever it appears necessary, to appoint a guardian of the person and/or property of any person who is subject to the jurisdiction of the Wyandotte Nation Court.

(b) As used in this Title, the term person means any person subject to civil jurisdiction of the Wyandotte Nation Court.

(c) By accepting appointment, a guardian personally submits to the jurisdiction of the Wyandotte Nation Court in any proceeding relating to the guardianship that may be instituted by any interested person.

Section 102. Classifications of Guardians.

(a) A general guardian is a guardian of the person or all of the property of the ward 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 the property of the ward, or over both such person and property.

(c) A temporary guardian is a person appointed by the Court for a limited duration as set forth in the Court's order.

(d) A special guardian is a guardian who may be appointed by the Court for a specific situation and for a specific duration of time as set forth in the Court's order.

Section 103. 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 Title, to:

- (1) Appoint and remove guardians for individuals;
- (2) Issue and revoke letters of guardianship;
- (3) Control the conduct of guardians with regard to the care and treatment provided to the wards;

(4) Control the conduct of guardians with regard to the management of the financial resources of the 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 the ward;

(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 the guardian;

(8) Settle the accounts of the guardians;

(9) Appoint appraisers of the property of the wards;

(10) Compel the attendance of witnesses and the production of documents and property; and

(11) Exercise all powers conferred by this Title and to make such orders as may be necessary for the exercise of said powers.

Section 104. Guardian Ad Litem.

(a) Nothing contained in this Title affects or impairs the power of the Court to appoint a guardian ad litem to defend the interests of any ward, incapacitated person, partially incapacitated person, or minor interested in any suit or matter pending therein.

(b) At any point in a guardianship proceeding, the subject of the proceeding, their 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.

Section 105. Duties and Powers of Guardians.

(a) Except as otherwise ordered or limited by the Court:

(1) A guardian of an individual shall have the right and duty to provide for the ward's physical custody and shall be required to care for their health, safety and welfare as well as educational needs and necessary medical care.

(2) In a legal action, the guardian shall have the authority to represent the interests of the ward in actual, threatened or contemplated litigation or other proceedings of a legal nature. The guardian may employ legal counsel and settle or compromise suits or claims subject to the approval of the Court.

(3) A guardian of the property of a ward shall have the authority to invest, manage and dispose of the ward's property in a prudent and reasonable manner, subject to the Court's approval, and may use the proceeds to provide for the care and support of the ward, as shall be reasonably necessary.

(b) A guardian may petition the Court at any time for authority to perform any act, if he or she is uncertain of their authority. The Court may grant such authority, after notice and hearing, if the act appears to be consistent with the best interests of the ward.

(c) A guardian shall report to the Court any change in 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 or property, shall:

(1) Stand in a fiduciary relationship to the ward;

(2) Exercise a high degree of care in managing the ward's property;

(3) Derive no personal benefit of any kind from the management of the ward's property; and

(4) Shall be liable to the ward for any losses attributable to a breach of duties.

(e) Any action to enforce liability against the guardian may be brought by the ward upon a determination of legal capacity, or a subsequently appointed guardian 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 a minor ward.

(f) The Court shall hold annual review hearings in guardianship cases. Every guardian, whether of the person and/or property of a ward shall file a progress report with the Court annually, at least thirty (30) days prior to the annual review hearing.

Section 106. Confidential Information Filed with Court.

Confidential information filed with or submitted to the Court in conjunction with any proceeding pursuant to this Title 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 their attorney;

(b) The guardian ad litem;

(c) If the subject of the confidential information is a ward, the guardian of such ward;

(d) If the subject of the confidential information is the guardian, the ward and their attorney, and the attorney of such guardian; and

(e) Tribal or Bureau of Indian Affairs governmental entities necessary to the provision of services to the ward.

Section 107. 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 a 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 guardian or ward.

Section 108. Filing of Petition and Eligibility.

(a) Guardianship proceedings shall be initiated by the filing of a petition. Any person eighteen (18) years of age or older, a child if he/she is twelve (12) years of age or older, or any representative of the Wyandotte Family Services Department may file a petition.

