

**HO-CHUNK NATION CODE (HCC)**  
**TITLE 4 – CHILDREN, FAMILY AND ELDER WELFARE**  
**SECTION 14 - ADULT GUARDIANSHIP AND SPENDTHRIFT ORDINANCE**

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**CITE AS: 4 HCC § 14**

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**1. Title.** This ordinance shall be known as the "Adult Guardianship Ordinance".

**2. Authority.**

- a. Article V, Section 2(a) of the Ho-Chunk Nation Constitution (öConstitutionö) grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.
- b. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Nation.
- c. Article V, Section 2(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions.
- d. Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation.
- e. Article V, Section 2(t) of the Constitution grants the Legislature the power to enact laws governing law enforcement on lands within the jurisdiction of the Nation.
- f. Article V, Section 2(u) of the Constitution grants the Legislature the power to enact laws to regulate domestic relations of persons within the jurisdiction of the Nation.

**3. Jurisdiction.** The tribal Trial Court shall have jurisdiction over all petitions for guardianship over the person or estate of a member, pursuant to Sec. 5 guardianship of the estate, once granted, shall extend to all of his or her estate, wherever situated.

**4. Definitions.** As used in this ordinance:

- a. öActivities of daily livingö means activities relating to the performance of self-care, work, and leisure activities, including dressing, eating, personal cares (grooming), mobility, and object manipulation.
- b. öCaretakerö means any of the following:
  - (1) A person who is required by Tribal law or custom or state law to provide care, services, or resources to an adult or elder;
  - (2) A person who voluntarily undertakes to provide care, services, or resources to an adult or elder;
  - (3) An institution or agency which voluntarily or is required by Tribal law or custom, state or federal law, or contract to provide care, services, or resources to an adult or elder;

- (4) An employee of any institution or agency specified in paragraph (3), above.
- c. "Conservator" means a person is appointed by a Trial Court at an individual's request under this Act to manage the estate of the individual.
- d. "Trial Court" means the Ho-Chunk Nation Trial Court.
- e. "Decedent" means the deceased individual whose estate is subject to administration.
- f. "Degenerative Brain Disorder" means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological condition closely related to an intellectual disability or requiring treatment similar to that required for individuals with an intellectual disability, which has continued or can be expected to continue indefinitely, substantially impairs an individual from adequately providing for his or her own care or custody, and constitutes a substantial handicap to the afflicted individual. The term does not include dementia that is primarily caused by degenerative brain disorder.
- g. "Dependents" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer (or is treated under subsection C or E as received from the taxpayer):
- (1) a son or daughter of the taxpayer, or a descendant of either;
  - (2) a stepson or stepdaughter of the taxpayer;
  - (3) a brother, sister, stepbrother, or stepsister of the taxpayer;
  - (4) the father or mother of the taxpayer, or an ancestor of either;
  - (5) a stepfather or stepmother of the taxpayer;
  - (6) a son or daughter of a brother or sister of the taxpayer;
  - (7) a brother or sister of the father or mother of the taxpayer;
  - (8) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer, or;
  - (9) an individual (other than an individual who at any time during the taxable year was the spouse, determined without regard to Code § 7703, of the taxpayer) who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household.

- h. "Developmentally disabled person" means any individual having a disability attributable to mental retardation, autism, seizures disorders with primary onset before age of 22 or another neurological condition closely related to mental retardation or requiring treatment similar to that required for mentally retarded individuals, which has continued indefinitely, substantially impairs the individual from adequately providing for his or her own care or custody and constitutes a substantial handicap to the afflicted individual. The term does not include a person affected by senility which is primarily caused by the process of aging or the infirmities of aging.
- i. "Foreign Trial Court" means a Trial Court of a foreign state or tribe having competent jurisdiction of a foreign ward.
- j. "Foreign guardian" means a guardian appointed by a foreign Trial Court for a foreign ward.
- k. "Foreign guardianship" means a guardianship issued by a foreign Trial Court.
- l. "Foreign ward" means an individual who has been found by a foreign Trial Court to be incompetent or a spendthrift and who is subject to a guardianship order or related order in a foreign state.
- m. "Guardian" means a person appointed by the Trial Court to manage the income and assets and provide for the essential requirements for health and safety and the personal needs of an individual found to be incompetent or a spendthrift.
- n. "Guardian ad Litem" means a person appointed by the Trial Court to represent the best interests of the proposed ward.
- o. "Guardian of the estate" means a guardian appointed to comply with the duties specified in this Act and to exercise the powers specified in this Act.
- p. "Guardian of the person" means a guardian appointed to comply with the duties specified in this Act and to exercise the powers specified in this Act.
- q. "Good Faith" means an honest belief or purpose and the lack of intent to defraud.
- r. "Heir" means any person, including the surviving legal spouse, who is entitled under the statutes of interstate succession to an interest in the property of the decedent, unless otherwise defined by a subsequent tribal probate code of the Ho-Chunk Nation.
- s. "Incapacity" means the inability of an individual effectively to receive and evaluate information or to make or communicate a decision with respect to the exercise of a right or power.

t. "Individual found incompetent" means an individual who has been adjudicated by the Trial Court as meeting the following requirements:

