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ORDINANCE OF THE GOVERNING BODY

OF THE

SAUK-SUIATTLE INDIAN TRIBE

Ordinance No. 12-10-07: GUARDIANSHIP ORDINANCE

THEREFORE BE IT ENACTED BY THE TRIBAL COUNCIL OF THE SAUK-SUIATTLE INDIAN TRIBE, AS FOLLOWS:

WHEREAS, The Sauk-Suiattle Tribal Council is the duly constituted governing body of the Sauk-Suiattle Indian Tribe, by authority of the Constitution and Bylaws, approved by the Secretary of the Interior on September 17, 1975 and in accordance with the Indian Reorganization Act of June 18, 1934 (48 Stat.984); and

WHEREAS, the Sauk-Suiattle Indian Tribal Council is the duly elected governing body of the Sauk-Suiattle Indian Tribe; and

WHEREAS, in accordance with the Tribal Constitution and Bylaws of the Sauk-Suiattle Indian Tribe, it shall be the duty of Tribal Council to protect and preserve the people of the Sauk-Suiattle Indian Tribe as provided in Article II, Section 1(a) including the promulgation of laws and ordinances pursuant to Article VII, Section 1(P); and

WHEREAS, in order to maintain and provide the peace, health and general welfare of the Sauk-Suiattle Tribe, the Tribal Council is committed to the protection of all tribal members; now

THEREFORE, BE IT ENACTED THAT, the Sauk-Suiattle Tribal Council hereby asserts its right as a sovereign power, to protect and preserve the harmony and well being of persons within the jurisdiction of the Sauk-Suiattle Indian Tribe; now

BE IT FURTHER ENACTED THAT, this Ordinance is to set forth uniform goals and procedures to be followed in appointing and monitoring guardianships of vulnerable individuals within the jurisdiction of the Sauk-Suiattle Indian Tribe.

LEGISLATIVE HISTORY

Enacted:

- Guardianship Ordinance No. 12/10/07, (12 /7/07).

Section 1. Purpose

This chapter establishes the procedure for the appointment of guardians for minor persons not subject to the Youth Code or for adults who are unable to manage their property and business affairs and or to physically care for themselves.

Section 2. Definitions

2.01 Guardian. A guardian is an adult appointed to take care of the person or property of another. A “guardian of the person” shall be responsible for the care and custody of a minor or incapacitated person. A “guardian of the property” shall receive and administer the assets of the minor or incapacitated person in a reasonable and prudent manner. The same person may, but does not have to, assume both roles. The guardian must exercise the highest fiduciary standard of care for the ward, and is subject to oversight by the Tribal Court.

2.02 Incapacitated persons and minors. A guardian may be appointed for any person subject to the jurisdiction of the Court who is unable (whether based on a mental or physical incapacity) to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for health, safety, or self-care, even with appropriate technological assistance and for any minor person not subject to proceedings pursuant to the Youth Code.

2.03 Interested person. Unless otherwise defined more specifically, an “interested person” means (a) the minor or allegedly incapacitated person who is the subject of a guardianship petition, (b) any person nominated as a guardian, (c) any spouse, parent, adult children, siblings, or next of kin of the minor or allegedly incapacitated person, (d) any adult person who has lived with the minor or allegedly incapacitated person for a period of six months preceding the filing of the petition for guardianship, (e) any attorney or advocate for any person listed in this section, (f) any governmental agency paying, intending to pay, or planning to pay benefits to the minor or incapacitated person, (g) the Sauk-Suiattle Indian Tribe by and through its Department of Health and Social Services, and (h) any other person designated by the Court.

Section 3. Persons to Whom a Guardian May Be Appointed.

A guardian may be appointed, in the manner described in Section 4, to:

- (a) an incapacitated person; or
- (b) a minor who is not subject to proceedings pursuant to the Youth Code.

Section 4. How a Guardian Is Appointed.

