

TRIBAL CODE  
CHAPTER 34  
GUARDIANSHIP ORDINANCE

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TRIBAL CODE

CHAPTER 34

GUARDIANSHIP ORDINANCE

34.101 Title.

This ordinance shall be known as the "Guardianship Ordinance".

34.102 Authority.

This ordinance is adopted pursuant to Article VI, Section 1 (a), (n), (q), (r) and (u) of the Tribal Constitution.

34.103 Jurisdiction.

The tribal court shall have jurisdiction over all petitions for guardianship over the person or estate of a member or tribal child, pursuant to Section 34.105. A guardianship of the estate, once granted, shall extend to all of his or her estate, wherever situated.

34.104 Definitions.

As used in this ordinance:

(1) "Developmentally disabled person" means any individual having a disability attributable to mental retardation, cerebral palsy, epilepsy, autism 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.

(2) "Guardian" means one appointed by a court to have care, custody and control of the person of a minor or an incompetent or the management of the estate of a minor, an incompetent or a spendthrift.

(3) "Incompetent" means a person adjudged by a court of record to be substantially incapable of managing his property or caring for himself by reason of

infirmities of aging, developmental disabilities, or other like incapacities. Physical disability without mental incapacity is not sufficient to establish incompetence.

(4) "Infirmities of aging" means organic brain damage caused by advanced age or other physical degeneration in connection therewith to the extent that the person so afflicted is substantially impaired in his ability to adequately provide for his own care or custody.

(5) "Interested person" means any adult relative or friend of a person to be protected under this ordinance.

(6) "Member" means an enrolled member of the Tribe.

(7) "Minor" means a person who has not attained the age of 18 years.

(8) "Other like incapacities" means those conditions incurred at any age which are the result of accident, organic brain damage, mental or physical disability, continued consumption or absorption of substances, producing a condition which substantially impairs an individual from providing for his own care or custody.

(9) "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 such support.

(10) "Reservation" means the area within the external boundaries of the Lac du Flambeau Indian Reservation.

(11) "Tribe" means the Lac du Flambeau Band of Lake Superior Chippewa Indians.

(12) "Tribal child" means a minor who is either:

(a) an enrolled member of the Tribe; or

(b) eligible for enrollment in the Tribe in his or her own right; or

(c) the biological child of a member who is eligible for membership by adoption into the Tribe.

(13) "Tribal court" means the Lac du Flambeau Tribal Court. The term "Court" when used herein shall mean the tribal court.

(14) "Ward" means a subject for whom a guardian has been appointed.

34.105 Persons and Estates Subject to Guardianship.

All members and tribal children who reside on the reservation and are minors, incompetents, or spendthrifts are subject to guardianship. The tribal court may appoint a guardian of the person of anyone subject to guardianship who is a nonresident found on the reservation under extraordinary circumstances requiring medical aid or the prevention of harm to his or her person or property found on the reservation. The tribal court may appoint a guardian of the estate of anyone subject to guardianship, whether a resident of the reservation or not, if any of the estate is located on the reservation. Separate guardians of the person and of the estate of a ward may be appointed.

34.106 Exceptions.

(1) Except for minors found to be incompetent, upon marriage, a minor shall no longer be a proper subject for guardianship of the person and a guardianship of the person is revoked by the marriage of a minor ward. Upon application, the tribal court may release in whole or in part the estate of a minor ward to him upon his marriage. Upon marriage, the guardianship of an incompetent is subject to review under Section 34.133.

(2) If a minor or an incompetent, except for his or her incapacity, is entitled to possession of personal property of a value of \$5,000 or less, the tribal court may, in its discretion, without requiring the appointment of a guardian, order one of the following:

(a) Deposit in a savings account in a bank, the payment of whose accounts in cash immediately upon default of the bank are insured by the federal deposit insurance corporation; or invest in the stock of a savings and loan association, payment of whose stock by substitution of stock in another and similar savings and loan association insured by the federal savings and loan insurance corporation, in case of default in payment; or deposit in a savings account in a credit union having its deposits guaranteed by the Wisconsin credit union savings insurance corporation or by the national credit union administration.

(b) Payment to the natural guardian of the minor or to the person having actual custody of the minor.

(c) Payment to the minor.

(d) Payment to the person having actual or legal custody of the incompetent or to the person providing for his care and maintenance for the benefit of the incompetent.

34.107 Petition.

Any relative or other person may petition for the appointment of a guardian of a person subject to guardianship. Such petition shall be accompanied by a filing fee of \$10 and shall state:

(1) 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 tribal child.