- (1) The individual is aged at least 17 years and 6 months.
- (2) For purposes of appointment of a guardian of the person, because of an impairment, the individual is unable effectively to receive and evaluate information or to make or communicate decisions to such an extent that the individual is unable to meet the essential requirements for his or her physical health and safety.
- (3) For purposes of appointment of a guardian of the estate, because of an impairment, the individual is unable effectively to receive and evaluate information or to make or communicate decisions related to management of his or her property or financial affairs, to the extent that any of the following applies:
  - (a) The individual has property that will be dissipated in whole or in part.
  - (b) The individual is unable to provide for his or her support.
  - (c) The individual is unable to prevent financial exploitation.

u. "Interested person"

- (1) For purposes of a petition for guardianship, means any of the following:
  - (a) The spouse or adult child of the proposed ward
  - (b) For a proposed ward who has no spouse, child, or parent, an heir, as defined in this code, of the proposed ward that may be reasonably ascertained with due diligence.
  - (c) Any individual who is nominated as guardian, any individual who is appointed to act as guardian or fiduciary for the proposed ward by the Trial Court of any state or tribe, any trustee for a trust established by or for the proposed ward, any person appointed as agent under a power of attorney for health care as defined or any person appointed as agent under a power of attorney.
  - (d) If the proposed ward is receiving moneys paid, or if moneys are payable by the federal department of veterans affairs, a representative of the federal department of veterans affairs, or, if the proposed ward is receiving moneys paid, or if moneys are payable, by the state department of veterans affairs, a representative of the state department of veterans affairs.
  - (e) If the proposed ward is receiving long-term support services or similar public benefits, the tribal and/or county department of human services or social services that is providing the services or benefits.

- (f) The corporation counsel of the county in which the petition is filed and, if the petition is filed in a county other than the county of the proposed ward's residence, the corporation counsel of the county of the proposed ward's residence.
  - (g) Any other person required by the Trial Court.
- (2) For purposes of proceedings subsequent to an order for guardianship, any of the following:
- (a) The guardian.
  - (b) The spouse or adult child of the ward or the parent of a minor ward.
  - (c) The county of venue, through the county's corporation counsel, if the county has an interest.
  - (d) Any person appointed as an agent under a power of attorney as defined in this code, unless the agency is revoked or terminated by the Trial Court.
  - (d) Any other individual that the Trial Court may require, including any fiduciary that the Trial Court may designate.
- w. "Least Restrictive Alternative" means an approach which allows an Adult-at-Risk independence and freedom from intrusion consistent with the Adult-at-Risk's needs by requiring that the least disruptive method of intervention be used when intervention is necessary to protect the Adult-at-Risk from harm.
- x. "Meet the essential requirements for physical health and safety" means perform those actions necessary to provide the health care, food, shelter, clothes, personal hygiene, and other care without which serious physical injury or illness would likely occur.
- y. "Member" means an enrolled member of the Ho-Chunk Nation.
- z. "Power of Attorney" means an original written document signed by an adult and notarized giving another person the power to act in conducting a person's business in the name of the person. There are three main types of powers of attorney:
- (1) A Power of Attorney for Finances and Property covers all the person's business activities, for example signing papers, title documents, contracts, or bank accounts;
  - (2) A Limited Power of Attorney grants powers limited to specific matters, for example selling a particular piece of real estate or handling specific bank accounts;
  - (3) A Power of Attorney for Health Care grants powers to individuals to make health care decisions on a person's behalf should they become incapacitated.

- aa. "Property" means any interest, legal or equitable, in real estate or personal property, without distinction as to kind, including money, rights of a beneficiary under a contractual arrangement and anything that may be the subject of ownership.
- bb. "Proposed ward" means an individual alleged to be incompetent, or an alleged spendthrift, for whom a petition for guardianship is filed.
- cc. "Serious and Persistent Mental Illness" means a mental illness that is severe in degree and persistent in duration, that causes a substantially diminished level of functioning in the primary aspects of daily living and an inability to cope with the ordinary demands of life, that may lead to an inability to maintain stable adjustment and independent functioning without long term treatment and support, and that may be of lifelong duration which includes schizophrenia as well as a wide spectrum of psychotic and other severely disabling psychiatric diagnostic categories, but does not include degenerative brain disorder or a primary diagnosis of a developmental disability or of alcohol or drug dependence.
- dd. "Spendthrift" means a person who because of the use of intoxicants or drugs or of gambling, idleness or debauchery or other wasteful course of conduct, is unable to attend to business or thereby is likely to affect the health, life or property of himself or others so as to endanger the support of himself and his dependents or expose the public to responsibility for his support.
- ee. "Standby guardian" means an individual, or tribe, named, including date of birth, by the Trial Court order whose appointment as guardian becomes effective immediately upon the death, resignation, or Trial Court's removal of the initially appointed guardian, or if the initially appointed guardian is temporarily or permanently unable, unavailable, unwilling or incapacitated, to fulfill his or her duties.
- ii. "Successor guardian" means when/if a guardian dies, is removed by order of the Trial Court, or revokes and the self-revocation is accepted by the Trial Court, the Trial Court, on its own motion or upon petition of any interested person, may appoint a competent and suitable person as a successor guardian. The Trial Court may, upon request of any interested person or tribe on its own motion, direct that a petition for appointment of a successor guardian be heard in the same manner and subject to the same requirements as provided under this chapter for an original appointment of a guardian.
- jj. "Temporary Guardian of Adult" means a person, Tribe or institution who is assigned by a Trial Court of law as having the duty and authority to authorize and/or provide care for a person found to be incapacitated/incompetent for a specified amount of time as determined by the Trial Court. Temporary Guardianship of Adult is not a mandatory step in the pursuance of a petition for Permanent Guardianship of Adult.
- kk. "Termination of Guardianship" means when a former incapacitated ward is found to be competent.

