

RE: SEMINOLE TRIBE OF FLORIDA GUARDIANSHIP, CONSERVATORSHIP AND PROTECTIVE ARRANGEMENT ORDINANCE

SEMINOLE TRIBE OF FLORIDA  
HOLLYWOOD, FLORIDA

ORDINANCE NO. C-03-21

WHEREAS, the Seminole Tribe of Florida is an organized Indian Tribe as defined in Section 16 of the Indian Reorganization Act of June 18, 1934, as amended; and

WHEREAS, the Tribal Council of the Seminole Tribe of Florida is the governing body of the Seminole Tribe of Florida; and

WHEREAS, pursuant to Article IV of the Bylaws of the Amended Constitution and Bylaws of the Seminole Tribe of Florida, all final decisions of the Tribal Council on matters of general and permanent interest to Members of the Seminole Tribe of Florida and to Tribal administration are to be embodied in Ordinances; and

WHEREAS, on February 19, 2008, the Tribal Council of the Seminole Tribe of Florida enacted Ordinance C-01-08, the SEMINOLE TRIBE OF FLORIDA GUARDIANSHIP ORDINANCE; and

WHEREAS, the Tribal Council of the Seminole Tribe of Florida has determined that Ordinance C-01-08 is outdated and it is in the best interest of the Members of the Seminole Tribe of Florida that the SEMINOLE TRIBE OF FLORIDA GUARDIANSHIP ORDINANCE be re-written; and

WHEREAS, the Tribal Council of the Seminole Tribe of Florida has reviewed this Ordinance and it is otherwise fully advised.

NOW THEREFORE BE IT ENACTED: that this Ordinance cancels and replaces Ordinance C-01-08, "Seminole Tribe of Florida Guardianship Ordinance" and the following shall govern all guardianships, conservatorships, protective arrangements and related proceedings.

**Preamble**

1. It is the policy of the Tribal Council to protect the health, safety and welfare of Tribal Members who are unable to provide for themselves or who are unable to protect themselves from harmful or dangerous undue influences by providing processes for their care and assistance in a manner which respects their dignity and individuality.
2. It is the purpose of this Ordinance to promote the Tribal public welfare by establishing a system that permits these vulnerable Tribal Members to participate as fully as possible in all decisions affecting them, that assists them in meeting the essential requirements for their health and safety, in protecting their rights, managing their financial affairs, and in developing or regaining their abilities to the maximum extent possible; and that accomplishes these objectives through providing, in each case, the kind of assistance that least interferes with their legal capacity to act on their own.
3. The terms and provisions of this Ordinance shall be liberally construed in conformity with and to promote the stated policy and purpose.

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**ARTICLE 1 - GENERAL PROVISIONS**

**SECTION 101. SHORT TITLE.** This Ordinance may be cited generally as the “Guardianship, Conservatorship and Protective Arrangement Ordinance” or “Ordinance” herein.

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**SECTION 102. DEFINITIONS.** In this Ordinance:

(1) "Adult" means an individual at least eighteen (18) years of age or an emancipated individual under the age of eighteen (18). When an Adult is the subject of a proceeding pursuant to, or a guardianship, conservatorship or Protective Arrangement under, this Ordinance it shall also mean an Adult who is a Tribal Member or Descendant.

(2) "Attorney" means an attorney-at-law or a lay advocate admitted to practice before the Court.

(3) "Conservator" means a Person appointed by the Court to make decisions with respect to the Property or financial affairs of a Ward.

(4) "Conservatorship Estate" means the Property subject to conservatorship under this Ordinance.

(5) "Court" means the courts established by the Seminole Tribe pursuant to the Seminole Tribal Court Ordinance, C-04-11, as the same may be amended, superseded or replaced from time to time.

(6) "Court Monitor" means a Person appointed by the Court to aid the Court in determining the best interests of a Ward, Minor or Respondent, as applicable.

(7) "Descendant" means a person who has at least one birth parent who is an enrolled member of the Seminole Tribe, but who is not eligible for enrollment due to lack of the minimum blood quantum level.

(8) "Full Conservatorship" means a conservatorship that grants the Conservator all powers available under this Ordinance.

(9) "Full Guardianship" means a guardianship that grants the Guardian all powers available under this Ordinance.

(10) "Guardian" means a Person appointed by the Court to make decisions with respect to the personal affairs of a Ward.

(11) "Less Restrictive Alternative" means an approach to meeting a Tribal Member or Descendant's needs which restricts fewer rights of the individual than would the appointment of a Guardian or Conservator. The term includes "Supported Decision Making", appropriate technological assistance, appointment of a representative payee, and appointment of an agent by the Tribal Member or Descendant, including appointment under a power of attorney or designation of health care surrogate.

(12) "Letters" means Letters of Conservatorship or Letters of Guardianship, as appropriate.

(13) "Letters of Conservatorship" means an order issued by the Court certifying a Conservator's authority to act.

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(14) "Letters of Guardianship" means an order issued by the Court certifying a Guardian's authority to act.

(15) "Limited Conservatorship" means a conservatorship that grants the Conservator less than all powers available under this Ordinance, grants powers over only certain Property or otherwise restricts the powers of the Conservator.

(16) "Limited Guardianship" means a guardianship that grants the Guardian less than all powers available under this Ordinance or otherwise restricts the powers of the Guardian.

(17) "Minor" means an un-emancipated Tribal Member or Descendant under eighteen (18) years of age.

(18) "Parent" means the legally recognized mother or father of a Minor.

(19) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality, or other legal entity.

(20) "Personal Service" means service that is effectuated pursuant to the rules of civil procedure as adopted by the Tribal Council of the Seminole Tribe unless in conflict with Section 125 of this Ordinance which shall otherwise apply.

(21) "Property" means real estate, tangible and intangible property, and anything else capable of ownership.

(22) "Protective Arrangement" means a Court order entered under Section 502 or 503.

(23) "Respondent" means a Tribal Member or Descendant for whom appointment of a Guardian or Conservator or a Protective Arrangement is sought.

(24) "Seminole Tribe" means the Seminole Tribe of Florida.

(25) "Supported Decision Making" means assistance from one or more Persons of a Tribal Member or Descendant's choosing in understanding the nature and consequences of potential personal and financial decisions, which enables the Tribal Member or Descendant to make the decisions and in communicating a decision once made if consistent with the Tribal Member or Descendant's wishes.

(26) "Tribal Member" means an enrolled member of the Seminole Tribe.

(27) "Ward" means a Tribal Member or Descendant who is subject to a guardianship or conservatorship under this Ordinance.

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**SECTION 103 TRIBAL SOVEREIGN IMMUNITY.** Nothing contained in this Ordinance shall be deemed or construed to be a waiver of the sovereign immunity of the Seminole Tribe.

**SECTION 104. SUPPLEMENTAL PRINCIPLES OF LAW AND EQUITY.** In the absence of specific provisions in this Ordinance which may be helpful to the Court in a particular case, the Court may apply the guardianship laws of the State of Florida or general principles of law and equity insofar as such those laws do not conflict with the provisions of this Ordinance or any other laws of the Seminole Tribe. Inclusion of or reference to language, definitions, procedures or other statutory or administrative provisions of other jurisdictions shall not be deemed to defer or consent to other jurisdictional authority over any proceeding under this Ordinance; the Court shall maintain exclusive jurisdiction over the Guardian or Conservator so appointed and all proceedings related thereto.

**SECTION 105. PRACTICE IN COURT.** Except as otherwise provided in this Ordinance, the rules of evidence and procedure, including rules concerning appellate review, as adopted by the Tribal Council of the Seminole Tribe govern proceedings under this Ordinance.

**SECTION 106. LETTERS OF GUARDIANSHIP AND CONSERVATORSHIP.**

(a) The Court shall issue Letters of Guardianship and Letters of Conservatorship, full or limited as the case may be, upon a finding that a guardianship or conservatorship is necessary and that the proposed Guardian or Conservator is fit to hold the position and otherwise meets any conditions or requirements imposed by the Court.

(b) The Court at any time may limit the powers conferred on a Guardian or Conservator. The Court shall issue new Letters to reflect the limitation. The Court shall give notice of the limitation to the Guardian or Conservator, the Ward and any other Person the Court determines.

**SECTION 107. EFFECT OF ACCEPTANCE OF APPOINTMENT.** A Guardian or Conservator submits to personal jurisdiction of the Court upon expressed or implied acceptance of appointment.

**SECTION 108. JUDICIAL APPOINTMENT OF SUCCESSOR GUARDIAN OR SUCCESSOR CONSERVATOR.**

(a) The Court at any time may appoint a successor Guardian or successor Conservator to serve immediately or when a designated event occurs.

(b) A Person entitled under Section 202 or 302 to petition the Court to appoint a Guardian may petition the Court to appoint a successor Guardian. A Person entitled under Section 402 to petition the Court to appoint a Conservator may petition the Court to appoint a successor Conservator.

(c) A successor Guardian or successor Conservator has the predecessor's powers unless otherwise provided by the Court.

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**SECTION 109. EFFECT OF DEATH, REMOVAL, OR RESIGNATION OF GUARDIAN OR CONSERVATOR.**

(a) Appointment of a Guardian or Conservator terminates on the death or removal of the Guardian or Conservator or when the Court under subsection (b) approves a resignation of the Guardian or Conservator.

(b) A Guardian or Conservator must petition the Court to resign. The petition may include a request that the Court appoint a successor. Resignation of a Guardian or Conservator is effective on the date the resignation is approved by the Court.

(c) Death, removal, or resignation of a Guardian or Conservator does not affect liability for a previous act or the obligation to account for:

- (1) an action taken on behalf of the Ward or
- (2) the Ward's Property.

**SECTION 110. NOTICE OF HEARING GENERALLY.** Every document subsequent to the initial petition filed in a proceeding under this Ordinance must be served on each party or Person entitled to notice pursuant to this Ordinance or as otherwise ordered by the Court. If a party or Person entitled to notice is represented by an Attorney, service may be made upon such Attorney. Service may be made by personal delivery, mail, facsimile transmission or electronic mail to each Person entitled to the same at the address or other contact information of each such Person filed of record in the Court file. Each person making service hereunder shall certify as to whom the document was served upon, the means of service, the date of service and shall be signed by the person making service, with the person's address, phone number, e-mail address or facsimile number.

**SECTION 111. WAIVER OF NOTICE.**

(a) Except as otherwise provided in subsection (b), a Person may waive notice in writing signed by the Person or Person's Attorney and filed in the proceeding.

(b) A Respondent, Ward, or Tribal Member or Descendant subject to a Protective Arrangement may not waive notice under this Ordinance.

**SECTION 112. APPOINTMENT OF COURT MONITOR.** The Court at any time may appoint a Court Monitor if the Court determines that such appointment would be in the best interest of the Respondent, Ward, or Tribal Member or Descendant subject to a Protective Arrangement.

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**SECTION 113. REQUEST FOR NOTICE.**

(a) A Person may file a request for notice with the Court if the Person is:

(1) not otherwise entitled to notice; and

(2) interested in the welfare of the Respondent, Ward, or Tribal Member or Descendant subject to a Protective Arrangement.

(b) A request under subsection (a) must include a statement showing the interest of the Person making the request and the address of the Person or an Attorney for the Person to whom notice is to be given.

(c) If the Court approves a request under subsection (a), the Court shall give notice of the approval to the Guardian or Conservator, if one has been appointed, or the Respondent if no Guardian or Conservator has been appointed.

**SECTION 114. DISCLOSURE OF BANKRUPTCY OR CRIMINAL HISTORY.**

(a) In any petition for the appointment of a Guardian or Conservator, the petitioner or proposed Guardian or Conservator, shall disclose to the Court whether the proposed Guardian or Conservator is or has been a debtor in a bankruptcy, insolvency, or receivership proceeding; been convicted of a felony, a crime involving dishonesty, neglect, violence, or use of physical force; or any other crime relevant to the functions the individual would assume as Guardian or Conservator.

(b) A Guardian or Conservator that engages or anticipates engaging an agent the Guardian or Conservator knows has been convicted of a felony, a crime involving dishonesty, neglect, violence, or use of physical force, or other crime relevant to the functions the agent is being engaged to perform promptly shall disclose that knowledge to the Court.

(c) If a Conservator engages or anticipates engaging an agent to manage finances of the Ward and knows the agent is or has been a debtor in a bankruptcy, insolvency, or receivership proceeding, the Conservator promptly shall disclose that knowledge to the Court.

**SECTION 115. COMPENSATION AND EXPENSES; IN GENERAL.**

(a) Unless otherwise compensated or reimbursed, an Attorney for a Respondent in a proceeding under this Ordinance is entitled to reasonable compensation for services and reimbursement of reasonable expenses from the Property of the Respondent.

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(b) Unless otherwise compensated or reimbursed, an Attorney or other Person whose services resulted in an order beneficial to a Respondent, Ward, or Tribal Member or Descendant for whom a Protective Arrangement was ordered is entitled to reasonable compensation for services and reimbursement of reasonable expenses from the Property of the Tribal Member or Descendant.

(c) The Court must approve compensation and expenses payable under this Section before payment. Approval is not required before a service is provided or an expense is incurred.

(d) If the Court dismisses a petition under this Ordinance and determines the petition was filed in bad faith, the Court may assess the costs against the petitioner.

**SECTION 116. COMPENSATION OF GUARDIAN OR CONSERVATOR.**

(a) Subject to Court approval, a Guardian is entitled to reasonable compensation for services as Guardian and to reimbursement for room, board, clothing, and other appropriate expenses advanced for the benefit of Ward. If a Conservator, other than the Guardian or a Person affiliated with the Guardian, is appointed for the Ward, reasonable compensation and reimbursement to the Guardian may be approved and paid by the Conservator without Court approval.

(b) Subject to Court approval, a Conservator is entitled to reasonable compensation for services and reimbursement for appropriate expenses from the Property of the Ward.

(c) In determining reasonable compensation for a Guardian or Conservator, the Court or a Conservator shall consider:

(1) the necessity and quality of the services provided;

(2) the experience, training, professional standing, and skills of the Guardian or Conservator;

(3) the difficulty of the services performed, including the degree of skill and care required;

(4) the conditions and circumstances under which a service was performed, including whether the service was provided outside regular business hours or under dangerous or extraordinary conditions;

(5) the effect of the services on the Ward;

(6) the extent to which the services provided were or were not consistent with the Guardian's plan under Section 317 or Conservator's plan under Section 420; and

(7) the fees customarily paid to a Person that performs a like service.

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(d) A Guardian or Conservator need not use personal funds of the Guardian or Conservator for the expenses of the Ward.

(e) If a Ward seeks to modify or terminate the guardianship or conservatorship or remove the Guardian or Conservator, the Court may order compensation to the Guardian or Conservator for time spent opposing modification, termination, or removal only to the extent the Court determines the opposition was reasonably necessary to protect the interest of the Ward.

**SECTION 117. NO LIABILITY OF GUARDIAN OR CONSERVATOR FOR ACT OR OMISSION OF THE WARD.** A Guardian or Conservator is not personally liable to another Person solely because of the guardianship or conservatorship for an act or omission of the Ward.

**SECTION 118. PETITION AFTER APPOINTMENT FOR INSTRUCTION OR RATIFICATION.**

(a) A Guardian or Conservator may petition the Court for instruction concerning fiduciary responsibility or ratification of a particular act related to the guardianship or conservatorship.

(b) On notice and hearing on a petition under subsection (a), the Court may give an instruction and issue an appropriate order.

**SECTION 119. USE OF AGENT BY GUARDIAN OR CONSERVATOR.**

(a) Except as otherwise provided in subsection (b), a Guardian or Conservator may delegate a power to an agent which a Guardian or Conservator of comparable skills could delegate prudently under the circumstances if the delegation is consistent with the Guardian's or Conservator's fiduciary duties and the Guardian's plan under Section 317 or Conservator's plan under Section 420.

(b) A Guardian or Conservator may not delegate all powers to an agent.

(c) A Guardian or Conservator that delegates and monitors a power in compliance with this Section is not liable for the decision, act, or omission of the agent.

**SECTION 120. TEMPORARY SUBSTITUTE GUARDIAN OR CONSERVATOR.**

(a) The Court may appoint a temporary substitute Guardian or temporary substitute Conservator for a Ward for a period not exceeding six (6) months if:

(1) a proceeding to remove a Guardian or Conservator for the Ward is pending; or

(2) the Court finds the Guardian or Conservator is not effectively performing the Guardian's or Conservator's duties and the welfare of the Ward or the protection of the Conservatorship Estate requires immediate action.

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(b) Except as otherwise ordered by the Court, a temporary substitute Guardian or temporary substitute Conservator has the powers stated in the order of appointment of the Guardian or Conservator. The authority of the existing Guardian or Conservator is suspended for as long as the temporary substitute Guardian or Conservator has authority.

(c) The Court shall give notice of appointment of a temporary substitute Guardian or temporary substitute Conservator, not later than seven (7) days after the appointment, to:

(1) the Ward;

(2) the affected Guardian or Conservator; and

(3) in the case of a Minor, each Parent of the Minor and any Person currently having care or custody of the Minor.

(d) The Court may remove a temporary substitute Guardian or temporary substitute Conservator at any time.

(e) The temporary substitute Guardian or temporary substitute Conservator shall make any report the Court requires.

**SECTION 121. GRIEVANCE AGAINST GUARDIAN OR CONSERVATOR.**

(a) A Ward or Person interested in the welfare of a Ward that reasonably believes the Guardian or Conservator is breaching the Guardian's or Conservator's fiduciary duty or otherwise acting in a manner inconsistent with this Ordinance may file a grievance with the Court.

(b) Subject to subsection (c), after receiving a grievance under subsection (a), the Court:

(1) shall review the grievance and such other information as may be necessary to determine the appropriate response related to the guardianship or conservatorship;

(2) shall schedule a hearing if the Ward is an Adult and the grievance supports a reasonable belief that:

(A) removal of the Guardian or the Conservator and appointment of a successor may be appropriate under Sections 319 or 431, as applicable;

(B) termination or modification of the guardianship or conservatorship may be appropriate under Section 320 or Section 432, as applicable; and

(3) may take any action supported by the evidence, including:

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(A) ordering the Guardian or Conservator to provide the Court a report, accounting, inventory, updated plan, or other information;

(B) appointing a Court Monitor; or

(C) appointing an Attorney for the Ward.

(c) The Court may decline to act under subsection (b) if a similar grievance was filed within the six (6) months preceding the filing of the current grievance and the Court followed the procedures of subsection (b) in considering the earlier grievance.

**SECTION 122. APPOINTMENT OF A NON-INDIVIDUAL AS GUARDIAN OR CONSERVATOR.** In the event the Court appoints a Guardian or Conservator that is not an individual, the appointment shall nevertheless list an individual's name but state that such individual is serving in a representative capacity and that any successor to such individual shall automatically serve in the same capacity without further order of the Court. Such successor shall be entitled to receive new Letters as appropriate.

**SECTION 123. SEVERABILITY.** If any provision of this Ordinance or its application to any Person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

**SECTION 124. DUAL CAPACITY.** Nothing herein shall preclude the same Person from serving as both the Guardian and Conservator for the same Ward.

**SECTION 125. PROCESS AND PERSONAL SERVICE.**

(a) The Clerk of Court or Judge shall, upon the filing of a petition for a guardianship, conservatorship or Protective Arrangement, issue any summons or other court papers authorized by this Ordinance to be served upon the Respondent.

(b) The Court may appoint any person not interested in the petition to serve process. Service of process may also be made by any person authorized under state or federal law unless that person is prohibited by any law of the Seminole Tribe.

(c) The process server shall file with the Court proof of service by affidavit within five (5) days from the date of service. The process server shall write the date and hour of service on the original process and all copies.

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(d) Service of original process on a Respondent who is not a Minor or who does not have a legal guardian shall be made by: (i) delivering a copy to the Respondent along with a copy of the petition; or (ii) by leaving a copy, along with a copy of the petition, at the Respondent's usual place of residence with any person living there who is older than twelve (12) years of age.

(e) Service of original process on a Minor shall be made by delivering a copy, along with a copy of the petition, to a Parent of the Minor.

(f) Service of original process on a person that has a legal guardian shall be made by delivering a copy, along with a copy of the petition, to the legal guardian.

**SECTION 126. RULES OF CONSTRUCTION.** When the context requires, the singular includes the plural and the plural the singular; words importing any gender include the other genders; the word "or" shall be deemed to include "and/or", the words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation".

**ARTICLE 2 - GUARDIANSHIP OF MINOR**

**SECTION 201. BASIS FOR APPOINTMENT OF GUARDIAN FOR MINOR.** The Court may appoint a Guardian for a Minor who does not have a Guardian if the Court finds the appointment is in the Minor's best interest and: (i) each Parent of the Minor, after being fully informed of the nature and consequences of guardianship, consents; or (ii) that upon the greater weight of the evidence, the Court determines that no Parent of the Minor is willing or able to exercise the powers the Court is granting the Guardian.

