

# A HANDBOOK FOR GUARDIANS OF MINOR CHILDREN

**Prepared by**

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Guardianship Handbook Subcommittee\***

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## I. GENERAL INFORMATION

This handbook is published by the Oklahoma Bar Association as an easy-to-read guide on Minor Guardianship laws in Oklahoma and the rights, duties, obligations required by the Guardianship statutes. The Minor Guardianship laws of Oklahoma are located in Title 30 of the Oklahoma Statutes.

This handbook includes a summary of the duties of Guardians, legal notices, timetables, required court approvals, a Guardian's accountability duties to the court and to the Ward, and sanctions/penalties for non-compliance.

The Courts and the judges (as well as their clerks and bailiffs) assigned to the guardianship dockets cannot act as your attorney. They cannot advise pro-se guardianship litigants how to proceed, what forms to use, how to present the case or what is necessary legally to obtain a guardianship over a minor. Knowing the court's limitations up front will help to avoid frustration and confusion if you are trying to handle a minor guardianship on your own, or pro-se. This Handbook will provide information that should be helpful in the event you want to represent yourself in the minor guardianship process.

A Guardianship for an incapacitated person shall be (1) used only as is necessary to promote and protect the well-being of the person and his or her property, (2) designed to encourage the development of maximum self-reliance and independence of the person, (3) ordered only to the extent required by the actual mental, physical, and adaptive limitations of the person. (30 O.S §3-111(c)).

### Do You Need an Attorney?

Guardianship and conservatorship laws are tricky. Title 30 of the Oklahoma Statutes contains over one hundred statutes and thousands of clauses. It was written by legislators and has been interpreted and reinterpreted by courts for generations. Perhaps most important, your case will have a judge assigned to it. His or her interpretation of the interplay of statutes and appellate opinions will have tremendous control over your case.

Lawyers went to law school and have spent a good portion of their adult lives working to understand what the statutes and cases mean. They have taken the time to understand how each judge works and what they may expect.

If you break your arm, you might set the broken bone on your own. Your best chance for a good recovery though, is to go to the effort and expense of getting a doctor involved. Likewise, you might do your own Guardianship, but your best chance at a problem-free experience is to involve professionals from the beginning.

Lastly, if your case is contested or objected to by any person, or if the child or children are enrolled or eligible for enrollment in a Native American Indian tribe, it is highly recommended that you seek professional legal counsel.



## II. DEFINITIONS

1. “Abandonment” - means a Minor who has been abandoned as defined at §1-1-105 of Title 10A of the Oklahoma statutes.
2. "Abuse" - means the intentional infliction of physical pain, injury, or mental anguish or the deprivation of food, clothing, shelter, or medical care to an incapacitated person, partially incapacitated person, or a minor by a guardian or other person responsible for providing these services. (30 O.S. §1-111(A)(1))
3. “Background Investigation” - means the investigation and report which may be received by the Court, before making an appointment of a Guardian for a Minor. The Court will balance the need for a home study to protect the best interests of the child with the ability of the prospective Guardian to pay for the home study report and investigation. (30 O.S. §2-101(B)(1))
4. “Child Support in Minor Guardianship” - means any Order appointing a Guardians for a Minor shall provide for the payment of child support by each parent or other responsible party pursuant to the Oklahoma child support guidelines at Sections 118 or 119 of Title 43 of the Oklahoma statutes. (30 O.S. §2-108(B))
5. "Confidential information" - means medical records, physical, psychological or other evaluations of a ward or subject of the proceeding, initial and subsequent guardianship plans, reports of guardians, limited guardians and conservators submitted to the court in connection with a proceeding pursuant to the provisions of the Oklahoma Guardianship and Conservatorship Act. (30 O.S. §1-111(A)(2))
6. “Court” - Refers to a Judge or proceedings in front of a Judge.
7. “Court Order” - A direction issued by a court or a judge requiring a person to do or not do something.
8. “Entry of Appearance” or “Entering an Appearance” – A document filed to show a person is a party of record and entitled to notice of all court filings. Entering an appearance is filing an Entry of Appearance or otherwise putting the court and all other parties on notice that you are an interested party and/or a party of record.
9. “Estate” - The property of the person subject to the Guardianship proceeding. (30 O.S. §1-111).
10. “Guardian” - A person appointed by the court to take care of the person or property of another. (30 O.S. §1-105).
11. Evaluation – A professional assessment of: (a) the ability of an adult to receive and evaluate information effectively or communicate decisions, (b) the impact of any impairment of these skills on the capacity of the individual to meet the essential requirements for the

individual's physical health or safety, or to manage the individual's financial resources, or (c) the services necessary to provide for the ward. (30 O.S §1-111).