ll. "Trial Court" means the Ho-Chunk Nation Trial Court. The term "Trial Court" when used herein shall mean the Trial Court.

mm. "Ward" means a subject for whom a guardian has been appointed.

## **5. Persons and Estates Subject to Guardianship.**

- a. All enrolled members who are incapacitated, found to be incompetent by a Trial Court of law, or spendthrifts are subject to guardianship.
- b. The Trial Court may appoint a guardian of the person of anyone subject to guardianship who is residing on or within the Ho-Chunk Nation property, under extraordinary circumstances, requiring medical aid or the prevention of harm to his or her person or property found on the Ho-Chunk Nation lands.
- c. The Trial Court may appoint a guardian of the estate of anyone subject to guardianship, whether on or within the Ho-Chunk Nation property, if any of the estate is located on the Ho-Chunk Nation lands.
- d. Separate guardians of the person and of the estate of a ward may be appointed.
- e. Successor guardians of the person and of the estate may also be appointed.
- f. The Trial Court may appoint a guardian of the person and/or a guardian of the estate for any Tribal Member aged at least 17 years 6 months who is found incapacitated or based upon the following:
  - (1) For purposes of appointment of a guardian of the person, because of an impairment, the individual is unable effectively to receive and evaluate information or to make or communicate decisions to such an extent that the individual is unable to meet the essential requirements for his or her physical health and safety.
  - (2) For purposes of appointment of a guardian of the estate, because of an impairment, the individual is unable effectively to receive and evaluate information or to make or communicate decisions related to management of his or her property or financial affairs, to the extent that any of the following applies:
    - (a) The individual has property that will be dissipated in whole or in part.
    - (b) The individual is unable to provide for his or her support.
    - (c) The individual is unable to prevent financial exploitation.
  - (3) The individual's need for assistance in decision making or communication is unable to be met effectively and less restrictively through appropriate and reasonably available



training, education, support services, health care, assistive devices, or other means that the individual will accept.

(a) Unless the proposed ward is unable to communicate decisions effectively in any way, the determination under section 5 (2)(a-c) above may not be based on poor judgment, or physical disability.

(b) In appointing a guardian under this subsection, declaring incompetence to exercise a right under, or determining what powers are appropriate for the guardian to exercise under the Trial Court shall consider all of the following:

**6. Petition.** Any relative, Tribe, or other person may petition for the appointment of a guardian of a person and/or guardian of estate subject to guardianship. Such petition will include the following:

- a. The name, date of birth, residence and post-office address of the proposed ward, and information showing that the proposed ward is a tribal member or resides on Ho-Chunk Nation lands.
- b. The nature of the ward's incapacity with specification of the incompetency or spendthrift habits.
- c. The approximate value of his property, including real estate property, and a general description of its nature.
- d. Any assets previously derived from or benefits now due and payable from the Veterans administration.
- e. Any other claim, income, any Social Security benefits, compensation, pension, insurance, tribal per capita distributions or allowance to which he may be entitled.
- f. Whether the proposed ward has a guardian, or whether or not a Power Of Attorney, for Health Care or Estate is activated.
- g. The name and post-office address of any person nominated as guardian by the petitioner.
- h. The names and post-office addresses of the spouse and presumptive or apparent adult heirs of the proposed ward, and all other persons believed by the petitioner to be interested.
- i. The name and post-office addresses of the person or institution having the care and custody of the proposed ward.
- j. The interest of the petitioner, and if a public official or creditor is the petitioner, then the fact of indebtedness or continuing liability for maintenance or continuing breach of the public peace as well as the authority of the petitioner to act.

k. Other relevant evidence.

l. Whether the individual's situation places him or her at risk of abuse exploitation, neglect, or violation of rights.

(1) Whether the individual can adequately understand and appreciate the nature and consequences of his or her impairment.

(2) Any physical illness of the individual and the prognosis of the individual.

(3) Any mental disability, alcoholism, or other drug dependence of the individual and the prognosis of the mental disability, alcoholism, or other drug dependence.

(4) Any medication with which the individual is being treated and the medication's effect on the individual's behavior, cognition, and judgment.

(5) Whether the effect on the individual's evaluative capacity is likely to be temporary or long term, and whether the effect may be ameliorated by appropriate treatment.

m. Whether other reliable resources are available to provide for the individual's personal needs or property management, and whether appointment of a guardian is the least restrictive means to provide for the individual's need for a substitute decision maker, such as:

(1) The Trial Court shall be notified of the preferences, desires, and values of the proposed ward with regard to personal needs or property management.

(2) The nature and extent of the proposed ward's care and treatment needs and property and financial affairs.