(2) The nature of the ward's incapacity with specification of the incompetency or spendthrift habits.

(3) The approximate value of his property and a general description of its nature.

(4) Any assets previously derived from or benefits now due and payable from the veterans administration.

(5) Any other claim, income, compensation, pension, insurance or allowance to which he may be entitled.

(6) Whether the proposed ward has any guardian presently.

(7) The name and post-office address of any person nominated as guardian by the petitioner.

(8) 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.

(9) The name and post-office addresses of the person or institution having the care and custody of the proposed ward.

(10) 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.

34.108 Notice of Hearing.

Upon the filing of a petition for guardianship, and the court being satisfied as to compliance with Section 34.107, the court shall order notice of the time and place of hearing as follows:

(1) In the case of incompetents, a petitioner shall have notice served of a petition for appointment or change of a guardian upon the proposed incompetent and existing guardian, if any, by personal service at least 10 days before the time set for hearing. If such proposed incompetent 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. The custodian shall inform the proposed incompetent of the complete contents of the notice and certify thereon that the custodian served and informed the proposed incompetent and returned the certificate and notice to the tribal court judge. The notice shall include the names of all persons who are petitioning for guardianship and specific allegations of the grounds of incompetency. The 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 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. 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 court may require. The court shall then proceed under sec. 34.132.

(2) 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 ward may appear without objecting to the jurisdiction of the court over the proposed ward's person and thereupon the matter may be heard forthwith.

(3) When the proposed ward is a minor, notice shall be given to the following persons:

- (a) To his spouse;
- (b) To parents;
- (c) To a minor over 14 years of age unless the minor appears at the hearing;

(d) To any other person, agency, institution, welfare department or other entity having the legal or actual custody of the minor.

(e) No notice need be given to parents whose rights have been judicially terminated.

(4) Notice of a rehearing to determine if a ward is a proper subject to continue under guardianship shall be given as required for the appointment of a guardian.

#### 34.109 Nomination and Selection of Guardian.

The court shall consider nominations made by any interested person and, in its discretion, shall appoint a proper guardian, having due regard for the following:

(1) A minor over 14 years may in writing in court nominate his or her own guardian, but if the minor is in the armed service, is without the reservation, or if other good reason exists, the court may dispense with the right of nomination.

(2) If one or both of the parents of a minor, a developmentally disabled person or a person with other like incapacity are suitable and willing, the court shall appoint one or both of them as guardian unless the proposed ward objects. The court shall appoint a corporate guardian only if no suitable individual guardian is available.

(3) If neither parent is suitable and willing, the court may appoint the nominee of a minor.

(4) Subject to the rights of a surviving parent, a parent may by will nominate a guardian of the person of his minor child.

(5) A parent may by will nominate a guardian of the estate of his minor child and may waive the requirement of a bond as to such estate derived through the will.

(6) Subject to the rights of a surviving parent, a parent may by will nominate a guardian and successor guardian of the person or estate of any of his minor children who are in need of guardianship. For a person over the age of 18 found to be in need of guardianship under Sec. 34.132 by reason of a developmental disability or other like incapacity, a parent may by will nominate a testamentary guardian.

(7) Any person other than a minor may, at such time as he has sufficient capacity to form an intelligent preference, execute a written instrument, in the same

manner as the execution of a will under the Probate Code, nominating a person to be appointed as guardian of his person or property or both in the event that a guardian is in the future appointed. Such nominee shall be appointed as guardian by the court unless the court finds that the appointment of such nominee is not in the best interests of the person for whom, or for whose property, the guardian is to be appointed.

#### 34.110 Decision and Order.

The court shall after hearing determine whether the person is a proper subject for guardianship. If the person is found to be in need of a guardian, the court shall appoint one or more guardians but not more than one guardian of the person shall be appointed unless they be husband and wife. The order shall specify the amount of the bond, if any, to be given.

#### 34.111 Sufficiency of Bond.

In any action or proceeding wherein funds are to be paid to a guardian, the court shall, prior to payment or approval, be satisfied as to the sufficiency of the penal sum of the guardians bond.

#### 34.112 Bond.

(1) Upon the appointment of a guardian of the estate of a ward, except for beneficiaries of the veteran's administration as provided in Section 34.136, the court may require a bond given in accordance with, conditioned upon the faithful performance of the duties of the guardian.

(2) Unless required under Section 34.136, the 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.