12. "Exploitation" - means an unjust or improper use of the resources of an incapacitated person, a partially incapacitated person, or a minor for the profit or advantage, pecuniary or otherwise, of a person other than an incapacitated person, a partially incapacitated person, or a minor through the use of undue influence, coercion, harassment, duress, deception, false representation, or false pretense. (30 O.S. §1-111(A)(6))
13. "Guardian ad Litem" – means a person appointed by the court to assist the subject of the proceeding in making decisions with regard to the guardianship proceeding, or to make the decisions when the subject of the proceeding is wholly incapable of making the decisions even with assistance. (30 O.S. §1-111).

NOTE: A Guardian ad Litem differs from a Guardian. The Guardian has specific rights and responsibilities to the Ward, pursuant to law and Court orders. A Guardian ad Litem is an attorney appointed by the Court to advocate for the best interests of the child, even if that is different than what the child wants. (30 O.S. §1-117)

ADDITIONALLY, a Guardian ad Litem differs from an "Attorney for the Child." A Guardian ad Litem must advocate for the child's best interests, whereas an Attorney for the Child must advocate the child's position, even if the child's position may be contrary to the child's best interests.

14. "Guardian of a minor" - means a guardian for a person under 18 years of age. (30 O.S. §1-111(A)(19))
15. "Guardianship Plan" - The plan for the care and treatment of a Ward or for the management of the Ward's financial resources, or both, including health, education, and welfare. (30 O.S. §2-107, 108, 110, 111 and 116)
16. "Guardianship Proceeding" - A court proceeding to appoint a Guardian or for other orders regarding the condition, care or treatment of the person, or the management of financial resources, of a Ward. (30 O.S. §1-111)

Guardianship Proceedings for Minor must be based on the verified petition of a relative or other person on behalf of the Minor. (30 O.S. §2-101-103).

17. "Guardianship Report" - Any report required by a Guardian under the legal rules for incapacitated/partially incapacitated persons or Guardianship of the person and/or property of the Ward found in 30 O.S. § 4-305 and 4-306.

Guardianship Report will be due to the Court annually after the appointment (30 O.S. §2-109(B)(1) and periodically as determined by the Court. (30 O.S. §2-109(B)(2))

18. “Guide” - means the Guide to Obtaining the required background checks for Guardianship of a Minor and submission of all the forms required for all adults who will be living in the home where the Minor is placed which can be found at the end of this Handbook.
19. “Immediate Court Action” - in a Minor Guardianship means that nothing contained in this subsection shall prevent a court from immediately assuming custody of a minor, pursuant to the Oklahoma Children's Code, and ordering whatever action may be necessary, including medical treatment, to protect the minor's health or welfare. (30 O.S. §1-111(B)(2)).
20. Intangible Personal Property – Cash, stocks, and bonds, mutual funds, money market accounts, certificates of deposit, insurance contracts, commodity accounts, and other assets of a similar nature. (30 O.S. §1-111).
21. “Legally responsible” - means that an order appointing a guardian of the minor who has a parent living or other person legally responsible for the child shall comply with the provisions of § 2-108 of this title.
22. “Letters” - (Letters of Guardianship) - A document signed by a judge after the appointment of a Guardian. Letters of Guardianship (Letters) will designate the name of the Guardian and specify the authority and powers of the Guardian.
23. Meet the Essential Requirements for Physical Health or Safety – Actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury is more likely than not to occur. (30 O.S. §1-111).
24. “Minor” - A person under eighteen (18) years of age. (30 O.S. §1-111)
25. “Minor Estates Not Exceeding \$10,000” - means that the funds may, at the discretion of the Court, be delivered to a custodian designated by the court under the Uniform Transfers to Minors Act. (30 O.S. §2- 116(A)(1)(a))
26. “Minor Estate Exceeding \$10,000” - means that the Court may, in its discretion, without the appointment of a Guardian deliver the Minor’s property to a Custodian under the Uniform Transfers to Minors Act. (30 O.S. §2-116 (A)(2))
27. “Neglect” - means the failure to provide protection for an incapacitated person, a partially incapacitated person, or a minor who is unable to protect the person's own interest; or the failure to provide adequate shelter or clothing; or the harming or threatening with harm through action or inaction by either another individual or through the person's own action or inaction because of a lack of awareness, incompetence, or incapacity, which has resulted or may result in physical or mental injury. (30 O.S. §1-111(A)(20))
28. “Notice” - Informing people other than yourself that you are asking for a court order that may affect them or their rights. The process of “giving notice” means giving copies of court

papers to the parties entitled to notice as required by law. The court papers can ONLY be delivered in a manner permitted by law, and proof of proper delivery must be filed.