(b) Any person eighteen (18) years of age or older and subject to the jurisdiction of the Court may serve as guardian, provided the Court makes a specific finding of the fitness of the individual to serve as guardian.

(c) Preference shall be given to relatives and to the person preferred by a ward who is twelve (12) years or older; however, in all cases, the Court shall determine the guardian based on the basis of the best interests of the ward.

Section 109. 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, if any, of the petitioner;
- (c) The full name, sex, date of birth, residence and tribal affiliation of the proposed ward;
- (d) The petitioner's relationship, if any, to the ward;
- (e) The name and address of the person or agency having custody of the ward, if a child;
- (f) The names and addresses of all known relatives of the proposed ward, 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 proposed ward 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.

Section 110. 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 to be given in the form required by the Court to the proposed ward them self unless the proposed ward has not yet reached the age of twelve (12) as of the date the petition is filed. The Court shall also cause notice to be sent to the following person or persons:

(1) Any living parent, child or sibling or any other person having care of the proposed ward, if such person is not the petitioner or one of the petitioners.

(2) If the proposed ward is a minor with no living parents, then to the proposed ward's living grandparents, provided they are not the petitioners or married to the petitioner.

(3) If there is no such then-living parent, child, sibling, or grandparent then notice shall be given to the next closest living relative, if known.

Section 111. 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 best interest of the ward to change the guardian(s) or to return a minor child to their parent(s) or custodian(s).

Section 112. Permanent Guardianship.

(a) A permanent guardianship awards permanent care and control of a ward to a guardian.

(b) The Court may appoint a permanent guardian for a ward under such terms and conditions as the Court deems appropriate and in the best interests of the ward.

(c) There shall be a presumption of continued permanent guardianship in order to provide stability for the ward.

(d) 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 ward.

Section 113. Order of Guardianship.

The Court shall specify in writing the facts and findings 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.

Section 114. Guardianship Plan.

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

(b) The proposed guardianship plan and any subsequent guardianship plans for the care and treatment of the ward shall state:

(1) 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 any evaluation report made with respect to the ward, and the means for obtaining those services;

(2) the manner in which the guardian or limited guardian, the ward, and the guardian of the property of the ward, will exercise and share decision-making authority; and

(3) such other services necessary to assist in fulfilling the needs of the ward.

Section 115. Setting of Initial Review Hearing.

(a) In the order appointing the guardian, the Court shall set the date for the initial review hearing, which shall be not more than ninety (90) days 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.

Section 116. Inventory and appraisal.

(a) Within thirty (30) days after the appointment of a general guardian or guardian of the property, the guardian shall prepare and file with the Court an inventory and appraisal of the ward's real property, if any.

(b) The appraisal shall be made by a disinterested person who shall certify under oath to his/her appraisal and may receive reasonable compensation for this service.

(c) No appraisal shall be required of items of obvious value or 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 ward's property.

Section 117. 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 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.

Section 118. Bond.

(a) In the event a guardian receives any funds or property of the ward at the time of appointment or during the term of the guardianship, he or she 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.

(b) If no real property exists and the personal property of the ward is of a nominal value, the Court may waive the posting of a bond.

Section 119. Trust Property.

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

Section 120. 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 cancelled checks, vouchers, receipts and bank statements shall be attached to the accounting.

Section 121. Discharge of Guardian.

- (a) Every guardian shall serve until discharged by the Court;
- (b) A guardian of a minor's estate appointed by the Court is not entitled to be discharged 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 attaining the age of majority.

CHAPTER TWO GUARDIANSHIPS OF MINORS

Section 201. Appointment - Petition - Investigation and Report.

- (a) The Court, when it appears necessary or convenient, may appoint guardians of the person or estate of a minor child.
- (b) Such appointment may be made on the verified petition of a relative or other person on behalf of the minor child.
- (c) Before making the appointment, the Court may receive an investigation and report regarding the background and home of the prospective guardian and any adult member of the household. The investigation and report of the prospective guardian and placement restrictions and requirements shall be made in a manner that gives consideration to the health and welfare, physical and emotional safety, and best interests of the minor child.
- (d) The report may be made by either a guardian ad litem, child's attorney or the Wyandotte Nation Family Services Program.
- (e) The costs of such investigation and report may be assessed against the prospective guardians of the minor child or may be waived for good cause shown by the Court.

