

WINNEBAGO TRIBAL CODE
TITLE 18

TITLE 18
GUARDIANSHIP AND CONSERVATORSHIP
(As adopted March 9, 2011)

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PRELIMINARY PROVISIONS

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18-101 Citation. This Code shall be known and may be cited as the “Guardianship and Conservatorship Code.” [TCR 11-72]

18-102 Declaration of policy. The Winnebago Tribe of Nebraska recognizes the need to provide mechanisms for intervening in the lives of vulnerable persons who are incapacitated either by disability or minority in order to promote the peace, safety, morals and general welfare of the Tribe. [TCR 11-72]

18-103 Authority. This Code is adopted pursuant to the inherent sovereign powers of the Winnebago Tribe of Nebraska and the Constitution of the Winnebago Tribe of Nebraska, as amended. [TCR 11-72]

18-104 Jurisdiction. The Winnebago Tribal Court shall have the power and duty to appoint guardians and conservators, to grant letters of conservatorship and guardianship, to administer, settle and close conservatorship and guardianship proceedings, when:

1. The proposed ward or the proposed guardian or conservator is an enrolled member or eligible for enrollment in the Winnebago Tribe of Nebraska; or
2. When the proposed ward or the proposed guardian or conservator resides on the reservation.

The Winnebago Tribal Court shall have exclusive and continuing jurisdiction over the proceeding until it is terminated by the Court or the appointment or order expires by its own terms. [TCR 11-72]

18-105 Civil action. Actions and proceedings arising pursuant to this Guardianship and Conservatorship Code are civil actions. [TCR 11-72]

18-106 Definitions. Where a term is not defined in this Code, it shall be given its ordinary meaning, unless otherwise defined in the Winnebago Tribal Code. The Definitions below apply to this Code only:

1. “Clerk” means the Clerk of the Winnebago Tribal Court.
2. “Conservator” means a person appointed by the Court to have the custody and control of the property of a ward under the provisions of this Code.
3. “Court” means the Tribal Court of the Winnebago Tribe of Nebraska.
4. “Estate” means the real and personal property of a ward.
5. “Family member” means spouse, children, siblings, parents, uncles, aunts, nieces, nephews, grandparents, grandchildren, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, and daughter-in-law of the ward.

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6. “Functional limitations” means the behavior or condition of a person which impairs the person’s ability to care for the person’s personal safety or to attend to or provide for necessities for the person.
7. “Guardian” means the person appointed by the Court to have the custody of the person of the ward under the provisions of this Guardianship and Conservatorship Code.
8. “Hearing” means a proceeding before the Court.
9. “Incapacitated” means the condition of any person who has been adjudicated by a court to meet at least one of the following conditions:
 - a. To have a decision-making capacity which is so impaired that the person is unable to care for the person’s personal safety or to attend to or provide for necessities for the person such as food, shelter, clothing, or medical care, without which physical injury or illness may occur.
 - b. To have a decision-making capacity which is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person’s financial affairs.
 - c. To have a decision-making capacity which is so impaired that both paragraphs 1 and 2 are applicable.
10. “Letters” means and includes letters of guardianship and/or letters of conservatorship.
11. “Person” includes agencies and departments of the Winnebago Tribe of Nebraska, including but not limited to Winnebago Child and Family Services and includes other natural persons, and entities, agencies, and departments, whether public or private, if the other natural person, entity, agency or department is qualified to act as a guardian and/or conservator and has no proprietary or legal interest in an organization which provides direct services to the ward and if authorized to act in a fiduciary capacity and otherwise found to be suitable by the Court. Notwithstanding the foregoing, Winnebago Child and Family Services and any agency and department of the Winnebago Tribe of Nebraska are a person eligible to be appointed as guardian and conservator pursuant to this Code.
12. “Property” means and includes both real and personal property.
13. “Reservation” shall mean all the territory within the exterior boundaries of the Winnebago Indian Reservation (including Flowers Island and other Tribal land located east of the Missouri River) as set forth in the Winnebago Treaty of March 8, 1865 (14 Stat. 671) and the twenty (20) sections included in the strip purchased in Nebraska for Wisconsin Winnebagos (18 Stat. 170), June 22, 1874 and such lands as may be added thereto by Congress or the Tribe or reaffirmation of the title of lands through the Courts to the Tribe, except as otherwise provided by law. This definition of reservation includes all rights-of-way, waterways, streams, lakes, highways, railroad rights-of-way, mineral rights, etc.
14. “Trial” means a proceeding before the Court.
15. “Ward” means a person who has a guardian or conservator appointed by the Court to care for and take responsibility for that person or that person’s financial and other affairs. [TCR 11-72]

18-107 Severability. If any provision of this Code or its application is held to be invalid, the remainder of the Code, or the application of the provision to other persons or circumstances, is not affected. [TCR 11-72]

18-108 Construction.

1. Nothing in this Code shall constitute a waiver, cession, or diminishment of sovereign immunity or any sovereign power of the Tribe.
2. Inclusion or reference to language, definitions, procedures, or other statutory or administrative provisions of other jurisdictions in this Code shall not be deemed an action or deferring to or consenting to such other jurisdiction by the Tribe. [TCR 11-72]

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18-109 Applicability of Rules of Civil Procedure. All actions triable in guardianship and/or conservatorship shall be governed by the Rules of Civil Procedure of the Winnebago Tribe of Nebraska. [TCR 11-72]

18-110 Penalties. Any guardian or conservator who steals, diverts or grossly abuses the funds or property of a ward shall additionally be subject to civil sanctions including a penalty not to exceed \$5,000.00 and an order of restitution by the Court. [TCR 11-72]

18-111 Effective Date. The Code shall be effective as of the date of adoption by the Tribal Council. [TCR 11-72]

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18-201 Pleadings. All pleadings, hearing, and the trial of the case shall be governed by the Rules of Civil Procedure of the Winnebago Tribe of Nebraska. The cause shall be tried as a civil action, and no party shall be entitled to a jury trial. [TCR 11-72]

18-202 Reports. All petitions, reports, and applications for orders in guardianship and conservatorship proceedings must be in writing, verified, acknowledged or certified, and self-explanatory. [TCR 11-72]

18-203 Combining Petitions. The petitions for the appointment of a guardian and a conservator may be combined and the cause tried in the same manner as a petition for the appointment of a conservator. [TCR 11-72]

18-204 Same person as guardian and conservator. The same person may be appointed to serve as both guardian and conservator. [TCR 11-72]

18-205 Service. Service of process of the petition to commence a proceeding for guardianship or conservatorship shall be effected as set forth in the Rules of Civil Procedure and shall be served on the person designated in this Code. [TCR 11-72]

18-206 Waiver of notice. Any notice required under this Code or by order of the Court may be waived in writing by the person, guardian or conservator entitled to receive such notice. [TCR 11-72]

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18-207 Proof of Service. Proof of service of any notice required by this Code or by order of the Court, including those by publication, shall be filed with the clerk. [TCR 11-72]

18-208 Notice – commencement of action.