Notice in Minor Guardianships means such Court ordered notice shall be mailed to each person, entitled to notice pursuant to this section, at that person's address as last-known to the petitioner, at least ten (10) days prior to the date set by the court for hearing on the petition.(30 O.S. §2-101(E))

Persons Entitled to Notice in Minor Guardianship:

- (1) The then-living parents of the minor and any other person having custody of the minor, if such parent or person is not one of the petitioners;
  - (2) If the minor has no then-living parent, then to one of the then-living grandparents who is not one of the petitioners and who is not married to one of the petitioners; and
  - (3) If there is no such then-living grandparent or if there is no such then-living grandparent whose address is known to the petitioner, then notice shall be given to an adult relative, if any, of the minor residing in the county in which the petition was filed. (30 O.S. §2-101(D))
29. “Notary Public” (Notary or Public Notary) - A person authorized to perform certain legal formalities, such as certify another person’s signature after verifying that person’s identity, particularly on legal documents and contracts. Having your signature notarized means having a Notary verify your identity and witness your signature on documents, then the Notary will sign the documents to certify your signature and date your signature and the Notary’s signature. When a Notary notarizes a document, he/she should write in the County in which you and the Notary were physically present when the document was signed and notarized.
30. “Party” - A person filing a Guardianship petition, application, motion or other related legal documents. Including but not necessarily limited to the person seeking Guardianship, a duly appointed Guardian, Guardian ad litem, court-appointed conservator, the Ward or prospective Ward, any party who has filed an objection, and anyone else who has entered an appearance.
31. “Pauper's Affidavit” (“pauperis” affidavit) - Can be filed by very low-income persons to avoid paying filing fees to the court. Usually, the judge will review the affidavit and decide about whether you have to pay fees or not.
32. “Petition” - A written application from a person or persons asking for relief in court. A formal application made to a court in writing that requests action on a certain matter, such as a Petition for Guardianship.

33. "Property" - means real property, personal property, income, any interest in such real or personal property and includes anything that may be the subject of ownership. (30 O.S. §1-111(A)(25))
34. "Section" - The Oklahoma Guardianship and Conservator Act is cited throughout this Handbook. The Act is found at Title 30 of the Oklahoma Statutes. In this Handbook, where you see the word Section or the symbol §, this is referring to the specific section of Title 30 or another title from the Oklahoma Statutes. For example, when you see 30 O.S. §1-111, this is a reference to Title 30, Section 1-111 of the Oklahoma Statutes.
35. "The Subject of the Proceeding" - The minor child/ren for whom a Guardianship is needed. Also referred to in this Handbook as: Ward, Minor, or Subject. (30 O.S. §1-111)
36. "Surcharge" - The imposing of personal liability ordered by the judge on a Guardian if that Guardian commits willful or negligent misconduct handling a Ward's property or financial resources.
37. "Transfer of Permanent Care" - means that in any Court Order providing for the transfer of the permanent care and custody of a Minor shall be reviewed by the Court within one (1) year after the transfer including any reports the Court deems necessary for purposes of the review. (30 O.S. §2-109(B)(1) and (2))
38. "Ward" - A person over whom a Guardian is appointed and/or a person over whose property a Guardian or conservator is appointed. (30 O.S. §1-107)

NOTE: In this Handbook, the term "Ward" is to refer to a "minor", "subject", "physically incapacitated person", "incapacitated person", "partially incapacitated person" or other person over whom a court has granted Guardianship.

*Additional definitions may be found at Title 30 of the Oklahoma Statutes, Section 1-111.*

### **III. TYPES OF GUARDIANSHIP OVER A MINOR**

General Guardianship - A Guardian of the person or of all the property of the Ward within this state or of both person and property. (30 O.S. §1-109)

Limited Guardianship - A person authorized by the court to exercise limited powers over the person of the Ward, or over the property of the Ward within the state or of both person and property. (30 O.S. §1-109)

Emergency Guardianship - The Court has the inherent power to grant emergency guardianship over a child to protect the child from irreparable harm. (43 O.S. §110(B)(2), 43 O.S. §107.4 and 30 O.S. §2-101(B)(4))



Special Guardianship - A special guardianship is a type of guardianship for incapacitated adults and does not apply to minors. (30 O.S. §3-115) To obtain Special Guardianship, you must file a Petition for General Guardianship and an Application for Special Guardianship.

Guardianship by Power of Attorney - This is relatively new guardianship of limited duration with no court supervision. It is created by a very simple form, which can be found in the forms section of this Handbook. (10 O.S. §700).

#### **IV. GUARDIANSHIP BY POWER OF ATTORNEY – A SUPER SIMPLE BUT LIMITED SOLUTION**

Often, a child needs a short-term legal guardian for things like assurance of temporary safety, medical decision making, or school enrollment. In such circumstances, a regular guardianship may be overly complicated and more than needed. Oklahoma has a very simple solution for these problems, guardianship by power of attorney. (10 O.S. §700)

Using the proper form, a natural parent can designate custodial authority over a child to someone else for up to one (1) year. The person to whom custodial authority is designated is called the Attorney-in-Fact. A fill in the blank form is attached. This very simple form can address the vast majority of needs that lead people to think they want a guardianship.

From the parent’s perspective, this is a quick and simple short-term solution that gives the Attorney-in-Fact authority to act on behalf of the child without diminishing the natural parent’s legal and custodial authority. The Power of Attorney Guardianship expires automatically after one (1) year, but can be terminated by the natural parent at any time.