Section 202. 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 into 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.

Section 203. Consent and Nomination By Minor.

(a) If the minor is under the age of fourteen (14) years, the Court may name and appoint the guardian without the consent of the minor child.

(b) If the minor child is fourteen (14) years or older, the child's consent is required, unless same is overruled by the Court for good cause shown.

(c) If the minor child is fourteen (14) years or older, the child may nominate their own guardian, who, if approved by the Court, must be appointed accordingly.

Section 204. Minor at 14 Years of Age May Nominate Guardian Subject to Approval of the Court.

(a) 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 or she has attained the age of fourteen (14), may nominate his or her own guardian, subject to the approval of the Court.

(b) If a guardian nominated by a minor who has attained the age of fourteen (14) years is not approved by the Court, or after being notified by the Court, the child 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 child were under the age of fourteen (14) years.

Section 205. Visitation Rights of Parents and Other Family Members.

Upon the entry of either a temporary or permanent guardianship of a minor ward, 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.

Section 206. Support and Maintenance of a Minor Ward.

(a) Any order appointing a guardian of the minor who has a living parent or other person legally responsible for the support of the child shall:

(1) provide for the payment of child support by each parent or other responsible party pursuant to the applicable child support guidelines as set forth by the Wyandotte Nation Code of Laws. Each parent, including parents who reside together, shall be individually ordered to pay the percentage of the total monthly child support obligation attributable to that parent; and

(2) contain an immediate income assignment provision pursuant to the Wyandotte Nation Code of Laws.

(b) The Court may defer the issue of establishment or enforcement of child support to the appropriate administrative agency when child support services are being provided by a state or tribal agency.

Section 207. Order for Appointment of Guardian of a Minor.

(a) When any person is appointed guardian of a minor, the Court shall include in the order of appointment conditions providing for the care, treatment, education and welfare of the minor.

(b) An order providing for the transfer of the permanent care and custody of a child:

(1) Shall require that the placement be reviewed within one (1) year after transfer and may require the person to whom custody is transferred to submit any records or reports the Court deems necessary for purposes of the review; and

(2) Shall require annual reviews by the Court thereafter until such time as the minor child reaches the age of majority and the guardianship is terminated.

Section 208. When Power of Guardian Appointed for Minor Ceases.

The authority of a guardian appointed for a minor child ceases upon:

(1) The removal of the guardian by the Court;

(2) The solemnized marriage of the ward; or

(3) The minor ward attaining the legal age of majority.

(4) The successful completion of rehabilitative standards of the biological parents or original custodian.

Section 209. Release of Minor Ward at Majority.

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

CHAPTER THREE GUARDIANSHIPS OF ADULTS

Section 301. Petition for Appointment of a Guardian.

(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 person entitled to notice and to the attorney of the subject of this 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 result 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 of the filing of the petition, may be attached to the petition at the time it is filed.

(d) A guardianship plan or plans, as appropriate, may be attached to the petition at the time it is filed or may be submitted at the time of the hearing.

(e) Before making the appointment, the Court may receive an investigation and report regarding the background and home of the prospective guardian. When required, the investigation and report of the prospective guardian and placement restrictions and requirements shall include a background check for the petitioner and each adult member of the petitioner's household establishing that there is no record of a criminal conviction, protective order or pending criminal charge. The petitioner shall disclose the case name and status of any civil or criminal matter in tribal, state or federal Court, including but not limited to bankruptcy adjudications, involving the petitioner or any adult household member.

Section 302. 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. Such nomination shall, in the event of incapacity or partial incapacity of said person be proved in the same manner as any other writing. The nomination shall be binding on the Court subject to the disqualification of the nominee by the Court.