4.01 By will. The last surviving parent or spouse of a minor or incapacitated person may designate in a will the guardian for the minor or incapacitated person. Upon determination by the Court that the will is valid, that the individual for whom a guardian has been designated is in fact a minor or incapacitated person, and that the person designated is willing to accept the responsibilities of guardianship, the Court shall appoint the person designated; provided that for good cause shown, the Court may decline to appoint the person designated.

4.02 By Court appointment. Where an incapacitated person is in need of a guardian, and no guardian is appointed pursuant to a valid will, the Court may appoint a guardian to promote the best interests of the incapacitated person. The Court may appoint a guardian on its own motion or at the petition of an interested party.

- (a) **Petition.** A petition from an interested party must explain in detail the reasons a guardian is required, identify the relationship of the petitioner to the minor or incapacitated person, and contain a list of any other potentially interested persons and their addresses. A petition does not need to be in any particular format, other than in writing and signed by the petitioner. A petitioner may contact the court clerk for a standard Sauk-Suiattle Tribal Court petition form.
- (b) **Preference in appointment.** In appointing a guardian the Court shall give preference to relatives of the individual for whom a guardian is to be appointed, and secondary preference to tribal members, except that the Court shall not be bound by such preferences if it finds that such relative(s) or tribal member(s) would not act in the best interests of the minor or allegedly incapacitated person.
- (c) **Tribe as guardian.** If no suitable relative or tribal member is available and willing to be appointed guardian, the Court may appoint the Tribe as guardian.

4.03 Hearing. In each case where a guardian is to be appointed, either by will, or by Court appointment, a hearing shall be held following notice to all interested parties. A copy of the notice of the hearing shall be served at least ten (10) days before the date of the hearing, either personally, by first class mail, by certified mail, or by registered mail on the individual for whom a guardian may be appointed. The issues to be determined at the hearing are:

- (a) whether there is clear and convincing evidence that the individual is one to whom a guardian may be appointed, pursuant to Section 3; and
- (b) If so, who is to be appointed guardian.

4.04 Order of Guardianship. If the Court determines that a guardian shall be appointed, it shall be done by Order of Guardianship. The Order shall set out the name and contact information of the guardian; the scope of the guardianship (i.e. whether it is of the person, property, or both); a statement of the current assets of the individual that are subject to the guardianship; and a date for a review hearing no later than 60 days from the date the guardianship is established.

Section 5. Duties of a Guardian.

A guardian of the person shall be responsible for the care and custody of the minor or incapacitated person, and must take reasonable steps to provide for the needs, care, and support of the minor or incapacitated person. A guardian of the property shall, subject to conditions imposed by the Court, receive and administer the assets of the minor or incapacitated person in a reasonable and prudent manner, for the best interests of such person, and shall use such assets, and any proceeds from those assets, only for the support, care, health and educational needs of the minor or incapacitated person. Any other use of the assets of the minor or incapacitated person shall be grounds for immediate termination of the guardianship. The Court, in appointing a guardian, shall specify if the guardian is to serve as a guardian of the person, guardian of the property, or both.

Section 6. Reporting by the Guardian.

6.01. Initial Report

Within 60 days after appointment, the guardian shall provide a report to the Court on the minor or incapacitated person.

6.02. Annual Report

A guardian shall report to the Court at least annually after the Initial Report. The Court may order more frequent reporting.

6.03 Contents of Report

6.03.01 A report must provide information regarding the individual's wellbeing, including the following:

- (a) the current mental, physical, and social condition of the minor or incapacitated person,;
- (b) the living arrangements and all addresses for the minor or incapacitated person during the reporting period; and
- (c) the medical, vocational, educational, and other services provided to the minor or incapacitated person.

6.03.02 A report must also provide an accounting of his/her handling of the ward's assets, including a written record of expenditures, investments, and any other transactions involving the assets of his/her ward, and to the extent possible receipts and other papers as evidence of these transactions. All of the guardian's written record and all other papers shall be presented to the Court at the time of the report required by this section.