**SECTION 202. PETITION FOR APPOINTMENT OF GUARDIAN FOR MINOR.**

(a) The Tribal Council, a social service department of the Seminole Tribe or a Tribal Member interested in the welfare of a Minor may petition for appointment of a Guardian for a Minor.

(b) A petition under subsection (a) must state the petitioner's name, principal residence, current street address, if different, relationship to the Minor, interest in the appointment, the name, address and telephone number of any Attorney representing the petitioner, and, to the extent known, the following:

(1) the Minor's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed the Minor will reside if the appointment is made;

(2) the name and current street address of the Minor's Parents;

(3) the name and address of each Person that had primary care or custody of the Minor for at least sixty (60) days during the two years immediately before the filing of the petition;

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(4) the name and address of any Attorney for the Minor and any Attorney for each Parent of the Minor;

(5) the reason guardianship is sought and would be in the best interest of the Minor;

(6) the name and address of any proposed guardian and the reason the proposed guardian should be appointed;

(7) the disclosure as required by Section 114;

(8) if the Minor has Property other than personal effects, a general statement of the Minor's Property with an estimate of its value;

(9) whether the Minor needs an interpreter, translator, or other form of support to communicate effectively with the Court or understand Court proceedings;

(10) whether any Parent of the Minor needs an interpreter, translator, or other form of support to communicate effectively with the Court or understand Court proceedings;

(11) whether any other proceeding concerning the care or custody of the Minor is pending in any court in another jurisdiction; and

(12) the status of enrollment in the Seminole Tribe for both the Minor and the petitioner.

**SECTION 203. NOTICE AND HEARING FOR APPOINTMENT OF GUARDIAN FOR MINOR.**

(a) If a petition for the appointment for a Guardian of a Minor is filed, the Court shall schedule a hearing and the petitioner shall:

(1) serve by Personal Service notice of the date, time, and place of the hearing, together with a copy of the petition, personally on each of the following:

(A) the Minor, if the Minor will be twelve (12) years of age or older at the time of the hearing;

(B) each Parent of the Minor or, if there is none, the Adult nearest in kinship who can be found with reasonable diligence;

(C) any Adult with whom the Minor resides; and

(D) any other Person the Court determines should receive Personal Service of notice;

and

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(2) give notice under Section 110 of the date, time, and place of the hearing, together with a copy of the petition, to:

(A) any Person whom the Minor has expressed an interest in being named as Guardian, if the Minor is twelve (12) years of age or older;

(B) any Person whom a Parent has expressed an interest in being named as Guardian;

(C) each grandparent and Adult sibling of the Minor;

(D) any guardian or conservator acting for the Minor in any jurisdiction; and

(E) any other Person the Court determines.

(b) Notice required by subsection (a) must include a statement: (i) of the right to request appointment of an Attorney for the Minor or object to appointment of a Guardian; (ii) a description of the nature, purpose, and consequences of appointment of a Guardian; and (iii) that the failure to attend the hearing could result in the appointment of a Guardian without the Minor's input.

(c) The Court may not grant a petition for guardianship of a Minor if notice substantially complying with subsection (a)(1) is not served on:

(1) the Minor, if the Minor is 12 years of age or older; and

(2) each Parent of the Minor, unless the Court finds by the greater weight of the evidence that the Parent cannot with due diligence be located and served or the Parent waived, in writing or orally in open Court, the right to notice.

(d) If a petitioner is unable to serve notice under subsection (a)(1) on a Parent of a Minor or alleges that the Parent waived the right to notice under this Section, the Court shall appoint a Court Monitor who has completed a training course conducted by the Guardianship Program of the Advocacy and Guardianship Department and who shall:

(1) interview the petitioner and the Minor to the extent feasible;

(2) ascertain whether the Parent cannot be located with due diligence if the petitioner alleges that the Parent cannot be located; and

(3) investigate any other matter relating to the petition the Court directs.

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**SECTION 204. APPOINTMENT AND ROLE OF COURT MONITOR.** After the filing of a petition for appointment of a Guardian, the Court may appoint a Court Monitor. The Court Monitor must have completed a training course conducted by the Guardianship Program of the Advocacy and Guardianship Department. To the extent feasible, the Court Monitor shall interview the Minor in person and in a manner the Minor is best able to understand and perform such tasks as assigned by the Court, including investigating any matter involving the guardianship.

**SECTION 205. ATTORNEY FOR MINOR.**

(a) The Court shall appoint an Attorney to represent a Minor who is the subject of a proceeding under Section 202 if the Court determines that the Minor is in need of the same.

(b) An Attorney appointed under subsection (a) shall:

- (1) make a reasonable effort to ascertain the Minor's wishes;
- (2) advocate for the Minor's wishes to the extent reasonably ascertainable; and
- (3) if the Minor's wishes are not reasonably ascertainable, advocate for the Minor's best interest.

**SECTION 206. ATTENDANCE AND PARTICIPATION AT HEARING FOR APPOINTMENT OF GUARDIAN FOR MINOR.**

(a) The Court shall require a Minor who is the subject of a hearing under Section 203 to attend the hearing and allow the Minor to participate in the hearing unless the Court determines:

- (1) the Minor failed to appear after being properly served and, if the Minor is twelve (12) years of age or older, the potential consequences of failing to do so was set forth in the notice;
- (2) there is no practicable way for the Minor to attend the hearing;
- (3) the Minor lacks the ability or maturity to participate meaningfully in the hearing; or
- (4) attendance would be harmful to the Minor.

(b) Unless excused by the Court for good cause, the Person proposed to be appointed as guardian for a Minor shall attend a hearing under Section 203.

(c) Each parent of a Minor who is the subject of a hearing under Section 203 has the right to attend the hearing.

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(d) A Person may request permission to participate in a hearing under Section 203. The Court may grant the request, with or without a hearing, on determining that it is in the best interest of the Minor who is the subject of the hearing. The Court may impose appropriate conditions on the Person's participation.

**SECTION 207. ORDER AND PRIORITY OF APPOINTMENT; LIMITED GUARDIANSHIP FOR MINOR.**

(a) After a hearing under Section 203, the Court may appoint a Guardian for a Minor, if appointment is proper under Section 201, dismiss the proceeding, or take other appropriate action consistent with this Ordinance or laws of the Seminole Tribe.

(b) In appointing a Guardian under subsection (a), the following priorities apply:

(1) The Court shall appoint a Person nominated as Guardian by a Parent of the Minor in a will or other writing unless the Court finds the appointment is contrary to the best interest of the Minor.

(2) If multiple Persons have expressed an interest in different Persons to serve as Guardian, the Court shall appoint the Person whose appointment is in the best interest of the Minor.

(3) If a Guardian is not appointed under paragraph (1) or (2), the Court shall appoint the Person expressed by the Minor to serve if the Minor is twelve (12) years of age or older unless the Court finds that appointment is contrary to the best interest of the Minor. In that case, the Court shall appoint as Guardian a Person whose appointment is in the best interest of the Minor.

(c) In the interest of maintaining or encouraging involvement by a Minor's Parent in the Minor's life, developing self-reliance of the Minor, or for other good cause, the Court, at the time of appointment of a Guardian for the Minor or later, on its own or on petition of the Minor or other Person interested in the welfare of the Minor, may create a Limited Guardianship by limiting the powers otherwise granted by this Ordinance to the Guardian. Following the same procedure, the Court may grant additional powers or withdraw powers previously granted.

(d) The Court, as part of an order appointing a Guardian for a Minor, shall state rights retained by any Parent of the Minor, which may include contact or visitation with the Minor, decision making regarding the Minor's health care, education, or other matter, or access to any record regarding the Minor.

(e) An order granting a guardianship for a Minor must state that each Parent of the Minor is entitled to notice that:

- (1) the Guardian has delegated custody of the Minor subject to guardianship;
- (2) the Court has modified or limited the powers of the Guardian; or
- (3) the Court has removed the Guardian.

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(f) An order granting a guardianship for a Minor must identify any Person in addition to a Parent of the Minor that is entitled to notice of the events listed in subsection (e).

**SECTION 208. EMERGENCY GUARDIAN FOR MINOR.**

(a) On its own after a petition has been filed under Section 202, or on petition by a Person interested in a Minor's welfare, the Court may appoint an emergency Guardian for the Minor if the Court finds:

(1) appointment of an emergency Guardian is likely to prevent substantial harm to the Minor's health, safety, or welfare; and

(2) no other Person appears to have authority and willingness to act in the circumstances.

(b) The duration of authority of an emergency Guardian for a Minor may not exceed sixty (60) days and the emergency Guardian may exercise only the powers specified in the order of appointment. The emergency Guardian's authority may be extended once for not more than sixty (60) days if the Court finds that the conditions for appointment of an emergency Guardian in subsection (a) continue.

(c) Except as otherwise provided in subsection (d), reasonable notice of the date, time, and place of a hearing on a petition for appointment of an emergency Guardian for a Minor must be given to:

(1) the Minor, if the Minor is twelve (12) years of age or older;

(2) any Attorney appointed under Section 205;

(3) each Parent of the Minor;

(4) any Person, other than a Parent, having care or custody of the Minor; and

(5) any other Person the Court determines.

(d) The Court may appoint an emergency Guardian for a Minor without notice under subsection (c) and a hearing only if the Court finds from an affidavit or testimony that the Minor's health, safety, or welfare will be substantially harmed before a hearing with notice on the appointment can be held. If the Court appoints an emergency Guardian without notice to an unrepresented Minor or the Attorney for a represented Minor, notice of the appointment must be given not later than forty-eight (48) hours after the appointment to the individuals listed in subsection (c). Not later than ten (10) days after the appointment, the Court shall hold a hearing on the appropriateness of the appointment.

(e) Appointment of an emergency Guardian under this Section is not a determination that a basis exists for appointment of a Guardian under Section 201.

(f) The Court may remove an emergency Guardian appointed under this Section at any time.

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(g) The emergency Guardian shall make any report the Court requires.

**SECTION 209. DUTIES OF GUARDIAN FOR MINOR.**

(a) A Guardian for a Minor is a fiduciary. Except as otherwise limited by the Court, a Guardian for a Minor has the duties and responsibilities of a Parent regarding the Minor's support, care, education, health, safety, and welfare. A Guardian shall act in the Minor's best interest and exercise reasonable care, diligence, and prudence.

(b) A Guardian for a Minor shall:

(1) be personally acquainted with the Minor and maintain sufficient contact with the Minor to know the Minor's abilities, limitations, needs, opportunities, and physical and mental health;

(2) take reasonable care of the Minor's personal effects and bring a proceeding for a conservatorship or Protective Arrangement if necessary to protect other Property of the Minor;

(3) expend funds of the Minor which have been received by the Guardian for the Minor's current needs for support, care, education, health, safety, and welfare;

(4) conserve any funds of the Minor not expended under paragraph (3) for the Minor's future needs, but if a Conservator is appointed for the Minor, pay the funds at least quarterly to the Conservator to be used for the Minor's future needs;

(5) report the condition of the Minor and account for funds and other Property of the Minor in the Guardian's possession or subject to the Guardian's control, as required by Court rule or ordered by the Court on petition of a Person interested in the Minor's welfare;

(6) inform the Court of any change in the Minor's dwelling or address; and

(7) in determining what is in the Minor's best interest, take into account the Minor's preferences to the extent actually known or reasonably ascertainable by the Guardian.

**SECTION 210. POWERS OF GUARDIAN FOR MINOR.**

(a) Except as otherwise limited by Court order, a Guardian of a Minor has the powers a Parent otherwise would have regarding the Minor's support, care, education, health, safety, and welfare.

(b) Except as otherwise limited by Court order, a Guardian for a Minor may:

(1) apply for and receive funds and benefits otherwise payable for the support of the Minor to the Minor's Parent, guardian, or custodian under a statutory system of benefits or insurance or any private contract, devise, trust, conservatorship, or custodianship;

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(2) take custody of the Minor and establish the Minor's place of dwelling unless inconsistent with another jurisdiction's court order that the Court determines is entitled to recognition;

(3) if the Minor is not subject to conservatorship, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a Person to support the Minor or make a payment for the benefit of the Minor;

(4) consent to health or other care, treatment, or service for the Minor; or

(5) to the extent reasonable, delegate to the Minor responsibility for a decision affecting the Minor's well-being.

(c) The Court may authorize a Guardian for a Minor to consent to the adoption of the Minor if the Minor does not have a Parent.

**SECTION 211. REMOVAL OF GUARDIAN FOR MINOR; TERMINATION OF GUARDIANSHIP; APPOINTMENT OF SUCCESSOR.**

(a) A guardianship for a Minor terminates:

(1) on the Minor's death, adoption, emancipation, or attainment of eighteen (18) years of age; or

(2) when the Court finds that the original need for the guardianship no longer exists, unless the Court finds that:

(A) termination of the guardianship would be harmful to the Minor; and

(B) the Minor's interest in the continuation of the guardianship outweighs the interest of any Parent of the Minor in restoration of the Parent's right to make decisions for the Minor.

(b) A Minor subject to guardianship or a Person interested in the welfare of the Minor may petition the Court to terminate the guardianship, modify the guardianship, remove the Guardian and appoint a successor Guardian.

(c) A petitioner under subsection (b) shall give notice of the hearing on the petition to the Minor, if the Minor is twelve (12) years of age or older and is not the petitioner, the Guardian, each Parent of the Minor, and any other Person the Court determines.

(d) The Court shall follow the priorities in Section 207(b) when selecting a successor Guardian for a Minor.

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(e) Not later than thirty (30) days after appointment of a successor Guardian for a Minor, the Court shall give notice of the appointment to the Minor subject to guardianship, if the Minor is twelve (12) years of age or older, each Parent of the Minor, and any other Person the Court determines.

(f) When terminating a guardianship for a Minor under this Section, the Court may issue an order that will assist the Minor with a transition of custody and is in the best interest of the Minor.

(g) A Guardian for a Minor that is removed shall cooperate with a successor Guardian to facilitate transition of the Guardian's responsibilities and protect the best interest of the Minor.

**ARTICLE 3 - GUARDIANSHIP OF ADULTS**

**SECTION 301. BASIS FOR APPOINTMENT OF GUARDIAN.**

(a) On petition and after notice and hearing, the Court may:

(1) appoint a Guardian for an Adult if the Court finds by clear and convincing evidence that:

(A) the Respondent lacks the ability to meet essential requirements for physical health, safety, or self-care because the Respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or Supported Decision Making; and

(B) the Respondent's identified needs cannot be met by a Protective Arrangement or other Less Restrictive Alternative; or

(2) with appropriate findings, treat the petition as one for a Conservatorship under Article 4 or a Protective Arrangement under Article 5, issue any appropriate order, or dismiss the proceeding.

(b) The Court shall grant a Guardian appointed under subsection (a) only those powers necessitated by the demonstrated needs and limitations of the Respondent and issue orders that will encourage development of the Respondent's maximum self-determination and independence. The Court may not establish a Full Guardianship if a Limited Guardianship, Protective Arrangement, or other Less Restrictive Alternatives would meet the needs of the Respondent.

**SECTION 302. PETITION FOR APPOINTMENT OF GUARDIAN.**

(a) The Tribal Council, a social service department of the Seminole Tribe or a Tribal Member interested in a Respondent's welfare, including the Respondent for whom the order is sought, may petition for appointment of a Guardian.

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(b) A petition under subsection (a) must state the petitioner's name, principal residence, current street address, if different, relationship to the Respondent, interest in the appointment, the name, address and telephone number of any Attorney representing the petitioner, and, to the extent known, the following:

(1) the Respondent's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed the Respondent will reside if the petition is granted;

(2) the name and address of the Respondent's:

(A) spouse or, if none, an Adult with whom the Respondent has shared household responsibilities for more than six (6) months in the twelve (12) month period immediately before the filing of the petition;

(B) Adult children or, if none, each Parent and Adult sibling of the Respondent, or, if none, at least one Adult nearest in kinship to the Respondent who can be found with reasonable diligence; and

(C) Adult stepchildren whom the Respondent actively parented during the stepchildren's minor years and with whom the Respondent had an ongoing relationship in the two (2) year period immediately before the filing of the petition;

(3) the name and current address of each of the following, if applicable:

(A) any Person responsible for the care or custody of the Respondent;

(B) any Attorney currently representing the Respondent;

(C) any representative payee appointed by the Social Security Administration for the Respondent;

(D) any guardian or conservator acting for the Respondent;

(E) any trustee or custodian of a trust or custodianship of which the Respondent is a beneficiary;

(F) any fiduciary for the Respondent appointed by the Department of Veterans Affairs;

(G) any agent designated under a designation of health care surrogate or other similar document in which the Respondent is identified as the principal;

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(H) any agent designated under a power of attorney in which the Respondent is identified as the grantor;

(I) any Person whom the Respondent has expressed an interest in being named as Guardian;

(J) any Person whom the Respondent's Parent or spouse desires to serve as guardian as expressed in a will or other signed document; and

(K) a proposed guardian and the reason the proposed guardian should be appointed.

(4) the reason a guardianship is necessary, including a brief description of:

(A) the nature and extent of the Respondent's alleged need based on the Respondent's health condition, cognitive functioning and level of supervision needed;

(B) any Protective Arrangement or other Less Restrictive Alternatives for meeting the Respondent's alleged need which have been considered or implemented;

(C) if no Protective Arrangement or other Less Restrictive Alternatives have been considered or implemented, the reason they have not been considered or implemented; and

(D) the reason a Protective Arrangement or other Less Restrictive Alternative is insufficient to meet the Respondent's alleged need;

(5) whether the petitioner seeks a Limited Guardianship or Full Guardianship;

(6) if the petitioner seeks a Full Guardianship, the reason a Limited Guardianship or Protective Arrangement is not appropriate;

(7) if a Limited Guardianship is requested, the powers to be granted to the Guardian;

(8) the name and current address, if known, of any Person with whom the petitioner seeks to limit the Respondent's contact;

(9) if the Respondent has Property other than personal effects, a general statement of the Respondent's Property, with an estimate of its value, including any insurance or pension, and the source and amount of other anticipated income or receipts;

(10) whether the Respondent needs an interpreter, translator, or other form of support to communicate effectively with the Court or understand Court proceedings; and

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(11) the status of enrollment in the Seminole Tribe for both the Respondent and the petitioner.

**SECTION 303. NOTICE AND PRELIMINARY HEARING.**

(a) On the filing of a petition for appointment of a Guardian, the Court shall set a date, time, and place for a preliminary hearing.

(b) A copy of a petition under Section 302 and notice of the preliminary hearing must be by Personal Service on the Respondent, with notice on the Respondent's spouse, if any; any Person responsible for the care of the Respondent; and any Attorney known to be representing the Respondent.

(c) At a preliminary hearing, the Court shall:

(1) explain to the Respondent the substance of the petition, the nature, purpose, and effect of the proceeding, the Respondent's rights at the hearing on the petition, and the general powers and duties of a Guardian;

(2) determine the Respondent's views about the appointment sought by the petitioner, including views about a proposed Guardian, the Guardian's proposed powers and duties, and the scope and duration of the proposed guardianship;

(3) inform the Respondent of the Respondent's right to employ and consult with an Attorney at the Respondent's expense and the right to request a Court-appointed Attorney; and

(4) inform the Respondent that all costs and expenses of the proceeding, including Respondent's Attorney's fees, may be paid from the Respondent's assets.

(d) If the Court is aware of circumstances which would prohibit or make it impractical for the Respondent to attend the preliminary hearing, the Court may appoint a Court Monitor pursuant to Section 305 to meet with the Respondent regarding the items listed in subsection (c) (1)-(4) above and to advise the Court of the same.

**SECTION 304. NOTICE AND HEARING FOR APPOINTMENT OF GUARDIAN.**

(a) On the filing of a petition for appointment of a Guardian, the Court shall set a date, time, and place for a hearing on the petition.

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(b) A copy of the petition and notice of a hearing on the petition must be served by Personal Service on the Respondent. The notice must include a description of the nature, purpose, and consequences of granting the petition. The notice must inform the Respondent of the Respondent's rights at the hearing, including the right to an Attorney and the right to attend the hearing, and advise that the failure to attend the hearing could result in the appointment of a Guardian without the Respondent's input. The Court may not grant the petition if notice substantially complying with this subsection is not served on the Respondent.

(c) In a proceeding on the petition, the notice required under subsection (b) must be given to the Persons required to be listed in the petition under Sections 302(b)(2) and 302(b)(3), and any other Person interested in the Respondent's welfare the Court determines. Failure to give notice under this subsection does not preclude the Court from appointing a Guardian.

(d) After the appointment of a Guardian, notice of a hearing on a petition for an order under this Article 3, together with a copy of the petition, must be given to:

- (1) the Ward;
- (2) the Guardian; and
- (3) any other Person the Court determines.