(b) The person making the nomination, may nominate an alternate guardian or guardians to act in the event a previously nominated person is unable or unwilling to act as guardian.

(c) 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.

Section 303. Nomination of Guardian or Limited Guardian by Will for Incapacitated Person.

A parent of an unmarried incapacitated or partially incapacitated person, the spouse of a married incapacitated or partially incapacitated 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 304. Priorities for Selection of Guardian or Limited Guardian.

(a) The following priorities shall guide the selection by the Court of a guardian or limited guardian of an incapacitated or partially incapacitated person:

(1) The individual or individuals nominated by the subject of the proceeding;

(2) 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;

(3) The spouse of the subject of the proceeding;

(4) An adult child of the subject of the proceeding;

(5) A sibling of the subject of the proceeding; or

(6) Any other person approved by the Court.

(b) When the guardian or limited guardian of an incapacitated or partially incapacitated 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.

(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 proposes to provide for the care of the ward, and of the proposed guardian of the estate 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 for the best interest of the ward.

Section 305. Nominee Unable or Unwilling to Serve.

If a person nominated is unable or unwilling to serve, the Court shall make a finding of such fact and proceed to appoint a guardian as if such nomination had not been made.

Section 306. Rights of Incapacitated or Partially Incapacitated Person.

(a) In all hearings conducted pursuant to this Title, an individual who is alleged to be or found to be an incapacitated or partially incapacitated person shall have a right to:

- (1) Notice;
- (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 as provided by the rules of civil procedure;
- (7) Representation by court-appointed counsel upon request; 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 a hearing may be waived only for good cause shown. 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.

(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 and that the person to be admitted to the closed proceeding has a legitimate interest in the proceedings.

(d) Statements of individuals alleged or found to be partially incapacitated or incapacitated persons made during the course of the evaluations, examinations and treatment shall be privileged and confidential. Such statements shall not be admissible without the individual's consent in any civil or criminal proceeding other than a proceeding held pursuant to this Title.

Section 307. Appointment of Attorney and/or Guardian Ad Litem.

(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 and/or a guardian ad litem on behalf of the subject of the proceeding if the Court makes a determination that the appointment is in the best interests of the subject of the proceeding.

(b) If the subject of the proceeding is present at the hearing on the petition and is not represented by counsel at said hearing, the Court shall explain on the record:

(1) the purpose and potential consequences of the proceeding; and

(2) the right to be represented by counsel upon request and that if the subject of the proceeding wishes to be represented by counsel, the Court will appoint an attorney to represent the subject of the proceeding at the hearing on the petition.

(c) If the subject of the proceeding is not present at the hearing on a petition alleging him to be an incapacitated or partially incapacitated person and is not represented by counsel, the Court shall make sufficient inquiry to determine affirmatively whether it would be in the best interest of the subject of the proceeding to appoint counsel and/or a guardian ad litem in the matter.

Section 308. Evaluation of the Subject of the 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 where the capacity of said person is a material issue.

(b) Any evaluations made pursuant to this Title, 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 physical health or safety or to manage that individual's financial resources.

(c) An evaluation report prepared and signed by the person or persons performing the evaluation shall be submitted to the Court for consideration at the hearing. 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) An opinion regarding the kind and extent of assistance, if any, required by the person.

Section 309. Hearing for Appointment of Guardian.

(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 the Court finds a guardian is necessary, the Court shall determine:

(1) Whether by clear and convincing evidence the subject of the proceeding is an incapacitated or partially incapacitated person;

(2) The nature and extent of the incapacity of the subject of the proceedings, as well as the essential requirements for the health and safety of the individual and the skills necessary to meet those requirements; and

(3) The type and amount of the financial resources and the skills necessary to manage the financial resources.

(b) If after a full hearing upon such petition, the Court finds by clear and convincing evidence that the subject of the proceeding is an incapacitated or partially incapacitated person, the Court shall determine the extent of the incapacity and the feasibility of less restrictive alternatives to guardianship to meet the needs of the subject of the proceeding. Upon such determination, the Court may:

(1) Dismiss the action if the Court finds that less restrictive alternatives to guardianship are feasible and adequate to meet the needs of the subject of the proceeding; or

(2) Appoint a guardian or limited guardian.