The Power of Attorney Guardianship removes the expense and hassle of court filings, hearings, and court monitoring required with a formal guardianship.

#### **V. WHO MAY BE APPOINTED AS GUARDIAN**

1. A person 18 years of age or older who is of sound mind and not acting under duress, menace, fraud, or undue influence may nominate their own Guardian over physical care and/or property. Such nomination must be in writing and signed by the person making the nomination. If two or more people are nominated, the person most recently nominated will be the Guardian. The court may also approve and appoint two people as co-Guardians, when appropriate. (30 O.S. §3-102)
2. The court may consider the people listed below when appointing a Guardian and does not have to choose in the order listed. The court has final say and chooses the Guardian based on what is in the Ward’s best interests.
  - a. Custody or guardianship of a child may be awarded to:
    - i. A parent or to both parents jointly;
    - ii. A grandparent;
    - iii. A person who was indicated by the wishes of a deceased parent;

- iv. A relative of either parent;
  - v. The person in whose home the child has been living in a wholesome and stable environment including but not limited to a foster parent; or
  - vi. Any other person deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.
3. A will or other written instrument may nominate a person to serve as guardian of a minor, to take effect upon the death of the parent so nominating:
- i. if the child is born in wedlock, by either parent or both parents.
  - ii. If the child is born out of wedlock, by the mother of the child or by the natural father of the child, if said natural father has acknowledged paternity pursuant to Section 55 of Title 10 of the Oklahoma Statutes or has been judicially determined to be the father of the child at a paternity proceeding pursuant to Section 70 of Title 10 of the Oklahoma Statutes, or by both such mother and father. (30 O.S. §2-102 A).
4. Guardian's Fitness Inquiry (30 O.S. §4-105): In conducting an inquiry to determine whether a person is suitable to serve as a Guardian, the court shall inquire whether the person applying for Guardianship is:

- a. Over the age of 18;
  - b. Of sound mind (not incapacitated or partially incapacitated);
  - c. If the court is to appoint a person who has a criminal conviction, protective order, pending criminal charges, or other civil or criminal matter in state or federal court, after investigating such matters, the court shall only make such an appointment if the court has a reasonable belief that the person proposed to serve will be faithful to and not neglect the fiduciary and care responsibilities of the guardian, and that the appointment is in the best interest of the ward;
  - d. The person seeking Guardianship shall tell the court about any criminal history of himself/herself and complete the required background checks for any other adult household member, so the court can consider whether the criminal history relates to the requested Guardianship;
  - e. Whether the person seeking Guardianship is insolvent or has declared bankruptcy in the five (5) years preceding the Guardianship petition;
  - f. Whether the person seeking Guardianship is under any financial obligation to the proposed Ward;
  - g. Whether there is any conflict of interest that would keep the person seeking Guardianship from properly caring for the Ward or the Ward's finances;
  - h. Whether the person seeking Guardianship is a citizen, a legal resident, or is otherwise legally present in the United States of America.
5. A nomination of a guardian for a minor made by a parent who has relinquished parental rights pursuant to an adoption proceeding or whose parental rights have been terminated by a district court shall have no effect. (30 O.S. §2-102 B)
6. If a minor is under the age of fourteen (14) years, the Court may name and appoint his guardian. If the minor has attained the age of fourteen (14) years, the minor may nominate his own guardian, who, if approved by the court, must be appointed accordingly. (30 O.S. §2-103)
- a. When a guardian has been appointed by the court for a minor under the age of fourteen (14) years, the minor, at any time after he has attained age fourteen (14), may nominate his own guardian, subject to the approval of the Court. (30 O.S. §2-104)
  - b. If a guardian nominated by a minor who has attained the age of fourteen (14) years is not approved by the Court, or if, after being notified by the court, the minor neglects for ten (10) days to nominate a suitable person, the Court may name and appoint a guardian in the same manner as if the minor was under the age of fourteen (14) years.
  - c. If the Court determines that the person nominated is unable, unwilling, or cannot qualify to so serve, the court must make a finding to that effect, and then the Court must appoint a guardian as if the nomination had not been made, taking into account any alternative guardian named in the nomination. (30 O.S. §3-105)

## VI. STATUTORY NOTICES (30 OS. §2-201)

### A. WHO RECEIVES NOTICE OF A GUARDIANSHIP PETITION?

1. The Minor if over the age of 14 years; and
2. The Ward's living parent(s) and any other person having custody of the minor, if such person is not a petitioner;
3. If the minor has no living parent, to one of the minor's living grandparents who is not a petitioner nor married to one of the petitioners;
4. If there is no such then-living grandparent, or if there is no such then-living grandparent whose address is known to the petitioner, then notice shall be given to an adult relative, if any, of the minor residing in the county in which the petition was filed;
5. The Department of Human Services, if public assistance money, child support services, or medical support has been provided through the Department of Human Services;
6. Any other person as directed by the court.