(3) Whenever a guardian has or will have possession of funds with a total value of \$40,000 or less, the court may direct deposit of the 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 court. In such event the court may waive the requirement of a bond.

#### 34.113 Letters.

When a guardian has given bond as required and the bond has been approved by the judge, letters under the seal of the court shall be issued to him.

#### 34.114 Temporary Guardians.

(1) If, after consideration of a petition for temporary guardianship, the court finds that the welfare of a minor, 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 60 days unless further extended for 60 days by order of the court. The court may extend the period only once. 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 court directs and shall account to the court upon termination of authority.

(2) No person appointed temporary guardian of a child under this section may adopt the child without complying with the adoption procedures of the Child Welfare Code, Tribal Code Ch. 31.

(3) The person petitioning for appointment of temporary guardian shall cause notice to be given under sec. 34.108 of that petition to the minor, spendthrift or alleged incompetent and, if the appointment is made, shall give notice of the appointment to the ward. The time limits of sec. 34.108 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 under sec. 34.133 within 30 days of receipt of the notice.

(4) Every temporary guardian appointed under sub.(1) shall before entering upon the duties of his or her trust give bond to the judge in such sum and with such sureties the court designates and approves.

(5) If the temporary guardianship is not sooner terminated the duties and powers of the temporary guardian shall cease upon the issuing of letters of permanent guardianship to the guardian of the ward, or, if the ward is a minor, 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 court any report that the court requires. A temporary guardian of the estate shall, upon termination of duties and powers, account to the 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.

#### 34.115 Removal of Guardian.

(1) When a minor ward has attained the age of 14 years a guardian of his person, upon notice as required by the court, may be removed on petition of the ward for the purpose of having another person appointed guardian if it is for the best interest of the ward.

(2) When any guardian fails or neglects to discharge his trust the court may remove him after such notice as the court shall direct to such guardian and all others interested.

(3) Upon complaint made to the court by any guardian or ward, or by any creditor or other person interested in the estate, or by any person having any prospective interest therein, 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 the court may cite and examine such suspected person and proceed with him as to such charge in the same manner as is provided with respect to persons suspected of concealing or stealing the effects of a deceased person in the Probate Code, Tribal Code Ch. 82.

#### 34.116 Appointment of Successor Guardian.

When a guardian dies, is removed by order of the court, or resigns and such resignation is accepted by the court, the 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.

#### 34.117 Inventory.

When a guardian of the estate has been appointed an inventory shall be made in the same manner and subject to the same requirements as are provided for the inventory of a decedent's estate in the Probate Code, Tribal Code Ch. 82. An appraisal of all or any part of the ward's estate shall be made when ordered by the court.

#### 34.118 Management of Ward's Estate.

(1) The guardian of the estate shall take possession of all of the ward's real 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.

(2) The guardian of the estate may, without the approval of the court, retain any real 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.

(3) The guardian of the estate may, with the approval of the court, after such notice as the court directs, retain any real 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 court approving such retention.

(4) In all cases where the 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 court.

(5) The guardian of the estate may, without approval of the court, invest and reinvest the proceeds of sale of any guardianship assets and any other moneys in his possession in accordance with Wis. Stat. ch. 881.

(6) The guardian of the estate may, with the approval of the court, after such notice as the 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 court determines to be in the best interests of the guardianship estate.

(7) No guardian shall lend guardianship funds to himself.

(8) The guardian of the estate may, without approval of the court, sell any property of the guardianship estate acquired by the guardian pursuant to sub.(5).

(9) The 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 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 court may order, for the purpose of paying the ward's debts, providing for his care, maintenance and education and the care, maintenance and education of his dependents, investing the proceeds or for any other purpose which is in the best interest of the ward.

(10) No guardian shall purchase property of the ward, unless sold at public sale with the approval of the court, and then only if the guardian is a spouse, parent, child, brother or sister of the ward or is a cotenant with the ward in the property.

(11) 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.

#### 34.119 Inventory.

(1) 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 decedent's 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 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.

(2) 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 court shall order the guardian to file the inventory and the costs may be adjudged against the guardian.

#### 34.120 Fraud, Waste, or Mismanagement.

If the 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 court shall appoint a guardian ad litem for any minor or incompetent person interested and shall order the guardian to file the account. If upon the examination of the account the court deems it necessary to proceed further, a time and place for the adjustment and settlement of the account shall be fixed by the 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 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.