(3) The proposed ward's management of the activities of daily living.

(4) The proposed ward's understanding and appreciation of the nature and consequences of any inability he or she may have with regard to personal needs or property management.

(5) The extent of the demands placed on the proposed ward by his or her personal needs and by the nature and extent of his or her property and financial affairs.

(6) In appointing a guardian under this subsection, the Trial Court shall authorize the guardian to exercise only those powers under this code that are necessary to provide for the proposed ward's personal needs and property management and to exercise the powers in a manner that is appropriate to the proposed ward and that constitutes the least restrictive form of intervention.

## 7. Temporary Guardians.

- a. If, after consideration of a petition for temporary guardianship, the Trial Court finds that the welfare of a spendthrift or an alleged incompetent requires the immediate appointment of guardian of the person or of the estate, or of both, it may appoint a temporary guardian for a period not to exceed six (6) months unless by order of the Trial Court. The Trial Court may extend the period at its discretion. The authority of the temporary guardian shall be limited to the performance of duties respecting specific property, or to the performance of particular acts, as stated in the order of appointment. All provisions of the law concerning the powers and duties of guardians shall apply to temporary guardians except as limited by the order of appointment. The temporary guardian shall make the reports the Trial Court directs and shall account to the Trial Court upon termination of authority.
- b. If the Ho-Chunk Nation receives notice, official or personal, that a Ho-Chunk adult is a proposed adoptee, the Ho-Chunk Nation will file a notice of appearance on behalf of the Ho-Chunk Nation. The Ho-Chunk Nation will consider the health, safety and welfare and will continue to monitor the case until it decides it to file a petition. No person appointed temporary guardian of an adult under this Section may adopt the ward without consenting to the jurisdiction of the Ho-Chunk Nation. The proposed guardian/parent of the ward will ensure that the ward is given opportunity to utilize culturally appropriate services and maintain ties with the traditional values and beliefs of the Ho-Chunk Nation,
- c. The person petitioning for appointment of temporary guardian shall cause notice to be given of that petition to spendthrift or alleged incompetent and, if the appointment is made, shall give notice of the appointment to the ward. The time limits of Section 8 do not apply to notice given under this subsection. The notice shall be served before or at the time the petition is filed or as soon thereafter as possible and shall include notice of the right to counsel and of the right to petition for reconsideration or modification of the temporary guardianship within 30 days of receipt of the notice.
- d. Every temporary guardian appointed under sub.(1) shall, under this provision, before entering upon the duties of his or her trust give bond to the judge in such sum and with such sureties the Trial Court designates and approves.
- e. If the temporary guardianship is not sooner terminated the duties and powers of the temporary guardian shall cease upon the issuing of orders of permanent guardianship to the guardian of the ward, or upon his becoming of age, or when it shall be judicially determined that any other disability of the temporary ward which was the cause of the temporary guardianship has terminated. Upon termination of the temporary guardian's duties and powers, a temporary guardian of the person shall file with the Trial Court any report that the Trial Court requires. A temporary guardian of the estate shall, upon termination of duties and powers, account to the Trial Court and deliver to the person or persons entitled to them all the estate of the ward in his or her hands. Any action which has been commenced by the temporary guardian may be prosecuted to final judgment by the successor or successors in interest, if any.

**8. Notice of Hearing.** Upon the filing of a petition for guardianship, and the Trial Court being satisfied as to compliance with Section 7, the Trial Court shall order notice of the time and place of hearing as follows:

- a. In the case of incapacitated persons, a petitioner shall have notice served of a petition for appointment or change of a guardian upon the proposed incapacitated person and existing guardian, if any, by personal service at least 10 days before the time set for the hearing.
- b. If such proposed incapacitated person is in custody or confinement, a petitioner shall have notice served by registered or certified mail on the proposed incompetent's custodian, who shall immediately serve it on the proposed incompetent.
- c. The custodian shall return the certificate and notice to the Trial Court judge upon receipt.
- d. The notice shall include the names of all persons who are petitioning for guardianship and specific allegations of the grounds of incompetency.
- e. The Trial Court shall cause the proposed incompetent, if able to attend, to be produced at the hearing. If the person is unable to attend a hearing because of physical inaccessibility or lack of transportation, the Trial Court shall hold the hearing in a place where the person may attend if requested by the proposed ward, guardian ad litem, adversary counsel or other interested person.
- f. Such notice shall also be given personally or by mail at least 10 days before the hearing to the proposed incompetent's counsel, if any, guardian ad litem, presumptive adult heirs or other persons who have legal or physical custody of the proposed incompetent whose names and addresses are known to the petitioner or can, with reasonable diligence, be ascertained, to any governmental or private agency, charity or foundation from which the proposed incompetent is receiving aid and to such other persons or entities as the Trial Court may require.

## **9. Hearing**

- a. A hearing on the issues should be held no longer than forty (40) calendar days from the filing of the petition, provided no continuances have been granted.
- b. Before appointing a guardian under this code, declaring incapacity or incompetence to exercise a right, the Trial Court shall determine if additional medical, psychological, social, vocational, or educational evaluation is necessary for the Trial Court to make an informed decision respecting the individual's competency to exercise legal rights.
- c. Hearings in guardianship cases shall be before the Trial Court and may be conducted in an informal manner. However, all parties will conduct themselves in a manner reflecting respectfulness to the Trial Court and other parties.

