

TITLE 8. FAMILY CODE

Chapter 8.5

GUARDIANSHIP

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8.5.1. Purpose. This chapter provides a process for empowering a person who is not a child's parent to perform the duties of a primary caregiver, without terminating the parental rights of the parent. It is intended that this chapter be applied with flexibility for a variety of family situations and problems. For example, guardianship may be used to give a child's grandparents authority to enroll a child in school and obtain medical care for him or her. A parent may wish to use guardianship rather than give a child up for adoption. A guardianship may be appropriate if the child is a youth-in-need-of-care and a guardianship would be in the child's best interest. A guardianship may be desirable if a child's parent(s) is dead or has abandoned the child. Another jurisdiction may have terminated the parental rights of the parents but have not arranged for or completed an adoption. This list is by way of example only and is not intended to limit the uses of guardianship.

Guardianship for adult persons is treated in Chapter 9.3 of the Suquamish Tribal Code. (Res. 98-060 (part), passed July 20, 1998)

8.5.2. Petition for Guardianship — Who May File. Any person at least eighteen (18) years old may file a petition with the Court requesting that he or she be appointed as a guardian of a child. Furthermore, the Tribe, after consultation with a prospective guardian, may file a petition on that person's behalf. (Res. 98-060 (part), passed July 20, 1998)

8.5.3. Petition — Contents. A petition for appointment of a guardian shall include:

(a) The name, birth date, residence, and tribal status of the child who is the subject of the petition;

(b) The name, birth date, residence, and tribal status, if known, of the child's parent(s) and the petitioner(s);

(c) If the child is residing with someone other than a parent, the location and length of stay at the location; and

(d) A statement by the petitioner(s) of the facts and reasons supporting his or her request to be appointed as a guardian. (Res. 98-060 (part), passed July 20, 1998)

8.5.4. Setting the Hearing. When the Court receives the petition, it shall set a hearing date which shall not be more than forty (40) calendar days after the Court received the petition, unless continued for good cause. (Res. 98-060 (part), passed July 20, 1998)

8.5.5. Notice of Hearing. Notice of hearing shall be served upon the parties set forth below pursuant to STC §§4.2.3 – 4.2.4 at least twenty-five (25) calendar days before the hearing. The notice shall include the date, time, and place of the hearing and a copy of the petition. The notice shall be served on the following persons.

(a) The petitioner(s).

(b) The child, if the child is twelve (12) years or older.

(c) The child's parent(s).

(d) The presenting officer or other designated representative of the Suquamish Tribe.

(e) Any person the Court deems necessary for proper adjudication. The Court may discover that additional persons should be notified after the guardianship proceedings are in progress. The Court may continue the proceedings in order to give those persons notice.

(f) Any person the parties believe necessary for the hearing.

(g) If the child is not enrolled in the Suquamish Tribe, any tribe the child is enrolled in or is eligible for enrollment in shall be notified. (Res. 98-060 (part), passed July 20, 1998)

8.5.6. Court Authorized to Appoint Guardian *ad Litem*. Upon motion of a party or upon its own motion, the Court may appoint a guardian *ad litem* for the child if the Court determines such an appointment to be in the best interests of the child. (Res. 98-060 (part), passed July 20, 1998)

8.5.7. Guardianship Report — Preparation. The petitioner(s) shall arrange to have a guardianship report prepared by the Tribe's Indian Child Welfare (ICW) program. Indian Child Welfare, in preparing the report, shall conduct a complete home study and shall consult with the child, if Indian Child Welfare determines the child is of appropriate age and/or can sufficiently comprehend the issues; the child's parent(s); the child's extended family; health, education, and social service personnel who have had prior professional contacts with the child; and with the petitioner(s) to determine whether appointment of a guardian would be in the best interest of the child. A criminal background check of the petitioners shall be requested from appropriate law enforcement authorities. Evidence of alcohol and drug abuse shall be described. ICW shall conduct an investigation to determine whether the child is the ward of another court, whether the child is the object of a guardianship by order of a court of competent jurisdiction, or whether the entry of a guardianship would otherwise conflict with valid court orders. The guardianship report shall be in writing and contain the professional opinions of all health, education, and social services personnel consulted. (Res. 98-060 (part), passed July 20, 1998)

8.5.8. Guardianship Report — Service. Petitioner(s) shall file the guardianship report with the Court at least fifteen (15) calendar days before the hearing. The court clerk shall provide copies of the report to all parties at least five (5) days before the hearing. (Res. 98-060 (part), passed July 20, 1998)

8.5.9. Additional Reports. Any party may file with the Court a report which shall include his or her recommendations regarding the guardianship. The party shall provide copies of the report to all other parties five (5) working days prior to the hearing. (Res. 98-060 (part), passed July 20, 1998)