1. If the proposed ward is an adult, notice of the filing of the petition shall be served upon the proposed ward in the manner of an original notice and the content of the notice is governed by the Rules of Civil Procedure governing original notice.
 - a. Notice shall also be served on the ward's spouse. If the ward has no spouse, notice shall be served upon the ward's adult children, if any.
 - b. If no other person is notified under (1)(a) of this Section, then notice shall be served on at least one of the closest adult relatives of the ward or person alleged to be incapacitated, if any can be found.
2. If the proposed ward is a minor, notice of the petition shall be served upon the minor, if the minor is 14 or more years old, in the manner of an original notice and the content of the notice is governed by the Rules of Civil Procedure governing original notice. Notice shall also be served on any living parent of the minor, the legal guardian(s) of the minor, if any, and the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition.
3. Proof of service shall be made by affidavit, which affidavit shall list all of the documents that were served.
4. In addition to notice of the filing of a petition, the notice required to be served upon the person alleged to be incapacitated shall list the following rights of the person:
 - a. The right to request the appointment of a legal counsel;
 - b. The right to present evidence in his or her own behalf;
 - c. The right to request that the power of the guardian, if appointed, be limited by the Court;
 - d. The right to be notified regarding how to contact the temporary guardian if a temporary guardian is appointed;
 - e. The right to compel attendance of witnesses;
 - f. The right to cross-examine witnesses, including the Court-appointed physician;
 - g. The right to appeal any final order; and
 - h. The right to request a hearing closed to the public. [TCR 11-72]

18-209 Notice of hearing or trial.

1. Unless otherwise provided in this Code, the Court shall fix the time and place of hearing or any matter requiring notice and shall prescribe the time and manner of service of the notice of such hearing.
2. In the case of proceedings against unknown persons or persons whose address or whereabouts are unknown, the Court may, after application by the party seeking to serve by publication, prescribe that notice of hearing or trial may be served by publication within the time and manner provided by the Rules of Civil Procedure.
3. In its discretion, the Court's notice may direct each interested party to file the party's objections/responses thereto in writing, if any, within 20 days after the notice is served upon the party. Said notice shall be served upon each interested party in compliance with the Rules of Civil Procedure. In the event objections are timely filed, the Court shall fix the time and place of the hearing for the judicial determination of the issues raised. [TCR 11-72]

18-210 Hearing procedure.

1. Upon the receipt of a petition for the appointment of a guardian and/or a conservator, the Court shall set a date for hearing on the matters alleged in the petition.
2. The Court may appoint an attorney to represent the proposed ward in the proceeding.
 - a. The Court may appoint a guardian ad litem to advocate for the best interest of the proposed ward.
3. If the petition for the appointment of a conservator and/or guardian is for reasons other than minority, the Court may direct the proposed ward to be examined by a physician or other professional service provider designated by the Court. Such physician or professional service provider shall prepare a written report about the proposed ward's mental and physical condition and file it with the Court.
4. A hearing shall be held to determine whether a guardianship and/or conservatorship should be established. The proposed ward, his or her attorney, and all interested persons and their attorneys shall attend the hearing in order to assist the judge with making the decision.
5. In proceedings to establish, modify, or terminate a guardianship or conservatorship, in determining if the proposed ward is incapacitated, the Court shall consider credible evidence from any source.
6. The Court shall make a final determination regarding the need for appointment of a guardian or conservator in writing. The Court shall make findings of fact to support any powers conferred on the guardian or conservator.
7. The Court shall make the appointment of a guardian or conservator as appropriate and/or shall make any other appropriate order as needed.
8. Unless otherwise noted, the Rules of Evidence shall apply. [TCR 11-72]

18-211 Burden of persuasion; General provisions.

1. Determination of competency of the proposed ward and the need for appointment of guardian or conservator shall be supported by clear and convincing evidence.
2. The burden of persuasion is on the petitioner in an initial proceeding to appoint a guardian or conservator.
3. In a proceeding to terminate a guardianship or conservatorship, the burden of persuasion is on the guardian or conservator to show by clear and convincing evidence that the guardianship or conservatorship should not be terminated.
4. In a proceeding to modify a guardianship or conservatorship, the burden of persuasion is on the petitioner to show by clear and convincing evidence that the guardianship or conservatorship should not be modified. [TCR 11-72]

18-212 Representation.

1. In a proceeding for the appointment of a guardian and/or conservator:
 - a. If the proposed ward is an adult, the proposed ward is entitled to representation. Upon filing of the petition, or as soon thereafter as reasonably possible, the Court shall appoint an attorney to represent the proposed ward if the ward has not retained counsel and shall provide for notice of the appointment of counsel.
 - b. If the proposed ward is a minor, the Court shall determine in its sole discretion whether, under the circumstances of the case, the proposed ward is entitled to representation. The determination regarding representation may be made with or without notice to the proposed ward, as the Court deems necessary. If the Court determines that the proposed ward is entitled to representation, the Court shall appoint an attorney to represent the proposed ward and provide for notice of appointment of counsel.

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- c. The Court may take action under paragraph (a) or (b) above prior to the service of the original notice upon the proposed ward.
 - d. The Court may reconsider the determination regarding representation upon application by any interested person.
 - e. The Court may discharge the attorney appointed by the Court if it appears upon the application of the proposed ward or any other interested person that the ward has privately retained an attorney who has filed an appearance on behalf of the proposed ward.
2. The Court shall ensure that all proposed wards entitled to representation have been provided with notice of the right to representation and the right to be personally present at all proceedings and shall make findings of fact in any order of disposition setting out the manner in which notification was provided.
 3. The cost of Court-appointed or privately retained counsel for the ward shall be paid by the ward or the estate of the ward, except if the ward does not have sufficient assets and funds to pay the cost of legal counsel, the Court shall pay such reasonable costs.
 4. An attorney representing a ward shall:
 - a. Ensure that the proposed ward has been properly advised of the nature and purpose of the proceeding.
 - b. Ensure that the proposed ward has been properly advised of the ward's rights in a guardianship and/or conservatorship proceeding.
 - c. Personally interview the proposed ward.
 - d. File a written report stating whether there is a return on file showing that proper service on the proposed ward has been made and also stating that specific compliance with paragraphs (1) through (3) immediately above has been made or stating the inability to comply by reason of the proposed ward's condition.
 - e. Represent the proposed ward.
 - f. Ensure that the guardianship and/or conservatorship procedures conform to the statutory and due process requirements of the Rules of Civil Procedure.
 - g. Inform the proposed ward of the effects of the order entered for appointment of guardian and/or conservator.
 - h. Advise the ward of the ward's right to petition for modification or termination of the guardianship and/or conservatorship.
 - i. Advise the ward of the rights retained by the ward. [TCR 11-72]

18-213 Preference for appointment of guardian and/or conservator; minor.

1. Subject to any other provision set forth herein, the parents or legal guardian(s) of a minor, if qualified and suitable, shall be preferred over all others for appointment as guardian and/or conservator.
2. Preference shall then be given to any person, if qualified and suitable, nominated as guardian and/or conservator for a minor child by a will executed by the parent having custody of a minor child, any qualified and suitable person requested by a minor 14 years of age or older, or to any family member.
3. Subject to these preferences, the Court shall appoint as guardian and/or conservator a qualified and suitable person who is willing to serve in that capacity and the preferences herein are recommended but not mandatory. [TCR 11-72]

18-214 Preference for appointment of guardian and/or conservator; adult. The spouse of an adult, if qualified and suitable, shall be preferred over all others for appointment as guardian and/or conservator. Preference shall then be given to any adult child and then to any family member, if qualified and suitable, nominated as guardian and/or conservator for an adult. Subject to these preferences, the Court shall

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appoint as guardian and/or conservator a qualified and suitable person who is willing to serve in that capacity. [TCR 11-72]

18-215 Affidavit of guardian and/or conservator. Prior to being appointed as a guardian or conservator, and prior to issuance of letters of guardianship or conservatorship, the proposed appointee shall complete, sign under oath, and file with the Clerk, an affidavit stating whether the proposed appointee has:

1. Ever been convicted of a felony in any jurisdiction;
2. Acted as guardian or conservator in any jurisdiction for any person within three years of the filing of the petition in this matter;
3. Reviewed and has a working knowledge of the powers and duties imposed on a guardian and/or conservator, as applicable;
4. Acted in a fiduciary capacity pursuant to a power-of-attorney for any person in any jurisdiction within three years of the filing of the petition in this matter;
5. Ever been listed in an elder abuse or sex offender registry in any jurisdiction at any time and whether any enterprise in which the proposed appointee has an interest has ever been listed in an elder abuse or sex offender registry or in any jurisdiction at any time;
6. If appointed as a guardian or conservator for any person within three years prior to the filing of the petition in this case, whether the proposed appointee in this case has ever failed to file any Report of Guardian or Conservator in any jurisdiction later than three months after the date the report was due;
7. Ever been removed as a guardian or conservator for any person in any jurisdiction at any time;
8. Ever received anything of value exceeding a total of \$100 in any one year, by gift, devise, or bequest from any individual, or estate of an individual, to whom the proposed appointee is not related by blood or marriage and for whom the enterprise and/or proposed appointee served at any time as guardian, conservator, trustee, or attorney-in-fact;
9. Been named as a personal representative, trustee or other type of beneficiary of any individual to whom the proposed appointee is not related by blood or marriage and for whom the proposed appointee served as guardian, conservator, trustee, or attorney-in-fact;
10. Any interest in any enterprise providing housing, health care, or comfort care services to any individual;
11. The proposed appointee shall state the nature of his/her relationship with the proposed ward.
[TCR 11-72]

18-216 Letters of guardian or conservator issued. Upon the guardian or conservator filing an affidavit of guardian or conservator pursuant to Section 18-215, and filing proof of bond if any bond is required, the Clerk shall issue letters under the seal of the Court giving the guardian or conservator the power authorized by law with said powers to be enumerated in the letters. [TCR 11-72]

18-217 Oath – acceptance of appointment. Every guardian and conservator, before entering upon the duties herein, shall subscribe an oath or certify under penalty of perjury that the guardian or conservator will faithfully discharge the duties imposed by law according to the best of the guardian's or conservator's ability. [TCR 11-72]

18-218 Effect of appointment – ward. The appointment of a guardian or conservator shall not constitute an adjudication that the ward is of unsound mind. [TCR 11-72]

18-219 Legal effect of appointment. By qualifying as guardian and/or conservator, any person, whether a resident or nonresident of the reservation, whether a Tribal member or non-tribal member, submits to the jurisdiction of the Tribal Court, and in addition, shall be deemed to agree that:

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1. All property coming into the guardian's and/or conservator's control or possession as a result of the guardianship and/or conservatorship appointment is subject to the jurisdiction of the Tribal Court; and
2. The guardian and/or conservator is subject to all orders entered by the Court in the proceedings in which the guardian and/or conservator is serving and that notices served upon the guardian and/or conservator with respect thereto in compliance with the procedure prescribed in this Code shall have the same force and effect as if such service had been personally made upon the guardian and/or conservator within the jurisdiction and boundaries of the reservation.
3. The guardian and/or conservator shall be subject to the jurisdiction of the Tribal Court in all actions and proceedings against the guardian and/or conservator arising from or growing out of the guardianship and/or conservatorship relationship and activities, and that the service process in such actions and proceedings may be made upon the guardian and/or conservator by serving the original notice upon the guardian and/or conservator outside the reservation and that such service shall have the same force and effect as though the service had been personally made upon the guardian and/or conservator within the reservation. [TCR 11-72]

18-220 Compensation of guardian or conservator. The guardian or conservator may be compensated from the estate of the ward at such reasonable amount as may be determined by the Court for services rendered and for good cause shown upon application to the Court and after hearing and determination and order by the Court as to said request for compensation. [TCR 11-72]

18-221 Self-dealing by guardian or conservator. No guardian or conservator shall in any manner engage in self-dealing, except on order of the Court after notice to all interested persons, and shall derive no profit other than the amounts to be paid to said conservator or guardian after application therefore by the guardian or conservator seeking an order under the provisions of this Section, shall specify in detail the reasons for such application and the facts justifying the requested order. [TCR 11-72]

18-222 Liability of guardians and conservators. Guardians and conservators shall not be held personally liable for action or omission taken or made in the official discharge of the guardian's or conservator's duties, except for any of the following:

1. A breach of fiduciary duty imposed by this Code.
2. Willful or wanton misconduct in the official discharge of the guardian's or conservator's duties. [TCR 11-72]

18-223 Tort liability of guardians and conservators. The fact that a person is a guardian or conservator shall not in itself make the person personally liable for damages for the acts of the ward. [TCR 11-72]

18-224 Cause for termination; general. A guardianship shall cease and a conservatorship shall terminate upon the occurrence of any of the following circumstances:

1. The death of the ward;
2. The restoration of capacity of the ward; or
3. Determination by the Court, after notice and hearing, that the conservatorship or guardianship is no longer necessary for any reason. [TCR 11-72]

18-225 Cause for termination; restoration of capacity.

1. A guardian or conservator of a minor not otherwise incapacitated, or the minor him/herself, may petition the Court on or after the date the minor reaches the age of majority, is adopted, or becomes married to have the guardian or conservator discharged and the estate turned over to the minor. The Court shall grant such discharge with or without notice and hearing, upon the receipt of sufficient, competent evidence that the minor has reached the age of majority unless the minor appears to be otherwise incapacitated, in which case a hearing with notice, shall be held to determine such fact.
2. A guardian or conservator of an incapacitated or another person may petition the Court for a determination of the ward's restoration to capacity and for discharge of the guardian or conservator. The Court shall hold a hearing after such notice to known interested parties as the Court shall direct, and receive evidence, both of a medical nature and otherwise, of the ward's competency. If it is found that the ward is of sound mind and capable of taking care of him/herself and his/her property, his/her restoration to capacity shall be adjudged and his/her guardianship or conservatorship and guardian or conservator discharged.
 - a. In such a proceeding to terminate a guardianship or a conservatorship, the ward shall make a prima facie showing that the ward has some decision-making capacity.
 - b. Once the ward has made the showing, the guardian or conservator has the burden to prove by clear and convincing evidence that the guardianship or conservatorship should not be terminated. [TCR 11-72]

18-226 Cause for termination; resignation or removal proceedings.

1. Any person interested in the welfare of a ward, or the ward if fourteen years of age or older, may petition for removal of a guardian or conservator on the ground that removal would be in the best interest of the ward. A guardian or conservator may petition for permission to resign.
2. A petition for removal or for permission to resign may, and if the guardian or conservator were the sole or last surviving guardian or conservator, shall include a request for appointment of a successor guardian or conservator.
3. After notice and hearing on a petition for removal or for permission to resign, the Court may terminate the guardianship or conservatorship and make any further order that may be appropriate.
4. Where the guardian or conservator was the sole or last surviving guardian or conservator, the Court may determine that termination of the guardianship or conservatorship is not effective until a successor guardian or conservator has been appointed. [TCR 11-72]

18-227 Appointment of successor guardian or conservator. When any guardian or conservator fails to qualify, dies, is removed by the Court, or resigns, and such resignation is accepted by the Court, the Court may, and if the guardian or conservator were the sole or last surviving guardian or conservator, the Court shall, after notice and a hearing, appoint another guardian or conservator in the former's place. [TCR 11-72]

18-228 Powers of successor guardian or conservator. When a successor guardian or conservator is appointed, the successor shall have all the rights, powers, titles and duties of the predecessor, except that the successor shall not exercise powers given in any order creating the power that by its express terms are personal to the guardian or conservator therein designated. [TCR 11-72]

18-229 Limit on application to terminate. If any petition for terminating such guardianship or conservatorship shall be denied, no other petition shall be filed therefor until at least six months shall have elapsed since the denial of the former one unless the termination is on the basis of majority. [TCR 11-72]

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TITLE 18
GUARDIANSHIP AND CONSERVATORSHIP

ARTICLE 3
GUARDIANSHIP

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18-301 Natural guardians; parental preference.

