

SISSETON-WAHPETON SIOUX TRIBE

CHAPTER 42

GUARDIANSHIP

S.W.S.T. CODE
 Amendment
 New Adoption
Judicial Approved
01-04-84
Council Adopted
01-04-84

42-01-01 JURISDICTION

42-01-02 Guardians of Persons and Estates of Minors, Incompetents, Habitual Drunkards

The Sisseton-Wahpeton Sioux Tribal Court shall have jurisdiction and authority to appoint a guardian, when it appears necessary or convenient, of the person and estate, or either, of a person who is a member of the Sisseton-Wahpeton Sioux Tribe, or a non-member who is a member of any Tribe holding a relationship with the United States, and who is living on the Sisseton-Wahpeton Indian Reservation, for:

1. A minor who has no court appointed guardian;
2. A person who is of unsound mind, a habitual drunkard, or for any other cause is mentally or physically incompetent to manage his own affairs or property.

42-02-01 APPOINTMENT

42-02-02 Procedure for Appointment of Guardian, Petition, Citation, Hearing and Appointment

The Sisseton-Wahpeton Sioux Tribal Court may appoint a guardian for a minor, incompetent drunkard, and issue letters of guardianship, if:

1. A petition of a relative, a person appointed by will or deed, or other person praying for such appointment is filed in Court, or in the case of a minor, upon proper findings of the Court in any juvenile matters as provided by the Code of the Sisseton-Wahpeton Sioux Tribe.
2. A petition for the appointment of a guardian shall contain:
 - (a) The name of the person or persons for whom the guardianship is sought and proper identifying information.
 - (b) The jurisdictional facts.
 - (c) The circumstances and grounds making the appointment of a guardian necessary or convenient.

- (d) The names, ages, relationships, and post office addresses of the immediate relatives and next of kin, and of the person having care of the person or persons, for whom guardianship is sought.
 - (e) The facts concerning the condition of the person and the estate, description, nature, and probable value of the property owned by the minor; incompetent, habitual drunkard, if any, and the probable income therefrom.
3. A citation and notice has been served upon.
- (a) In the case of a minor, upon the immediate relatives and next of kin, upon the person having custody, upon the minor himself, if he is more than fourteen (14) years of age, and upon such other persons as the Court shall deem proper.
 - (b) In the case of an incompetent person, habitual drunkard, as the case may be, upon such person, upon the next of kin and relatives, and upon such other persons as the Court may deem proper.
4. A hearing shall be held upon such petition.
- (a) Upon the filing of a petition for guardianship, the Court shall fix a time and place for a hearing.
 - (b) Any person interested may appear in person or by counsel and be heard upon the matter of (a) whether a guardian should be appointed and (b) the suitability of the person proposed to be appointed as guardian.
 - (c) The Court may require the attendance of the person, or persons, for whom the guardianship is sought and may issue citation requiring any peace officer to bring the said person or persons, before the Court for such hearing. The Court may likewise require the attendance of witnesses by subpoena or other process for the purpose of the hearing.
5. If it is found by the Court that the appointment prayed for is necessary or convenient, and the proposed guardian is suitable, the Court shall issue an order of appointment of the guardianship upon filing of a bond in such amount as the Court may direct for the care of the person or persons, management of the estate of the said ward (s), either in general terms or by special directions. Such order and letters shall be a permanent record of the Court.

6. The general public shall be excluded from the hearing.

42-03-01 GUARDIAN FOR A MINOR AND PHYSICALLY INCOMPETENT PERSON

If a minor is under the age of fourteen (14) years, the Court may nominate and appoint his guardian. A minor or physically incompetent person who is fourteen (14) years of age or older may nominate his own guardian, who, if approved by the Court, shall be appointed accordingly.

42-04-01 POWERS OF A GUARDIAN OVER THE PERSON AND ESTATE

A guardian of the person of a minor, if the custody of minor is not in the father or mother, is charged with the custody of the ward and must look to his support, health, and education.

42-04-02 The guardian may fix the residence of the ward at any place within the Reservation, but not elsewhere, without the permission of the Court.

42-04-03 A guardian of the person of an incompetent, or a habitual drunkard, is charged with the proper care and custody of the person of the ward.

42-04-04 A guardian of the estate of a ward shall be charged with the management and keeping and maintenance of all of the ward's estate, as the order of appointment may direct.

42-04-05 A guardian of the estate of a ward shall make inventory of all the property of the estate, real and personal, of the ward that comes to his possession or knowledge, and to return the same within such time as the Court may order.

42-04-06 A guardian of an estate shall dispose of and manage the estate according to law and for the best interest of the ward, and faithfully discharge his trust in applying the same to the care, custody, and education of the ward in accordance with the order of the Court.

42-04-07 A guardian of the estate shall render an account, on oath, of the property of the estate of the ward in his hands, and all proceeds or interests derived therefrom, and of the management and disposition of the same within three (3) months after his appointment and at such other times as the Court directs, and at the expiration of his trust to settle his accounts with the Court or with the ward, if competent and of legal representative, and any effects remaining in his hands, or due from him on such settlement shall be delivered to the person who is legally entitled thereto.

42-05-01 QUALIFICATIONS OF GUARDIAN - OATH AND BOND

The appointment of the guardian shall not become effective, nor letters of guardianship be issued, until the guardian has qualified as hereinafter provided:

1. Has become at least twenty-one (21) years of age;
2. Is capable of making a contract;
3. Has not been convicted of a felony for the one (1) year period preceding his appointment as a guardian;
4. The Court shall order expert examination of all persons for whom appointment of a guardian is sought and shall request the presence of experts who have knowledge of the particular case, including physicians, psychiatrists, mental health professionals, and social workers.
5. Has taken, subscribed and filed an oath that he will perform the duties of his office according to law.
6. Has furnished a bond to the Sisseton-Wahpeton Sioux Tribe with sufficient surety to be approved by the court, and in such sum as the court shall order, conditioned that the guardian will faithfully execute the duties of his trust according to law and directions of the court.