**SECTION 305. APPOINTMENT AND ROLE OF COURT MONITOR.** After the filing of a petition for appointment of a Guardian, the Court may appoint a Court Monitor. The Court Monitor must have completed a training course conducted by the Guardianship Program of the Advocacy and Guardianship Department. To the extent feasible, the Court Monitor shall interview the Respondent in person and in a manner the Respondent is best able to understand and perform such tasks as assigned by the Court, including investigating any matter involving the guardianship.

**SECTION 306. APPOINTMENT AND ROLE OF ATTORNEY.**

(a) The Court shall appoint an Attorney to represent the Respondent in a proceeding for appointment of a Guardian if the Respondent requests an appointment or the Court determines the Respondent needs representation.

(b) An Attorney representing the Respondent shall:

- (1) make reasonable efforts to ascertain the Respondent's wishes;
- (2) advocate for the Respondent's wishes to the extent reasonably ascertainable; and
- (3) if the Respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive in type, duration, and scope, consistent with the Respondent's interests.

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**SECTION 307. PROFESSIONAL EVALUATION.**

(a) At or before a hearing on a petition for guardianship, the Court shall order a professional evaluation of the Respondent:

(1) if the Respondent requests the evaluation; or

(2) in other cases, unless the Court finds that it has sufficient information to determine the Respondent's needs and abilities without the evaluation.

(b) If the Court orders an evaluation under subsection (a), the Respondent must be examined by a licensed physician, psychologist or other individual appointed by the Court who is qualified to evaluate the Respondent's alleged cognitive and functional abilities and limitations and will not be advantaged or disadvantaged by a decision to grant the petition or otherwise have a conflict of interest. The individual conducting the evaluation promptly shall file a report with the Court. Unless otherwise directed by the Court, the report must contain:

(1) a description of the nature, type, and extent of the Respondent's cognitive and functional abilities and limitations;

(2) an evaluation of the Respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills;

(3) a prognosis for improvement and recommendation for the appropriate treatment, support, or habilitation plan; and

(4) the date of the examination on which the report is based.

(c) The Respondent may decline to participate in an evaluation ordered under subsection (a). If Respondent declines to participate the Court may enter an order granting the guardianship or other Protective Arrangement without the report required by subsection (b) if the Court otherwise finds that there is a basis for such order.

**SECTION 308. ATTENDANCE AND RIGHTS AT HEARING.**

(a) Except as otherwise provided in subsection (b), a hearing under Section 304 may not proceed unless the Respondent attends the hearing. If it is not reasonably feasible for the Respondent to attend a hearing at the location Court proceedings typically are held, the Court shall make reasonable efforts to hold the hearing at an alternative location convenient to the Respondent or allow the Respondent to attend the hearing using real-time audio-visual technology or by telephone if the same is not available.

(b) A hearing under Section 304 may proceed without the Respondent in attendance if the Court finds by clear and convincing evidence that:

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(1) the Respondent failed to appear after being served with the notice required by Section 304(b); or

(2) there is no practicable way for the Respondent to attend and participate in the hearing even with appropriate supportive services and technological assistance.

(c) The Respondent may be assisted in a hearing under Section 304 by a Person or Persons of the Respondent's choosing, assistive technology, an interpreter, translator, or a combination of these supports. If assistance would facilitate the Respondent's participation in the hearing, but is not available to the Respondent, the Court shall make reasonable efforts to provide it.

(d) The Respondent has a right to choose an Attorney to represent the Respondent at a hearing under Section 304.

(e) The Court shall advise the Respondent of the matters set forth in Section 303 (c) (1 - (4) if a preliminary hearing was not held and if any appointed Court Monitor was not able to meet with the Respondent.

(f) At a hearing on the petition held under Section 304, the Respondent may:

(1) present evidence, whether testimonial, written or otherwise;

(2) examine witnesses, including any Court-appointed evaluator and the Court Monitor; and

(3) otherwise participate in the hearing.

(g) Unless excused by the Court for good cause, a proposed guardian shall attend a hearing under Section 304.

(h) A hearing under Section 304 must be closed on request of the Respondent and a showing of good cause.

(i) Any Person may request to participate in a hearing under Section 304. The Court may grant the request, with or without a hearing, on determining that the best interest of the Respondent will be served. The Court may impose appropriate conditions on the Person's participation.

**SECTION 309. CONFIDENTIALITY OF RECORDS.**

(a) The existence of a proceeding for or the existence of a guardianship is a matter of public record unless the Court seals the record after the Respondent, Ward, or the Parent of a Respondent who is a Minor petitions that the record be sealed and either the petition for guardianship is dismissed or the guardianship is terminated.

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(b) A Respondent subject to a proceeding for guardianship, whether or not a Guardian is appointed, an Attorney designated by the Tribal Member or Descendant, and a Person entitled to notice under Section 311(d)(5) or a subsequent order are entitled to access Court records of the proceeding and resulting guardianship, including the Guardian's plan under Section 317 and report under Section 318. A Person not otherwise entitled to access to Court records under this subsection for good cause may petition the Court for access to Court records of the guardianship, including the Guardian's plan and report. The Court shall grant access if access is in the best interest of the Respondent or Ward or furthers the public interest and does not endanger the welfare or financial interests of the Respondent or Ward.

(c) A report of a Court Monitor under Section 305 or a professional evaluation under Section 307 is confidential and must be sealed on filing, but is available to:

- (1) the Court;
- (2) the Respondent or Ward, without limitation as to use;
- (3) the petitioner, Court Monitor, and any Attorney for the petitioner, Respondent or Ward, for purposes of the proceeding;
- (4) an agent appointed under a power of attorney in which the Respondent or Ward is the grantor unless the Court otherwise orders;
- (5) an agent appointed under a designation of health care surrogate or other similar document in which the Respondent or Ward is the principal unless the Court otherwise orders; and
- (6) any other Person if it is in the public interest or for a purpose the Court orders for good cause and does not endanger the welfare or financial interests of the Respondent or Ward.

**SECTION 310. WHO MAY BE GUARDIAN.** The Court in appointing a Guardian shall consider the following Persons qualified to be Guardian:

- (1) a guardian, other than a temporary or emergency guardian, currently acting for the Respondent;
- (2) a Person expressed by the Respondent to serve as Guardian; and
- (3) such other Person as determined by the Court to be best qualified to serve in such capacity.

**SECTION 311. ORDER OF APPOINTMENT FOR GUARDIAN.**

(a) A Court order appointing a Guardian must:

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(1) include a specific finding that clear and convincing evidence established that the identified needs of the Ward cannot be met by a Protective Arrangement or other Less Restrictive Alternative, including use of appropriate supportive services, technological assistance, or Supported Decision Making;

(2) include a specific finding that the Ward was given proper notice of the hearing on the petition; and

(3) state whether the Ward retains the right to marry and, if the Ward does not retain the right to marry, include findings that support removing that right.

(b) A Court order establishing a Full Guardianship for a Ward must state the basis for granting a Full Guardianship and include specific findings that support the conclusion that a Limited Guardianship would not meet the functional needs of the Ward.

(c) A Court order establishing a Limited Guardianship for a Ward must state the specific powers granted to the Guardian.

(d) The Court, as part of an order establishing a guardianship for a Ward, shall identify any Person that subsequently is entitled to:

(1) notice of the rights of the Ward;

(2) notice of a change in the primary dwelling of the Ward;

(3) notice that the Guardian has delegated:

(A) the power to manage the care of the Ward;

(B) the power to make decisions about where the Ward lives;

(C) the power to make major medical decisions on behalf of the Ward; or

(D) a power that requires Court approval under Section 316.

(4) a copy of the Guardian's plan under Section 317 and the Guardian's report under Section 318;

(5) access to Court records relating to the guardianship;

(6) notice of the death or significant change in the condition of the Ward;

(7) notice that the Court has limited or modified the powers of the Guardian; and

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(8) notice of the removal of the Guardian.

(e) A spouse or, if the Ward has none, an Adult with whom the Ward shared household responsibilities for more than six (6) months in the twelve (12) month period immediately before the filing of the petition, and children of the Ward are entitled to notice under subsection (d) unless the Court determines notice would be contrary to the preferences or prior directions of the Ward or not in the best interest of the Ward.

**SECTION 312. NOTICE OF ORDER OF APPOINTMENT; RIGHTS.** A Guardian, within fourteen (14) days of appointment, shall give the Ward, any Attorney for the Ward, and to all such Persons as the Court determines appropriate, using Section 302(b)(2) and (3) as a guide for the same, a copy of the order of appointment together with a notice of the right to request its termination or modification.

**SECTION 313. EMERGENCY GUARDIAN FOR WARD.**

(a) On its own after a petition has been filed under Section 302, or on a petition by a Person interested in a Respondent's welfare, the Court may appoint an emergency Guardian for the Respondent if the Court finds:

(1) appointment of an emergency Guardian is likely to prevent imminent harm to the Respondent's health, safety or welfare;

(2) no other Person appears to have authority and willingness to act in the circumstances;  
and

(3) there is reason to believe that a basis for appointment of a Guardian under Section 301 exists.

(b) The duration of authority of an emergency Guardian may not exceed thirty (30) days and the emergency Guardian may exercise only the powers specified in the order of appointment. The emergency Guardian's authority may be extended once for not more than thirty (30) days if the Court finds that the conditions for appointment of an emergency Guardian in subsection (a) continue.

(c) Immediately on filing of a petition for appointment of an emergency Guardian, the Court may appoint an Attorney to represent the Respondent in the proceeding. Except as otherwise provided in subsection (d), reasonable notice of the date, time, and place of a hearing on the petition must be given to the Respondent, the Respondent's Attorney, and any other Person the Court determines.

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(d) The Court may appoint an emergency Guardian without notice to the Respondent and any Attorney for the Respondent only if the Court finds from an affidavit or testimony that the Respondent's physical health, safety, or welfare will be substantially harmed before a hearing with notice on the appointment can be held. If the Court appoints an emergency Guardian without giving notice under subsection (c), the Court must give notice of the appointment not later than forty-eight (48) hours after the appointment to the Respondent, the Respondent's Attorney and any other Person the Court determines. The Court shall hold a hearing on the appropriateness of the appointment not later than ten (10) days after the appointment.

(e) Appointment of an emergency Guardian under this Section is not a determination that a basis exists for appointment of a Guardian under Section 301.

(f) The Court may remove an emergency Guardian appointed under this Section at any time.

(g) The emergency Guardian shall make any report the Court requires.

**SECTION 314. DUTIES OF GUARDIAN.**

(a) A Guardian for a Ward is a fiduciary. Except as otherwise limited by the Court, a Guardian shall make decisions regarding the support, care, education, health, and welfare of the Ward to the extent necessitated by the Ward's limitations.

(b) A Guardian shall promote the self-determination of the Ward and, to the extent reasonably feasible, encourage the Ward to participate in decisions, act on the Ward's own behalf, and develop or regain the capacity to manage the Ward's personal affairs. In furtherance of this duty, the Guardian shall:

(1) become or remain personally acquainted with the Ward and maintain sufficient contact with the Ward, including through regular visitation, to know the Ward's abilities, limitations, needs, opportunities, and physical and mental health;

(2) to the extent reasonably feasible, identify the values and preferences of the Ward and involve the Ward in decisions affecting the Ward, including decisions about the Ward's care, dwelling, activities, or social interactions; and

(3) make reasonable efforts to identify and facilitate supportive relationships and services for the Ward.

(c) A Guardian shall exercise reasonable care, diligence, and prudence when acting on behalf of or making decisions for the Ward. In furtherance of this duty, the Guardian shall:

(1) take reasonable care of the personal effects, pets, and service or support animals of the Ward and bring a proceeding for a conservatorship or a protective arrangement instead of conservatorship if necessary to protect the Ward's Property;

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(2) expend funds and other Property of the Ward received by the Guardian for the Ward's current needs for support, care, education, health, and welfare;

(3) conserve any funds and other Property of the Ward not expended under paragraph (2) for the Ward's future needs, but if a Conservator has been appointed for the Ward, pay the funds and other Property at least quarterly to the Conservator to be used for the Ward's future needs; and

(4) monitor the quality of services, including long-term care services, provided to the Ward.

(d) In making a decision for the Ward, the Guardian shall make the decision the Guardian reasonably believes the Ward would make if the Ward were able unless doing so would unreasonably harm or endanger the welfare or personal or financial interests of the Ward. To determine the decision the Ward would make if able, the Guardian shall consider the Ward's previous or current directions, preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable by the Guardian.

(e) If a Guardian cannot make a decision under subsection (d) because the Guardian does not know and cannot reasonably determine the decision the Ward probably would make if able, or the Guardian reasonably believes the decision the Ward would make would unreasonably harm or endanger the welfare or personal or financial interests of the Ward, the Guardian shall act in accordance with the best interest of the Ward. In determining the best interest of the Ward, the guardian shall consider:

(1) information received from professionals and Persons that demonstrate sufficient interest in the welfare of the Ward;

(2) other information the Guardian believes the Ward would have considered if the Ward were able to act; and

(3) other factors a reasonable person in the circumstances of the Ward would consider, including consequences for others.

(f) A Guardian immediately shall notify the Court if the condition of the Ward has changed so that the Ward is capable of exercising rights previously removed.

**SECTION 315. POWERS OF GUARDIAN.**

(a) Except as limited by Court order, a Guardian may:

(1) apply for and receive funds and benefits for the support of the Ward, unless a Conservator is appointed for the Ward and the application or receipt is within the powers of the Conservator;

(2) unless inconsistent with a Court order, establish the Ward's place of dwelling;

(3) consent to health or other care, treatment, or service for the Ward;

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(4) if a Conservator has not been appointed, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel another Person to support the Ward or pay funds for the Ward's benefit;

(5) to the extent reasonable, delegate to the Ward responsibility for a decision affecting the Ward's well-being; and

(6) receive personally identifiable health-care information regarding the Ward.

(b) The Court by specific order may authorize a Guardian to:

(1) consent or withhold consent to the marriage of the Ward if the Ward's right to marry has been removed under Section 311;

(2) petition for divorce, dissolution, or annulment of marriage of the Ward or a declaration of invalidity of the Ward's marriage; or

(3) support or oppose a petition for divorce, dissolution, or annulment of marriage of the Ward or a declaration of invalidity of the Ward's marriage.

(c) In determining whether to authorize a power under subsection (b), the Court shall consider whether the underlying act would be in accordance with the Ward's preferences, values, and prior directions and whether the underlying act would be in the Ward's best interest.

(d) In exercising a Guardian's power under subsection (a)(2) to establish the Ward's place of dwelling, the Guardian shall:

(1) select a residential setting the Guardian believes the Ward would select if the Ward were able, in accordance with the decision-making standard in Section 314(d) and (e). If the Guardian does not know and cannot reasonably determine what setting the Ward probably would choose if able, or the Guardian reasonably believes the decision the Ward would make would unreasonably harm or endanger the welfare or personal or financial interests of the Ward, the Guardian shall choose in accordance with Section 314(e) a residential setting that is consistent with the Ward's best interest;

(2) in selecting among residential settings, give priority to a residential setting in a location that will allow the Ward to interact with Persons important to the Ward and meet the Ward's needs in the least restrictive manner reasonably feasible unless to do so would be inconsistent with the decision-making standard in Section 314(d) and (e);

(3) not later than 30 days after a change in the dwelling of the Ward:

(A) give notice of the change to the Court, the Ward, and any Person identified as entitled to the notice in the Court order appointing the Guardian or a subsequent order; and

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(B) include in the notice the address and nature of the new dwelling and state whether the Ward received advance notice of the change and whether the Ward objected to the change;

(4) establish or move the permanent place of dwelling of the Ward to a nursing home, mental-health facility, or other facility that places restrictions on the Ward's ability to leave or have visitors only if:

(A) the establishment or move is in the Guardian's plan under Section 317;

(B) the Court authorizes the establishment or move; or

(C) the Guardian gives notice of the establishment or move at least fourteen (14) days before the establishment or move to the Ward and all Persons entitled to notice under Section 311(d) or a subsequent order, and no objection is filed;

(5) establish or move the place of dwelling of the Ward only if consistent with the Guardian's plan; and

(6) take action that would result in the sale of or surrender of the lease to the primary dwelling of the Ward only if:

(A) the action is specifically included in the Guardian's plan under Section 317;

(B) the Court authorizes the action by specific order; or

(C) notice of the action was given at least fourteen (14) days before the action to the Ward and all Persons entitled to the notice under Section 311(d) or a subsequent order and no objection has been filed.

(f) In exercising a Guardian's power under subsection (a)(3) to make health-care decisions, the Guardian shall:

(1) involve the Ward in decision making to the extent reasonably feasible, including, when practicable, by encouraging and supporting the Ward in understanding the risks and benefits of health-care options;

(2) defer to a decision by an agent under a designation of health care surrogate or other similar document executed by the Ward and cooperate to the extent feasible with the agent making the decision; and

(3) take into account:

(A) the risks and benefits of treatment options; and

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(B) the current and previous wishes and values of the Ward, if known or reasonably ascertainable by the Guardian.

**SECTION 316. SPECIAL LIMITATIONS ON GUARDIAN'S POWER.**

(a) Unless authorized by the Court by specific order, a Guardian does not have the power to revoke or amend a designation of health care surrogate or other similar document or power of attorney executed by the Ward. If a designation of health care surrogate or other similar document is in effect, unless there is a Court order to the contrary, a health-care decision of an agent takes precedence over that of the Guardian and the Guardian shall cooperate with the agent to the extent feasible. If a power of attorney is in effect, unless there is a Court order to the contrary, a decision by the agent which the agent is authorized to make under the power of attorney takes precedence over that of the Guardian and the Guardian shall cooperate with the agent to the extent feasible.

(b) A Guardian may not restrict the ability of the Ward to communicate, visit, or interact with others, including receiving visitors and making or receiving telephone calls, personal mail, or electronic communications, including through social media, or participating in social activities, unless:

(1) authorized by the Court by specific order;

(2) a protective order or a Protective Arrangement is in effect that limits contact between the Ward and a Person; or

(3) the Guardian has good cause to believe restriction is necessary because interaction with a specified Person poses a risk of significant physical, psychological, or financial harm to the Ward and the restriction is:

(A) for a period of not more than seven (7) business days if the Person has a family or pre-existing social relationship with the Ward; or

(B) for a period of not more than sixty (60) days if the Person does not have a family or pre-existing social relationship with the Ward.

**SECTION 317. GUARDIAN'S PLAN.**

(a) A Guardian, not later than sixty (60) days after appointment, when there is a significant change in circumstances, or the Guardian seeks to deviate significantly from the Guardian's plan, shall file with the Court a plan for the care of the Ward. The plan must be based on the needs of the Ward and take into account the best interest of the Ward as well as the Ward's preferences, values, and prior directions, to the extent known to or reasonably ascertainable by the Guardian. The Guardian shall include in the plan:

(1) the Ward's medical condition, cognitive functions, everyday functioning and levels of supervision needed;

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(2) the living arrangement, services, and supports the Guardian expects to arrange, facilitate, or continue for the Ward;

(3) social and educational activities the Guardian expects to facilitate on behalf of the Ward;

(4) any Person with whom the Ward has a close personal relationship or relationship involving regular visitation and any plan the Guardian has for facilitating visits with the Person;

(5) the anticipated nature and frequency of the Guardian's visits and communication with the Ward; and

(6) goals for the Ward, including any goal related to the restoration of the Ward's rights, and how the Guardian anticipates achieving the goals.

(b) A Guardian shall give notice of the filing of the Guardian's plan under subsection (a), together with a copy of the plan, to the Ward, a Person entitled to notice under Section 311(d) or a subsequent order, and any other Person the Court determines. The notice must include a statement of the right to object to the plan and be given not later than fourteen (14) days after the filing.

(c) A Ward and any Person entitled under subsection (b) to receive notice and a copy of the Guardian's plan may object to the plan.

(d) The Court shall review the Guardian's plan filed under subsection (a) and determine whether to approve the plan or require a new plan. In deciding whether to approve the plan, the Court shall consider an objection under subsection (c) and whether the plan is consistent with the Guardian's duties and powers under Sections 314 and 315. The Court may not approve the plan until thirty (30) days after its filing. The Court may schedule a hearing on any plan.

(e) After the Guardian's plan under this Section is approved by the Court, the Guardian shall provide a copy of the plan to the Ward, a Person entitled to notice under Section 311(d) or a subsequent order, and any other Person the Court determines.

**SECTION 318. GUARDIAN'S REPORT; REVIEW OF GUARDIANSHIP.**

(a) A Guardian shall at least annually from the date of appointment file with the Court a report regarding the condition of the Ward and accounting for funds and other Property in the Guardian's possession or subject to the Guardian's control.