### B. WHEN AND HOW IS NOTICE SERVED IN A GENERAL GUARDIANSHIP?

1. Notice MUST be mailed by regular U.S. Mail, with proper postage, as follows:
  - a. WHEN: At least ten (10) days before the hearing.
  - b. WHAT TO INCLUDE: Copies of the Notice of Hearing and the Petition for Guardianship
  - c. SERVED UPON: all other persons entitled to Notice of the Petition for Guardianship, listed in the Who Receives Notice section above.

## VII. REQUIRED COURT APPROVALS

Once you have a Guardianship in place, the Guardian and the court work together to manage the care and finances of the Ward. The Guardian must provide the court with certain information and the court must review the Guardian's actions and plans. At a minimum, the Guardian must obtain the court's approval of:

1. Appointment and removal of guardians. (30 O.S. §1-114(B)(1) and 2-101)
2. Permission to relocate Ward within or without the county. (30 O.S. §1-120(A))
3. Permission to use Ward's excess income to pay for education and maintenance or the ward. (30 O.S. §2-108)

4. Any transfer of guardianship of a child (minor). (30 O.S. §2-109(B))
5. Investment of Ward's assets in life insurance. (30 O.S. §2-110)
6. Settlement of accounts between the guardian and the ward upon attainment of the ward of majority age. (30 O.S. §2-114)
7. Waiving or waiver of the posting of a bond by the proposed guardian, or for reduction of a bond. (30 O.S. §4-201).
8. An inventory of the ward's property which inventory must be filed within two (2) months of the guardian's appointment. (30 O.S. §4-301)
9. An annual accounting of the ward's property and assets, or shorter time if required by the court. (30 O.S. §4-303)
10. An annual report concerning the person of the person of the ward, that is, a report of the ward's physical and mental condition. (30 O.S. §4-303(D) and §3-305)
11. Specific form for report of the property of the ward may be found at 30 O.S. §4-306(C)
12. Allowance of Guardian's expenses must be approved by the Court. (30 O.S. §4-401)
13. Court approval needed for approval of attorney fees for attorneys for the ward or guardian. (30 O.S. §4-403)
14. Court approval needed before removal of a ward's property to another state. (30 O.S. §4-606)
15. Approval of the Court required for investment of the ward's money in real estate or any other investment. (30 O.S. §4-7-803)
16. Approval from the Court is needed for any note or mortgage executed by a guardian for securing payment on a homestead for the ward. (30 O.S. §4-709(C)(4))
17. Approval from the Court is needed for sale of real property or personal property of the ward. (30 O.S. §4-751)
18. Approval from the Court is needed for partition of the ward's real property. (30 O.S. §4-758)
19. Court approval is needed for exchange of the ward's real property for other real property. (30 O.S. §4-768)
20. Court approval is necessary to suspend a guardian. (30 O.S. §4-802)

## VIII. THE GUARDIAN'S ACCOUNTABILITY TO THE COURT

### GUARDIAN'S DUTIES

In carrying out the duties to the court, any Guardian MUST:

1. Assure the court that the rights of their appointed Ward are protected. (30 O.S. §1-106)
2. Perform in good faith and diligently any specific duties and powers assigned by the court.
3. Comply with any court ordered investigation and report regarding the background and home of the prospective guardian pursuant to the requirements of the Oklahoma Adoption Code. (30 O.S. § 2-101)
4. Comply with any home study required by the court, where the court shall balance the need for a home study to protect the best interests of the minor with the ability of the prospective guardian to pay for the home study. (30 O.S. § 2-101)
5. Comply with any order by the court regarding the conditions providing for the care, treatment, education and welfare of the minor that the guardian must maintain. (30 O.S. § 2-109)
6. Assure the court they are competent to be in charge of the education of the Ward. (30 O.S. §2-107)
7. Comply, if required by the Court, that an order providing for the transfer of the permanent care and custody of a child is completed and:
  - a. Attend a placement review held within one (1) year after transfer
  - b. If required, submit any records or reports the court deems necessary for purposes of the review and any required periodic reviews by the court thereafter as necessary to serve the best interests of the child. (30 O.S. § 2-109)
8. Assure to the court that the payment of child support by each parent or other responsible party pursuant to the Oklahoma child support guidelines as set forth in 43 O.S. §§ 118, 119 are received. (30 O.S. § 2-108)
9. Tell the court if public assistance money or medical support has been provided through the Department of Human Services (DHS) for the benefit of each child, or whether the Department is providing child support services pursuant to the state child support plan as provided in 56 O.S. §237. (30 O.S. § 2-108)
10. Assure that the Department of Human Services (DHS) has been given notice of the action of guardianship, if the guardian is receiving public assistance money or medical support through DHS. (30 O.S. §2-108)