(c) Guardianship for an incapacitated person shall be ordered only to the extent required by the actual mental, physical and adaptive limitations of the person.

Section 310. Order Appointing Guardian - Specific Determinations to be Made by Court.

(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;

(5) Any further orders as the Court deems necessary for the best interest of the ward, including but not limited to issues regarding the ward's care and the maintenance and management of the ward's property; and

(6) The amount of any bond which may be required pursuant to this Title.

Section 311. 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 to have 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 receipt of the petition, the Court shall set a hearing within thirty (30) days of the filing of the petition. The Court shall cause notice to be served as provided by Section 306 of this Title. At the hearing for restoration, the guardian or 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 ward is no longer incapacitated or partially incapacitated then restoration to capacity shall be adjudged, and the guardianship of such person shall cease.

Section 312. Duties and Powers of Guardian or Limited Guardian.

A guardian or limited guardian of the person of an incapacitated or partially incapacitated person is responsible for the care or control of the ward pursuant to this Title, the orders of the Court, and the judicially approved guardianship plan and shall perform diligently and in good faith any specific duties and powers assigned by the Court.

Section 313. Duty of Guardian to Keep Property of Ward Safe - Fiduciary Duties.

(a) A guardian of the property must keep safe the property of the ward and shall act as a fiduciary of same.

(b) Subject to the Court's 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:

(i) the essential requirements for the physical health or safety of the ward are met,

(ii) the property rights of the ward are protected, and

(iii) the financial resources of the ward, which are subject to the guardianship, are prudently managed.

(2) May, with approval from the Court, expend funds of the estate for the support of persons legally dependent on the ward.

CHAPTER FOUR MISCELLANEOUS PROVISIONS

Section 401. Costs, Expenses and Compensation.

(a) A guardian shall be allowed the amount of their reasonable expenses in the execution of their duties, provided that the reimbursement is approved by the Court prior to payment.

(b) An attorney, other than a public defender, for a ward or a subject of a proceeding pursuant to this Title or whose services are obtained by a guardian on behalf of a ward is entitled to reasonable compensation to be paid from and as a charge against the estate of the ward. Reasonable compensation for attorney services rendered and expenses made on behalf of the guardian of the ward may be paid from and charged against the estate of the ward, as approved by the Court prior to payment.

(c) Compensation and reimbursements pursuant to this section shall be paid from the financial resources of the subject of the proceeding unless the Court determines that such payment of compensation and reimbursements would:

(1) substantially impede the partially incapacitated or incapacitated person from meeting the essential requirements for his physical health or safety, and

(2) substantially impair the financial resources of such person, or substantially impede his ability to obtain the services necessary for developing or regaining his abilities to the maximum extent possible.

Section 402. Removal, Suspension or Termination of a Guardianship.

(a) A guardian may be removed by the Court for any of the following causes:

(1) For abuse of his fiduciary responsibilities;

(2) For continued failure to perform his duties;

(3) For incapacity to perform his duties;

(4) For gross immorality;

(5) For having an interests adverse to the faithful performance of 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; and

(8) When it is no longer proper that the ward should be under a guardianship.

(b) The power of a guardian may be suspended only by order of the Court for good cause shown.

(c) 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 403. Civil Liability of Guardians or Petitioners.

(a) Any guardian who willfully violates the duties or willfully misuses the powers assigned by the Court and thereby causes injury to the ward or damages to the financial resources of the ward shall, in addition to any criminal penalties, be liable in a civil action for any actual damages suffered by the ward. Nothing in this subsection shall limit the authority of the Court to surcharge a guardian as otherwise provided by law.

(b) Any person who willfully or maliciously files a false petition or application pursuant to the provisions of this Title or a petition or application without a reasonable basis in fact for such a petition pursuant to the provisions of this Title shall be liable in a civil suit for any actual damages suffered by the subject of the petition or application.