(b) A report under subsection (a) must state or contain:

(1) the mental, physical, and social condition of the Ward;

(2) the living arrangements of the Ward during the reporting period;

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(3) a summary of the Supported Decision Making, technological assistance, medical services, educational and vocational services, and other supports and services provided to the Ward and the Guardian's opinion as to the adequacy of the Ward's care;

(4) a summary of the Guardian's visits with the Ward, including the dates of the visits;

(5) action taken on behalf of the Ward;

(6) the extent to which the Ward has participated in decision making;

(7) if the Ward is living in a mental health facility or living in a facility that provides the Ward with health-care or other personal services, whether the Guardian considers the facility's current plan for support, care, treatment, or habilitation consistent with the Ward's preferences, values, prior directions, and best interest;

(8) anything of more than de minimis value which the Guardian, any individual who resides with the Guardian, the spouse or if the Guardian has none, an Adult with whom the Guardian has shared household responsibilities for more than six (6) months in the twelve (12) month period immediately prior to the filing of the report, Parent, child, or sibling of the Guardian has received from an individual providing goods or services to the Ward;

(9) if the Guardian delegated a power to an agent, the power delegated and the reason for the delegation;

(10) any business relation the Guardian has with a Person the Guardian has paid or that has benefited from the Property of the Ward;

(11) a statement whether the Guardian has deviated from the most recently approved plan and, if so, how the Guardian has deviated and why;

(12) plans for future care and support of the Ward;

(13) a recommendation as to the need for continued guardianship and any recommended change in the scope of the guardianship; and

(14) whether any co-Guardian or successor Guardian appointed to serve when a designated event occurs is alive and able to serve.

(c) Notice of the filing under this section of a Guardian's report, together with a copy of the report, must be given to the Ward, a Person entitled to notice under Section 311(d) or a subsequent order, and any other Person the Court determines. The notice and report must be given not later than fourteen (14) days after the filing.

(d) The Court shall review each report at least annually to determine whether:

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(1) the report provides sufficient information to establish the Guardian has complied with the Guardian's duties;

(2) the guardianship should continue; and

(3) the Guardian's requested fees, if any, should be approved.

(e) If the Court determines there is reason to believe the Guardian has not complied with the Guardian's duties or the guardianship should be modified or terminated, the Court:

(1) shall notify the Ward, the Guardian, and any other Person entitled to notice under Section 311(d) or a subsequent order;

(2) may require additional information from the Guardian;

(3) consistent with Section 319 and 320, may hold a hearing to consider removal of the Guardian, termination of the guardianship, or a change in the powers granted to the Guardian or terms of the guardianship.

(f) If the Court has reason to believe fees requested by a Guardian are not reasonable, the Court shall hold a hearing to determine whether to adjust the requested fees.

(g) A Guardian may petition the Court for approval of a report filed under this Section. The Court after review may approve the report. If the Court approves the report, there is a rebuttable presumption the report is accurate as to a matter adequately disclosed in the report.

**SECTION 319. REMOVAL OF GUARDIAN; APPOINTMENT OF SUCCESSOR.**

(a) The Court may remove a Guardian for failure to perform the Guardian's duties or for other good cause and appoint a successor Guardian to assume the duties of Guardian.

(b) The Court shall hold a hearing to determine whether to remove a Guardian and appoint a successor Guardian on:

(1) a petition of the Ward, Guardian, or a Person interested in the welfare of the Ward which contains allegations that, if true, would support a reasonable belief that removal of the Guardian and appointment of a successor Guardian may be appropriate, but the Court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed during the preceding six (6) months;

(2) a communication from the Ward, Guardian, or a Person interested in the welfare of the Ward which supports a reasonable belief that removal of the Guardian and appointment of a successor Guardian may be appropriate; or

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(3) a determination by the Court that a hearing would be in the best interest of the Ward.

(c) Notice of a petition under subsection (b)(1) must be given to the Ward, the Guardian, and any other Person the Court determines.

(d) A Ward who seeks to remove the Guardian and have a successor Guardian appointed has the right to choose an Attorney to represent the Ward in such proceeding. If the Ward is not represented by an Attorney, the Court shall appoint an Attorney under the same conditions as in Section 306. The Court shall award reasonable attorney's fees to the Attorney for the Ward as provided in Section 115.

(e) The Court shall consider the provisions of Section 310 in appointing a successor Guardian.

(f) Not later than thirty (30) days after appointing a successor Guardian, the Court shall give notice of the appointment to the Ward and any Person entitled to notice under Section 311(d) or a subsequent order as well as to any other Person the Court determines.

**SECTION 320. TERMINATION OR MODIFICATION OF GUARDIANSHIP.**

(a) The Ward, Guardian, or a Person interested in the welfare of the Ward may petition for:

(1) termination of the guardianship on the ground that a basis for appointment under Section 301 does not exist, termination would be in the best interest of the Ward, or for other good cause; or

(2) modification of the guardianship on the ground that the extent of protection or assistance granted is not appropriate or for other good cause.

(b) The Court shall hold a hearing to determine whether termination or modification of a guardianship is appropriate on:

(1) a petition under subsection (a) which contains allegations that, if true, would support a reasonable belief that termination or modification of the guardianship may be appropriate, but the Court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed during the preceding six (6) months;

(2) a communication from the Ward, Guardian, or a Person interested in the welfare of the Ward which supports a reasonable belief that termination or modification of the guardianship may be appropriate, including because the functional needs of the Ward or supports or services available to the Ward have changed;

(3) a report from the Guardian or Conservator which indicates that termination or modification may be appropriate because the functional needs of the Ward or supports or services available to the Ward have changed or a Protective Arrangement or other Less Restrictive Alternative for meeting the Ward's needs is available; or

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(4) a determination by the Court that a hearing would be in the best interest of the Ward.

(c) Notice of a petition under subsection (b)(1) must be given to the Ward, the Guardian, and any other Person the Court determines.

(d) On presentation of prima facie evidence for termination of a guardianship, the Court shall order termination unless it is proven that a basis for appointment of a Guardian under Section 301 exists.

(e) The Court shall modify the powers granted to a Guardian if the powers are excessive or inadequate due to a change in the abilities or limitations of the Ward, the Ward's supports, or other circumstances.

(f) Unless the Court otherwise orders for good cause, before terminating or modifying a guardianship, the Court shall follow the same procedures to safeguard the rights of the Ward which apply to a petition for guardianship.

(g) A Ward who seeks to terminate or modify the terms of the guardianship has the right to choose an Attorney to represent the Ward in the proceeding. If the Ward is not represented by an Attorney, the Court shall appoint an Attorney under the same conditions as in Section 306. The Court shall award reasonable attorney's fees to the Attorney for the Ward as provided in Section 115.

**ARTICLE 4 - CONSERVATORSHIP**

**SECTION 401. BASIS FOR APPOINTMENT OF CONSERVATOR.**

(a) On petition and after notice and hearing, the Court may appoint a Conservator for the Property or financial affairs of a Minor if the Court finds by the greater weight of the evidence that appointment of a Conservator is in the Minor's best interest, and:

(1) if the Minor has a Parent, the Court gives weight to any recommendation of the Parent whether an appointment is in the Minor's best interest; and

(2) either:

(A) the Minor owns funds or other Property requiring management or protection that otherwise cannot be provided;

(B) the Minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the Minor's age; or

(C) appointment is necessary or desirable to obtain or provide funds or other Property needed for the support, care, education, health, or welfare of the Minor.

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(b) On petition and after notice and hearing, the Court may appoint a Conservator for the Property or financial affairs of an Adult if the Court finds by clear and convincing evidence that:

(1) the Adult is unable to manage Property or financial affairs because:

(A) of a limitation in the Adult's ability to receive and evaluate information or make or communicate decisions, even with the use of appropriate supportive services, technological assistance, or Supported Decision Making; or

(B) the Adult is missing or detained;

(2) appointment is necessary to:

(A) avoid harm to the Adult or significant dissipation of the Property of the Adult;

or

(B) obtain or provide funds or other Property needed for the support, care, education, health, or welfare of the Adult or of an individual entitled to the Adult's support; and

(3) the Adult's identified needs cannot be met by a Protective Arrangement or other Less Restrictive Alternative.

(c) The Court shall grant a Conservator only those powers necessitated by demonstrated limitations and needs of the Adult and issue orders that will encourage development of the Adult's maximum self-determination and independence. The Court may not establish a full Conservatorship if a Limited Conservatorship, Protective Arrangement, or other Less Restrictive Alternative would meet the needs of the Adult.

**SECTION 402. PETITION FOR APPOINTMENT OF CONSERVATOR**

(a) The following may petition for the appointment of a Conservator:

(1) the Respondent for whom the order is sought;

(2) the Tribal Council, a social service department of the Seminole Tribe or a Tribal Member interested in the Property, financial affairs, or welfare of the Respondent, including a person that would be adversely affected by lack of effective management of Property or financial affairs of the Respondent; or

(3) the Guardian for the Respondent.

(b) A petition under subsection (a) must state the petitioner's name, principal residence, current street address, if different, relationship to the Respondent, interest in the appointment, the name, address and telephone number of any Attorney representing the petitioner, and, to the extent known, the following:

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(1) the Respondent's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed the Respondent will reside if the petition is granted;

(2) the name and address of the Respondent's:

(A) spouse or, if none, an Adult with whom the Respondent has shared household responsibilities for more than six (6) months in the twelve (12) month period immediately before the filing of the petition;

(B) Adult children or, if none, each Parent and Adult sibling of the Respondent, or, if none, at least one Adult nearest in kinship to the Respondent who can be found with reasonable diligence; and

(C) Adult stepchildren whom the Respondent actively parented during the stepchildren's minor years and with whom the Respondent had an ongoing relationship during the two (2) years immediately before the filing of the petition;

(3) the name and current address of each of the following, if applicable:

(A) any Person responsible for the care or custody of the Respondent;

(B) any Attorney currently representing the Respondent;

(C) the representative payee appointed by the Social Security Administration for the Respondent;

(D) any guardian or conservator acting for the Respondent;

(E) any trustee or custodian of a trust or custodianship of which the Respondent is a beneficiary;

(F) any fiduciary appointed for the Respondent by the Department of Veterans Affairs;

(G) any agent designated under a designation of health care surrogate or other similar document in which the Respondent is identified as the principal;

(H) any agent designated under a power of attorney in which the Respondent is identified as the grantor;

(I) any Person known to have routinely assisted the Respondent with decision making in the six (6) month period immediately before the filing of the petition;

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(J) any Person whom the Respondent has expressed an interest in being named as Conservator, if the Respondent is twelve (12) years of age or older; and

(K) if the Tribal Member or Descendant for whom a Conservator is sought is a Minor:

(i) an Adult not otherwise listed with whom the Minor resides; and

(ii) each Person not otherwise listed that had primary care or custody of the Minor for at least sixty (60) days during the two years immediately before the filing of the petition;

(4) a general statement of the Respondent's Property with an estimate of its value, including any insurance or pension, and the source and amount of other anticipated income or receipts;

(5) the reason a conservatorship is necessary, including a brief description of:

(A) the nature and extent of the Respondent's alleged need based on the Respondent's health condition, cognitive functioning, everyday financial functioning and level of supervision needed;

(B) if the petition alleges the Respondent is missing or detained, the relevant circumstances, including the time and nature of the disappearance or detention and any search or inquiry concerning the Respondent's whereabouts;

(C) any Protective Arrangement or other Less Restrictive Alternatives for meeting the Respondent's alleged need which have been considered or implemented;

(D) if no Protective Arrangement or other Less Restrictive Alternatives have been considered or implemented, the reason they have not been considered or implemented; and

(E) the reason a Protective Arrangement or other Less Restrictive Alternative is insufficient to meet the Respondent's alleged need;

(6) whether the petitioner seeks a Limited Conservatorship or a Full Conservatorship;

(7) if the petitioner seeks a Full Conservatorship, the reason a Limited Conservatorship or Protective Arrangement is not appropriate;

(8) the name and address of the proposed Conservator and the reason the proposed Conservator should be appointed;

(9) if the petition is for a Limited Conservatorship, a description of the Property to be placed under the Conservator's control and any requested limitation on the authority of the Conservator;

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(10) whether the Respondent needs an interpreter, translator, or other form of support to communicate effectively with the Court or understand Court proceedings; and

(11) the status of enrollment in the Seminole Tribe for both the Respondent and the petitioner.

**SECTION 403. NOTICE AND PRELIMINARY HEARING.**

(a) On the filing of a petition for appointment of a Conservator for an Adult, the Court shall set a date, time and place for a preliminary hearing.

(b) A copy of a petition under Section 402 and notice of the preliminary hearing must be by Personal Service on the Respondent, with notice on the Respondent's spouse, if any; any Person responsible for the care of the Respondent; and any Attorney known to be representing the Respondent.

(c) At the preliminary hearing, the Court shall:

(1) explain to the Respondent the substance of the petition, the nature, purpose, and effect of the proceeding, the Respondent's rights at the hearing on the petition, and the general powers and duties of a Conservator;

(2) determine the Respondent's views about the appointment sought by the petitioner, including views about a proposed Conservator, the Conservator's proposed powers and duties, and the scope and duration of the proposed conservatorship;

(3) inform the Respondent of the Respondent's right to employ and consult with an Attorney at the Respondent's expense and the right to request a Court-appointed Attorney; and

(4) inform the Respondent that all costs and expenses of the proceeding, including Respondent's Attorney's fees, may be paid from the Respondent's assets.

(d) If the Court is aware of circumstances which would prohibit or make it impractical for the Respondent to attend the preliminary hearing, the Court may appoint a Court Monitor pursuant to Section 406 to meet with the Respondent regarding the items listed in subsection (c) (1)-(4) above and to advise the Court of the same.

**SECTION 404. NOTICE AND HEARING FOR APPOINTMENT OF CONSERVATOR.**

(a) On the filing of a petition for appointment of a Conservator, the Court shall set a date, time, and place for a hearing on the petition.

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(b) A copy of the petition and notice of a hearing on the petition must be by Personal Service on the Respondent. If the Respondent is an enrolled member of the Seminole Tribe whose whereabouts are unknown or on whom Personal Service cannot be made, then service can be effectuated by completing the following three (3) requirements: (i) mailing the notice and a copy of the petition by U.S. Mail, postage prepaid, to the Respondent's last known address on file at the office of the Tribal Secretary of the Seminole Tribe; (ii) serving the notice and a copy of the petition by Personal Service on a family relative of the Respondent; and (iii) posting the notice and a copy of the petition in a conspicuous place in at least one administrative building on a reservation of the Seminole Tribe, which posting must remain in place for no less than three (3) business days. The notice must inform the Respondent of the Respondent's rights at the hearing, including the right to an Attorney; the right to attend the hearing; that the failure to attend the hearing could result in the appointment of a Conservator without the Respondent's input; and include a description of the nature, purpose, and consequences of granting the petition. The Court may not grant a petition for appointment of a Conservator if notice substantially complying with this subsection is not served on the Respondent.

(c) In a proceeding on the petition, the notice required under subsection (b) must be given to the Persons required to be listed in the petition under Section 402(b)(2) and (3), but excluding the Persons listed in 402(b)(3)(G) and (K)(ii), and any other Person interested in the Respondent's welfare the Court determines. Failure to give notice under this subsection does not preclude the Court from appointing a Conservator.

(d) After the appointment of a Conservator, notice of a hearing on a petition for an order under this Article 4, together with a copy of the petition, must be given to:

- (1) the Ward, if 12 years of age or older and not missing;
- (2) the Conservator; and
- (3) any other Person the Court determines.

**SECTION 405. ORDER TO PRESERVE OR APPLY PROPERTY WHILE PROCEEDING PENDING.** While a petition is pending, before a hearing under Section 404 and without notice to others, the Court may issue an order to preserve and apply Property of the Respondent as required for the support of the Respondent or an individual who is in fact dependent on the Respondent.

**SECTION 406. APPOINTMENT AND ROLE OF COURT MONITOR.**

(a) After the filing of a petition for the appointment of a Conservator, the Court may appoint a Court Monitor. The Court Monitor must have completed a training course conducted by the Guardianship Program of the Advocacy and Guardianship Department. To the extent feasible, the Court Monitor shall interview the Respondent in person and in a manner the Respondent is best able to understand and perform such tasks as assigned by the Court, including investigating any matter involving the conservatorship.

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(b) When the whereabouts of an enrolled member of the Seminole Tribe is unknown and Personal Service cannot be made, then the procedure for service pursuant to Section 404(b) may be assigned to a Court Monitor who shall effectuate service as provided for therein and shall file with the Court a certification that the requirements were complied with. The Court Monitor shall have discretion as to where the posting pursuant to Section 404(b) may be made.

**SECTION 407. APPOINTMENT AND ROLE OF ATTORNEY.**

(a) The Court shall appoint an Attorney to represent the Respondent in a proceeding to appoint a Conservator if the Respondent requests an appointment or the Court determines the Respondent needs representation.

(b) An Attorney representing the Respondent in a proceeding shall:

(1) make reasonable efforts to ascertain the Respondent's wishes;

(2) advocate for the Respondent's wishes to the extent reasonably ascertainable; and

(3) if the Respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive in type, duration, and scope, consistent with the Respondent's interests.

**SECTION 408. PROFESSIONAL EVALUATION.**

(a) At or before a hearing on a petition for conservatorship for an Adult, the Court shall order a professional evaluation of the Respondent:

(1) if the Respondent requests the evaluation; or

(2) in other cases, unless the Court finds it has sufficient information to determine the Respondent's needs and abilities without the evaluation.

(b) If the Court orders an evaluation under subsection (a), the Respondent must be examined by a licensed physician, psychologist or other individual appointed by the Court who is qualified to evaluate the Respondent's alleged cognitive and functional abilities and limitations and will not be advantaged or disadvantaged by a decision to grant the petition or otherwise have a conflict of interest. The individual conducting the evaluation promptly shall file a report with the Court. Unless otherwise directed by the Court, the report must contain:

(1) a description of the nature, type, and extent of the Respondent's cognitive and functional abilities and limitations with regard to the management of the Respondent's Property and financial affairs;

(2) an evaluation of the Respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills;

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(3) a prognosis for improvement with regard to the ability to manage the Respondent's Property and financial affairs; and

(4) the date of the examination on which the report is based.

(c) The Respondent may decline to participate in an evaluation ordered under subsection (a). If the Respondent declines to participate, the Court may enter an order granting the conservatorship or other Protective Arrangement without the report required by subsection (b) if the Court otherwise finds that there is a basis for such order.

**SECTION 409. ATTENDANCE AND RIGHTS AT HEARING.**

(a) Except as otherwise provided in subsection (b), a hearing under Section 404 may not proceed unless the Respondent attends the hearing. If it is not reasonably feasible for the Respondent to attend a hearing at the location Court proceedings typically are held, the Court shall make reasonable efforts to hold the hearing at an alternative location convenient to the Respondent or allow the Respondent to attend the hearing using real-time audio-visual technology or by telephone if the same is not available.

(b) A hearing under Section 404 may proceed without the Respondent in attendance if the Court finds by clear and convincing evidence that:

(1) the Respondent failed to appear after being served with notice as required by Section 404(b);

(2) there is no practicable way for the Respondent to attend and participate in the hearing even with appropriate supportive services or technological assistance; or

(3) the Respondent is a Minor who has received proper notice and attendance would be harmful to the Minor.

(c) The Respondent may be assisted in a hearing under Section 404 by a Person or Persons of the Respondent's choosing, assistive technology, or an interpreter, translator or a combination of these supports. If assistance would facilitate the Respondent's participation in the hearing but is not available to the Respondent, the Court shall make reasonable efforts to provide it.

(d) The Respondent has a right to choose an Attorney to represent the Respondent at a hearing under Section 404.

(e) The Court shall advise the Respondent of the matters set forth in Section 403 (c) (1 - (4) if a preliminary hearing is not held and if any appointed Court Monitor was not able to meet with the Respondent.

(f) At a hearing under Section 404, the Respondent may:

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- (1) present evidence whether testimonial, written or otherwise;
- (2) examine witnesses, including any Court-appointed evaluator and the Court Monitor; and
- (3) otherwise participate in the hearing.

(g) Unless excused by the Court for good cause, a proposed conservator shall attend a hearing under Section 404.

(h) A hearing under Section 404 must be closed on request of the Respondent and a showing of good cause.

(i) Any Person may request to participate in a hearing under Section 404. The Court may grant the request, with or without a hearing, on determining that the best interest of the Respondent will be served. The Court may impose appropriate conditions on the Person's participation.

**SECTION 410. CONFIDENTIALITY OF RECORDS.**

(a) The existence of a proceeding for or the existence of a conservatorship is a matter of public record unless the Court seals the record after the Respondent, Ward, or the Parent of a Respondent who is a Minor petitions that the record be sealed and either the petition for conservatorship is dismissed or the conservatorship is terminated.