8.5.10. Rights of Parties. In a guardianship hearing, all parties shall be entitled to the rights set forth in §8.1.38. (Res. 98-060 (part), passed July 20, 1998; reference corrected from prior §8.2.010 to §8.1.38, Jul. 14, 2008)

8.5.11. Guardianship Hearing — Conduct. The hearing shall be private and closed. Only those persons the Court finds to have a legitimate interest in the proceedings may attend, including extended family members as that term is defined in STC §8.1.12. The Court shall hear testimony to determine whether guardianship is in the best interest of the child and the tribal community. The Court shall consider all guardianship reports submitted for review. All parties shall be given the opportunity to contest the factual

contents and conclusions of the guardianship reports. (Res. 98-060 (part), passed July 20, 1998; reference corrected from prior §8.2.010 to §8.1.12., Jul. 14, 2008)

8.5.12. Grounds for Appointing Guardian — Burden of Proof. The Court may appoint a guardian when:

(a) The parent(s) of the child has/have consented in writing to the guardianship; both parents are dead; or the youth has been adjudicated a youth in need of care as defined under this code; and

(b) The following conditions have been proved, by a preponderance of the evidence:

(1) Appointment of a guardian is in the best interest of the child and the tribal community; and

(2) The prospective guardian(s) can provide appropriate and adequate parental care for the child. (Res. 98-060 (part), passed July 20, 1998)

8.5.13. Placement Preference. The Court shall be guided by the placement preferences set forth in STC §8.1.62 in appointing a guardian. (Res. 98-060 (part), passed July 20, 1998)

8.5.14. Enrollment Prior to Appointment of Guardian. If a child is not enrolled but is eligible for enrollment or membership in an Indian tribe, the Indian Child Welfare specialist shall assist in making application for membership or enrollment of the child. If an objection to enrollment or membership is filed, the Court shall set the matter for hearing, notify the parent(s), and make a determination based on the best interest of the child. (Res. 98-060 (part), passed July 20, 1998)

8.5.15. Order of Appointment — Powers of Guardian. If the Court orders the appointment of a guardian, the order shall declare the child to be a ward of the Court. Unless limited by the Court, the duties and powers assigned to a guardian shall be those of a parent, whose parental rights have not been terminated or suspended, toward his or her child, including but not limited to the following:

(a) The guardian shall assure that the child receives adequate food, clothing, health and other professional care, shelter, and education, as needed and appropriate.

(b) The authority to consent to marriage and to enlistment in the armed forces of the United States.

(c) The authority to consent to an adoption, with the Tribe's concurrence, if there are no living parents or if all parental rights have been terminated by a court of competent jurisdiction.

(d) A guardian is morally responsible for acts of the child. Should a guardian be found liable for the acts of the child, the guardian shall only be responsible for actual damage caused by the child while the child is living with the guardian (i.e., the guardian is not responsible for the child's acts if the child has run away).

(e) A guardian may bring lawsuits on behalf of the child and otherwise represent the child in legal proceedings if expressly authorized to do so by the Court on a case-by-case basis.

(f) The guardian has a duty to provide timely informed consent to necessary medical procedures, except sterilization shall require prior Court approval.

(g) The guardian cannot enroll a child who is eligible for enrollment in the Suquamish Indian Tribe in another tribe without first obtaining Court approval.

(h) The guardianship does not affect the child's inheritance rights.

(i) A guardian may motion the Court for authority to do any act about which he or she is uncertain of his or her 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 child, provided that the parent(s) receives actual notice of the motion and is given an opportunity to respond. (Res. 98-060 (part), passed July 20, 1998)

8.5.16. Appointment of Guardian for a Child's Property. The Court may appoint a person or financial institution to be the guardian of a child's property. This may be a different person than the guardian who provides direct care to the child. (Res. 98-060 (part), passed July 20, 1998)

8.5.17. Existing Trusts. If the child's property is subject to a trust (for example, where a parent has died leaving property to a child in a trust set up in the will), the guardian is bound by the trust provisions. The Court has the power to review any trust in connection with appointment of a guardian and to impose any protections necessary to enforce the trust, to ensure that the guardian fully and regularly accounts for trust funds, and to see that the funds are properly managed. (Res. 98-060 (part), passed July 20, 1998)

8.5.18. Removal of Guardian. The Court has the power to remove a guardian and appoint a replacement guardian whenever the Court determines this to be in the best interests of the child. (Res. 98-060 (part), passed July 20, 1998)

8.5.19. Creating a Tribal Trust. If a trust has not already been established to administer a child's property, the Court may create a trust for the benefit of a child and appoint the Suquamish Tribe as trustee of the funds. The following rules apply to such trusts.

