

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

**ENACTED BY LEGISLATURE: JUNE 18, 2013**

**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 (

(4) An employee of any institution or agency specified in paragraph (3), above.

c.

h.

t.

- (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

aa.

II.



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 Veteran

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

## **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

- 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

- 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

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

- 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

## **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.