(b) A Respondent, whether or not a Conservator is appointed, an Attorney designated by the Tribal Member or Descendant, and a Person entitled to notice under Section 412(e)(6) or a subsequent order are entitled to access Court records of the proceeding and resulting conservatorship, including the Conservator's plan under Section 420 and the Conservator's report under Section 424. A Person not otherwise entitled to access to Court records under this subsection for good cause may petition the Court for access to Court records of the conservatorship, including the Conservator's plan and report. The Court shall grant access if access is in the best interest of the Respondent or Ward or furthers the public interest and does not endanger the welfare or financial interests of the Respondent or Ward.

(c) A report of a Court Monitor under Section 406 or a professional evaluation under Section 408 is confidential and must be sealed on filing, but is available to:

- (1) the Court;
- (2) the Respondent or Ward, without limitation as to use;
- (3) the petitioner, Court Monitor, and any Attorney for the petitioner, Respondent or Ward, for purposes of the proceeding;

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(4) an agent appointed under a power of attorney in which the Respondent or Ward is the grantor unless the Court otherwise orders; and

(5) an agent appointed under a designation of health care surrogate or other similar document in which the Respondent or Ward is the principal unless the Court otherwise orders.

**SECTION 411. WHO MAY BE CONSERVATOR.** The Court in appointing a Conservator shall consider the following Persons qualified to be a Conservator:

(1) a conservator, other than a temporary or emergency conservator, currently acting for the Respondent;

(2) a Person expressed by the Respondent to serve as Conservator;

(3) such other Person as determined by the Court to be best qualified to serve in such capacity.

**SECTION 412. ORDER OF APPOINTMENT OF CONSERVATOR.**

(a) A Court order appointing a Conservator for a Minor must include findings to support appointment of a Conservator and, if a Full Conservatorship is granted, the reason a Limited Conservatorship would not meet the identified needs of the Minor.

(b) A Court order appointing a Conservator for an Adult must:

(1) include a specific finding that clear and convincing evidence established that the identified needs of the Respondent cannot be met by a Protective Arrangement or other Less Restrictive Alternative, including use of appropriate supportive services, technological assistance, or Supported Decision Making; and

(2) include a specific finding that the Respondent was given proper notice of the hearing on the petition.

(c) A Court order establishing a Full Conservatorship for an Adult must state the basis for granting a Full Conservatorship and include specific findings to support the conclusion that a Limited Conservatorship would not meet the functional needs of the Ward.

(d) A Court order establishing a Limited Conservatorship must state the specific Property placed under the control of the Conservator and the powers granted to the Conservator.

(e) The Court, as part of an order establishing a conservatorship, shall identify any Person that subsequently is entitled to:

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- (1) notice of the rights of the Ward;
- (2) notice of a sale of or surrender of a lease to the primary dwelling of the Ward;
- (3) notice that the Conservator has delegated a power that requires Court approval under Section 415;
- (4) notice that the Conservator will be unavailable to perform the Conservator's duties for more than one (1) month;
- (5) a copy of the Conservator's plan under Section 420 and the Conservator's report under Section 424;
- (6) access to Court records relating to the conservatorship;
- (7) notice of a transaction involving a substantial conflict between the Conservator's fiduciary duties and personal interests;
- (8) notice of the death or significant change in the condition of the Ward;
- (9) notice that the Court has limited or modified the powers of the Conservator; and
- (10) notice of the removal of the Conservator.

(f) If a Ward is an Adult, the spouse, or if the Ward has none, an Adult with whom the Ward shared household responsibilities for more than six (6) months in the twelve (12) month period immediately before the filing of the petition, and Adult children of the Ward are entitled under subsection (e) to notice unless the Court determines notice would be contrary to the preferences or prior directions of the Ward or not in the best interest of the Ward.

(g) If a Ward is a Minor, each Parent and Adult sibling of the Minor is entitled under subsection (e) to notice unless the Court determines notice would not be in the best interest of the Ward.

**SECTION 413. NOTICE OF ORDER OF APPOINTMENT; RIGHTS.** A Conservator, within fourteen (14) days of appointment, shall give the Ward, any Attorney for the Ward, and such other Persons as the Court determines appropriate, using Section 402(b)(2) and (3) as a guide for the same, a copy of the order of appointment, together with notice of the right to request its termination or modification.

**SECTION 414. EMERGENCY CONSERVATOR.**

(a) On its own after a petition has been filed under Section 402, or on a petition by a Person interested in a Respondent's welfare filed under Section 402, the Court may appoint an emergency Conservator for the Respondent if the Court finds:

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(1) appointment of an emergency Conservator is likely to prevent substantial and irreparable harm to the Respondent's Property or financial interests;

(2) no other Person appears to have authority and willingness to act in the circumstances;  
and

(3) there is reason to believe that a basis for appointment of a Conservator under Section 401 exists.

(b) The duration of authority of an emergency Conservator may not exceed thirty (30) days and the emergency Conservator may exercise only the powers specified in the order of appointment. The emergency Conservator's authority may be extended once for not more than thirty (30) days if the Court finds that the conditions for appointment of an emergency Conservator under subsection (a) continue.

(c) Immediately on filing of a petition for an emergency Conservator, the Court may appoint an Attorney to represent the Respondent in the proceeding. Except as otherwise provided in subsection (d), reasonable notice of the date, time, and place of a hearing on the petition must be given to the Respondent, the Respondent's Attorney, and any other Person the Court determines.

(d) The Court may appoint an emergency Conservator without notice to the Respondent and any Attorney for the Respondent only if the Court finds from an affidavit or testimony that the Respondent's Property or financial interests will be substantially and irreparably harmed before a hearing with notice on the appointment can be held. If the Court appoints an emergency Conservator without giving notice under subsection (c), the Court must give notice of the appointment not later than forty-eight (48) hours after the appointment to the Respondent, the Respondent's Attorney, and any other Person the Court determines. Not later than ten (10) days after the appointment, the Court shall hold a hearing on the appropriateness of the appointment.

(e) Appointment of an emergency Conservator under this Section is not a determination that a basis exists for appointment of a Conservator under Section 401.

(f) The Court may remove an emergency Conservator appointed under this Section at any time.

(g) The emergency Conservator shall make any report the Court requires.

**SECTION 415. POWERS OF CONSERVATOR REQUIRING COURT APPROVAL.**

(a) Except as otherwise ordered by the Court, a Conservator must give notice to Persons entitled to notice under Section 404(d) and receive specific authorization by the Court before the Conservator may exercise with respect to the conservatorship the power to:

(1) make a gift, except a gift of de minimis value;

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(2) sell, encumber an interest in, or surrender a lease to the primary dwelling of the Ward;

(3) convey, release, or disclaim a contingent or expectant interest in Property, including marital Property and any right of survivorship incident to joint tenancy or tenancy by the entireties;

(4) exercise or release a power of appointment;

(5) create a revocable or irrevocable trust of Property of the Conservatorship Estate, whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the Ward.

(6) exercise a right to elect an option or change a beneficiary under an insurance policy or annuity or surrender the policy or annuity for its cash value;

(7) exercise a right to an elective share in the estate of a deceased spouse of the Ward or renounce or disclaim a Property interest;

(8) grant a creditor priority for payment over creditors of the same or higher class if the creditor is providing Property or services used to meet the basic living and care needs of the Ward and preferential treatment otherwise would be impermissible under this Ordinance; and

(9) make, modify, amend, or revoke the will of the Ward.

(b) In approving a Conservator's exercise of a power listed in subsection (a), the Court shall consider primarily the decision the Ward would make if able, to the extent the decision can be ascertained.

(c) To determine under subsection (b) the decision the Ward would make if able, the Court shall consider the Ward's prior or current directions, preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable by the Conservator. The Court also shall consider:

(1) the financial needs of the Ward and individuals who are in fact dependent on the Ward for support, and the interests of creditors of the Ward;

(2) possible reduction of income, estate, inheritance, or other tax liabilities;

(3) eligibility for governmental assistance;

(4) the previous pattern of giving or level of support provided by the Ward;

(5) any existing estate plan or lack of estate plan of the Ward;

(6) the life expectancy of the Ward and the probability the conservatorship will terminate before the Ward's death; and

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(7) any other relevant factor.

(d) A Conservator may not revoke or amend a power of attorney executed by the Ward. If a power of attorney is in effect, a decision of the agent takes precedence over that of the Conservator, unless the Court orders otherwise.

**SECTION 416. PETITION FOR ORDER AFTER APPOINTMENT.** A Ward or a Person interested in the welfare of the Ward may petition for an order:

(1) requiring the Conservator to furnish a bond or collateral or additional bond or collateral or allowing a reduction in a bond or collateral previously furnished;

(2) requiring an accounting for the administration of the Conservatorship Estate;

(3) directing distribution;

(4) removing the Conservator and appointing a temporary or successor Conservator;

(5) modifying the type of appointment or powers granted to the Conservator, if the extent of protection or management previously granted is excessive or insufficient to meet the Ward's needs, including because the Ward's abilities or supports have changed;

(6) rejecting or modifying the Conservator's plan under Section 420, the Conservator's inventory under Section 421, or the Conservator's report under Section 424; or

(7) granting other appropriate relief.

**SECTION 417. BOND; ALTERNATIVE ARRANGEMENT.**

(a) The Court shall require a Conservator to furnish a bond with a surety the Court specifies, or require an alternative asset-protection arrangement, conditioned on faithful discharge of all duties of the Conservator. The Court may waive this requirement only if it finds that a bond or other asset-protection arrangement is not necessary to protect the interests of the Ward. The Court may not waive the requirement if the Conservator is in the business of serving as a Conservator and is being paid for the Conservator's service.

(b) Unless the Court directs otherwise, the bond required must be in the amount of the aggregate capital value of the Conservatorship Estate, plus one year's estimated income, less the value of Property deposited under an arrangement requiring a Court order for its removal and real property the Conservator lacks power to sell or convey without specific Court authorization. The Court, in place of surety on a bond, may accept collateral for the performance of the bond, including a pledge of securities or a mortgage of real property.

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**SECTION 418. TERMS AND REQUIREMENTS OF BOND.**

(a) The following apply to the bond required under Section 417:

(1) Except as otherwise provided by the bond, the surety and the Conservator are jointly and severally liable.

(2) By executing a bond provided by a Conservator, the surety submits to the personal jurisdiction of the Court.

(b) If a bond under Section 417 is not renewed by the Conservator, the surety or sureties immediately shall give notice to the Court and the Ward.

**SECTION 419. DUTIES OF CONSERVATOR.**

(a) A Conservator is a fiduciary and has duties of prudence and loyalty to the Ward.

(b) A Conservator shall promote the self-determination of the Ward and, to the extent reasonably feasible, encourage the Ward to participate in decisions, act on the Ward's own behalf, and develop or regain the capacity to manage the Ward's personal affairs.

(c) In making a decision for Ward, the Conservator shall make the decision the Conservator reasonably believes the Ward would make if able unless doing so would fail to preserve the Property needed to maintain the Ward's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal or financial interests of the Ward. To determine the decision the Ward would make if able, the Conservator shall consider the Ward's prior or current directions, preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable by the Conservator.

(d) If a Conservator cannot make a decision under subsection (c) because the Conservator does not know and cannot reasonably determine the decision the Ward probably would make if able, or the Conservator reasonably believes the decision the Ward would make would fail to preserve Property needed to maintain the Ward's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal or financial interests of the Ward, the Conservator shall act in accordance with the best interest of the Ward. In determining the best interest of the Ward, the Conservator shall consider:

(1) information received from professionals and Persons that demonstrate sufficient interest in the welfare of the Ward;

(2) other information the Conservator believes the Ward would have considered if the Ward were able to act; and

(3) other factors a reasonable Person in the circumstances of the Ward would consider, including consequences for others.

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(e) Except when inconsistent with the Conservator's duties under subsections (a) through (d), a Conservator shall invest and manage the Conservatorship Estate as a prudent investor would, by considering:

(1) the circumstances of the Ward and the Conservatorship Estate;

(2) the need for liquidity, regularity of income, and preservation or appreciation of capital;

and

(3) the special relationship or value, if any, of specific Property to the Ward.

(f) The propriety of a Conservator's investment and management of the Conservatorship Estate is determined in light of the facts and circumstances existing when the Conservator decides or acts and not by hindsight.

(g) A Conservator shall make a reasonable effort to verify facts relevant to the investment and management of the Conservatorship Estate.

(h) A Conservator that has special skills or expertise, or is named Conservator in reliance on the Conservator's representation of special skills or expertise, has a duty to use the special skills or expertise in carrying out the Conservator's duties.

(i) In investing, selecting specific Property for distribution, and invoking a power of revocation or withdrawal for the use or benefit of the Ward, a Conservator shall consider any estate plan of the Ward known or reasonably ascertainable to the Conservator and may examine the will or other donative, nominative, or appointive instrument of the Ward.

(j) A Conservator shall maintain insurance on the insurable Property of the Ward unless the Conservatorship Estate lacks sufficient funds to pay for insurance or the Court finds:

(1) the Property lacks sufficient equity; or

(2) insuring the Property would unreasonably dissipate the Conservatorship Estate or otherwise not be in the best interest of the Ward.

(k) If a power of attorney is in effect, a Conservator shall cooperate with the agent to the extent feasible.

(l) A Conservator shall have access to and authority over the digital assets of the Ward for the sole purpose of fulfilling the Conservator's duties under this Ordinance unless otherwise ordered by the Court.

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(m) A Conservator for an Adult shall notify the Court if the condition of the Adult has changed so that the Adult is capable of exercising rights previously removed. The notice must be given immediately on learning of the change.

**SECTION 420. CONSERVATOR'S PLAN.**

(a) A Conservator, not later than ninety (90) days after appointment, when there is a significant change in circumstances, or the Conservator seeks to deviate significantly from the Conservator's plan, shall file with the Court a plan for protecting, managing, expending, and distributing the assets of the Conservatorship Estate. The plan must be based on the needs of the Ward and take into account the best interest of the Ward as well as the Ward's preferences, values, and prior directions, to the extent known to or reasonably ascertainable by the Conservator. The plan shall include a budget containing projected expenses and resources as well as projected income of the Ward.

(b) A Conservator shall give notice of the filing of the Conservator's plan under subsection (a), together with a copy of the plan, to the Ward, if an Adult, and any other Person the Court determines. The notice must include a statement of the right to object to the plan and be given not later than fourteen (14) days after the filing.

(c) A Ward and any Person entitled under subsection (b) to receive notice and a copy of the Conservator's plan may object to the plan.

(d) The Court shall review the Conservator's plan filed under subsection (a) and determine whether to approve the plan or require a new plan. In deciding whether to approve the plan, the Court shall consider an objection under subsection (c) and whether the plan is consistent with the Conservator's duties and powers. The Court may not approve the plan until thirty (30) days after its filing.

(e) After a Conservator's plan under this Section is approved by the Court, the Conservator shall provide a copy of the plan to the Ward, if an Adult, and any other Person the Court determines.

**SECTION 421. INVENTORY; RECORDS.**

(a) Not later than ninety (90) days after appointment, the Conservator shall prepare and file with the Court a detailed inventory of the Conservatorship Estate, together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits.

(b) The Conservator shall give notice of the filing of an inventory to the Ward, if an Adult, and any other Person the Court determines. The notice must be given not later than fourteen (14) days after the filing.

(c) The Conservator shall keep records of the administration of the Conservatorship Estate and make them available for examination on reasonable request of the Ward, a Guardian for the Ward, or any other Person the Conservator or the Court determines.

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**SECTION 422. ADMINISTRATIVE POWERS OF CONSERVATOR NOT REQUIRING COURT APPROVAL.**

(a) Except as otherwise provided in Section 415 or qualified or limited in the Court's order of appointment and stated in the Letters of Conservatorship, a Conservator has all powers granted in this Section.

(b) A Conservator, acting reasonably and consistent with the fiduciary duties of the Conservator to accomplish the purpose of the conservatorship, without specific Court authorization or confirmation, may with respect to the Conservatorship Estate:

(1) collect, hold, and retain Property, including Property in which the Conservator has a personal interest, until the Conservator determines disposition of the Property should be made;

(2) receive additions to the Conservatorship Estate;

(3) continue or participate in the operation of a business or other enterprise;

(4) invest assets;

(5) deposit funds or other Property in a financial institution, including one operated by the Conservator;

(6) acquire or dispose of Property, including options related thereto, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of, or abandon Property;

(7) make ordinary or extraordinary repairs or alterations in a building or other structure, demolish any improvement, or raze an existing or erect a new party wall or building;

(8) subdivide or develop land, dedicate land to public use, make or obtain the vacation of a plat and adjust a boundary, adjust a difference in valuation of land, exchange or partition land by giving or receiving consideration, and dedicate an easement to public use without consideration;

(9) enter for any purpose into a lease of Property as lessor or lessee, with or without an option to purchase or renew, for a term within or extending beyond the term of the Conservatorship;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or a pooling or unitization agreement;

(11) vote a security, in person or by general or limited proxy;

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(12) pay a call, assessment, or other sum chargeable or accruing against or on account of a security;

(13) sell or exercise a stock subscription or conversion right;

(14) consent, directly or through a committee or agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(15) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery;

(16) insure:

(A) the Conservatorship Estate, in whole or in part, against damage or loss in accordance with Section 419(j); and

(B) the Conservator against liability with respect to a third Person;

(17) borrow funds, with or without security, to be repaid from the Conservatorship Estate or otherwise;

(18) advance funds for the protection of the Conservatorship Estate or the Ward and all expenses, losses, and liability sustained in the administration of the Conservatorship Estate or because of holding any Property for which the Conservator has a lien on the Conservatorship Estate;

(19) pay or contest a claim, settle a claim by or against the Conservatorship Estate or the Ward by compromise, arbitration, or otherwise, or release, in whole or in part, a claim belonging to the Conservatorship Estate to the extent the claim is uncollectible;

(20) pay a tax or assessment and other expense incurred in the collection, care, administration, and protection of the Conservatorship Estate;

(21) pay a sum distributable to the Ward or an individual who is in fact dependent on the Ward by paying the sum to the distributee or for the use of the distributee:

(A) to the guardian for the distributee;

(B) to the custodian of the distributee; or

(C) if there is no guardian, custodian, or custodial trustee, to a relative or other Person having physical custody of the distributee;

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(22) bring or defend an action, claim, or proceeding in any jurisdiction for the protection of the Conservatorship Estate or the Conservator in the performance of the Conservator's duties;

(23) structure the finances of the Ward to establish eligibility for a public benefit, including by making gifts consistent with the Ward's preferences, values, and prior directions, if the Conservator's action does not jeopardize the Ward's welfare and otherwise is consistent with the Conservator's duties; and

(24) execute and deliver any instrument that will accomplish or facilitate the exercise of a power of the Conservator.

**SECTION 423. DISTRIBUTION FROM CONSERVATORSHIP ESTATE.** Except as otherwise provided in Section 415 or qualified or limited in the Court's order of appointment and stated in the Letters of Conservatorship, and unless contrary to a Conservator's plan under Section 420, the Conservator may expend or distribute income or principal of the Conservatorship Estate without specific Court authorization or confirmation for the support, care, education, health, or welfare of the Ward or an individual who is in fact dependent on the Ward, including the payment of child or spousal support, in accordance with the following rules:

(1) The Conservator shall consider a recommendation relating to the appropriate standard of support, care, education, health, or welfare for the Ward or individual who is dependent on the Ward, made by a Guardian for the Ward, if any, and, if the Ward is a Minor, a recommendation made by a Parent of the Minor.

(2) The Conservator acting in compliance with the Conservator's duties under Section 419 is not liable for an expenditure or distribution made based on a recommendation under paragraph (1) unless the Conservator knew the expenditure or distribution was not in the best interest of the Ward.

(3) In making an expenditure or distribution under this Section, the Conservator shall consider:

(A) the size of the Conservatorship Estate, the estimated duration of the conservatorship, and the likelihood the Ward, at some future time, may be fully self-sufficient and able to manage the Conservatorship Estate and attendant affairs;

(B) the accustomed standard of living of the Ward and individual who is dependent on the Ward;

(C) other funds or source used for the support of the Ward; and

(D) the preferences, values, and prior directions of the Ward.

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(4) Funds expended or distributed under this Section may be paid by the Conservator to any Person, including the Ward, as reimbursement for expenditures the Conservator might have made, or in advance for services to be provided to the Ward or individual who is dependent on the Ward if it is reasonable to expect the services will be performed and advance payment is customary or reasonably necessary under the circumstances.

**SECTION 424. CONSERVATOR'S REPORT AND ACCOUNTING; REVIEW.**

(a) A Conservator shall file with the Court a report regarding the administration of the Conservatorship Estate annually from the date of appointment unless the Court otherwise directs, on resignation or removal, on termination of the conservatorship, and at any other time the Court directs.