11. Invest funds or assets, if legally holding funds or assets belonging to or for the benefit of a minor AND with the approval of the court, into a single premium life, single premium endowment, or single premium annuity contracts of legal reserve life insurance companies as are duly licensed and qualified to transact business within this state (30 O.S. § 2-110)
12. Assure that their guardianship is not discharged until one (1) year after the majority of the ward unless the court determines that the minor has earlier validly released said guardian after a final accounting. (30 O.S. § 2-115)
13. Assure the court the Ward's property is safe, subject to the order and the Guardianship plan for the management of the financial resources of the Ward. (30 O.S. §1-121)
14. Assure the court the Guardian is properly managing his/her own finances and affairs.
15. File with the Court Clerk a proposed plan for the care and treatment of the Ward (care plan) and a proposed plan for the management of the Ward's financial resources (financial plan).
  - a. The proposed Plan for Care and Treatment of the Ward may be filed at the time of filing of the Petition, time of hearing, or within 10 days of appointment as Guardian. Any modification to the care plan must also be filed with the Court. (30 O.S. §3-120)
  - b. The proposed Plan for the Management of the Ward's Finances must be filed within 2 months after appointment. Any modification to the financial plan shall also be filed with the Court. (30 O.S. §3-122)
16. File with the Court Clerk an inventory of the estate of the Ward within 2 months after their appointment (can be extended by the court by showing good reason to). The inventory shall state the Guardian's opinion of the value of the Ward's estate. Any property discovered or transferred regarded the state of the Ward must have a new inventory filed. Inventories may be required by the court at any time. The judge, the Ward, or any interested person may request that the property be appraised. (30 O.S. §4-301). (See form: Inventory of Ward's Estate).
17. A Guardian may have to post a bond with the court before serving as a Guardian. If the value of the Ward's estate and the yearly income of the Ward is not over forty thousand dollars (\$40,000), and the Guardian is a parent, spouse, brother, sister, grandparent, child, or grandchild of the Ward, the bond may be waived. The court alone may waive a bond. (30 O.S. §4-201)
18. A Guardian must, at the conclusion of his first year of Guardianship, and at least once a year thereafter, file a report on the Ward and Guardianship of the property. (30 O.S. §4-303)
  - a. This report must include an accounting of any money received by the Guardian for the Ward, any payment(s) made for the Ward by the Guardian, any changes of

property on the inventory, and any significant change in the physical or mental condition of the Ward, or Ward's financial resources. The report shall state the Guardian's request for compensation and the Guardian's request for compensation for the attorney. Additional reports may be required of Guardians and limited Guardians by the court appointing them.

19. When it is no longer proper that the Ward should be under Guardianship, for example, upon termination of the disability of the Ward or upon his death, or upon the resignation or removal of the Guardian or conservator, there shall be a final account and request for final compensation filed within thirty (30) days after it is determined that the Guardianship should be terminated. The court shall set the final account for hearing. Notice of the hearing shall be given at least ten (10) days before the hearing date by mailing a copy to those persons in the section of this handbook titled "Step by Step Guide to Adult Guardianship". (30 O.S. § 4-803)
20. Assure the court when given authority by them over the estate of the Ward (whether exceeding \$10,000 or not) you are paying necessary expenses of the minor and hold, manage, and dispose of the property in the manner directed by the court. (30 O.S. §2-116)

## **IX. ACCOUNTABILITY TO THE WARD**

### **DUTIES OWED BY THE GUARDIAN TO THE WARD:**

1. To faithfully fulfill all the duties to the court listed in the previous section and obtain any special permissions as required by the court. (30 O.S. § 3-118)
2. To protect the Ward's rights and to manage the Ward's financial resources (30 O.S. §1-103);
3. To assist the Ward, as much as possible, to develop or regain the ability to stay safe and healthy (§1-103);
4. To protect the Ward, to decide where the Ward lives; and stay advised of the condition of the Ward and to make sure the Ward has the proper food, clothing, shelter, medical care, and education (30 O.S. §§1-120 and 4-706);
5. To take care of and maintain the property of the Ward so that it does not decay or be destroyed (30 O.S. §1-121);
6. To inform the court, when a Ward reaches the age of 14, if the Ward wishes to nominate a guardian (30 O.S. §2-104);
7. To settle accounts, turn over all property to the Ward, when ordered by the court (30 O.S. §§2-113, 2-114 and 2-115);
8. To pay the Ward's debts in a timely manner (30 O.S. §4-701);



9. To demand payment and collect all debts owed to the Ward (30 O.S. § 4-702);
10. To settle claims or lawsuits as authorized by the court (30 O.S. § 4-702);
11. To promptly deal with any legal matter, if served notice on behalf of the Ward (30 O.S. § 4-704);
12. To carefully manage the property of the Ward.
13. The Guardian may sell the Ward's real property with a court order only (30 O.S. § 4-705);
14. To only sell real estate and make investments when in the best interests of the Ward and only with a court order (30 O.S. §§ 4-708, 4-709 and 4-752).