- d. The general public shall be excluded and only such interested parties admitted as the Judge finds who has a direct relationship and legitimate interest in the case shall be allowed in the Trial Courtroom.
- e. The proposed ward or his potential guardian may be separately interviewed at any time at the discretion of the Trial Court.
- f. The hearing may be continued from time to time upon order of the Trial Court.
- g. The Judge shall read the rights of the proposed ward:
  - (1) The proposed ward or ward has the right to counsel, if any of the following occurs:
    - (a) The proposed ward or ward requests counsel.
    - (b) The guardian ad litem or another person states to the Trial Court that the proposed ward or ward is opposed to the guardianship petition.
    - (c) If the Trial Court determines that the interests of justice require counsel for the proposed ward or ward.
    - (d) If the proposed ward or ward is unable to obtain legal counsel, the Trial Court shall appoint legal counsel.
  - (2) The proposed ward or ward has the right to a trial by a jury if demanded by the proposed ward or ward, his or her attorney, except that the right is waived unless demanded in writing to the Trial Court at least 48 hours before the time set for the hearing.
  - (3) If requested by the proposed ward, ward, or anyone on the proposed ward's or ward's behalf, the proposed ward or ward has the right at his or her own expense, where the petition is heard on the merits, to secure an independent medical or psychological examination relevant to the issue involved in any hearing under this code, and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing.
  - (4) The proposed ward or ward has the right to be present at any hearing regarding the guardianship.
  - (5) The proposed ward or ward has the right to have any hearing regarding the guardianship conducted in a location and manner that is accessible to the proposed ward or ward.
  - (6) The proposed guardian and any proposed standby guardian shall be physically present at the hearing unless the Trial Court excuses the attendance of either or, for good cause shown, permits attendance by telephone.

(7) The Trial Court shall, in all cases, require the appointment of a guardian ad litem.

**10. Incompetency.**

- a. Whenever it is proposed to appoint a guardian on the ground of incompetency, a licensed physician or licensed psychologist, or both, shall furnish a written statement concerning the mental condition of the proposed ward, based upon examination. A copy of such statement shall be provided to the proposed ward, guardian ad litem and attorney. The original signed medical document will be provided to the Trial Court.
- b. The attorney or guardian ad litem for the proposed ward shall be provided with a copy of the report of the physician or psychologist at least five (5) calendar days in advance of the hearing. Any final decision of the Trial Court is subject to the right of appeal.
- c. If requested, by the proposed ward, the GAL, or any other party, the Trial Court may consider who has the right, at his or her expense to secure an independent medical or psychological examination relevant to the issue involved in any hearing under this ordinance, and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing.
- d. The written report of the guardian ad litem shall be required.
- e. Whether other reliable resources are available to provide for the individual's personal needs or property management, and whether appointment of a guardian is the least restrictive means to provide for the individual's need for a substitute decision maker.
- f. The preferences, desires, and values of the individual with regard to personal needs or property management.
- g. The nature and extent of the individual's care and treatment needs and property and financial affairs.
- h. Whether the individual's situation places him or her at risk of abuse, exploitation, neglect, or violation of rights.
- i. Whether the individual can adequately understand and appreciate the nature and consequences of his or her impairment.
- j. The individual's management of the activities of daily living.
- k. The individual's understanding and appreciation of the nature and consequences of any inability he or she may have with regard to personal needs or property management.
- l. The extent of the demands placed on the individual by his or her personal needs and by the nature and extent of his or her property and financial affairs.

- m. Any physical illness of the individual and the prognosis of the individual.
- n. Any mental disability, alcoholism, or other drug dependence of the individual and the prognosis of the mental disability, alcoholism, or other drug dependence.
- o. Any medication with which the individual is being treated and the medication's effect on the individual's behavior, cognition, and judgment.
- p. Whether the effect on the individual's evaluative capacity is likely to be temporary or long term, and whether the effect may be ameliorated by appropriate treatment.
- q. Other relevant evidence.

### **11. Spendthrifts**

- a. As to spendthrifts, notice shall be served personally upon the proposed spendthrift ward at least 10 days before the time set for hearing, but the proposed spendthrift may appear without objecting to the jurisdiction of the Trial Court over the proposed spendthrift's person and thereupon the matter may be heard forthwith.
- b. Notice of a rehearing to determine if a spendthrift is a proper subject to continue under guardianship shall be given as required for the appointment of a guardian.

**12. Nomination and Selection of Guardian.** The Trial Court shall consider nominations made by any fit and willing person and, in its discretion, shall appoint a proper guardian, consideration should be given to the following preferences noted in Section 13.

**13. Guardian Preferences.** Whenever possible and appropriate, a Hocak guardian shall be in the order preferenced below:

- a. Fit and willing parents or step-parent.
- b. Fit and willing Paternal Traditional Relatives, provided these relatives are Hocak Tribal Members.
- c. Fit and willing Maternal Traditional Relatives, with priority to the tega (maternal brother) and maternal grandparents, if the father is not a member of the Hocak Nation, or is not known.
- d. Another fit and willing Hocak Tribal Member.
- e. Another fit and willing American Indian guardian that is a relative of one of the ward's parents.