1. The father and mother are the natural guardians of their minor children and are duly entitled to their custody and to direct their education being themselves competent to transact their own business and not otherwise unsuitable, and if in the best interest of the minor child. If either dies or is disqualified from acting, or has abandoned his or her family, the guardianship devolves upon the other except as otherwise provided in this Section.
2. In the appointment of a parent as a guardian when the other parent has died and the child was born out of wedlock, the Court shall consider the wishes of the deceased parent as expressed in a valid will executed by the deceased parent. If in such valid will the deceased parent designates someone other than the other natural parent as guardian for the minor children, the Court shall take into consideration the designation by the deceased parent. In determining whether or not the natural parent should be given priority in awarding custody, the Court shall also consider the natural parent’s acknowledgment of paternity, payment of child support, and whether the natural parent is a fit, proper, and suitable custodial parent for the child.
3. The Court may appoint a standby guardian for a minor whose parent is chronically ill or near death. The appointment of a guardian under this subsection does not suspend or terminate the parent’s parental rights of custody to the minor. The standby guardian’s authority would take effect, if the minor is left without a remaining parent, upon (1) the death of the parent, (2) the mental incapacity of the parent, or (3), the physical debilitation and consent of the parent.
4. The Court may appoint a guardian for a minor if all parental rights of custody have been terminated or suspended by prior or current circumstances or prior Court order.
5. A biological parent has a superior right to legal and physical custody of that parent’s child over a non-parent.
 - a. A biological parent will prevail over a non-parent unless the biological parent is shown to be unfit.
 - b. A biological parent is deemed “unfit” if a personal deficiency or incapacity which has prevented, or will probably prevent, performance of a reasonable parental obligation in

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child rearing and which has caused, or probably will result in, detriment to a child's well-being. [TCR 11-72]

18-302 Petition for Appointment of Guardian. Any person may file with the clerk a verified petition for the appointment of a guardian. The petitioner shall state the following information so far as known to the petitioner.

1. The name, age and physical address of the proposed ward and post office box address if there is no physical address where mail is regularly delivered.
2. The petitioner's relationship to the proposed ward.
3. That the proposed ward is in either of the following categories and the factual basis in support thereof;
 - a. Is a person whose decision-making capacity is so impaired that the person is unable to care of the person's personal safety or to attend to or provide for necessities of the person such as food, shelter, clothing, or medical care, without which physical injury or illness might occur.
 - b. Is a minor and the parent(s) or legal guardian died, became disqualified from acting, or has abandoned the minor.
4. The name and physical address of the proposed guardian and post office box address if there is no physical address where mail is regularly delivered, and that such person is qualified to serve in that capacity.
5. That the proposed ward is an enrolled member of the Winnebago Tribe of Nebraska, or is eligible for enrollment, or resides within the reservation, or that the proposed guardian is an enrolled member of the Winnebago Tribe of Nebraska, or is eligible for enrollment, or resides within the reservation, and that the proposed ward's best interests require the appointment of a guardian.
6. The name and address of the person or institution, if any, having the care, custody or control of the proposed ward. [TCR 11-72]

18-303 Notification of Guardianship Powers. In a proceeding for the appointment of a guardian, the proposed ward shall be given written notice by the Court or the person designated by Court order, which advises the proposed ward that if a guardian is appointed, the guardian may, without Court approval, provide for the care of the ward, manage the ward's personal property and effects, assist the ward in developing self-reliance and receive professional care, counseling, treatment or services as needed, and ensure that the ward receives necessary emergency medical services. The notice shall also advise the proposed ward that, upon the Court's approval, the guardian may change the ward's permanent residence to a more restrictive residence, and arrange for major elective surgery or any other non-emergency major medical procedure. The notice shall clearly advise the proposed ward of the right to counsel and the potential deprivation of the proposed ward's civil rights. The notice shall also state that the proposed ward may use the ward's own attorney instead of an attorney appointed by the Court. In an involuntary guardianship proceeding, the notice shall be served upon the proposed ward with the notice of the filing of the petition as provided in Section 18-208. [TCR 11-72]

18-304 Powers and duties of Guardian; general.

1. Except as otherwise specifically ordered or limited by the Court, a guardian of an incapacitated person has the same powers, rights, and duties respecting his or her ward that a parent has respecting his or her unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as may be specified by order of the Court:

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- a. To the extent consistent with the terms of any Court order relating to detention or commitment of the ward, the guardian is entitled to custody of the person of the ward and may establish the ward's place of abode within or without the reservation. When establishing the ward's place of abode, a guardian shall make every reasonable effort to ensure that the placement is on the least restrictive alternative. A guardian shall authorize a placement to a more restrictive environment only after careful evaluation of the need for such placement. The guardian may obtain a professional evaluation or assessment that such placement is in the best interest of the ward.
 - b. If entitled to custody of the ward, the guardian shall make provision for the care, comfort, and maintenance of the ward and, whenever appropriate, arrange for the training and education of the ward. Without regard to custodial rights of the ward's person, he or she shall take reasonable care of his or her ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of his or her ward is in need of protection.
 - c. A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical, psychiatric, psychological, or other professional care, counsel, treatment, or service. When making such medical or psychiatric decisions, the guardian shall consider and carry out the intent of the ward expressed prior to incompetency to the extent allowable by law.
 - d. If no conservator for the estate of the ward has been appointed, he or she may:
 - i. Institute proceedings to accompany any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his or her duty;
 - ii. Receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but he or she may not use funds from his or her ward's estate for room and board which he or she, his or her spouse, parent, or child has furnished the ward unless a charge for the service is approved by order of the Court made upon notice to at least one of the next of kin of the ward, if notice is possible. He or she must exercise care to conserve any excess for the ward's needs.
 - e. To take or provide for the custody of the person of the ward and shall be required to care for the health, safety and welfare of such minor or incapacitated and provide for their education and medical care as needed or appropriate.
 - f. Guardian may petition the Court for authority to do any act about which he/she is uncertain, and the Court may grant such authority, after such notice and hearing, if any, as the Court may direct if such appears to be consistent with the best interest of the minor or incapacitated.
2. Providing for the care, comfort and maintenance of the ward, including the appropriate training and education to maximize the ward's potential.
 3. Taking reasonable care of the ward's clothing, furniture, vehicle and other personal effects.
 4. Assisting the ward in developing maximum self-reliance and independence.
 5. Ensuring the ward receives necessary emergency medical services.
 6. Ensuring the ward receives professional care, counseling, treatment, or services as needed. If necessitated by the physical or mental disability of the ward, the provision of professional care, counseling, treatment, or services is limited to the provision of routine physical and dental examinations and procedures under anesthesia is included, if the anesthesia is provided within the scope of the health care practitioner's scope of practice. [TCR 11-72]

18-305 Powers and Duties of Guardian; subject to approval of the Court. A guardian may be granted the following additional powers only upon Court approval.

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1. Changing the ward's permanent residence if the proposed new residence is more restrictive of the ward's liberties than the current residence.
2. Arranging for the provision of major elective surgery or any other non-emergency major medical procedure.
 - a. "Major elective surgery" does not include the provision to the ward of professional care, counseling, treatment, or services limited to the provision of routine physical and dental examinations and procedures under anesthesia, if the use of anesthesia is necessitated by the physical or mental disability of the ward, and if the anesthesia is provided within the scope of the health care practitioner's scope of practice.
3. Consent to the withholding or withdrawal of life-sustaining procedures.
4. Consent to the marriage or adoption of the ward. [TCR 11-72]

18-306 Powers and duties of Guardian; other.