A. WHAT THE GUARDIAN CANNOT DO:

1. The Guardian CANNOT use the Ward's money for anything other than the Ward's needs and maintenance;
2. The Guardian CANNOT sell the Ward's property without first obtaining a court order;
3. The Guardian CANNOT move the Ward's residence out of the county without prior order;
4. The Guardian CANNOT consent on behalf of the Ward to withhold or withdraw life-support or life-sustaining procedures without court authorization or as authorized by an Advance Directive;
5. The Guardian CANNOT consent on behalf of the Ward to termination of the Ward's parental rights;
6. The Guardian CANNOT consent on behalf of the Ward to an abortion, psychosurgery, removal of a bodily organ, performance of any biomedical or behavioral procedure except in an emergency and as necessary to save the Ward's life and with permission;
7. The Guardian CANNOT prohibit marriage or divorce of the Ward except with court approval;
8. The Guardian CANNOT consent on behalf of the Ward to placing the Ward in a facility or institution absent formal commitment proceedings (30 O.S. § 3-119);
9. The Guardian CANNOT restrict or limit the Ward more than necessary; and
10. The Guardian CANNOT have more than five Wards at one time. (30 O.S. §4-101)

## X. CONFIDENTIALITY

Confidential information filed with or submitted with any proceeding under the Oklahoma Guardianship and Conservatorship Act, shall not constitute a public record and shall be sealed by the court. Access to confidential information shall be strictly controlled.

1. Except upon court order, no confidential information shall be disclosed to persons other than:
  - a. The subject of the proceeding and the attorney;
  - b. The Guardian ad litem;
  - c. If the subject of the confidential information is a Ward, the Guardian of the Ward;
  - d. If the subject of the confidential information is the Guardian, the Ward and the attorney, and the attorney of such Guardian;
  - e. Abstractors licensed under the Oklahoma Abstractors Law, to have access to records regarding minors and determinations of persons as incapacitated or partially incapacitated persons under the Oklahoma Guardianship Act. Abstractors shall maintain the confidentiality of this data, except for such parts as relate to the land title being researched;
  - f. An authorized representative of the United States Department of Veterans Affairs upon presentation of proper identification; and
  - g. An authorized representative of the Department of Human Services upon presentation of proper identification.
2. The fact of a Guardianship of a person or that person's estate shall not be considered confidential information. (30 O.S. §1-122)

## XI. SANCTIONS/PENALTIES FOR NON-COMPLIANCE

A Guardian must protect the incapacitated person (the Ward) and his property. The Guardian must also act in the Ward's best interest. *This is called a fiduciary duty.*

Guardians that fail to follow the court's orders, fail to timely file reports, or who waste, destroy, embezzle, or steal the Ward's property may be subject to removal, fines, or even civil or criminal penalties. In addition, Guardians may also be required to correct the problem that resulted or be ordered removal, fines, or penalties.

Guardians can also encounter problems when they fail to understand the requirements and limitations associated with their duties and responsibilities. There are age and residency requirements, and limitations based on criminal convictions, bankruptcies, dealings with the judge, and other conflicts of interest.

## XII. THE INDIAN CHILD WELFARE ACT (“ICWA”)

(Title 25 United States Code, Chapter 21 §1901)

A. PROFESSIONAL LEGAL HELP RECOMMENDED: If the minor to be placed in guardianship is enrolled or eligible for enrollment in any Native American Indian tribe, it is strongly recommended that you seek help from a licensed attorney experienced with ICWA matters.

### B. DEFINITIONS:

For the purposes of this Handbook, except as may be specifically provided otherwise, the term—

1. “Child custody proceeding” shall mean and include:
  - a. Foster care placement, meaning any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
  - b. Termination of parental rights, meaning any action resulting in the termination of the parent-child relationship;
  - c. Pre-Adoptive placement, meaning the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and
  - d. Adoptive placement, meaning the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

The term “child custody proceeding” does not include child custody in divorce proceedings wherein child custody is awarded to a natural parent.

2. “Extended family member” shall be as defined by the law or custom of the Indian child’s tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;
3. “Indian” means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 1606 of title 43 (43 U.S.C. § 1606);
4. “Indian child” means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;
5. “Indian child’s tribe” means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible

for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

6. “Indian custodian” means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;
7. “Indian organization” means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;
8. “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of title 43 (43 U.S.C. § 1602(c));
9. “Parent” means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;
10. “Reservation” means Indian country as defined in section 1151 of title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;
11. “Secretary” means the Secretary of the Interior; and
12. “Tribal court” means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

### C. APPLICABILITY OF ICWA TO GUARDIANSHIPS OF MINORS:

Any person seeking guardianship of a child who is an “Indian child”, as defined by the Indian Child Welfare Act (“ICWA”), must give notice of the action to the tribe and to the Bureau of Indian Affairs.

ICWA defines an Indian child as any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

ICWA mandates that an Indian Tribe has exclusive jurisdiction over any child custody proceeding involving an Indian child who resides in or is domiciled within a tribal reservation. Where an Indian child is a ward of a tribal court, the Indian tribe retains exclusive jurisdiction regardless of where the child resides.