- f. Any other family member which can provide a suitable home for wards of the Hocak Nation.
- g. Any other fit and willing individual within the community.
- h. Corporate guardian, with priority given to Hocak tribal members who are corporate guardians.

**14. Decision and Order.** The Trial Court shall, after a hearing, determine whether the person is a proper subject for guardianship. If the person is found to be in need of a guardian, the Trial Court shall appoint one or more guardians, but not more than one guardian of the person shall be appointed. Upon appointment of a guardian, a standby guardian may also be appointed. The order shall specify the amount of the bond, if any, to be given.

- a. Upon a filing of the petition before the Trial Court, the Trial Court shall have the authority to deem incapacity of a proposed ward.
- b. The Trial Court may provide a temporary or permanent order granting temporary or permanent guardianship.
- c. When a guardian has given bond as required and the bond has been approved by the judge, letters under the seal of the Trial Court shall be issued to him.
- d. If the Trial Court finds any of the following, the Trial Court shall dismiss the petition:
  - (1) Contrary to the allegations of the petition, the proposed ward is not any of the following:
    - (a) Incapacitated or incompetent.
    - (b) A spendthrift.
    - (c) A minor who is not aged at least 17 years 6 months.
  - (2) Advance planning by the ward, when he was competent, may not render a guardianship unnecessary.
  - (3) The elements of the petition are unproven.
  - (4) The foreign guardian is not presently in good standing with the foreign Trial Court.
  - (5) The foreign guardian is moving or has moved the foreign ward or the property of the foreign ward from the foreign jurisdiction in order to avoid or circumvent the provisions of the foreign guardianship order.
  - (6) The transfer of the foreign guardianship from the foreign jurisdiction is not in the best interests of the foreign ward.



- e. If the Trial Court appoints a guardian of the person, the Trial Court shall determine if, the proposed ward is prohibited from possessing a firearm. If the proposed ward is prohibited, the Trial Court shall order the proposed ward not to possess a firearm, order the seizure of any firearm owned by the proposed ward.
  - (1) If under this code, the Trial Court orders a proposed ward not to possess a firearm, the proposed ward may petition the Trial Court to cancel the order.
  - (2) The Trial Court considering the petition under this code shall grant the petition if the Trial Court determines that the circumstances regarding the appointment of a guardian under this subsection and the individual's record and reputation indicate that the individual is not likely to act in a manner dangerous to public safety and that the granting of the petition would not be contrary to public interest.
  - (3) If the Trial Court grants the petition under a above, the Trial Court shall cancel the order under 8(a) above and order the return of any firearm ordered seized

**15. Sufficiency of Bond.** In any action or proceeding wherein funds are to be paid to a guardian, the Trial Court shall, prior to payment or approval, be satisfied as to the sufficiency of the sum of the guardians bond.

**16. Bond.**

- a. Upon the appointment of a guardian of the estate of a ward, except for beneficiaries of the veteran's administration, the Trial Court may require a bond given in accordance with, conditioned upon the faithful performance of the duties of the guardian.
- b. The Trial Court may waive the requirement of a bond at any time in its discretion or if so requested in a will wherein a nomination appears.
- c. Whenever a guardian has or will have possession of funds with a total value of \$40,000 or less, the Trial Court may direct the deposit of funds in an insured account of a bank, credit union or savings and loan association in the name of the guardian and the ward and payable only upon further order of the Trial Court. In such event the Trial Court may waive the requirement of a bond.

**17. Removal of Guardian.**

- a. Upon a written Show Cause complaint made to the Trial Court by any guardian or ward, or by any creditor or other person interested in the estate, or the Ho-Chunk Nation, or by any person having any prospective interest therein, such as heir or otherwise, against any person suspected of having concealed, stolen or conveyed away any of the money, goods, effects or instruments in writing belonging to the ward, or fraud or deceit or failing to carry out duties as the guardian, the Trial Court may cite and fine such suspected person and

proceed with him as to such charge in the same manner as contempt of Trial Court or other applicable laws.

- b. If the Trial Court has reason to believe that any guardian, within its jurisdiction, has filed a false inventory, claims property or permits others to claim and retain property belonging to the estate which he or she represents, and is guilty of waste or mismanagement of the estate or is unfit for the proper performance of duties, the Trial Court shall appoint a guardian ad litem for the ward interested and shall order the guardian to file the account. If upon the examination of the account, the Trial Court deems it necessary to proceed further, a time and place for the adjustment and settlement of the account shall be fixed by the Trial Court, and at least 10 days notice shall be given to the guardian ad litem and to all persons interested. If, upon the adjustment of the account, the Trial Court is of the opinion that the interests of the estate and of the persons interested require it, the guardian may be removed and another appointed.
- c. Upon notice and hearing, the Trial Court may remove any guardian who fails or neglects to discharge the duties as granted by the Trial Court as a guardian.
- d. Under exigent circumstances, the Trial Court may waive notice and hearing.
- e. Upon removal of the guardian, the Trial Court will provide notice to the former guardian and all other interested parties.

**18. Appointment of Successor Guardian.** When a guardian dies, is removed by order of the Trial Court, or resigns and such resignation is accepted by the Trial Court, the Trial Court may appoint another guardian in his place in the same manner and subject to the same requirements as are herein provided for an original appointment of a guardian.