Section 7. Termination of Guardianship.

(a) For Cause. Upon motion of any person, or the Tribe, the Court may provide notice and hold a hearing on whether to terminate a guardianship. Grounds for termination shall include, but not be limited to, personal use by the guardian of the assets of the ward, failure to provide a reasonable level of care for the ward, and failure to exercise care in the use and monitoring of the ward's assets. Unless the guardianship is a voluntary guardianship under Section 8 of this Chapter, the person moving for termination of the guardianship bears the burden of showing, by clear and convincing evidence, that such termination is in the best interest of the minor or incapacitated person.

(b) Automatic. Guardianship, including for guardians of the property, and the control over the ward's assets, shall terminate automatically upon a minor reaching age eighteen (18), or upon an incapacitated person being adjudged by the Court to have regained legal capacity.

Section 8. Voluntary Guardianship.

A custodial parent may voluntarily petition the Tribal Court to appoint a guardian for a minor on a temporary basis or any other person may voluntarily petition the Tribal Court to appoint a guardian for his or herself on a temporary basis. The terms of such a temporary appointment must be detailed in the petition. After notice and a hearing under Section 4(c) of this Chapter, unless good cause is shown, such a petition shall be approved by the Court. A temporary guardianship under this section may be terminated by the occurrence of the condition(s) in the original petition, or earlier if the petitioning parent so requests. A request for termination under the previous sentence shall be approved by the Tribal Court after notice and a hearing under Section 7(a) of this Chapter, unless good cause is shown.

Section 9. Liability of a Guardian.

A guardian owes a duty of care as a fiduciary to the minor or incapacitated person. A guardian is not liable to a third person for acts of the minor or incapacitated person solely by reason of the relationship. A guardian of a minor or incapacitated person is not liable for injury to the minor or incapacitated person for injury resulting from the negligence or acts of a third person providing medical or other care or treatment, except to the extent that a parent would be liable under the circumstances.

Section 10. Right to Counsel.

A person who is the subject of a guardianship petition under this chapter has a right to be represented by counsel at his or her own expense, and the Court, on its own motion or on a motion from any party, may appoint such counsel. Such a minor or allegedly incapacitated person shall pay the costs of counsel out of assets of, or available to the minor or allegedly incapacitated person. Upon the filing of a petition for guardianship, the person who is the subject of the petition shall be notified in writing and verbally, whether by telephone or in person, that they are the subject of a petition and shall be informed of the content of the petition and their right to counsel under this Section.

Section 11. Bond.

The Court, on its own motion, or on motion by any interested party, may require a guardian or guardian of property to post an appropriate bond to insure compliance with this title. This Section may not be applied to the Tribe if the Tribe has been appointed guardian.

Section 12. Guardianship Oversight Committee.

A committee of three tribal members shall be appointed by the Sauk-Suiattle Tribal Council to monitor guardianships established pursuant to this Chapter to which the Tribe is assigned to be guardian. The Committee shall review the recommendations of the staff social worker assigned to the guardianship and advise and oversee major decision-making with respect to the ward. Additionally, the Committee shall be consulted by the Department of Health and Social Services prior to any petition by the Department to have a guardian appointed.

CERTIFICATION

Pursuant to the authority contained in Article VII, Section 1 (N) of the Constitution and Bylaws of the Sauk-Suiattle Indian Tribe, ratified by the Tribe on July 19, 1975 and certified by the Secretary of Interior on September 17, 1975, pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), the foregoing Ordinance was adopted this ____, day of _____, 2007 at a Regular Council Meeting held at the Sauk-Suiattle Indian Reservation at which a quorum was present, by a vote of __ for, __ against, __ abstain, and __ absent.



Janice W. Mabee, Chairman

ATTEST:



Cynthia M. Harris, Secretary