1. The Court make take into account all available information concerning the capabilities of the ward and any additional evaluation deemed necessary, including the availability of third-party assistance to meet the needs of the ward or proposed ward.
2. The Court may direct that the guardian only have a specially limited responsibility for the ward. In that event, the Court shall state those areas of responsibility which shall be supervised by the guardian and all other shall be retained by the ward.
3. The Court may make a finding that the ward lacks the capacity to contract a valid marriage. From time to time, upon a proper showing, the Court may modify the respective responsibilities of the guardian and the ward, after notice to the ward and an opportunity to be heard. Any modification that would be more restrictive or burdensome for the ward shall be based on clear and convincing evidence that the ward continues to fall within the categories of Section 18-211 and that the facts justify a modification of the guardianship. [TCR 11-72]

18-307 Powers and duties of guardian of a minor.

1. A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child, except that a guardian is not legally obligated to provide from his own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:
 - a. To take reasonable care of the ward's personal effects and commence protective proceedings if necessary to protect other property of the ward;
 - b. To receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship;
 - c. To exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case such excess shall be paid over at least annually to the conservator;
 - d. To facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice; provided, that a guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented;
 - e. To report the condition of the ward and of the ward's estate which has been subject to the guardian's possession or control, as ordered by the Court, and upon termination of the guardianship settle with the ward and pay over and deliver all of the estate and effects remaining in the guardian's hands or due from the guardian on settlement to the person or persons who shall be lawfully entitled thereto.

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2. A guardian of a minor may exercise the following powers and duties:
 - a. To receive money or personal property from any person under a duty to pay or deliver money or personal property to a minor;
 - b. To institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.
3. The appointment of a guardian for a minor shall not relieve the minor's parent or parents, liable for the support of such minor, from their obligation to provide for such minor. For the purposes of guardianship of minors, the application of guardianship income and principal after payment of debts and charges of managing the estate, in relationship to the respective obligations owed by fathers, mothers, and others, for the support, maintenance and education of the minor shall be:
 - a. The income and property of the father and mother of the minor in such manner as they can reasonably afford, regard being had to the situation of the family and to all the circumstances of the case;
 - b. The guardianship income, in whole or in part, as shall be judged reasonable considering the extent of the guardianship income and the parents' financial ability;
 - c. The income and property of any other person having a legal obligation to support the minor, in such manner as the person can reasonably afford, regard being had to the situation of the person's family and to all the circumstances of the case; and
 - d. The guardianship principal, either personal or real estate, in whole or in part, as shall be judged for the best interest of the minor, considering all of the circumstances of the minor and those liable for his support.
4. The Court may from time to time authorize the guardian to use so much of the guardianship income or principal, whether personal or real estate, as it may deem proper, considering all the circumstances of the minor and those liable for his support, if it is shown that (a) an emergency exists which justifies an expenditure, or (b) a fund has been given to the minor for a special purpose and the Court can, with reasonable certainty, ascertain such purpose. [TCR 11-72]

18-308 Qualification of guardian. Any competent natural person 21 years of age or older or a suitable institution, except any institution or employee of such institution that provides care, treatment or housing to the ward, may serve as a guardian; provided that, nothing in this Section shall prevent a spouse, adult child, parent or other relative from being appointed as guardian. Preference shall be given to relatives of the ward in order of their closeness of relationship and some preference shall also be given to a person with whom the ward is living at the time of the guardianship hearing. In all cases, the Court shall determine the best interests of the ward in selecting a guardian. [TCR 11-72]

18-309 Appointment of guardian based on incompetency.

1. If the allegations of the petition as to the status of the proposed ward and the necessity for the appointment of a guardian are proved by clear and convincing evidence, the Court may appoint a guardian.
2. Every guardian appointed as provided herein shall serve until discharged by the Court. [TCR 11-72]

18-310 Appointment of guardian based on minority.

1. Upon hearing, if the Court finds that a qualified person seeks appointment, the required notices have been given, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases, the Court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interest of the minor.

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2. If, at any time in the proceeding, the Court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen years of age or older.
3. Appointment of a guardian of a minor shall be subject to Section 18-301 and the appointment preferences under Section 18-213. [TCR 11-72]

18-311 Appointment of temporary guardian.

1. A temporary guardian may be appointed, but only after a hearing on such notice, and subject to such conditions, as the Court shall prescribe.
2. In an emergency, the Court may appoint a temporary guardian, pending notice and hearing. Any request for an emergency guardianship must be supported by an affidavit detailing the need for the guardianship and the reason why an emergency guardianship without hearing and notice is necessary. [TCR 11-72]

18-312 Bond. A guardian shall not be required to give bond unless the Court, for good cause, finds that the best interests of the ward require a bond. The Court may require a guardian to provide security in the form of a bond or otherwise to assure the faithful performance of the guardian's duties. Any surety of any such security will be deemed to have consented to the jurisdiction of the Winnebago Tribe of Nebraska Tribal Court for the purposes of action against such security. [TCR 11-72]

18-313 Reporting requirements — guardian.

1. A guardian appointed under this Article shall file with the Court the following written verified reports:
 - a. An initial report within 60 days of the guardian's appointment.
 - b. An annual report every year within 90 days of the annual anniversary of appointment of the guardian, unless the Court otherwise orders that a report should be filed every six (6) months or at some other interval to be determined by and in the discretion of the Court.
 - c. A final report within 30 days of the termination of the guardianship unless that time is extended by the Court.
2. Reports required by this Section must include:
 - a. The current mental and physical condition of the ward.
 - b. The present living arrangements of the ward, including a description of each resident where the ward has resided during the reporting period.
 - c. A summary of the medical, education, vocational and other professional services provided for the ward.
 - d. A report of the ward's income, assets, debts, disbursements and other relevant financial information for the reporting period.
 - e. A description of the guardian's visits with and activities on behalf of the ward.
 - f. A recommendation as to the need for continued guardianship.
 - g. Other information requested by the Court or useful in the opinion of the guardian.
 - h. Reports of the guardian shall be reviewed by the Court and either approved or not approved. If the report is not approved, notice shall be given to the guardian as to the deficiencies in the report and the Court shall set a deadline by which the report must be resubmitted.
 - i. Reports required by this Section shall be served on any attorney representing the ward in the guardianship proceeding and all other parties appearing in the proceeding.
3. The Court shall provide forms to the guardians to assist in completion of the reporting requirements. [TCR 11-72]

18-314 Guardian's compensation.

1. No guardian shall receive any compensation for acting as such without the prior approval of the Court and pursuant to Section 18-220.
2. The right to receive compensation as guardian shall be deemed waived for all years in which such is not requested and received. [TCR 11-72]

18-315 Property delivered — penalty. Upon the removal or upon termination of guardianship, the guardian shall be required by order of the Court to deliver to the person who may be entitled thereto all the property in the guardian's possession or under the guardian's control belonging to the ward no later than 30 days following the removal or termination, and if the guardian fails or refuses to comply with any proper order of the Court, the guardian may be sanctioned, fined, and/or committed to jail until the guardian complies. [TCR 11-72]

18-316 Testamentary appointment of guardian for incapacitated person.