**19. Inventory.**

- a. When any guardian of the estate has been appointed, an inventory shall be completed and attested to by a notary of the ward's estate, including the ward's credit report. An appraisal of all or any part of the ward's estate and liabilities shall be made when ordered by the Trial Court.
- b. Every guardian shall verify by his oath every inventory required of him and verification shall be to the effect that the inventory is true of all property which belongs to his estate or his ward, which has come to his possession or knowledge, and that upon diligent inquiry, he has not been able to discover any property belonging to the estate or ward which is not included therein. The Trial Court, at the request of any party interested, or on its own motion, may examine him on oath in relation thereto, or in relation to any supposed omission.
- c. If any guardian neglects to file the inventory or account when required by law, the judge shall call the guardian's attention to the neglect. If the guardian still neglects his or her duty

in the premises, the Trial Court shall order the guardian to file the inventory and the costs may be adjudged against the guardian.

- d. If the Trial Court finds that the failure or refusal to file the account inventory and subsequent annual reports, or the Trial Court finds that the neglect is willful or inexcusable, the guardian may be fined not to exceed \$500 for each incident or imprisoned not to exceed 30 days or both.

## **20. Management of Ward's Estate.**

- a. The guardian of the estate shall take possession of all of the ward's real estate and personal property, and of rents, income, issues and benefits therefrom, whether accruing before or after his appointment, and of the proceeds arising from the sale, mortgage, lease or exchange thereof. Subject to such possession the title of all such estate and to the increment and proceeds thereof shall be in the ward and not in the guardian. It is the duty of the guardian of the estate to protect and preserve it, to retain, sell and invest it as hereinafter provided, to account for it faithfully, to perform all other duties required of him by law and at the termination of the guardianship to deliver the assets of the ward to the persons entitled thereto.
- b. The guardian of the estate may, without the approval of the Trial Court, retain any real estate or personal property possessed by the ward at the time of appointment of the guardian or subsequently acquired by the ward by gift or inheritance so long as such retention constitutes the exercise of the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable safety of their capital.
- c. The guardian of the estate may, with the approval of the Trial Court, after such notice as the Trial Court directs, retain any real estate or personal property possessed by the ward at the time of the appointment of the guardian or subsequently acquired by the ward by gift or inheritance for such period of time as shall be designated in the order of the Trial Court approving such retention.
- d. In all cases where the Trial Court deems it advantageous to continue the business of a ward, such business may be continued by the guardian of the estate on such terms and conditions as may be specified in the order of the Trial Court.
- e. The guardian of the estate may, without approval of the Trial Court, invest and reinvest the proceeds of sale of any guardianship assets and any other moneys in the ward's possession, so long as the investment constitutes the exercise of the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable safety of their capital.

- f. The guardian of the estate may, with the approval of the Trial Court, after such notice as the Trial Court directs, invest the proceeds of sale of any guardianship assets and any other moneys in his possession in such real or personal property as the Trial Court determines to be in the best interests of the guardianship estate.
- g. No guardian shall lend the ward's estate, including funds, to himself.
- h. The Trial Court, on the application of the guardian of the estate or of any other person interested in the estate of any ward, after such notice, if any, as the Trial Court directs, may authorize or require the guardian to sell, mortgage, pledge, lease or exchange any property of the guardianship estate upon such terms as the Trial Court may order, for the purpose of paying the ward's debts, providing for his care, maintenance and education, and for his dependent's care, maintenance and education, investing the proceeds or for any other purpose which is in the best interest of the ward.
- i. No guardian shall purchase property of the ward, unless sold at public sale at reasonable value, with the approval of the Trial Court, and then only if the guardian is a spouse, parent, child, brother or sister of the ward or is a co-tenant with the ward in the property.
- j. The limitations of this Section relating to retention, sale, investment or reinvestment of any asset shall not be applicable to any bank or trust company authorized to exercise trust powers.

**21. Void Contract.** A contract is deemed void that names the ward if a copy of the petition for guardianship and Trial Court order for hearing are filed in the office of the register of deeds for the county, Ho-Chunk Nation Office of Tribal Enrollment, Ho-Chunk Nation Treasury Department and Ho-Chunk Nation tribal register of deeds; and if a guardian is appointed, upon such application, except for contracts related to necessities at reasonable prices, and all gifts, sales and transfers of property made by such incapacitated person or spendthrift.

**22. Claims and Notice to Creditors.**

- a. Every guardian shall pay the just debts of the ward out of the ward's personal estate and the income of his real estate, if sufficient, and if not, then out of his real estate upon selling the same as provided by law.
- b. The guardian or a creditor of any ward may apply to the Trial Court for adjustment of claims against the ward's estate incurred prior to entry of the petition for guardianship. The Trial Court shall by order, fix the time and place it will adjust claims and the time within which all claims must be presented or be barred. Notice of the time and place so fixed and limited shall be given by written notice.

**23. Actions.** The guardian shall settle all accounts of the ward and may demand, sue for, collect and receive all debts and claims for damages due him or her, or may, with the approval of the Trial Court, compound and discharge the same, and shall appear for and represent his or her ward in all actions and proceedings, except where another person is appointed for that purpose.