(b) A report under subsection (a) must state or contain:

(1) an accounting that lists Property included in the Conservatorship Estate and the receipts, disbursements, liabilities, and distributions during the period for which the report is made;

(2) a list of the services provided to the Ward;

(3) a copy of the Conservator's most recently approved plan and a statement whether the Conservator has deviated from the plan and, if so, how the Conservator has deviated and why;

(4) a recommendation as to the need for continued conservatorship and any recommended change in the scope of the conservatorship;

(5) to the extent feasible, a copy of the most recent reasonably available financial statements evidencing the status of bank accounts, investment accounts, and mortgages or other debts of the Ward with the account numbers and the Social Security number of the Ward redacted;

(6) anything of more than de minimis value which the Conservator, any individual who resides with the Conservator, or the spouse, or any Adult with whom the Conservator has shared household responsibilities for more than six (6) months in the twelve (12) month period immediately before the filing of the petition for conservatorship, Parent, child, or sibling of the Conservator has received from a Person providing goods or services to the Ward;

(7) any business relation the Conservator has with a Person the Conservator has paid or that has benefited from the Property of the Ward; and

(8) whether any co-Conservator or successor Conservator appointed to serve when a designated event occurs is alive and able to serve.

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(c) Notice of the filing under this Section of a Conservator's report, together with a copy of the report, must be provided to the Ward, if an Adult, and other Persons the Court determines. The notice and report must be given not later than fourteen (14) days after filing.

(d) The Court shall review each report at least annually to determine whether:

(1) the reports provide sufficient information to establish the Conservator has complied with the Conservator's duties;

(2) the conservatorship should continue; and

(3) the Conservator's requested fees, if any, should be approved.

(e) If the Court determines there is reason to believe a Conservator has not complied with the Conservator's duties or the conservatorship should not continue, the Court:

(1) shall notify the Ward, the Conservator and such other Persons as the Court determines appropriate, using Section 402(b)(2) and (3) as a guide for the same;

(2) may require additional information from the Conservator; and

(3) consistent with Sections 431 and 432, may hold a hearing to consider removal of the Conservator, termination of the conservatorship, or a change in the powers granted to the Conservator or terms of the conservatorship.

(f) If the Court has reason to believe fees requested by a Conservator are not reasonable, the Court shall hold a hearing to determine whether to adjust the requested fees.

(g) A Conservator may petition the Court for approval of a report filed under this Section. The Court after review may approve the report. If the Court approves the report, there is a rebuttable presumption the report is accurate as to a matter adequately disclosed in the report.

(h) An order, after notice and hearing, approving an interim report of a Conservator filed under this Section adjudicates liabilities concerning a matter adequately disclosed in the report, as to a Person given notice of the report or accounting.

(i) An order, after notice and hearing, approving a final report filed under this Section discharges the Conservator from all liabilities, claims, and causes of action by a Person given notice of the report and the hearing as to a matter adequately disclosed in the report.

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**SECTION 425. ATTEMPTED TRANSFER OF PROPERTY BY WARD.**

(a) The interest of a Ward in Property included in the Conservatorship Estate is not transferrable or assignable by the Ward and is not subject to levy, garnishment, or similar process for claims against the Ward unless allowed under Section 429.

(b) If a Ward enters into a contract after having the right to enter the contract is removed by the Court, the contract is void against the Ward and the Ward's Property.

(c) A Person other than the Conservator that deals with a Ward with respect to Property included in the Conservatorship Estate is entitled to protection provided by law as determined to be applicable by the Court pursuant to Section 104.

**SECTION 426. TRANSACTION INVOLVING CONFLICT OF INTEREST.** A transaction involving a Conservatorship Estate which is affected by a substantial conflict between the Conservator's fiduciary duties and personal interests is voidable unless the transaction is authorized by Court order after notice to the Ward and to such other Persons as the Court determines appropriate, using Section 402(b)(2) and (3) as a guide for the same. A transaction affected by a substantial conflict includes a sale, encumbrance, or other transaction involving the Conservatorship Estate entered into by the Conservator, an individual with whom the Conservator resides, the spouse or if the Conservator has none, an Adult with whom the Conservator has shared household responsibilities for more than six (6) months in the twelve (12) month period immediately before the filing of the petition for conservatorship, descendant, sibling, agent or Attorney of the Conservator, or a corporation or other enterprise in which the Conservator has a substantial beneficial interest.

**SECTION 427. PROTECTION OF PERSON DEALING WITH CONSERVATOR.** A Person that assists or deals with a Conservator in good faith and for value in any transaction, other than a transaction requiring a Court order under Section 415, is protected as though the Conservator properly exercised any power in question. Knowledge by a Person that the Person is dealing with a Conservator alone does not require the Person to inquire into the existence of authority of the Conservator or the propriety of the Conservator's exercise of authority, but restrictions on authority stated in Letters of Conservatorship, or otherwise provided by law, are effective as to the Person. A Person that pays or delivers Property to a Conservator is not responsible for proper application of the Property.

**SECTION 428. DEATH OF THE WARD.**

(a) If a Ward dies, the Conservator shall deliver to the Court for safekeeping any will of the Ward in the Conservator's possession and inform the personal representative named in the will if feasible, or if not feasible, a beneficiary named in the will, of the delivery.

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(b) If forty (40) days after the death no personal representative has been appointed and no application or petition for appointment is before any court, the Conservator may apply in any court of appropriate jurisdiction to exercise the powers and duties of a personal representative to administer and distribute the decedent's estate. The Conservator shall give notice to a Person nominated as personal representative by a will of the decedent of which the Conservator is aware.

(c) On the death of the Ward, the Conservator shall conclude the administration of the Conservatorship Estate as provided in Section 432.

**SECTION 429. PRESENTATION AND ALLOWANCE OF CLAIM.**

(a) A Conservator may pay or secure by encumbering Property in the Conservatorship Estate as allowable by applicable law, a claim against the Conservatorship Estate or the Ward arising before or during the conservatorship, on presentation and allowance in accordance with the priorities under subsection (d). A claimant may present a claim by:

(1) sending or delivering to the Conservator a statement of the claim, indicating its basis, the name and address of the claimant, and the amount claimed; or

(2) filing the claim with the Court, in a form acceptable to the Court, and sending or delivering a copy of the claim to the Conservator.

(b) A claim under subsection (a) is presented on receipt by the Conservator of the statement of the claim or the filing with the Court of the claim, whichever first occurs. A presented claim is allowed if it is not disallowed in whole or in part by the Conservator in writing sent or delivered to the claimant not later than sixty (60) days after its presentation. Before payment, the Conservator may change an allowance of the claim to a disallowance in whole or in part, but not after allowance under a Court order or order directing payment of the claim. The Court may determine that a claim is barred by laches pursuant to Section 104.

(c) A claimant whose claim under subsection (a) has not been paid may petition the Court for payment, and the Court may order its allowance, payment, or security by encumbering Property included in the Conservatorship Estate as allowable by applicable law. If a proceeding is pending against the Ward at the time of appointment of the Conservator or is initiated thereafter, the petitioning party shall give the Conservator notice of the proceeding if it could result in creating a claim against the Conservatorship Estate.

(d) If a Conservatorship Estate is likely to be exhausted before all existing claims are paid, the Conservator shall distribute the Conservatorship Estate in money or in kind in payment of claims in the following order:

(1) costs and expenses of administration;

(2) a claim of the Seminole Tribe, federal or state government having priority under applicable law;

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(3) a claim incurred by the Conservator for support, care, education, health, or welfare previously provided to the Ward or an individual who is in fact dependent on the Ward;

(4) a claim arising before the conservatorship; and

(5) all other claims.

**SECTION 430. PERSONAL LIABILITY OF CONSERVATOR.**

(a) Except as otherwise agreed by a Conservator, the Conservator is not personally liable on a contract properly entered into in a fiduciary capacity in the course of administration of the Conservatorship Estate unless the Conservator fails to reveal the Conservator's representative capacity in the contract or before entering into the contract.

(b) A Conservator is personally liable for an obligation arising from control of Property of the Conservatorship Estate or an act or omission occurring in the course of administration of the Conservatorship Estate only if the Conservator is personally at fault.

**SECTION 431. REMOVAL OF CONSERVATOR; APPOINTMENT OF SUCCESSOR.**

(a) The Court may remove a Conservator for failure to perform the Conservator's duties or other good cause and appoint a successor Conservator to assume the duties of the Conservator.

(b) The Court shall hold a hearing to determine whether to remove a Conservator and appoint a successor on:

(1) a petition of the Ward, Conservator, or a Person interested in the welfare of the Ward which contains allegations that, if true, would support a reasonable belief that removal of the Conservator and appointment of a successor Conservator may be appropriate, but the Court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed during the preceding six (6) months;

(2) a communication from the Ward, Conservator, or a Person interested in the welfare of the Ward which supports a reasonable belief that removal of the Conservator and appointment of a successor Conservator may be appropriate; or

(3) a determination by the Court that a hearing would be in the best interest of the Ward.

(c) Notice of a petition under subsection (b)(1) must be given to the Ward, the Conservator, and any other Person the Court determines.

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(d) A Ward who seeks to remove the Conservator and have a successor Conservator appointed has the right to choose an Attorney to represent the Ward in the proceeding. If the Ward is not represented by an Attorney, the Court shall appoint an Attorney under the same conditions as in Section 407. The Court shall award reasonable attorney's fees to the Attorney as provided in Section 115.

(e) The Court shall use Section 411 in appointing a successor Conservator.

(f) Not later than thirty (30) days after appointing a successor Conservator, the Court shall give notice of the appointment to the Ward and to such other Persons as the Court determines appropriate, using Section 402(b)(2) and (3) as a guide for the same.

**SECTION 432. TERMINATION OR MODIFICATION OF CONSERVATORSHIP.**

(a) A Conservatorship for a Minor terminates on the earliest of:

(1) a Court order terminating the conservatorship;

(2) the Minor becoming an Adult or, if the Minor consents or the Court finds by clear and convincing evidence that substantial harm to the Minor's interests is otherwise likely, attaining twenty-one (21) years of age;

(3) emancipation of the Minor; or

(4) death of the Minor.

(b) A conservatorship for an Adult terminates on order of the Court or when the Adult dies.

(c) The Ward, Conservator, or a Person interested in the welfare of the Ward may petition for:

(1) termination of the conservatorship on the ground that a basis for appointment under Section 401 does not exist, termination would be in the best interest of the Ward, or for other good cause; or

(2) modification of the conservatorship on the ground that the extent of protection or assistance granted is not appropriate or for other good cause.

(d) The Court shall hold a hearing to determine whether termination or modification of a conservatorship is appropriate on:

(1) a petition under subsection (c) which contains allegations that, if true, would support a reasonable belief that termination or modification of the conservatorship may be appropriate, but the Court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding six (6) months;

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(2) a communication from the Ward, Conservator, or a Person interested in the welfare of the Ward which supports a reasonable belief that termination or modification of the conservatorship may be appropriate, including because the functional needs of the Ward or supports or services available to the Ward have changed;

(3) a report from the Guardian or Conservator which indicates that termination or modification may be appropriate because the functional needs or supports or services available to the Ward have changed or a Protective Arrangement or other Less Restrictive Alternative is available; or

(4) a determination by the Court that a hearing would be in the best interest of the Ward.

(e) Notice of a petition under subsection (c) must be given to the Ward, the Conservator, and any other Person the Court determines.

(f) On presentation of prima facie evidence for termination of a conservatorship, the Court shall order termination unless it is proven that a basis for appointment of a Conservator under Section 401 exists.

(g) The Court shall modify the powers granted to a Conservator if the powers are excessive or inadequate due to a change in the abilities or limitations of the Ward, the Ward's supports, or other circumstances.

(h) Unless the Court otherwise orders for good cause, before terminating a conservatorship, the Court shall follow the same procedures to safeguard the rights of the Ward which apply to a petition for conservatorship.

(i) An Ward who seeks to terminate or modify the terms of the conservatorship has the right to choose an Attorney to represent the Ward in the proceeding. If the Ward is not represented by an Attorney, the Court shall appoint an Attorney under the same conditions as in Section 407. The Court shall award reasonable attorney's fees to the Attorney as provided in Section 115.

(j) On termination of a conservatorship other than by reason of the death of the Ward, Property of the Conservatorship Estate passes to the Ward. The order of termination must direct the Conservator to file a final report and petition for discharge on approval by the Court of the final report.

(k) On termination of a conservatorship by reason of the death of the Ward, the Conservator promptly shall file a final report and petition for discharge on approval by the Court of the final report. The Conservator may take reasonable measures necessary to preserve the Conservatorship Estate until distribution can be made.

(l) The Court shall issue a final order of discharge on the approval by the Court of the final report and satisfaction by the Conservator of any other condition the Court imposed on the Conservator's discharge.

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**ARTICLE 5 - OTHER PROTECTIVE ARRANGEMENTS**

**SECTION 501. AUTHORITY FOR PROTECTIVE ARRANGEMENT.**

(a) A Court:

(1) on receiving a petition for a guardianship for an Adult may order a protective arrangement instead of guardianship as a Less Restrictive Alternative to guardianship; and

(2) on receiving a petition for a conservatorship for an Adult or Minor may order a protective arrangement instead of conservatorship as a Less Restrictive Alternative to conservatorship.

(b) The Tribal Council, a social service department of the Seminole Tribe or a Tribal Member interested in an Adult's welfare, including the Adult or a Conservator for the Adult, may petition the Court for a protective arrangement instead of guardianship.

(c) The following Persons may petition the Court for a protective arrangement instead of conservatorship:

(1) the Respondent for whom the protective arrangement is sought;

(2) the Tribal Council, a social service department of the Seminole Tribe or a Tribal Member interested in the Property, financial affairs, or welfare of the Tribal Member or Descendant, including a person that would be affected adversely by lack of effective management of Property or financial affairs of the Adult or Minor; and

(3) the Guardian for the Respondent.

**SECTION 502. BASIS FOR PROTECTIVE ARRANGEMENT INSTEAD OF GUARDIANSHIP FOR ADULT.**

(a) After the hearing on a petition under Section 302 for a guardianship or under Section 501(b) for a protective arrangement instead of guardianship, the Court may issue an order under subsection (b) for a protective arrangement instead of guardianship if the Court finds by clear and convincing evidence that:

(1) the Respondent lacks the ability to meet essential requirements for physical health, safety, or self-care because the Respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or Supported Decision Making; and

(2) the Respondent's identified needs cannot be met by a Less Restrictive Alternative.

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(b) If the Court makes the findings under subsection (a), the Court, instead of appointing a Guardian, may:

(1) authorize or direct a transaction necessary to meet the Respondent's need for health, safety, or care, including:

(A) a particular medical treatment or refusal of a particular medical treatment;

(B) a move to a specified place of dwelling; or

(C) visitation or supervised visitation between the Respondent and another Person;

(2) restrict access to the Respondent by a specified person whose access places the Respondent at serious risk of physical, psychological, or financial harm; and

(3) order other arrangements on a limited basis that are appropriate.

(c) In deciding whether to issue an order under this Section, the Court shall consider the factors under Sections 314 and 315 which a Guardian must consider when making a decision on behalf of a Ward.

**SECTION 503. BASIS FOR PROTECTIVE ARRANGEMENT INSTEAD OF CONSERVATORSHIP FOR ADULT OR MINOR.**

(a) After the hearing on a petition under Section 402 for conservatorship for an Adult or under Section 501(c) for a protective arrangement instead of conservatorship for an Adult, the Court may issue an order under subsection (c) for a protective arrangement instead of conservatorship if the Court:

(1) finds by clear and convincing evidence that the Adult is unable to manage Property or financial affairs because of a limitation in the ability to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or Supported Decision Making, or the Adult is missing or detained; or

(2) finds by the greater weight of the evidence that it is necessary to prevent harm to the Adult or significant dissipation of the Property of the Adult; or to obtain or provide funds or other Property needed for the support, care, education, health, or welfare of the Adult or an individual entitled to the Adult's support; and

(3) the Adult's identified needs cannot be met by a Less Restrictive Alternative.

(b) After the hearing on a petition under Section 402 for conservatorship for a Minor or under Section 501(c) for a protective arrangement instead of conservatorship, the Court may issue an order under subsection (c) for a protective arrangement instead of conservatorship if the Court finds by the greater weight of the evidence that the protective arrangement is in the Minor's best interest, and:

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(1) if the Minor has a Parent, the Court gives weight to any recommendation of the Parent whether a protective arrangement instead of conservatorship is in the Minor's best interest;

(2) either:

(A) the Minor owns money or Property requiring management or protection that otherwise cannot be provided;

(B) the Minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the Minor's age; or

(C) the protective arrangement is necessary or desirable to obtain or provide funds or other Property needed for the support, care, education, health, or welfare of the Minor; and

(3) the order under subsection (c) is necessary or desirable to obtain or provide money needed for the support, care, education, health, or welfare of the Minor.

(c) If the Court makes the findings under subsection (a) or (b), the Court, instead of appointing a Conservator, may:

(1) authorize or direct a transaction necessary to protect the financial interest or Property of the Respondent, including:

(A) an action to establish eligibility for benefits;

(B) payment, delivery, deposit, or retention of funds or Property;

(C) sale, mortgage, lease, or other transfer of Property;

(D) purchase of an annuity;

(E) entry into a contractual relationship, including a contract to provide for personal care, supportive services, education, training, or employment;

(F) addition to or establishment of a trust;

(G) ratification or invalidation of a contract, trust, will, or other transaction, including a transaction related to the Property or business affairs of the Respondent; or

(H) settlement of a claim; or

(2) restrict access to the Respondent's property by a specified person whose access to the property places the Respondent at serious risk of financial harm.

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(d) After the hearing on a petition for conservatorship under Section 501(a)(2) or for a protective arrangement under Section 501(c), whether or not the Court makes the findings under this subsection (a) or (b), the Court may issue an order to restrict access to the Respondent or the Respondent's property by a specified person that the Court finds by clear and convincing evidence:

(1) through fraud, coercion, duress, or the use of deception and control caused or attempted to cause an action that would have resulted in financial harm to the Respondent or the Respondent's Property; and

(2) poses a serious risk of substantial financial harm to the Respondent or the Respondent's Property.

(e) Before issuing an order under subsection (c) or (d), the Court shall consider the factors under Section 419 a Conservator must consider when making a decision on behalf of a Ward.

(f) Before issuing an order under subsection (c) or (d) for a Respondent who is a Minor, the Court also shall consider the best interest of the Minor, the preference of the Parents of the Minor, and the preference of the Minor, if the Minor is twelve (12) years of age or older.

**SECTION 504. PETITION FOR PROTECTIVE ARRANGEMENT.** A petition for a Protective Arrangement must state the petitioner's name, principal residence, current street address, if different, relationship to the Respondent, interest in the Protective Arrangement, the name and address of any Attorney representing the petitioner, and, to the extent known, the following:

(1) the Respondent's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed the Respondent will reside if the petition is granted;

(2) the name and address of the Respondent's:

(A) spouse or, if none, an Adult with whom the Respondent has shared household responsibilities for more than six (6) months in the twelve (12) month period immediately before the filing of the petition;

(B) Adult children or, if none, each Parent and Adult sibling of the Respondent, or, if none, at least one Adult nearest in kinship to the Respondent who can be found with reasonable diligence; and

(C) Adult stepchildren whom the Respondent actively parented during the stepchildren's minor years and with whom the Respondent had an ongoing relationship in the two (2) year period immediately before the filing of the petition;

(3) the name and current address of each of the following, if applicable:

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- Respondent;
- beneficiary;
- Affairs;
- document in which the Respondent is identified as the principal;
- identified as the grantor;
- or other signed document;
- making in the six (6) month period immediately before the filing of the petition; and
- of:
- (A) any Person responsible for the care or custody of the Respondent;
  - (B) any Attorney currently representing the Respondent;
  - (C) any representative payee appointed by the Social Security Administration for the Respondent;
  - (D) any guardian or conservator acting for the Respondent;
  - (E) any trustee or custodian of a trust or custodianship of which the Respondent is a beneficiary;
  - (F) any fiduciary appointed for the Respondent by the Department of Veterans Affairs;
  - (G) any agent designated under a designation of health care surrogate or other similar document in which the Respondent is identified as the principal;
  - (H) any agent designated under a power of attorney in which the Respondent is identified as the grantor;
  - (I) any Person nominated as guardian by the Respondent's Parent or spouse in a will or other signed document;
  - (J) any Person known to have routinely assisted the Respondent with decision making in the six (6) month period immediately before the filing of the petition; and
  - (K) if the Respondent is a Minor:
    - (i) an Adult not otherwise listed with whom the Respondent resides; and
    - (ii) each Person not otherwise listed that had primary care or custody of the Respondent for at least sixty (60) days during the two (2) years immediately before the filing of the petition;
- (4) the nature of the Protective Arrangement sought;
- (5) the reason the Protective Arrangement sought is necessary, including a brief description of:
- (A) the nature and extent of the Respondent's alleged need;
  - (B) any Less Restrictive Alternative for meeting the Respondent's alleged need which has been considered or implemented;

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(C) if no Less Restrictive Alternative has been considered or implemented, the reason Less Restrictive Alternatives have not been considered or implemented; and

(D) the reason other Less Restrictive Alternatives are insufficient to meet the Respondent's alleged need;

(6) the name and current address, if known, of any Person with whom the petitioner seeks to limit the Respondent's contact;

(7) whether the Respondent needs an interpreter, translator, or other form of support to communicate effectively with the Court or understand Court proceedings; or

(8) if a Protective Arrangement is sought and the Respondent has Property other than personal effects, a general statement of the Respondent's Property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts.