#### 34.121 Use of Estate for Ward's Benefit.

(1) Every guardian shall apply the personal property or the income therefrom or from the real estate, as far as may be necessary for the suitable education, maintenance and support of the ward and of his family, if there be any

legally dependent upon him for support, and for the care and protection of his real estate. The parents, brothers and sisters of incompetent veterans of all wars are declared members of his family, and all payments heretofore made pursuant to court order to any dependent member of the family of any such incompetent, as herein defined, are ratified and approved.

(2) If any minor has property which is sufficient for his or her maintenance and education in a manner more expensive than his or her parents can reasonably afford, regard being had to the situation and circumstances of the family, the expenses of the minor's education and maintenance may be defrayed out of his or her property in whole or in part, as shall be judged reasonable and be directed by the court.

#### 34.122 Lis Pendens; Void Contract.

A copy of the petition and order for hearing provided for in Sections 34.107 and 34.108 may be filed in the office of the register of deeds for the county; and if a guardian shall be appointed upon such application all contracts, except for necessities at reasonable prices, and all gifts, sales and transfers of property made by such insane or incompetent person or spendthrift, after the filing of a copy of such petition and order as aforesaid, shall be void. The validity of a contract made by a person under limited guardianship is not void, however, unless the determination is made by the court in its finding under Section 34.132 that the ward is incapable of exercising the power to make contracts.

#### 34.123 Claims.

(1) Every general 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. But a temporary guardian shall pay the debts of his ward only on order of the court.

(2) The guardian or a creditor of any ward may apply to the court for adjustment of claims against the ward incurred prior to entry of the order appointing the guardian of the filing of a lis pendens as provided in Section 34.122. The 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 publication as in estates of decedents; and all statutes relating to claims against and in favor of estates of decedents shall apply. As in the settlement of estates of deceased persons, after the court has made the order no action or proceeding may be commenced or maintained in any court against the ward upon any claim of which the court has jurisdiction.

#### 34.124 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 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.

#### 34.125 Compensation From Estate.

(1) Every guardian shall be allowed the amount of his reasonable expenses incurred in the execution of his 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 court, in which his accounts are settled, deems to be just and reasonable.

(2) When a guardian is appointed the court may allow reasonable expenses incurred by the ward in contesting the appointment.

#### 34.126 Accounting.

(1) Every guardian shall prior to March 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 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 March of each year, the 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 guardian's qualification as such guardian, with the accounting period from the anniversary date of qualification to the ensuing annual anniversary date. When any guardian of a minor 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.

(2) Upon rendering any such account the guardian shall produce for examination by the court, or some person satisfactory to the 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 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 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 court may at any time require the guardian to produce all securities, evidences of debt and investments for examination as provided in this section.

(3) When the whole estate of a ward or of several wards jointly, under the same guardianship, does not exceed \$5000 in value, the guardian shall be required to render account only upon the termination of his guardianship, unless otherwise ordered by the court.

(4) The account shall be promptly examined under the court's direction and if it is not satisfactory it shall be examined on 8 days' notice and the court shall make such order thereon as justice requires. Notice to the guardian may be served personally or by certified mail as the court directs. When the examination of a guardian's account is upon notice a guardian ad litem of the ward may be appointed. No action by the court upon any account shall be final unless it is upon notice.

#### 34.127 Removal of Guardian.

If a guardian resides out of this state; neglects to render the account within the time provided by law or the order of the court; neglects to settle the estate according to law or to perform any judgment or order of the court; absconds or becomes insane or otherwise incapable or unsuitable to discharge the trust, the court may remove the guardian and appoint a successor. An order of removal may not be made until the person affected has been notified to show cause at a specified time why he or she should not be removed.

#### 34.128 Failure to File Account.

If a guardian fails to file his account as required by law or ordered by the court, the court may, upon its own motion or upon the petition of any party interested, issue an order to show cause before the court why he should not immediately make and file his reports or accounts. If a guardian fails, neglects or refuses to make and file any report or account after having been cited by the court so to do, or he fails to appear in court as directed by a citation issued under direction and by authority of the court, the court may, upon its own motion or upon the petition of any interested party, issue a warrant that the guardian be brought before the court to show cause why he should not be punished for contempt. If the court finds that the failure, refusal or neglect is willful or inexcusable, the guardian may be fined not to exceed \$500 or imprisoned not to exceed 30 days or both.