1. The parent of an incapacitated person may, by will, appoint a guardian of the incapacitated person. A testamentary appointment by a parent becomes effective when, after having given seven days' prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the Court in which the will is informally or formally probated if, prior thereto, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority unless it is terminated by the denial of probate in formal proceedings.
2. The spouse of a married incapacitated person may, by will, appoint a guardian of the incapacitated person. The appointment becomes effective when, after having given seven days' prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated. An effective appointment by a spouse has priority over an appointment by a parent unless it is terminated by the denial of probate in formal proceedings.
3. On the filing with the Court in which the will was probated, of written objection to the appointment by the person for whom a testamentary appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the Court in a proper proceeding of the testamentary nominee or any other suitable person upon an adjudication of incapacity in proceedings under the succeeding Sections of this part. [TCR 11-72]

18-317 Termination of guardianship for incapacitated person; liability for prior acts; obligation to account. The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward. [TCR 11-72]

18-318 Testamentary appointment of guardian of minor. The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of the minor under Section 18-318, a testamentary appointment becomes effective upon filing the guardian's acceptance in the Court in which the will is probated if, before acceptance, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority. Upon acceptance of appointment, written notice of acceptance must be given by the guardian to the minor and to the person having his care, or to his nearest adult relation. [TCR 11-72]

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18-319 Objection by minor of fourteen or older to testamentary appointment. A minor of 14 years or older may object to the appointment of his testamentary guardian prior to becoming effective, or object to a previously accepted appointment, by filing with the Court — if the will went through probate in the Tribal Court — a written objection to the appointment before it is accepted or within 30 days after notice of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the Court in a proper proceeding of the testamentary nominee or any other suitable person; however, the Court shall take the objection into consideration when making the appointment. [TCR 11-72]

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18-401 Petition for appointment of conservatorship. Any person may file with the Clerk a verified petition for the appointment of a conservator. The petition shall state the following information, so far as known to the petitioner:

1. The name, age and address of the proposed ward.
2. That the proposed ward is in either of the following categories and the factual basis therefore:
 - a. Is a person whose decision-making capacity is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person’s financial affairs.
 - b. Is a minor.
3. The name and address of the proposed conservator, the relationship of the proposed conservator to the proposed ward, and that such person is qualified to serve in that capacity.

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4. The estimated present value of the real estate, the estimated value of the personal property, and the estimated gross annual income of the estate of the ward. If any money is payable, or becomes payable, to the proposed ward by any third party, entity or agency of the Winnebago Tribe of Nebraska tribal government, or federal, or state government, the petition shall so state.
5. The name and address of the person or institution, if any, having the care, custody or control of the proposed ward.
6. That the proposed ward resides within the exterior boundaries of the reservation and/or is an enrolled member of the Winnebago Tribe of Nebraska, is a non-resident, is not enrolled, or that the proposed ward's residence is unknown, and that the proposed ward's best interests require the appointment of a conservator. [TCR 11-72]

18-402 Permissible court orders. The Court has the following powers which may be exercised directly or through a conservator with respect to the estate and affairs of protected persons:

1. While a petition for appointment of a conservator is pending and after preliminary hearing and without notice to others, the Court has power to preserve and apply the property of the person to be protected as may be required for his or her benefit or for the benefit of his or her dependents.
2. After hearing and upon determining that a basis for an appointment exists for a minor (without other disability), the Court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, the minor's family, and members of the minor's household.
3. After hearing and upon determining by clear and convincing evidence that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the Court has, for the benefit of the person and members of his or her household, all the powers over his or her estate and affairs which he or she could exercise if present and not under disability except the power to make a will. These powers include, but are not limited to, power to make gifts, to convey or release his or her contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to exercise or release his or her powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment, to enter into contracts, to create revocable or irrevocable trusts of property of the estate which may extend beyond his or her disability or life, to exercise or release of his or her powers as settler of a revocable trust to exercise options. [TCR 11-72]

18-403 Notification of conservatorship powers. In a proceeding for the appointment of a conservator, the proposed ward shall be given written notice which advised the proposed ward that if a conservator is appointed, the conservator may, without Court approval, manage the proposed ward's principal, income, and investments, sue and defend any claim by or against the ward, sell and transfer personal property, and vote at corporate meetings. The notice shall also advise the proposed ward that, upon the Court's approval, the conservator may invest the ward's funds, execute leases, make payments to or for the benefit of the ward, support the ward's legal dependents, compromise or settle any claim, and do any other thing that the Court determines is in the ward's best interests. The notice shall clearly advise the proposed ward of the right to counsel and the potential deprivation of the proposed ward's civil rights. The notice shall also state that the proposed ward may use the ward's own attorney instead of an attorney appointed by the Court. The notice shall be served upon the proposed ward as provided in Section 18-208. [TCR 11-72]

18-404 Appointment of conservator.

1. If the allegations of the petition as to the status of the proposed ward and the necessity for the appointment of a conservator are proved by clear and convincing evidence, then the Court may appoint a conservator.
2. Every conservator appointed as provided herein shall serve until discharged by the Court. [TCR 11-72]

18-405 Appointment of temporary and/or limited conservator.

1. A temporary and/or limited conservator may be appointed but only after a hearing on such notice and subject to such conditions as the Court shall prescribe.
2. A temporary conservatorship shall not extend longer than six (6) months from the date of appointment.
3. The Court may appoint a limited conservator to assist in the accomplishment of any protective arrangement or other single transaction. Such limited conservator shall serve until discharged by Court order and report to the Court of all matters done pursuant to the order of appointment. [TCR 11-72]

18-406 Duties of conservator.

1. It is the duty of the conservator of the estate to protect and preserve it, to invest it prudently, to account for it as herein provided, and to perform all other duties required of the conservator by law, and at the termination of the conservatorship, to deliver the assets of the ward to the person entitled thereto.
2. The conservator shall report to the Court at least annually unless the Court otherwise orders that a report should be filed at shorter intervals to be determined by and in the discretion of the Court, and the report shall comply with the provisions of Section 18-418. [TCR 11-72]

18-407 Powers of the conservator without further Court order. Upon appointment by the Court as the ward's conservator, the conservator shall have the full power, without further order of the Court, with relation to the estate of the ward:

1. To collect, receive, and provide receipts for, any principal or income, and to enforce, defend against or prosecute any claim by or against the ward or the conservator; to sue on and defend claims in favor of, or against the ward or the conservator.
2. To sell and transfer personal property of a perishable nature and personal property for which there is a regularly established market.
3. To vote at corporate meetings in person or by proxy.
4. To receive additional property from any source.
5. To continue to hold any investment or other property originally received by the conservator and also any increase therefore, pending the timely filing of the first annual report. [TCR 11-72]

18-408 Powers of conservator subject to the approval of the Court. Upon appointment, a conservator shall have the following powers subject to prior approval of the Court after hearing on such notice, if any, as the Court may prescribe:

1. To invest the funds belonging to the ward.
2. To execute leases.
3. To make payments to, or for the benefit of, the ward in any of the following ways:
 - a. Directly to the ward;

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- b. Directly for the maintenance, welfare and education of the ward;
 - c. To the legal guardian of the person of the ward; or
 - d. To anyone who at the time shall have the custody and care of the person of the ward.
4. To apply any portion of the income or of the estate of the ward for the support of any person for whose support the ward is legally liable.
 5. To make an election to the ward who is a surviving spouse.
 6. To do any other thing that the Court determines to be in the best interest of the ward and the ward's estate.
 7. Under order of the Court, for good cause shown, after such notice as the Court may prescribe, a conservator shall have the power to breach contracts of the ward entered into by the ward prior to the appointment of a conservator, thereby incurring such liability of the ward's estate for such breach as the ward would have incurred for such breach if the ward had been competent.
 8. Under order of Court, for good cause shown, after such notice as the Court may prescribe, a conservator shall have the power to sell, mortgage, exchange, pledge and lease real and personal property belonging to the ward, including the homestead and exempt personal property, when it appears to be the best interests of the ward, upon such terms and conditions that the Court may order and as permitted by law. [TCR 11-72]

18-409 Powers of ward.