A tribe has a right to remove any guardianship action involving an Indian child from state court to Tribal court, when the child is not residing in a reservation. The Tribal court has the right to decline to exercise jurisdiction once notified and may allow the District Court to proceed with the guardianship action.

Notice to the tribe and the parent or Indian custodian, shall be by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

In any case in which the court determines that a parent or Indian Custodian, shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds.

ICWA does not prevent an emergency removal or placement of an Indian child who is not on a reservation in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

**D. NOTICES TO THE CHILD’S TRIBE(S) AND THE BUREAU OF INDIAN AFFAIRS (“BIA”) SHOULD BE MADE AS FOLLOWS:**

Notice MUST by certified mail (return receipt requested) to:

- The parents or to the Indian custodians of the minor, if any;
- Any tribe that is or may be the tribe of the Indian child; and
- The appropriate Bureau of Indian Affairs (BIA) area office.

The notice should include:

1. The name and tribal affiliation of the Indian child;
2. A copy of the petition by which the proceeding was initiated;
3. A statement of the rights of the biological parents or Indian custodians, and the Indian tribe:
  - a. to intervene in the proceeding,

- b. to petition the court to transfer the proceeding to the tribal court of the Indian child, and
  - c. to request an additional twenty (20) days from receipt of notice to prepare for the proceeding; further extensions of time may be granted with court approval;
4. A statement of the potential legal consequences of an adjudication on the future custodial rights of the parents or Indian custodians;
5. A statement that if the parents or Indian custodians are unable to afford counsel, counsel will be appointed to represent them; and
6. A statement that tribal officials should maintain confidentiality of the information contained in the notice.

NOTICE OF REVIEW HEARINGS:

- Notice of review hearings shall be sent, via regular first-class mail, to the tribe of the Indian child unless the tribe is present at the time the review hearing is set and consents to the date of the review.

Proper Notice shall be evidenced by filing a certificate of mailing into the Court record (with the Court Clerk) prior to the review hearing.

Oklahoma Statutes, Title 10 Chapter 1B §40.4.

### XIII. OTHER RESOURCES

#### **OKLAHOMA RESOURCES**

Court Appointed Special Advocates  
(CASA)

[www.oklahomacasa.org](http://www.oklahomacasa.org)

Joint Oklahoma Information Network

[www.join.ok.gov](http://www.join.ok.gov)

Legal Aid Services of Oklahoma

[www.legalaidok.org](http://www.legalaidok.org)

OASIS Information and Referral

<http://oasis.ouhsc.edu>

Oklahoma Bar Association

[www.okbar.org](http://www.okbar.org)

Guardianship forms:

<https://www.okbar.org/a2j/guardian/>

Oklahoma Department of Human Services  
(OKDHS)

[www.okdhs.org](http://www.okdhs.org)

Adoptions: (866) 612-2565

Child Abuse Hotline: (800) 522-3511

Child Care: (866) 411-1877

Child Support: (800) 522-2922

Client Advocacy: (800) 522-8014

Developmental Disabilities: (405) 521-6267

Foster Parent Hotline: (800) 376-9729

Grandparents Initiative: (405) 522-4510

SoonerCare Helpline: (800) 987-7767

Sooner Start: (405) 522-5167

Supplemental Nutrition Assistance Program  
and Temporary Assistance for Needy

Families: (866) 411-1877

Oklahoma Department of Mental Health  
and Substance Abuse Services

[www.odmhsas.org](http://www.odmhsas.org)

Oklahoma Developmental Disabilities  
Council

[www.okddc.ok.gov](http://www.okddc.ok.gov)

Oklahoma Disability Law Center

[www.oklahomadisabilitylaw.org](http://www.oklahomadisabilitylaw.org)

Oklahoma Indian Legal Services

[www.oilsonline.org](http://www.oilsonline.org)

Oklahoma State Courts Network (OSCN)

[www.oscn.net](http://www.oscn.net)

Oklahoma State Department of Health

[www.ok.gov/health](http://www.ok.gov/health)

#### **NATIONAL RESOURCES**

AARP Grandparent Information Center

[www.aarp.org/relationships/grandparenting](http://www.aarp.org/relationships/grandparenting)

American Bar Association Kinship Care  
Legal Research Center

[www.abanet.org/child/kinshipcare](http://www.abanet.org/child/kinshipcare)

Benefits Checkup

[www.benefitscheckup.org](http://www.benefitscheckup.org)

The Brookdale Foundation Group

[www.brookdalefoundation.org](http://www.brookdalefoundation.org)

Generations United

[www.gu.org](http://www.gu.org)

Grandfamilies State Law and Policy  
Resource Center

[www.grandfamilies.org](http://www.grandfamilies.org)

National Center on Grandparents Raising  
Grandchildren

Georgia State University

[www.chhs.gsu.edu/nationalcenter](http://www.chhs.gsu.edu/nationalcenter)

Social Security Administration

[www.ssa.gov](http://www.ssa.gov)