## **24. Compensation From Estate.**

- a. Every guardian shall be allowed the amount of his reasonable expenses incurred in the execution of his responsibilities and trust including necessary compensation paid to attorneys, accountants, brokers and other agents and servants. He shall also have such compensation for his services as the Trial Court, in which his accounts are settled, deems to be just and reasonable.
- b. When a guardian is appointed, the Trial Court may allow reasonable expenses incurred by the ward in contesting the appointment.

## **25. Accounting.**

- a. Every guardian shall prior to April 15, or the closest business day, of each year file an account under oath and specify therein the amount of property received by him and remaining in his hands or invested by him, and the nature and manner of such investment, and his receipts and expenditures during the preceding calendar year and whenever ordered by the Trial Court, he shall, within 30 days, render and file a like account for any shorter term. In lieu of the filing of such accounts before April of each year, the Trial Court may, by appropriate order upon motion of the guardian, direct the guardian of an estate to thereafter render and file such annual accountings within 60 days after the anniversary date of the order appointing the guardian, with the accounting period from the anniversary date of appointment to the ensuing annual anniversary date. When any guardian has the custody of his ward and the care of his education he shall state in his report the time his ward attended school (naming the school) during the time for which the account is rendered, and shall also report any change in the status of the surety upon his bond.
- b. Upon rendering any such account the guardian shall produce for examination by the Trial Court, or some person satisfactory to the Trial Court, all securities, evidences of deposit and investments reported by him, which shall be described in such account in sufficient detail so that the same may be readily identified. It shall be ascertained whether such securities, evidences of deposit and investments correspond with the account. But such Trial Court may by a general or special order exempt any trust company bank, or any bank with trust powers, from the requirements of this Section, if such bank within 30 days after each examination by its proper supervisory banking authority files in such Trial Court a certificate of the examiner in charge, that at such examination the securities, evidences of deposits and investments of all trust accounts of such bank were examined and compared with the records of the several trusts and found to be correct. Notwithstanding any such order of exemption, the Trial Court may at any time require the guardian to produce all securities, evidences of debt and investments for examination as provided in this Section.

## **26. Authority of the Trial Court.**

- a. The Trial Court shall have the authority, upon its own motion, to hold a hearing within its jurisdiction, if there is a concern that the guardian has filed a false inventory, claims,

property or permits others to claim and retain property belonging to the estate which he or she represents, and could have committed fraud, waste or mismanagement of the estate, or is unfit for the proper performance of duties, the Trial Court shall appoint a guardian ad litem for the ward interested and shall order the guardian to file an account inventory. If upon the examination of the account inventory, the Trial Court deems it necessary to proceed further, a time and place for the adjustment and settlement of the account shall be fixed by the Trial Court, and at least 10 days notice shall be given to the guardian ad litem and to all persons interested. If, upon the adjustment of the account, the Trial Court is of the opinion that the interests of the estate and of the persons interested require it, the guardian may be removed and another appointed.

- b. If the Trial Court receives a written complaint and determines that the guardian has neglected his duties, as appointed by the Trial Court, the Trial Court will provide Child and Family Services (hereafter known as CFS) an order granting CFS permission to obtain, but not limited to, medical, financial, educational, and genealogical information, including family trees and traditional relatives lists, with the exception of impounded orders of adoption from foreign Trial Courts, in order to conduct a thorough investigation.
- c. If the Trial Court finds that the failure or refusal to file the account inventory and subsequent annual reports, or the Trial Court finds that the neglect is willful or inexcusable, the guardian may be fined not to exceed \$500 for each incident or imprisoned not to exceed 30 days or both.

## **27. Termination of Guardianship.**

- a. A guardianship of the person shall terminate:
  - (1) When the Trial Court adjudicates a former incompetent to be competent.
  - (2) When a ward dies.
- b. A guardianship of the estate shall terminate:
  - (1) When the Trial Court adjudicates a former incompetent or a spendthrift to be capable of handling his property.
  - (2) When a ward dies.

**28. Voluntary Dismissal of Guardianship.** The Trial Court may dismiss a guardianship upon the request of the petitioner without a hearing or upon the discretion of the Trial Court.

**29. Settlement of Accounts.** Upon termination of a guardianship, or upon resignation, removal or death of a guardian, such guardian or his personal representative shall forthwith render his final account to the Trial Court and to the former ward, the successor guardian or the deceased ward's personal representative as the case may be. Upon approval of the account and filing proper receipts the guardian shall be discharged and his bond released.

**30. Veterans Guardianships.** Notwithstanding any other provision of this ordinance, guardianships involving the estate of any beneficiary of a Veteran's Administration program shall conform to the requirements of the Uniform Veteran's Guardianship Act, and the provisions thereof shall control to the extent of any inconsistencies with any other provision of this ordinance.

**31. Severability.** If any Section, provision or portion of this ordinance is adjudged unconstitutional or invalid by a Trial Court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

**32. Effective Date.** This ordinance shall take effect upon the approval of the Ho-Chunk Nation Legislature.

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Legislative History:

6/18/13      Enacted Adult Guardianship and Spendthrift Ordinance (4 HCC § 14) by Legislative Resolution 06-18-13M.