1. A ward for whom a conservator has been appointed shall not have the power to convey, encumber, or dispose of property in any manner, other than by will if the ward possesses the requisite testamentary capacity, unless the Court determines that the ward has a limited ability to handle the ward's own funds. If the Court makes such a finding, it shall specify to what extent the ward may possess and use the ward's own funds.
2. Any modification of the powers of the ward that would be more restrictive of the ward's control over the ward's financial affairs shall be based upon clear and convincing evidence and the burden of persuasion is on the conservator. Any modification that would be less restrictive of the ward's control over the ward's financial affairs shall be based upon proof in accordance with the requirements of Section 18-211. [TCR 11-72]

18-410 Qualification of conservator. Any competent natural person 21 years of age or older or a corporation with general power to serve as trustee, except any institution or employee of such institution that provides care, treatment or housing to the ward, and exhibits ability to exercise the powers to be assigned by the Court may serve as a conservator; provided that, nothing in this Section shall prevent a spouse, adult child, parent or other relative from being appointed as conservator. Preference shall be given to relatives of the ward in order of their closeness of relationship and some preference shall also be given to the expressed wishes of the ward. In all cases, the Court shall determine the best interests of the ward in selecting a conservator. [TCR 11-72]

18-411 Bond. Unless exempted by the Court under Section 18-412 below, whenever a conservator is appointed, or upon the Court determining that a guardian shall be required to post bond, the Court shall determine the amount of the bond as set forth in Section 18-412 below and the terms and conditions thereof. Upon such determination by the Court, the conservator and/or guardian shall file with the clerk a certified copy of the conservator's official bond with sufficient surety or sureties and it shall be conditioned upon the faithful discharge of all the duties of the conservator and /or guardian according to law, including the duty to account. The bond shall be procured at the expense of the estate if an approved surety bond is furnished. The bond shall be duly authenticated by the Clerk of the Court, or the Clerk shall also file as a Court record a receipt for the property of the ward received by the conservator or guardian, which receipt shall be provided to the Clerk by the guardian or conservator. The Clerk shall file and record the bond(s) and receipt(s). [TCR 11-72]

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18-412 Amount of bond. Except as otherwise set forth herein or as may be otherwise ordered by the Court for good cause shown, the Clerk of the Court shall fix the penalty of the bond in an amount equal to the value of the personal property of the estate, plus the estimated gross annual income of the estate during the period of administration. The Court shall not exempt a conservator from giving a bond in a conservatorship with total assets of more than \$10,000.00 except for good cause shown. [TCR 11-72]

18-413 Bond — approval by Clerk. The bond shall not be deemed sufficient until it has been examined and approved by the Clerk who shall endorse such approval thereon. In the event the bond is not approved, the conservator or guardian shall, within such time as the Court directs, secure and file a bond with satisfactory surety or sureties. [TCR 11-72]

18-414 Review by Clerk when inventory is filed. At the time the inventory of the estate is filed, the Clerk shall review the amount of bond and report to the Court as to any apparent insufficiency thereof. [TCR 11-72]

18-415 Bond changed. The Court may at any time require a new bond, or increase or decrease the amount of the penalty of the bond of any conservator or guardian when good cause therefore appears. [TCR 11-72]

18-416 Obligees of bond — joint and several liability. The bond of the conservator or guardian shall run to the use of all persons interested in the estate, and shall be for the security and benefit of such persons. The sureties shall be jointly and severally liable with the conservator or guardian and with each other. [TCR 11-72]

18-417 Order for delivery. Upon the filing of the bond as provided above, the Court being satisfied with the amount thereof, it shall order the personal property of the ward delivered to such conservator or guardian and with each other. [TCR 11-72]

18-418 Inventory — reporting requirements.

1. A conservator appointed under this Section has a duty to make a diligent search to determine and discover the debts and property, real and personal, of the ward and the conservator shall file with the Court.
 - a. An inventory within 60 days of the conservator's appointment. This inventory shall include all debts and property of the ward that has come into the conservator's possession or of which the conservator has knowledge. When additional debts and/or property come into the possession of the conservator or to the knowledge of the conservator, a supplemental inventory shall be filed within 30 days.
 - b. Written verified reports and accountings as follows:
 - i. Annually, within 90 days of the anniversary of the date of appointment of the conservator, unless the Court otherwise orders that a report should be filed every six months or at some other interval to be determined by and in the discretion of the Court.
 - ii. Within 30 days following the date of removal of the conservator.
 - iii. Upon filing resignation and before the resignation is accepted by the Court.
 - iv. Within 60 days following the date of termination.
 - v. At other times as the Court may order.
 - c. The report and accounting shall account for all of the period since the close of the accounting contained in the most recent previously filed report to the date of the present report and shall include the following information as far as applicable:

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- i. The balance of funds on hand at the close of the accounting contained in the most recent previously filed report and all amounts received from whatever source during the present accounting period.
 - ii. All disbursements made during the present accounting period.
 - iii. Any changes in investments during the present accounting period, including a list of all assets, and the recommendations of the conservator for the retention or disposition of any property, real or personal, held by the conservator.
 - iv. A list of all debts and indebtedness as of the date of the present accounting.
 - v. The amount of the bond and the name of the surety on it.
 - vi. The residence address or the physical location of the ward.
 - vii. The general physical and mental condition of the ward.
 - viii. Such other information as shall be necessary to show the condition of the affairs of the conservatorship.
2. Reports of the conservator shall be reviewed and either approved or not approved by the Court. If the Court does not approve a report of the conservator, the Court shall, by order, instruct the conservator as to the deficiencies in the report and set a deadline by which the report must be resubmitted.
3. No order shall be entered approving an annual report of a conservator until the Court costs which have been docketed have been paid or provided for. The Court may, upon application, enter an order waiving payment of the Court costs in indigent cases. However, if the conservatorship subsequently becomes financially capable of paying any waived costs, the conservator shall immediately pay the costs. Court costs include the following:
 - a. Guardian's fees, if any.
 - b. Fees of the attorney for the guardian, if any.
4. The Court shall settle each and every account filed by the conservator by allowing or disallowing it, either in whole or in part, or by surcharging the account against the conservator.
5. Reports required by this Section shall be served on the attorney representing the ward in the conservatorship proceeding and all other parties appearing in the proceeding.
6. Failure by the conservator to file the report may result in removal of the conservator and forfeiture of the bond. [TCR 11-72]

18-419 Title to ward's property. The title to all property of the ward is in the ward and not the conservator, subject however, to the possession of the conservator and to the control of the Court for the purposes of administration, sale or other disposition, under the provisions of law. [TCR 11-72]

18-420 Conservator's right to possession. Every conservator shall have a right to, and shall take, possession of all of the real and personal property of the ward. The conservator shall pay the taxes and collect the income therefore until the conservatorship is terminated. The conservator may maintain an action for the possession of the property and to determine the title to same. [TCR 11-72]

18-421 Presumption of fraud. If a conservator is appointed, all contracts, transfers and gifts made by the ward after the filing of the petition shall be presumed to be a fraud against the rights and interest of the ward except as otherwise directed by the Court pursuant to Section 18-407(7). [TCR 11-72]

18-422 Claims against ward, conservatorship or conservator in that capacity. Claims accruing before or after the appointment of the conservator, and whether arising in contract or tort or otherwise, after being allowed or established as provided in this Article, shall be paid by the conservator from the assets of the conservatorship. [TCR 11-72]

18-423 Forms and verification of claims filed with Clerk.