42-06-01 SALE, EXCHANGE OR MORTGAGE OF PROPERTY OF WARD

No guardian shall sell, exchange or mortgage any of the property of the ward except in pursuance of an order of the Tribal Court. To obtain an order for the sale, exchange or mortgage of any property of a ward, after a private or government appraisal has been made of the particular property desired to be sold, exchanged or mortgaged, the guardian shall file a petition with the Tribal Court setting forth:

1. The jurisdictional facts.
2. The reasons why the sale, exchange or mortgage of such property could be for the best interest of his ward.

42-06-02 Upon being satisfied that such petition conforms to this ordinance, the court shall cause a notice of hearing to be posted for at least ten (10) days in one or more places and to be personally served upon the immediate relatives and next of kin and all persons interested in the estate of the ward who are residents of the reservation, or to be sent

42-06-03 Upon being satisfied at the conclusion of such hearing that such sale, exchange or mortgage of the property of the ward would be for the best interest of the ward, the court shall enter an order authorizing and directing the guardian to complete such sale, exchange or mortgage at public or private sale for cash money, or comparable property as the case may be. The court shall require that the sale exchange or mortgage must be substantially equal to the appraised

value of the property. If the court is not satisfied that the sale, exchange or mortgage or the property of the ward will be for the best interest of the ward, the petition shall be denied.

- 42-06-04 Where the sale, exchange or mortgage is under the supervision of the Department of the Interior, Bureau of Indian Affairs, the court shall not dispense with any private appraisal, notice of sale, exchange or mortgage and shall not enter its order confirming the sale, exchange or mortgage until there is an appraisal made by the Bureau of Indian Affairs in full compliance with the Tribe.
- 42-06-05 Where the sale, exchange or mortgage is under the supervision of the Department of the Interior, Bureau of Indian Affairs, the court shall cause notice of such sale, exchange or mortgage to be posted for at least ten (10) days and such other and further notice be given as the court deems proper.
- 42-06-06 After completion of any sale, exchange or mortgage of any property of a ward, the guardian shall within ten (10) days return a verified return and account thereof to the court, showing the name of the purchaser, other owner of mortgagee, the price or amount of sale, exchange or mortgage and such other facts as the court may require.
- 42-06-07 Upon the filing of such return and account, the court shall examine the same and the guardian under oath and if it appears to the satisfaction of the court that the sale or exchange was legally and fairly held; that the amount paid or to be paid or the value of the property received in exchange is substantially equal to the appraised value of the ward's property, that a greater amount cannot be obtained and that it is to the best interest of the ward, the court shall enter its order confirming the sale, exchange or mortgage and directing proper conveyance to be made. In the case of the mortgage of property of a ward the court must be satisfied that the terms of the note and mortgage and the rate of interest set forth therein are fair and in accord with prevailing rates and terms.
- 42-07-01 **TERMINATION OF THE DUTIES AND POWERS OF THE GUARDIAN**
The duties and powers of the guardian shall terminate upon the following:
1. By order of the Court:
 - (a) For abuse of his trust.
 - (b) For continued failure to perform his duties.
 - (c) For incapacity to perform his duties.
 - (d) For gross immorality.

- (e) On being convicted of a felony affecting his capacity as a guardian.
 - (f) When it is no longer necessary that the ward be under guardianship.
2. When the appointment was made solely because of the ward's minority, and he has attained his majority, or,
 3. Marriage of the minor ward shall terminate the guardianship over the person, but shall not terminate the guardianship over the estate until the ward attains his majority.

42-08-01 RESTORATION OF ONE DETERMINED INCOMPETENT OR HABITUAL DRUNKARD

Any person who has been declared an incompetent, or a habitual drunkard, the guardian, or any relative of such person within the third degree, or any other person, may apply by petition to the court to have the fact of his restoration to capacity judicially determined. The petition shall be verified and shall allege that such person then is competent. Upon receiving the petition, the Court must appoint a time and place for hearing and cause citation to be issued to the guardian, if any, of such incompetent or habitual drunkard, if there is a guardian, and to the spouse, if any, and to any parent of such incompetent or habitual drunkard, if living on the reservation.

42-08-02 At the hearing such guardian or any relative, or any other interested person, may contest the granting of the relief demanded. Witnesses may be required to appear and testify, as in other cases, and may be called and examined by the court on its own motion. If it be found that the incompetent or habitual drunkard is competent and capable of taking care of himself and his property, his restoration to capacity shall be adjudged and any guardianship of such person, if he is not a minor, shall cease.

42-09-01 STATE LAWS APPLICABLE

In the absence of provisions in the Guardianship Code of the Sisseton-Wahpeton Sioux Tribe, the Sisseton-Wahpeton Sioux Tribal Court shall apply the guardianship laws of the State of South Dakota insofar as they are not in conflict with the provisions of the Sisseton-Wahpeton Sioux Tribal Code, and the Sisseton-Wahpeton Sioux Tribal Court shall have exclusive jurisdiction over the guardian so appointed.

42-10-01 SEVERABILITY

If any clause, sentence, paragraph, section, or part of this code shall, for any reason be adjudicated by any Court of competent jurisdiction, to be invalid or unconstitutional, such judgement shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which the judgement shall have been rendered.

S.W.S.T. CODE
 Amendment
 New Adoption
 Judicial Approved
 62-94-89
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 63-61-26