**SECTION 505. NOTICE AND PRELIMINARY HEARING.**

(a) On the filing of a petition for a Protective Arrangement for an Adult, the Court shall set a date, time, and place for a preliminary hearing.

(b) A copy of a petition and notice of the preliminary hearing must be by Personal Service on the Adult, with notice on the Adult's spouse, if any; any Person responsible for the care of the Adult; and any Attorney known to be representing the Adult.

(c) At the preliminary hearing, the Court shall:

(1) explain to the Adult the substance of the petition, the nature, purpose, and effect of the proceeding, the Adult's rights at the hearing on the petition, and the general nature of a Protective Arrangement;

(2) determine the Adult's views about the Protective Arrangement and the scope and duration of the same;

(3) inform the Adult of the Adult's right to employ and consult with an Attorney at the Adult's expense and the right to request a Court-appointed Attorney; and

(4) inform the Adult that all costs and expenses of the proceeding, including the Adult's Attorney's fees, may be paid from the Adult's assets.

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(d) If the Court is aware of circumstances which would prohibit or make it impractical for the Adult to attend the preliminary hearing, the Court may appoint a Court Monitor pursuant to Section 507 to meet with the Adult regarding the items listed in subsection (c) (1)-(4) above and to advise the Court of the same.

**SECTION 506. NOTICE AND HEARING.**

(a) On the filing of a petition for a Protective Arrangement, the Court shall set a date, time, and place for a hearing on the petition.

(b) A copy of a petition and notice of a hearing on the petition must be by Personal Service on the Respondent. If the Respondent is an enrolled member of the Seminole Tribe whose whereabouts are unknown or on whom Personal Service cannot be made and the petition is for a protective arrangement instead of conservatorship, then service can be effectuated by completing the following three (3) requirements: (i) mailing the notice and a copy of the petition by U.S. Mail, postage prepaid, to the Respondent's last known address on file at the office of the Tribal Secretary of the Seminole Tribe; (ii) serving the notice and a copy of the petition by Personal Service on a family relative of the Respondent; and (iii) posting the notice and a copy of the petition in a conspicuous place in at least one administrative building on a reservation of the Seminole Tribe, which posting must remain in place for no less than three (3) business days. The notice must inform the Respondent of the Respondent's rights at the hearing, including the right to an Attorney; the right to attend the hearing; that the failure to attend the hearing could result in the entry of an order for a Protective Arrangement without the Respondent's input; and include a description of the nature, purpose, and consequences of granting the petition. The Court may not grant a petition if notice substantially complying with this subsection is not served on the Respondent.

(c) In a proceeding on the petition, the notice required under subsection (b) must be given to the Persons required to be listed in the petition under Section 504(2) and (3) and any other Person interested in the Respondent's welfare the Court determines. Failure to give notice under this subsection does not preclude the Court from granting the petition.

(d) After the Court has ordered a Protective Arrangement, notice of a hearing on a petition or an order under this Article 5, together with a copy of the petition, must be given to the Respondent and any other Person the Court determines.

**SECTION 507. APPOINTMENT AND ROLE OF COURT MONITOR.**

(a) After the filing of a petition for Protective Arrangement, the Court may appoint a Court Monitor. The Court Monitor must have completed a training course conducted by the Guardianship Program of the Advocacy and Guardianship Department. To the extent feasible, the Court Monitor shall interview the Respondent in person and in a manner the Respondent is best able to understand and perform such tasks as assigned by the Court, including investigating any matter involving the Protective Arrangement.

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(b) When the whereabouts of an enrolled member of the Seminole Tribe is unknown and Personal Service cannot be made on a petition for a protective arrangement instead of conservatorship, then the procedure for service pursuant to Section 506(b) may be assigned to a Court Monitor who shall effectuate service as provided for therein and shall file with the Court a certification that the requirements were complied with. The Court Monitor shall have discretion as to where the posting pursuant to Section 506(b) may be made.

**SECTION 508. APPOINTMENT AND ROLE OF ATTORNEY.**

(a) The Court shall appoint an Attorney to represent the Respondent in a proceeding for a Protective Arrangement if the Respondent requests the appointment or the Court determines the Respondent needs representation.

(b) An Attorney representing the Respondent in a proceeding for a Protective Arrangement shall:

(1) make reasonable efforts to ascertain the Respondent's wishes;

(2) advocate for the Respondent's wishes to the extent reasonably ascertainable; and

(3) if the Respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive alternative in type, duration, and scope, consistent with the Respondent's interests.

**SECTION 509. PROFESSIONAL EVALUATION.**

(a) At or before a hearing on a petition for a Protective Arrangement, the Court shall order a professional evaluation of the Respondent:

(1) if the Respondent requests the evaluation; or

(2) in other cases, unless the Court finds that it has sufficient information to determine the Respondent's needs and abilities without the evaluation.

(b) If the Court orders an evaluation under subsection (a), the Respondent must be examined by a licensed physician, psychologist, or other individual appointed by the Court who is qualified to evaluate the Respondent's alleged cognitive and functional abilities and limitations and will not be advantaged or disadvantaged by a decision to grant the petition or otherwise have a conflict of interest. The individual conducting the evaluation promptly shall file a report with the Court. Unless otherwise directed by the Court, the report must contain:

(1) a description of the nature, type, and extent of the Respondent's cognitive and functional abilities and limitations;

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(2) an evaluation of the Respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills;

(3) a prognosis for improvement, including with regard to the ability to manage the Respondent's Property and financial affairs if a limitation in that ability is alleged, and recommendation for the appropriate treatment, support, or habilitation plan; and

(4) the date of the examination on which the report is based.

(c) The Respondent may decline to participate in an evaluation ordered under subsection (a). If the Respondent declines to participate, the Court may enter an order for a Protective Arrangement without the report required by subsection (b) if the Court otherwise finds that there is a basis for such order.

**SECTION 510. ATTENDANCE AND RIGHTS AT HEARING.**

(a) Except as otherwise provided in subsection (b), a hearing under Section 506 may not proceed unless the Respondent attends the hearing. If it is not reasonably feasible for the Respondent to attend a hearing at the location Court proceedings typically are held, the Court shall make reasonable efforts to hold the hearing at an alternative location convenient to the Respondent or allow the Respondent to attend the hearing using real-time audio-visual technology, or by telephone if the same is not available.

(b) A hearing under Section 506 may proceed without the Respondent in attendance if the Court finds by clear and convincing evidence that:

(1) the Respondent failed to appear after being served with notice as required by Section 506;

(2) there is no practicable way for the Respondent to attend and participate in the hearing even with appropriate supportive services and technological assistance; or

(3) the Respondent is a Minor who has received proper notice and attendance would be harmful to the Minor.

(c) The Respondent may be assisted in a hearing under Section 506 by a Person or Persons of the Respondent's choosing, assistive technology, an interpreter or translator, or a combination of these supports. If assistance would facilitate the Respondent's participation in the hearing, but is not otherwise available to the Respondent, the Court shall make reasonable efforts to provide it.

(d) The Respondent has a right to choose an Attorney to represent the Respondent at a hearing under Section 506.

(e) At a hearing under Section 506, the Respondent may:

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- (1) present evidence, whether testimonial, written or otherwise;
- (2) examine witnesses, including any Court-appointed evaluator and the Court Monitor; and
- (3) otherwise participate in the hearing.

(f) A hearing under Section 506 must be closed on request of the Respondent and a showing of good cause.

(g) Any Person may request to participate in a hearing under Section 506. The Court may grant the request, with or without a hearing, on determining that the best interest of the Respondent will be served. The Court may impose appropriate conditions on the Person's participation.

**SECTION 511. NOTICE OF ORDER.** The Court shall give notice of an order under this Article 5 to the Tribal Member or Descendant who is subject to the Protective Arrangement, a person whose access to the Tribal Member or Descendant is restricted by the order, and any other Person the Court determines.

**SECTION 512. CONFIDENTIALITY OF RECORDS.**

(a) The existence of a proceeding for or the existence of a Protective Arrangement is a matter of public record unless the Court seals the record after the Respondent, the Tribal Member or Descendant subject to the Protective Arrangement, or the Parent of a Minor subject to a protective arrangement instead of conservatorship petitions that the record be sealed and either the proceeding is dismissed; the Protective Arrangement is no longer in effect; or an act authorized by the order granting the Protective Arrangement has been completed.

(b) A Respondent, an Adult or Minor subject to a Protective Arrangement, an Attorney designated by the Respondent or an Adult or Minor, a Parent of a Minor subject to a protective arrangement instead of conservatorship, and any other Person the Court determines are entitled to access Court records of the proceeding and resulting Protective Arrangement. A Person not otherwise entitled to access to Court records under this subsection for good cause may petition the Court for access to Court records relating to the Protective Arrangement. The Court shall grant access if access is in the best interest of the Respondent or the Adult or Minor subject to the Protective Arrangement or furthers the public interest and does not endanger the welfare or financial interests of the Respondent or the Adult or Minor subject to a Protective Arrangement.

(c) A report of a Court Monitor or professional evaluation generated in the course of a proceeding for a Protective Arrangement must be sealed on filing but is available to:

- (1) the Court;
- (2) the Respondent or Adult or Minor subject to a Protective Arrangement, without limitation

as to use;

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(3) the petitioner, Court Monitor and any Attorney for the petitioner or Respondent, for purposes of the proceeding;

(4) an agent appointed under a power of attorney in which the Respondent is the grantor unless the Court otherwise orders;

(5) an agent appointed under a designation of health care surrogate or other similar document in which the Respondent is the principal unless the Court otherwise orders; and

(6) any other Person if it is in the public interest or for a purpose the Court orders for good cause and does not endanger the welfare or financial interests of the Respondent or an Adult or Minor subject to a Protective Arrangement.

**RULES OF GUARDIANSHIP**

Rule 1 – Application

These rules govern the procedure and other requirements in all guardianships, conservatorships, Protective Arrangements and related proceedings pursuant to this Ordinance and shall supersede any other rules of Court that are otherwise in conflict.

Rule 2 – Petitions

Except for a request pursuant to Section 113 of this Ordinance, all applications to the Court for an order shall be by written petition unless made orally during a hearing or trial. All petitions must state with particularity the grounds therefor and shall set forth the relief or order sought. Written petitions must be signed by the Attorney of record or by an unrepresented Person either individually or in a representative capacity.

Rule 3 – Substantial Rights

No defect of form in proceedings before the Court shall impair substantial rights and no defect in a statement of jurisdictional facts actually existing renders any proceeding void.

Rule 4 – Verification and Certification

(a) When verification of a document is required, the document filed shall include an oath, affirmation or the following: “Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.”

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(b) When certification of a copy of a document is required, the document shall include an oath, affirmation or accompanying declaration by an officer to whose custody the document is entrusted in the following or similar words: "Under penalties of perjury, I declare that the foregoing or attached document is a true, exact, unaltered, and complete copy of the original document which is in the custody of my office."

(c) Any Person who willfully includes a false statement in a petition or document may be found to have committed perjury and may be referred to the proper authority for prosecution.

Rule 5 - Time

(a) Computation of time shall be as follows:

(i) exclude the day of the event that starts the computation of the time period;

(ii) count every day, including weekends and days the Court is closed, if the time period is greater than seven days, otherwise exclude the same;

(iii) include the last day of the period, but if the last day is a weekend day or a day in which the Court is closed, the time period will continue to run until the next day which is not a weekend day or a day in which the Court is closed.

(b) When an act is required or allowed to be done at or within a specified time by these rules, by order of the Court, or by notice given thereunder, for cause shown the Court at any time in its discretion, may:

(i) order the period enlarged, if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or

(ii) on petition after the expiration of the specified period, permit the act to be done when failure to act was the result of excusable neglect. The Court under this rule may not extend the time for serving a petition for rehearing.

(c) A copy of any written petition which may not be heard ex parte and a copy of the notice of the hearing thereon must be served a reasonable time before the time specified for the hearing.

(d) When serving a petition or other document, five (5) days are added after the period that would have otherwise expired under section (a) herein.

Rule 6 – Recording of Hearings

Electronic or stenographic recordings shall be made of all hearings.

Rule 7 – Consolidation

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The Chief Judge or Chief Justice of the Court may order any related case be consolidated with a pending guardianship, conservatorship or Protective Arrangement proceeding. Such order may address the application of such other Court rules of procedure as the Chief Judge or Chief Justice deems necessary or advisable notwithstanding Rule 1.

Rule 8 – Lawyers Representing the Seminole Tribe

(a) An attorney-at-law representing the Seminole Tribe need not be admitted to practice before the Court nor be a member of the Bar of the Seminole Tribe in order to appear and represent the Seminole Tribe in any proceeding under this Ordinance.

(b) An attorney-at-law representing the Seminole Tribe may withdraw at any time or limit their appearance before the Court without Court approval. The attorney must file a notice specifically limiting their appearance to a particular proceeding or matter in which the attorney appears. At the conclusion of that proceeding or matter, the attorney's role terminates. The attorney shall file a notice of completion of limited appearance or a notice of withdrawal, as applicable.

Rule 9 – Order to Show Cause; Contempt

(a) Any Person who fails to comply with the provisions of this Ordinance or an order of the Court may, pursuant to a petition or the Court acting on its own, be ordered to show cause why the Person should not be found in contempt of Court.

(b) Following a hearing to show cause, for which the Person had been given notice and at which the Person had the opportunity to be heard, if the Court finds that the Person failed to comply with this Ordinance or a valid, unambiguous Court order, the Court may find the Person in contempt and impose appropriate monetary or other sanctions.

Rule 10 – Petitions For Appointment

(a) Petitions for appointment of Guardians and Conservators must be verified and signed by the petitioner or their Attorney.

(b) If the petitioner is signing in a representative capacity, the representative capacity shall be specified.

(c) If the Respondent is the petitioner for the appointment of a Guardian or Conservator, the Court shall advise the petitioner of the applicability of Section 320 or Section 432 of this Ordinance, as applicable, at the first hearing in which the petitioner is before the Court. The Court shall not grant the petition without the petitioner having been so advised.

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Rule 11 – Discovery

In the interests of efficiency, economy and conserving the assets of the Ward, the Court has broad discretion to limit the scope, place, and manner of discovery.

Rule 12 – Testimony By Minors

(a) In the Court's discretion, a Minor under ten (10) years of age may testify without taking an oath if the Court determines that the Minor understands the duty to tell the truth or the duty not to lie.

(b) Unless the Court determines that the source of information or the method or circumstances by which it is reported indicates a lack of trustworthiness, an out of court statement made by a Minor with a chronological, mental, emotional, or developmental age of sixteen (16) years or less describing any act of child abuse or neglect performed in the presence of the Minor is admissible. If the Minor is unavailable as a witness, for the out of court statement to be admissible it must be corroborated by other admissible evidence of the abuse or neglect. Unavailability shall include a finding by the Court that the Minor's participation in the proceeding would result in a significant likelihood of severe emotional or mental harm.

Rule 13 – Testimony by At-Risk Adults

(a) For purposes of this rule, an at-risk adult means an adult who has a substantial physical or mental impairment due to age, congenital disease, injury, illness or infirmity.

(b) Unless the Court determines that the source of information or the method or circumstances by which it is reported indicates a lack of trustworthiness, an out of court statement made by an adult describing any act of abuse, neglect, or violence on the at-risk adult is admissible. If the at-risk adult is unavailable as a witness, for the out of court statement to be admissible it must be corroborated by other admissible evidence of the abuse, neglect or violence. Unavailability shall include a finding by the Court that the at-risk adult's participation in the proceeding would result in a significant likelihood of severe emotional or mental harm.

Rule 14 – Fiduciary Attorney-Client Privilege

A client acts as a fiduciary when serving as a Guardian or Conservator. A communication between an Attorney and a client acting as a fiduciary is privileged and protected from disclosure pursuant to the attorney-client privilege to the same extent as if the client were not acting as a fiduciary.

Rule 15 – Interpreters and Translators

(a) When the Court determines that a witness cannot sufficiently hear or understand the English language or cannot sufficiently communicate in English so as to be understood, an interpreter or translator shall be appointed.

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(b) The interpreter or translator shall present credentials confirming the skill and ability to provide the service and shall verify under oath that any interpretation or translation will be true and complete.

Rule 16 – Rehearing

A petition for rehearing of any order or judgment shall be served no later than ten (10) days after the date of filing the order or judgment with the Clerk of Court as shown on the face of the order or judgment.

Rule 17 – Prerequisites To Issuance of Letters

(a) Before the issuance of Letters:

(i) The Guardian or Conservator must file a designation of street address or mailing address and agree to notify the Court of any change of address within twenty (20) days of the change.

(ii) The Guardian or Conservator must file a signed affirmation with the Court which states that “I [individual’s name], do so solemnly affirm that I will faithfully and justly perform all the duties incumbent upon me pursuant to this Ordinance to the best of my ability.”

(b) The designation of address and the affirmation may be incorporated in the petition for appointment of Guardian or Conservator or any other petition or document filed with the Court.

Rule 18 – Notice of Litigation

A Guardian or Conservator shall file a notice when a civil action or criminal prosecution has been instituted against the Guardian or Conservator. The notice shall contain: (1) the name of the parties; (2) the style of the court and the case number; (3) the county and state where the proceeding is pending; (4) the date of commencement of the proceeding; and (5) a brief statement of the nature of the proceeding.

Rule 19 – Rights and Privileges of Non-Parties

Before the Court grants any rights or privileges to a Person who is a non-party interested in the welfare of a Respondent, Minor, Ward or Tribal Member or Descendant subject to a Protective Arrangement, the Court must determine that the Person has a legitimate concern or may reasonably be affected by the outcome of the particular proceeding involved.

Rule 20 – Documents Related to Request for Notice

If the Court approves a request from a Person for notice under Section 113 of this Ordinance, in addition to receiving notice of hearings the Court may order that the requestor receive, in advance of the hearings, any pertinent Court filings or related documents.

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Rule 21 – Professional Evaluation

(a) If a professional evaluation ordered by the Court pursuant to Sections 307, 408 or 509 of this Ordinance is conducted by or through a Seminole Tribe Department or component thereof, it shall be without charge.

(b) The individual conducting the evaluation on behalf of the Seminole Tribe Department or component thereof, whether as an employee or agent, shall verify in writing that the evaluation is based on an objective professional judgment and without any conflict of interest or under influence which would impair such judgment. Without written verification, the Court cannot review or consider the evaluation.

Rule 22 – Seminole Tribe Department

(a) When the petitioner on a petition for guardianship, conservatorship, or Protective Arrangement is a Seminole Tribe Department or component thereof, the petitioner may proceed with or without an Attorney as it deems appropriate or advisable on a case by case basis.

(b) The Legal Department may assist the Seminole Tribe Department or component thereof on an informal basis or an attorney-at-law from the Legal Department may enter an appearance on behalf of the Seminole Tribe through the Department or component thereof.

(i) Nothing in this rule shall prevent the Legal Department from assisting Tribal Members as it deems appropriate in conformity with the Seminole Tribe's Amended Constitution and Bylaws.

Rule 23 – Co-Fiduciaries

A co-Guardian or co-Conservator may be appointed by the Court with the authority to act singly or jointly as determined by order of the Court.

Rule 24 – Court Monitors

(a) In order to be eligible to serve as a Court Monitor, an individual must attend and complete an education and training program developed and implemented by the Advocacy and Guardianship Department. After the individual has completed the program, the Advocacy and Guardianship Department shall issue a program certificate and file a copy with the Court.

(b) In order to be appointed to serve as a Court Monitor in a particular case, the Court Monitor must attest in a written statement filed with the Court or by testimony before the judge that the Court Monitor understands and agrees to abide by the provisions contained in section (c).

(c) A Court Monitor:

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(i) cannot serve in a case in which the Court Monitor has a conflict of interest. If a conflict or interest arises after appointment the Court Monitor must immediately notify the Court and resign;

(ii) cannot accept or give a gift or loan from or to the Respondent, Minor or Ward.