34.129 Termination of Guardianship.

- (1) A guardianship of the person shall terminate:
  - (a) When a minor attains his majority, unless the minor is too incompetent.
  - (b) When a minor ward lawfully marries.
  - (c) When the court adjudicates a former incompetent to be competent.
- (2) A guardianship of the estate shall terminate:
  - (a) When a minor ward attains his majority.
  - (b) When a minor ward lawfully marries and the court approves such termination.
  - (c) When the court adjudicates a former incompetent or a spendthrift to be capable of handling his property.
  - (d) When a ward dies.
- (3) When the court determines that the estate of the ward is below \$5,000 and reduced to a point where it is to the advantage of the ward to dispense with the guardianship, the court may terminate the guardianship and authorize disposition of the remaining assets as provided by Section 34.106(2), and the court as a part of the disposition may order a suitable amount reserved in the guardianship to assure the ward a decent burial, a marker, and perpetual care for the grave.

34.130 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 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.

34.131 Voluntary Conservatorship.

(1) Any adult member who resides on the reservation who believes that he or she is unable properly to manage his or her property or income may voluntarily apply to the court for appointment of a conservator of the estate. Upon receipt of the application the court shall fix a time and place for hearing the application and direct to whom and in what manner notice of the hearing shall be given.

(2) At the time of such hearing the applicant shall be personally examined and if the court is satisfied that the applicant desires a conservator and that the fiduciary nominated is suitable, the court may appoint him as such and issue letters of conservatorship to him upon the filing of a bond in the amount fixed by the court.

(3) A conservator shall have all the powers and duties of a guardian of the property of an incompetent person. The conservator's powers shall cease upon being removed by the court or upon death of a person whose estate is being conserved.

(4) Any person whose estate is under conservatorship may apply to the court at any time for termination thereof. Upon such application, the court shall fix a time and place for hearing and direct that 10 days' notice by mail be given to the person's guardian, if any, the conservator and the presumptive heirs of the applicant. Upon such hearing, the court shall, unless it is clearly shown that the applicant is incompetent, remove the conservator and order the property restored to the applicant, or if the applicant so desires and the nominee is suitable, the court may appoint a successor conservator.

(5) If the court shall upon such hearing determine that the person whose estate is administered by a conservator may be incapable of handling his estate, the court shall order the conservatorship continued, or if the applicant so desires and the nominee is suitable, the court may appoint a successor conservator.

(6) Appointment of a conservator shall not be evidence of the competency or incompetency of the person whose estate is being administered.

#### 34.132 Incompetency.

(1) 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.

(2) The proposed ward has the right to counsel at the ward's expense whether or not present at the hearing on determination of competency. The court shall in all cases require the appointment of a guardian ad litem. The proposed ward,

attorney or guardian ad litem shall have the right to present and cross-examine witnesses, including the physician or psychologist reporting to the court under sub. (4). 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 96 hours in advance of the hearing. Any final decision of the court is subject to the right of appeal.

(3) If requested by the proposed ward or anyone on the proposed ward's behalf, the proposed ward has the right at his or her own 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.

(4) The duties of a guardian ad litem shall include:

(a) A personal interview with the proposed incompetent that shall include an explanation of the guardianship hearing procedure and information concerning the right to counsel.

(b) Notification to the proposed incompetent both orally and in writing, of the rights to a trial and appeal and rights to counsel and an independent medical or psychological examination. Such notification shall also include the right to introduce evidence as to retention of rights under limited guardianship.

(c) Recommendation of such additional medical, psychological or other evaluation and testimony to the court on behalf of any ward for whom a limited guardianship of the person or property may be appropriate.

(5) In a finding of limited incompetency, guardianship of the person shall be limited in accordance with the order of the court accompanying the finding of incompetence. The court shall make a specific finding as to which legal rights the person is competent to exercise. Such rights include but are not limited to the right to vote, to marry, to obtain a motor vehicle operator's license or other state license, to testify in any judicial or administrative proceeding, to hold or convey property and the right to contract. The findings of incompetence must be based upon clear and convincing evidence. The court shall determine if additional medical or psychological testimony is necessary for the court to make an informed decision respecting competency to exercise legal rights. The guardian, ward or any interested person may at any time file a petition with the court requesting a restoration of any such legal right, and specifying the reasons therefor. Such petition may request that a guardianship of the person be terminated and a guardianship of property be established.

(6) When it appears by clear and convincing evidence that the person is incompetent, the court shall appoint a guardian. In appointing a guardian, the court shall take into consideration the opinions of the alleged incompetent and of the members of the family as to what is in the best interests of the proposed incompetent. However, the best interests of the proposed incompetent shall control in making the determination when the opinions of the family are in conflict with the clearly appropriate decision. The court shall also consider potential conflicts of interest resulting from the prospective guardian's employment or other potential conflicts of interest.