(a) The Tribe shall place the trust funds in a separate, safe, interest-bearing account such as those used by the Tribe for its other funds. The account shall be a "blocked account" which allows disbursement only upon order of the Suquamish Tribal Court. The account shall be identified in the name of the Suquamish Tribe as trustee for the named child or children. The funds shall at all times remain in the exclusive jurisdiction of the Suquamish Tribe.

(b) The purpose of the trust shall be to preserve the principal and interest until the child is eligible to receive his or her share of the funds at twenty-one (21) years of age.

(c) The child's guardians, appointed under §8.5.130, shall be financially responsible for the child's needs and for arranging all available benefits and services for which the child is eligible. No portion of the trust funds may be disbursed prior to the child's twenty-first (21st) birthday except upon a showing of extreme hardship to the child. The Tribe or the guardian may petition the Court in such a case to request a hearing. If the Court finds that extreme hardship to the child exists and no other resources are available to meet the child's needs, it may order disbursement of a specified amount of funds for a specified purpose. The Court shall require a written accounting to be filed with the Court documenting all expenditures. If more than one disbursement will be necessary (e.g., monthly payments), the Court may so order.

(d) The Tribe shall provide the Court with an annual accounting of the trust and accounting prior to and after any disbursement, including a final distribution to a child upon reaching age twenty-one (21).

(e) A child shall, on or after his or her twenty-first (21st) birthday, petition the Court to order distribution of his or her share, free of trust. The child shall provide the Court with a certified copy of his or her birth certificate or an affidavit from tribal enrollment as proof of age.

(f) If there is more than one child whose funds are in the same trust, each child may petition for his or her share as he or she comes of age, with the remaining funds remaining in trust for those who have not reached age twenty-one (21).

(g) If a child dies before reaching age twenty-one (21), his or her share shall be paid to his or her estate. If his or her heirs are other children in the trust, the funds may remain in trust, subject to approval of the Suquamish Tribal Court.

(h) All funds while held in trust under this section are exempt from levy, execution, forfeiture, garnishment, seizure, lien, claim, bankruptcy, or encumbrance whatsoever; they cannot be assigned to another or used as collateral or security. Any agreement purporting to use or obligate funds in any of the foregoing ways is void.

(i) The Tribe shall serve as trustee without compensation. Reasonable bank fees shall be payable from the trust funds.

(j) The Tribe may petition the Court at any time to clarify its obligations under this section.

(k) All records and files maintained in connection with this section shall be confidential. (Res. 98-060 (part), passed July 20, 1998)

8.5.20. Change of Address — Limits, Notice. The Court may order placement of a child with guardians who live off the Port Madison Indian Reservation if it is in the best interest of the child and the tribal community. However, the guardian shall not move more than sixty-five (65) miles beyond the exterior boundaries of the Port Madison Indian Reservation without prior Court approval upon notice and hearing. Guardians shall immediately notify the Court, in writing, of any change of address. (Res. 98-060 (part), passed July 20, 1998)

8.5.21. Visitation. The Court may order visitation between the child and the biological parent(s). The Court may specify in the order that supervision is required or may impose other requirements to protect the child. (Res. 98-060 (part), passed July 20, 1998; amended by Res. 04-040, passed Mar. 29, 2004)

8.5.22. Court Review. The Court shall state in all guardianship orders whether review hearings shall be required and, if so, the frequency of such hearings. (Res. 98-060 (part), passed July 20, 1998)

8.5.23. Termination of Guardianship. Generally, a guardianship shall terminate upon the death, marriage, adoption, or eighteenth birthday of the child (unless continued by the Court under the Suquamish rules for adult guardianship) or upon order of the Court. Guardians of tribal trusts shall serve until all trust funds have been distributed under the terms of the trust. (Res. 98-060 (part), passed July 20, 1998)

Note: Sections in this chapter renumbered for consistency. See below. (Res. 2016-097, Jul. 11, 2016)

8.5.010 through 8.5.050: Leading and trailing zeroes dropped.

8.5.055 is now 8.5.6; 8.5.060 is now 8.5.7; 8.5.070 is now 8.5.8; 8.5.080 is now 8.5.9; 8.5.085 is now 8.5.10; 8.5.090 is now 8.5.11; 8.5.100 is now 8.5.12; 8.5.110 is now 8.5.13; 8.5.120 is now 8.5.14; 8.5.130 is now 8.5.15; 8.5.140 is now 8.5.16; 8.5.150 is now 8.5.17; 8.5.160 is now 8.5.18; 8.5.170 is now 8.5.19; 8.5.180 is now 8.5.20; 8.5.190 is now 8.5.21; 8.5.200 is now 8.5.22; 8.5.210 is now 8.5.23.