(iii) cannot use any information obtained in a case for any purpose other than to accomplish Court assignments. All such information must be treated as confidential.

(d) In addition to specific tasks assigned by the Court and unless otherwise directed by the Court, a Court Monitor shall:

(i) investigate and gather facts from an array of sources and provide them along with other information to the Court so that judges may make better-informed decisions about the Respondents, Wards, and Tribal Members and Descendants subject to Protective Arrangements over whom they have jurisdiction;

(ii) make the Court aware, to the extent not previously disclosed, of the preferences and wishes of Respondents, Minors or Wards and to otherwise give voice to their concerns and opinions in a manner which provides, preserves or enhances for them a sense of dignity and self-respect.

(e) A Court Monitor may be required to determine if a Ward is receiving appropriate support and care and to report to the Court as to whether the Guardian or Conservator is following Court orders.

(f) Court Monitors shall be chosen from a list compiled by the Court, with the advice and assistance of the Advocacy and Guardianship Department and, if necessary or helpful, other Seminole Tribe departments in the following descending order of priority;

(i) Seminole Tribe Member volunteers;

(ii) Volunteers who are not Members of the Seminole Tribe with experience as guardians ad litem or in guardianships generally;

(iii) Volunteers who are not Members of the Seminole Tribe;

(iv) Seminole Tribe Members who are to be paid for their services;

(v) Others with experience as guardians ad litem or with guardianships generally who are to be paid for their services.

(g) With respect to Court Monitors having equal priority under section (f), the Court may select the one it considers best qualified for a particular case. Additionally, the Court may, in furtherance of the best interest of a Respondent, Ward, or Tribal Member or Descendent subject to a Protective Arrangement, decline to appoint a Court Monitor having priority in favor of one having a lower priority.

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(h) An employee of the Advocacy and Guardianship Department or other Seminole Tribe department is not precluded from serving as a Court Monitor provided:

(i) the department is not the petitioner;

(ii) the employee solemnly states to the Court that the employee will perform the required duties and tasks impartially;

(iii) the employee fulfills all the necessary requirements under this rule except that if the employee is a trainer from the Advocacy and Guardianship Department for the program described in section (a), the employee need not attend or complete the program and the Advocacy and Guardianship Department need not file a certificate.

(i) A Court Monitor shall be given a Court order of appointment and such other identification as needed.

(j) A Court Monitor may have more than one case in progression.

(k) The Advocacy and Guardianship Department shall develop and implement operating procedures and guidelines, including expense reimbursements, fees and other payments, for Court Monitors.

Rule 25 – Inventory

(a) Inventory filed with the Court must be verified and include the following:

(i) all Property of the Ward that has come into the Conservator's possession or knowledge, including a statement of all encumbrances, liens, and other secured claims on any items, any claims against the Property, any causes of action accruing to the Ward, and any trusts of which the Ward is the beneficiary;

(ii) the location of the Property in sufficient detail so that it may be clearly identified or located;

(iii) a statement of all cash assets including cash assets held in institutions on deposit; and

(iv) the contents of any safe-deposit box.

(A) The box must be opened in the presence of a witness who verifies its contents in writing.

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(b) The inventory filed by the Conservator shall identify any Property not in the possession of the Conservator. If the Conservator learns of any Property not included in the inventory, or learns that the description is inaccurate, the Custodian shall, within thirty (30) days of this discovery, file an amended or supplemental inventory showing the change.

(c) The Conservator must maintain substantiating papers and records sufficient to demonstrate the accuracy of the initial inventory for a period of two (2) years after discharge.

Rule 26 – Production of Assets

On the petition of any Person interested in the welfare of the Ward or on its own, the Court may require a Guardian or Conservator to produce satisfactory evidence that the assets of the Ward are in the possession or under the control of the Guardian or Conservator and may order production of the assets in the manner and for the purposes directed by the Court.

Rule 27 – Conservatorship Accounting

(a) A conservatorship accounting shall include:

(i) a statement of the starting balance of assets on hand at the beginning of the accounting period which shall be the ending balance of the preceding accounting, or if none, the value of assets on the inventory and specifically does not include any Property or trust of which the Ward is a beneficiary but which is not under the control or administration of the Conservator;

(ii) a full and correct account of the receipts and disbursements of all of the Ward's Property over which the Conservator has control since the date of the last accounting or, if none, from the date of issuance of Letters of Conservatorship;

(iii) a schedule of assets at the end of the accounting period; and

(iv) in the case of annual accountings, a copy of the annual or year-end statement of all of the Ward's cash accounts from each of the institutions where the cash is deposited.

(b) The following standards are required:

(i) Accountings shall be stated in a manner that is understandable for those who are not familiar with practices and terminology peculiar to the administration of conservatorships.

(ii) The accounting shall begin with a concise summary of its purpose and content.

(iii) The accounting shall contain sufficient information disclosing all significant transactions affecting administration during the accounting period.

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(iv) The accounting shall contain two (2) values in the schedule of assets at the end of the accounting period, the asset acquisition value or carrying value, and estimated current value.

(v) Gains and losses incurred during the accounting period shall be shown separately in the same schedule.

(c) All accountings shall be verified by the Conservator filing the accounting.

(d) Unless otherwise ordered by the Court, the Conservator need not file the documents substantiating the conservatorship accounting. Upon reasonable written request, the Conservator shall make the substantiating documents available for examination to Persons entitled to receive or inspect the accounting.

(e) Upon reasonable written request and notice, the Conservator shall make all material financial records pertaining to the conservatorship available for inspections to those Persons entitled to receive or inspect the accounting.

(f) For purposes of complying with this rule, the following model accounting format may be used:

(i) IN RE: CONSERVATORSHIP OF

\_\_\_\_\_

ACCOUNTING OF CONSERVATOR

From: \_\_\_\_\_, \_\_\_\_\_, Through: \_\_\_\_\_, \_\_\_\_\_

The purpose of this accounting is to report the assets on hand at the beginning of the accounting period, all transactions that have occurred during the period covered by the accounting, and the assets that remain on hand at the end of the accounting period. It consists of a Summary sheet and Schedule A showing all receipts, Schedule B showing all disbursements, Schedule C showing all capital transactions and adjustments (the effect of which are also reflected in other schedules, if appropriate), and Schedule D showing assets on hand at the end of the accounting period.

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Under penalties of perjury, the undersigned Conservator declares that I have read and examined this accounting and that the facts and figures set forth in the Summary and the attached Schedules are true, to the best of my knowledge and belief, and that it is a complete report of all cash and Property transactions and of all receipts and disbursements by me as Conservator of \_\_\_\_\_, the Ward, from \_\_\_\_\_, through \_\_\_\_\_.

Signed on \_\_\_\_\_, \_\_\_\_\_.

Attorney for Conservator (if applicable):      Conservator:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(address)

(address)

[Print or Type Names Under All Signature Lines]

Telephone: \_\_\_\_\_

Email address: \_\_\_\_\_

(ii) IN RE: CONSERVATORSHIP OF

\_\_\_\_\_

ACCOUNTING OF CONSERVATOR

From: \_\_\_\_\_, \_\_\_\_\_, Through: \_\_\_\_\_, \_\_\_\_\_

SUMMARY

	<u>Estimated Current Value</u>	<u>Carrying Value</u>
I. <u>Starting Balance</u>		
Assets on Hand at Beginning of Accounting Period		\$ _____

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- II. Receipts  
Schedule A: \$ \_\_\_\_\_
- III. Disbursements  
Schedule B: \$ \_\_\_\_\_
- IV. Capital Transactions and Adjustments  
Schedule C: Net Gain or (Loss) \$ \_\_\_\_\_
- V. Assets on Hand at Close of Accounting Period  
Schedule D: Cash and Other Assets \$ \_\_\_\_\_ \$ \_\_\_\_\_

Entries on Summary are to be taken from totals on Schedules A, B, C and D.

The Summary and Schedules A, B, C and D are to constitute the full accounting. Every transaction occurring during the accounting period are reflected on the Schedules.

All purchases and sales, all adjustments to the asset acquisition or carrying value of any asset, and any other significant transactions that affect the property (such as stock splits) are described on Schedule C.

(iii) ACCOUNTING OF CONSERVATOR

CONSERVATORSHIP OF \_\_\_\_\_

From: \_\_\_\_\_, \_\_\_\_\_, Through: \_\_\_\_\_, \_\_\_\_\_

SCHEDULE A		
Receipts		
Date	Brief Description of Items	Amount

NOTE: Schedule A reflects only those items received during administration during the accounting period.

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Entries involving the sale of assets or other adjustments to the asset acquisition or carrying values of assets are shown on Schedule C.

(iv) ACCOUNTING OF CONSERVATOR

CONSERVATORSHIP OF \_\_\_\_\_

From: \_\_\_\_\_, \_\_\_\_\_, Through: \_\_\_\_\_, \_\_\_\_\_

SCHEDULE B		Disbursements
Date	Brief Description of Items	Amount

NOTE: Schedule B reflects only those items paid out during the accounting period.

Entries involving the purchase of assets or adjustments to the asset acquisition or carrying values of assets are shown on Schedule C.

(v) ACCOUNTING OF CONSERVATOR

CONSERVATORSHIP OF \_\_\_\_\_

From: \_\_\_\_\_, \_\_\_\_\_, Through: \_\_\_\_\_, \_\_\_\_\_

SCHEDULE C		Capital Transactions and Adjustments	
Date	Brief Description of Transactions	Net Gain	Net Loss

TOTAL NET GAINS AND LOSSES

NET GAIN OR (LOSS)

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NOTE: Schedule C reflects all purchases and sales of assets and any adjustments to the asset acquisition or carrying values of any assets.

Entries reflecting sales show the asset acquisition or adjusted carrying values, the costs and expenses of the sale, and the net proceeds received. The net gain or loss is extended in the appropriate column on the right side of Schedule C.

Entries reflecting purchases reflect the purchase price, any expenses of purchases or other adjustments to the purchase price, and the total amount paid.

Entries reflecting adjustments in capital assets explain the change (such as a stock split) and the net gain or loss is in the appropriate column on the right side of Schedule C.

The net gain or loss is entered in the carrying value column of the Summary.

(vi) ACCOUNTING OF CONSERVATOR

CONSERVATORSHIP OF \_\_\_\_\_

From: \_\_\_\_\_, \_\_\_\_\_, Through: \_\_\_\_\_, \_\_\_\_\_

SCHEDULE D Assets on Hand at Close of Accounting Period

(Indicating where held and legal description, certificate numbers, or other identification.)

	Estimated Current Value	Carrying Value
<hr/>		
ASSETS OTHER THAN CASH:		
OTHER ASSETS TOTAL		_____
CASH:		
CASH TOTAL	\$	_____
TOTAL ASSETS (agrees with the Total for Item V on Summary)		
<hr/>		

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NOTE: Schedule D is a complete list of all assets on hand reflecting asset acquisition or carrying values for each item, adjusted in accordance with any appropriate entries on Schedule C, and estimated current values for each item.

Current market values for any assets that are known to be different from the asset acquisition or carrying values as of the close of the accounting period are shown in the column marked "Estimate Current Value." The total adjusted carrying value (not Current Value) agrees with the Total for Item V on Summary.

(g) For guidance using the forms or otherwise adhering to section (f), a Custodian may refer to, but not be bound by, the Uniform Fiduciary Accounting Principles and Model Formats and commentary thereto adopted by the American Bar Association and the American Bankers Association.

(h) If the presiding judge or designated Court personnel, after reviewing a conservatorship accounting, has questions or concerns about unauthorized withdrawals from accounts, unauthorized gifts to family members or friends, unsubstantiated and unauthorized expenses, the lack of data to substantiate the accounting, or other irregularities or inconsistencies, the Court shall cause the accounting to be audited by a competent auditor either on a voluntary basis from a Seminole Tribe department, by voluntary basis from outside the Seminole Tribe, or on a fee basis. For purposes of this rule, "audit" means a systematic review of financial and all other documents to ensure compliance with this rule and any other pertinent Ordinance provisions using generally accepted accounting principles including substantiating papers and documents, inspections and investigations.

Rule 28 – Order Requiring Accounting

(a) When a Guardian or Conservator fails to file an accounting or return required by this Ordinance, the Court, on its own or on the petition of a Person interested in the welfare of a Ward, shall order the Guardian or Conservator to file the accounting or return with fifteen (15) days from the service on the Guardian or Conservator of the order, or show cause why they should not be compelled to do so.

(b) On the petition of a Person interested in the welfare of the Ward or on its own, the Court may require the Guardian or Conservator to file an accounting or return not required under this Ordinance. The order requiring an accounting or return shall specify the time frame. If the accounting or return is not filed within the time frame, the Court may require the Guardian or Conservator to show cause why the Court should not compel the filing.

(c) A copy of any order filed under this rule shall be served on the Guardian or Conservator, as applicable, and their respective Attorney.

Rule 29 – Surrogate Guardian or Conservator

(a) A Guardian or a Conservator may file a petition to designate a surrogate to exercise the powers of the Guardian or Conservator if the Guardian or Conservator is unavailable to act.

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(b) If the Court grants the petition, the order must specify: the name, address and telephone number of the surrogate; the duration of the appointment, which may not be for longer than thirty (30) days unless extended by the Court for good cause shown; and that the surrogate file a signed affirmation in the form required under Rule 17 before exercising any duties. The Court may require a bond for a surrogate Conservator.

(c) The surrogate Guardian or surrogate Conservator is subject to the jurisdiction of the Court as if appointed to serve as Guardian or Conservator.

(d) The Guardian or Conservator may terminate the authority of the surrogate by filing a written notice of termination with the Court and serving the notice on the surrogate.

Rule 30 – Court-Appointed Attorney Fees

(a) The compensation for a Court-appointed Attorney shall not exceed one thousand two hundred fifty (\$1,250.00) dollars for the first year following the date of appointment and shall not exceed five hundred (\$500.00) dollars each year thereafter.

(b) In a case that requires extraordinary and unusual time and effort, an Attorney may file a petition for payment in excess of the limit imposed in section (a).

(c) An attorney-at-law who is licensed and in good standing in Florida may be court appointed without being a member of the Bar of the Seminole Tribe for that attorney-at-law's first court-appointed case only; thereafter membership in the Bar of the Seminole Tribe is required.

Rule 31 – Tax Returns

Unless the Court orders otherwise:

(a) The Conservator for the Ward is specifically authorized and required to file the Ward's tax returns.

(b) If there is no Conservator for the Ward, then the Guardian for the Ward is specifically authorized and required to file the Ward's tax returns.

Rule 32 – Resignation or Disqualification of Guardian or Conservator

(a) A Guardian or Conservator seeking to resign shall file a resignation and petition for discharge which shall state:

(i) that the Guardian or Conservator wishes to resign and be relieved of all duties;

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(ii) the amount of compensation to be paid to the Guardian or Conservator and to the Attorneys, accountants, or other agents employed by the Guardian or Conservator; and

(iii) the name and address of the successor Guardian or Conservator and the successor Guardian's or Conservator's Attorney, or that a successor Guardian or Conservator has not yet been appointed or duly qualified.

(b) A resigning Conservator shall file a final report showing receipts, disbursements, amounts reserved for unpaid and anticipated costs and fees, and other relevant financial information from the date of the previous annual accounting and a list of assets to be turned over to the successor Conservator.

(c) A resigning Guardian must deliver to the successor Guardian any Property of the Ward in the resigning Guardian's possession including all records and notes of medical and personal care.

(d) Unless the Court orders otherwise, a Guardian's or Conservator's duties and obligations continue until their successor is appointed, duly qualified and authorized to act.

(e) Any Guardian or Conservator who is improperly appointed, or who becomes disqualified to act after appointment, shall immediately file a resignation and petition for discharge and proceed in accordance with this rule.

Rule 33 – Disclaimer

(a) A Guardian and a Conservator may disclaim, in whole or in part, conditionally or unconditionally, any interest in a power over Property, including a power of appointment.

(b) A disclaimer shall be unconditional unless the Guardian or Conservator explicitly provides otherwise and is valid even if the creator of the interest or power imposed a spendthrift provision or similar restriction on transfer or on a restriction or limitation on the right to disclaim.

Rule 34 – Digital Assets

(a) To the extent not in conflict with the provisions of this Ordinance or other laws of the Seminole Tribe, the Revised Uniform Fiduciary Access to Digital Assets Act of 2015 is adopted and incorporated herein.

(b) All rights and powers given to guardians and other fiduciaries under the Act shall also include a Conservator, co-Conservator, successor Conservator, and emergency Conservator as well as a Guardian, co-Guardian, successor Guardian and emergency Guardian.

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Rule 35 – Removal of Guardian or Conservator

(a) Proceedings for the removal of a Guardian or Conservator may be instituted by the Court, the Ward, or any Person interested in the welfare of the Ward, including any surety.

(b) Reasons for removal include:

(i) fraud in obtaining the appointment;

(ii) failure to discharge duties;

(iii) abuse of power;

(iv) incapacity or illness, including substance abuse, which renders the Guardian or Conservator incapable of discharging their duties;

(v) failure to comply with a Court order;

(vi) failure to return schedules of Property sold or accounts of sales of Property or to produce the Ward's assets when so required;

(vii) wasting, embezzlement or other mismanagement of the Ward's Property;

(viii) conviction of a felony;

(ix) development of a conflict of interest with the Ward.

(c) A removed Guardian and a removal Conservator must file a final report within twenty (20) days after removal. A copy of the report must be served on the successor Guardian or Conservator and any other Person the Court determines.

(d) The successor Guardian or Conservator shall demand of the removed Guardian or Conservator or their heirs, personal representative or surety all the Property of the Ward and all records and notes concerning the Ward in their care, custody or control. The removed Guardian or Conservator shall turn them over expeditiously.

(e) If the removed Guardian or Conservator fails to file a final report or to turn over the successor Guardian or Conservator all of the Ward's Property pursuant to this rule, the Court shall issue a show cause order. If cause is shown for the failure, the Court shall set a reasonable time within which to comply and, on failure to comply with this or any subsequent order, the removed Guardian or Conservator may be held in contempt. Proceedings for contempt may be instituted by the Court, the Ward, the successor Guardian or Conservator, or any Person interested in the welfare of the Ward.

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Rule 36 – Conservator’s Final Report, Objections and Discharge

(a) On termination of a Conservatorship, the Conservator shall file a verified final report and petition for discharge and serve notice stating that any objections to the report or petition must be in writing and filed within thirty (30) days from the date of service.

(b) The notice required under section (a) shall be served on the Ward, the personal representative of a deceased Ward, or if there is none the next of kin, the Guardian if there is one, and such other Persons that the Court directs.

(c) Persons served shall have thirty (30) days from the date of service to file specific objections, copies of which shall be served on the Custodian.

(d) Any Person interested in the welfare of the Ward may set a hearing on the objections. Notice of the hearing must be served within forty-five (45) days of the filing of the objections on the Custodian and on the Persons, excluding the Person setting the hearing, listed in section (b). If the notice of hearing is not so served, the objections will be deemed abandoned.

(e) After all objections are either withdrawn, abandoned or judicially resolved, and if the Court has found that the Conservator has paid all amounts due to the Persons entitled to them, has made full and complete distribution of the Ward’s assets to the Persons entitled to them, has otherwise faithfully discharged the duties of the Custodian, and has satisfied any other conditions the Court may have imposed on the Custodian, the Court shall enter an order of discharge.

Rule 37 – Department Reference

Any reference to the Advocacy and Guardianship Department shall include any component thereof or successors thereto.

Rule 38 – Legislative References

References to statutes, statutory provisions, court rules, administrative rules, ordinances and resolutions include any modifications, revisions, amendments or renumbering of them.

Rule 39 – Driver License

If a Court orders that a Ward does not have the legal capacity to drive a motor vehicle and the Ward possesses a Florida driver license, the Court shall cause the applicable State of Florida department to be so notified.

Rule 40 – Firearms

If a Court orders that a Ward does not have the legal capacity to purchase or possess a firearm, the Court shall cause the applicable State of Florida department to be so notified.

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BE IT FURTHER ENACTED: that this Ordinance is hereby adopted after motion duly made by Larry L. Howard, seconded by Mariann Billie, and a roll call vote as follows:

- Chairman Marcellus W. Osceola, Jr ..... AYE
- Vice-Chairman Mitchell Cypress. .... AYE
- Council Representative Mariann Billie..... AYE
- Council Representative Larry L. Howard. .... AYE
- Council Representative Christopher Osceola. .... AYE

DONE THIS THE 5<sup>th</sup> DAY OF AUGUST, 2021, at the regular meeting of the Tribal Council, duly convened at the Hollywood Seminole Indian Reservation, Broward County, Florida, held virtually via audio and video applications, with a quorum being present, by a vote of 5 For, 0 Against, and with no Abstentions.



Chairman  
TRIBAL COUNCIL

ATTEST:



Secretary  
TRIBAL COUNCIL