(7) All court records pertinent to the finding of incompetency are closed. The fact that a person has been found incompetent is accessible to any person who demonstrates to the custodian of the records a need for that information.

(8) At the time of determination of incompetency under this section, application for the appointment of a conservator or limited guardian of property may be heard by the court.

#### 34.133 Duration of Guardianship.

(1) Any guardianship of an individual found to be incompetent under this ordinance shall continue during the life of the incompetent, or until terminated by the court. Upon reaching the age of majority, an incompetent subject to guardianship under this chapter shall be reviewed by the court for the purpose of determining whether the guardianship should be continued or modified. The court shall make a specific finding of any rights under Section 34.132(5) which the individual is incompetent to exercise at the time.

(2) The court shall review and may terminate the guardianship of the person of an incompetent upon marriage to any person who is not subject to a guardianship.

(3) A ward of the age of 18 or over, any interested person on his behalf, or his guardian may petition the court to have the guardian discharged and a new guardian appointed, or to have the guardian of his property designated as a limited guardian.

(4) A ward who is 18 years of age or older, any interested person acting on his behalf, or his guardian may petition for a review of incompetency. Upon such a petition for review, the court shall conduct a hearing at which the ward shall be present.

(5) After a hearing under sub.(4) or on its own motion, a court may terminate or modify a guardianship of an incompetent.

#### 34.134 Limited Guardianship of Property.

(1) An incompetent person who is 18 years of age or older, a guardian or any person authorized to petition for guardianship of a person may apply to a court for a limited guardianship of property. Consonant with the least restrictive limitation of rights, when the person demonstrates to the satisfaction of the court that the person is capable of managing in whole or in part the person's wages, earnings, income or assets, the court may appoint a limited guardian of such person's property, or in the event one person is appointed or serving as both guardian of the person and of the property of such person, a guardian of the person with limited powers as guardian of the property. Such limited guardianship shall be used until the person has established himself or herself as reasonably capable of managing personal affairs without supervision.

(2) A limited guardian of the property shall receive, manage, disburse and account for all property, both real and personal, of the person not resulting from wages or earnings.

(3) Unless otherwise specified by the court, the person of 18 years of age or over for whom a limited guardian of the property has been appointed shall have the right to:

(a) Receive and expend any and all wages or other earnings from his employment; and

(b) Contract and legally bind himself for any sum of money not exceeding \$300 or one month's wages or earnings, whichever is greater.

(4) Notwithstanding sub.(3), the court may place such other limitations upon the rights of a person subject to limited guardianship of property under this section as it determines are in the best interests of the person.

(5) The appointment of a limited guardian of property shall have no bearing on any of the rights specified in Section 34.132(5) except upon specific finding of the court based upon clear and convincing evidence of the need for such limitations. In no event shall the appointment of a limited guardian constitute evidence of or a presumption as to the incompetence of the ward in any area not mentioned in the court order.

#### 34.135 Guardian of the Person of Incompetent.

(1) A guardian of the person of an incompetent, upon order of the court, may have custody of the person, may receive all notices on behalf of the person and may act in all proceedings as an advocate of the person, but may not have the power to bind the ward or the ward's property, or to represent the ward in any legal proceedings pertaining to the property, unless the guardian of the person is also the guardian of the property. A guardian of the person of an incompetent may admit a ward to certain residential facilities or make an emergency protective placement as provided in Wis. Stat. Ch 55. The guardian of the person has the power to apply for placement of the ward within the state protective services law, Wis. Stat. Ch. 55, or for commitment in state court under the state mental health law, Wis. Stat. Ch. 51.

(2) A guardian of the person shall endeavor to secure necessary care, services or appropriate protective placement on behalf of the ward.

(3) A guardian of the person of an incompetent appointed under 34.132 shall make an annual report on the condition of the ward to the court that ordered the guardianship. The report shall include, but not be limited to, the location of the ward, the health condition of the ward, any recommendations regarding the ward and a statement of whether or not the ward is living in the least restrictive environment consistent with the needs of the ward.

#### 34.136 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, Wis. Stat. s. 880.60, and the provisions thereof shall control to the extent of any inconsistencies with any other provision of this ordinance.

#### 34.137 Severability.

If any section, provision or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

#### 34.138 Effective Date.

This ordinance shall take effect upon the approval of the Secretary of the Interior as provided in Article VI, Section 2 of the Tribal Constitution.