1. A claim against the estate of a ward shall be in writing, filed in duplicate with the Clerk, stating the claimant's name and address, and describing the nature and amount claimed. It shall be accompanied by the affidavit of the claimant or an agent of the claimant, stating that the amount is justly due, or if not due, when it will or may become due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the affiant, except as stated therein.
2. The Clerk shall mail the duplicate to the conservator or the conservator's attorney of record.
3. If a claim is founded upon a written instrument, the original of such instrument, or a copy thereof, with all endorsements, must be attached to the claim. The original instrument must be exhibited to the conservator or to the Court, upon demand, unless it has been lost or destroyed, in which case, its loss or destruction must be stated in the claim. [TCR 11-72]

18-424 Filing of claim required. The filing of a claim in the conservatorship tolls the statute of limitations applicable to such claim until 30 days after its disallowance. [TCR 11-72]

18-425 Compelling payment of claims. No claimant shall be entitled to compel payment until the claimant's claim has been duly filed and allowed. [TCR 11-72]

18-426 Allowance by conservator. When a claim has been filed and has been admitted in writing by the conservator, it shall stand allowed, in the absence of fraud or collusion. [TCR 11-72]

18-427 Execution and levy prohibited. No execution shall issue upon, nor shall any levy be made against any property of the estate of a ward under judgment against the ward or conservator, but the provisions of this Section shall not be so construed as to prevent the enforcement of a mortgage, pledge or other lien upon property in an appropriate proceeding. [TCR 11-72]

18-428 Claims of conservators. If the conservator is a creditor of the ward, the conservator shall file the claim as with other creditors, and the Court shall appoint a temporary conservator to represent the ward at the hearing on the conservator's claim.

18-429 Claims not filed.

1. The conservator may pay any valid claim against the estate of the ward even though such claim has not been filed, but all such payments made by the conservator shall be at the conservator's own peril.
2. Valid contract claims arising in the ordinary course of the conduct of business or affairs of the ward by the conservator may be paid by the conservator without requiring affidavit or filing pursuant to Section 18-423. [TCR 11-72]

18-430 Liens not affected by failure to claim. Nothing in Section 18-422 shall affect or prevent an action or proceeding to enforce any mortgage, pledge or other lien upon the property of the ward. Such proceedings shall not be subject to claims under this Code. [TCR 11-72]

18-431 Pending actions. Any action pending against the ward at the time the conservator is appointed shall be considered a claim filed in the conservatorship if notice is served on the conservator as defendant, and a duplicate of the proof of service of notice of such proceeding is filed in the conservatorship proceeding. [TCR 11-72]

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18-432 General denial of claims. Where a claim has been filed, but not admitted in writing by the conservator before a hearing, the claim shall be considered denied. [TCR 11-72]

18-433 Disallowance of claim by conservator. At any time after the filing of a claim against an estate, the conservator may give the claimant and the claimant's attorney of record, if any, written notice of disallowance of claim. The notice shall be given by certified mail addressed to the claimant at the address stated in the claim and to the claimant's attorney of record, if any. A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant and/or claimant's attorney within sixty (60) days after its presentation. [TCR 11-72]

18-434 Notice of disallowance and request for hearing. A notice to a claimant of disallowance of claim shall advise the claimant that the claim has been disallowed and will be forever barred unless the claimant shall, within 20 days after the date of mailing the notice, file a request for hearing on the claim with the Clerk, and mail a copy of such required for hearing to the conservator and the conservator's attorney of record, if any, by certified mail. [TCR 11-72]

18-435 Notice of disallowance; proof of service. Proof of service of the notice of disallowance shall be made by affidavit, shall show the date and place of mailing, and shall be filed with the clerk. [TCR 11-72]

18-436 Notice of disallowance; claims barred after twenty days. Unless the claimant shall within 20 days after the date of mailing the notice of disallowance file a request for hearing with the Clerk and mail a copy of the request for hearing to the conservator and to the conservator's attorney of record, if any, the claim shall be deemed disallowed, and shall be forever barred. [TCR 11-72]

18-437 Request for hearing by claimant. At the time of the filing of a claim against an estate, or at any time thereafter prior to the time that the claim may be barred by the provisions of Section 18-436, or the approval of the final report of the conservator after notice to the claimant, the claimant may file a request for hearing with the Clerk, and mail a copy of the request for hearing to the conservator and the conservator's attorney of record, if any. [TCR 11-72]

18-438 Applicability of Rules of Civil Procedure to hearing on claim. Within 20 days from the filing of a request for hearing on a claim, the conservator shall move or plead to said claim and file any counterclaim against the claimant for an offset against the claim or other counterclaim in the same manner as though the claim were a petition filed in an ordinary action, and thereafter, all provisions of the law and Rules of Civil Procedure shall apply. [TCR 11-72]

18-439 Payment of claims in insolvent conservatorships. When it appears that the assets in a conservatorship are insufficient to pay in full all the claims against such conservatorship, the conservator shall report such matter to the Court, and the Court shall, upon hearing, with notice to all persons who have filed claims in the conservatorship, make an order for the pro rata payment of claims giving claimants the same priority, if any, as they would have if the ward were not under conservatorship. Preference shall be given to prior claims for the care, maintenance and education of the ward or the ward's dependents. [TCR 11-72]

18-440 Conservator may make gifts. For good cause shown and under order of Court, a conservator may make gifts on behalf of the ward out of the assets under a conservatorship to persons or religious, education, scientific, charitable, or other nonprofit organizations to whom or to which such gifts were regularly made prior to the commencement of the conservatorship, or on a showing to the Court that such gifts would benefit the ward or the ward's estate from the standpoint of income, gift, estate, or inheritance

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taxes. The making of gifts out of the assets must not foreseeably impair the ability to provide adequately for the best interests of the ward. [TCR 11-72]

18-441 Assets exhausted. At any time that the assets of the ward's estate do not exceed the amount of the charges and claims against it, the Court may direct the conservator to proceed to terminate the conservatorship. [TCR 11-72]

18-442 Accounting to ward upon termination — notice. Upon the termination of a conservatorship, the conservator shall pay the costs of administration and shall render a full and complete accounting to the ward and the ward's attorney, if any, or on the ward's guardian and attorney for the guardian, if any, and to the Court. Notice of the final report shall be served on the ward and the ward's attorney, if any, or the ward's guardian and attorney for the guardian, if any, in accordance with Section 18-209 unless notice is waived. An order prescribing notice may be made before or after the filing of the final report. [TCR 11-72]

18-443 Delivery of assets. Upon the termination of a conservatorship, all assets of the conservatorship shall be delivered under direction of the Court to the person or persons entitled to them. [TCR 11-72]

18-444 Discharge of conservator and release of bond. Upon settlement of the final accounting of a conservator, and upon determining that the property of the ward has been delivered to the person or persons lawfully entitled thereto, the Court shall discharge the conservator and exonerate the surety on the conservator's bond. [TCR 11-72]

18-445 Removal of conservator by Court. When any conservator is, or becomes, disqualified or has mismanaged the estate, dies, fails or failed to perform any duty imposed by law, or by any lawful order of Court, then the Court may remove the conservator. The Court may upon its own motion, and shall upon the filing of a verified petition by any person interested in the estate, including a surety on the conservator's bond, order the conservator to appear and show cause why the conservator should not be removed. Any such petition shall specify the grounds of complaint. The removal of a conservator after letters are duly issued to the conservator shall not invalidate the conservator's official acts performed prior to removal. [TCR 11-72]

18-446 Property delivered — penalty. Upon the removal of any conservator, the conservator shall be required by order of the Court to deliver to the person who may be entitled thereto all the property in the conservator's possession or under the conservator's control belonging to the estate of the ward and if the conservator fails or refuses to comply with any proper order of the Court, the conservator may be sanctioned, fined, or committed to jail until the conservator does. [TCR 11-72]