

**TITLE 5 – CIVIL CODE
CHAPTER 6 – GUARDIANSHIP**

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SUBCHAPTER A GENERAL GUARDIANSHIP PROVISIONS

Section 10 Definitions (5 PYTC § 6-10)

- (A) Definition of Guardian: A guardian is a person appointed to take care of a person or property of another and may include the duties of a conservator.
- (B) Guardians classified. Guardians are either:
 - (1) General: A general guardian is a guardian of the person or of all the property of the ward or both.
 - (2) Special: A special guardian is any other.
- (C) Definition of Ward: A ward is a person over whom or over whose property a guardian is appointed.

Section 20 Guardian, Appointment (5 PYTC § 6-20)

A person may become a guardian of a minor or incapacitated person upon appointment by the Court. The guardianship status continues until terminated. By accepting a Court appointment as guardian, a guardian submits personally to the jurisdiction of the Court.

Section 30 Qualifications of Guardians (5 PYTC § 6-30)

To be appointed a guardian by the Pascua Yaqui Tribal Court for a minor member of the Tribe or for a mentally incompetent member, a person must be:

- (A) A person of good moral character.
- (B) At least 21 years of age.
- (C) He must be qualified to administer the financial and personal affairs of his ward in a satisfactory manner.

Section 40 Voluntary Guardianship of Minor (5 PYTC § 6-40)

A person may apply for Guardianship of a minor upon a showing that it is in the best interest of the minor. The petitioner must submit written consent from the parent or previously appointed guardian. The Court

shall determine that consent to the guardianship was obtained from individuals or agencies authorized to give consent.

Section 50 Guardians of Insane or Incompetent Indians (5 PYTC § 6-50)

- (A) In case of incompetent persons, if after a full hearing and examination upon such petition, and upon further proof by the certificate of a qualified physician showing that the person is incompetent as defined in this chapter, it appears to the Court that the person in question is not capable of taking care of himself and of managing his property, such Court may appoint a guardian of his person and estate with the powers and duties specified in this chapter.
- (B) Every guardian of an incompetent person appointed as provided herein has the care and custody of the person of his ward and the management of his estate until such guardian is legally discharged; he must give bond to such ward in like manner and with like conditions as specified with respect to the guardianship of a child set forth in Title 5, Chapter 6 “Guardianship”, and Title 5, Chapter 7 “Juveniles”.

Section 60 Duties of Guardian (5 PYTC § 6-60)

- (A) Take reasonable care of the ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.
- (B) Apply any available money of the ward to the ward's current needs for support, care or education.
- (C) Conserve any excess money of the ward for the ward's future needs.
- (D) Report any condition of the ward's estate as required by the Court, but not less than annually.
- (E) A guardian may receive money payable for the support of the ward under terms of any benefit and apply it to the support of the ward.
- (F) Take appropriate action to compel the performance by any person with a duty to support the ward or to pay sums for the welfare of the ward.
- (G) The Court may revoke a guardianship for violation of any of the foregoing duties.

Section 70 Duties-Bond (5 PYTC § 6-70)

Every guardian appointed as provided in this section has the care and custody of the person of his ward and the management of all his estate, until such time as the guardian is legally discharged; and he must give bond to such ward in like manner and with the like conditions as prescribed with respect to the guardian of a minor.

Section 80 Restoration (5 PYTC § 6-80)

- (A) Any person who has been declared insane, or the guardian or any relative of such insane persons within the third degree, or any friend, may apply by petition to the Pascua Yaqui Tribal Court to have the fact of his restoration to capacity judicially determined. The petition shall be verified and shall state that such person is sane. Upon receiving the petition, the Court must appoint a day for the hearing and cause notice of the hearing to be given to the guardian of the petition, if there is a guardian, and to his or her husband or wife, if there be one, and to his father or mother, if living on the Reservation.

- (B) The guardian or relative of the petitioner, or in the discretion of the Court, any person may contest the right of the petitioner to the relief demanded. Witnesses may be required to appear and testify as in other cases and may be called and examined by the Court, if it be found that the petitioner be of sound mind and capable of talking care of himself and his property, his restoration to capacity shall be adjudged, and the guardianship of such person, if such person is not a minor, shall cease.

Section 90 Emergency Guardianship (5 PYTC § 6-90)

If an incapacitated or incompetent person has no guardian and an emergency exists, the Court may exercise the power of a guardian or appoint a temporary guardian pending a hearing. Any appointment of a temporary guardian shall be for a specified period not to exceed six months.

Section 100 State Laws Applicable (5 PYTC § 6-100)

- (A) The Pascua Yaqui Tribal Court shall apply the laws of the State of Arizona insofar as such laws do not conflict with the provisions of this chapter in the appointment of a guardian for a mentally incompetent Indian of the Pascua Yaqui Tribe and shall have exclusive jurisdiction over the guardian so appointed.
- (B) In regard to conservatorships, the Pascua Yaqui Tribe shall apply the laws of Arizona so long as they do not conflict with Tribal law.

SUBCHAPTER B GUARDIANSHIP OF JUVENILES

Section 110 Purpose (5 PYTC § 6-110)

- (A) The Juvenile Court, when it appears necessary or convenient, may appoint guardians for the person and/or property of children under the Court's jurisdiction. Such appointment may be made on the petition of a relative or other person on behalf of the child or incompetent, or a petition of a child at least 14 years of age. Before making such appointment the Court must cause such notice as the Court deems reasonable to be given to any person having the care of the child, and to such other relatives of the child residing on the reservation as the Court may deem proper, at least five days before the hearing on the petition.
- (B) If a child is under the age of 14 years, the Court may nominate or appoint his guardian. If she/he is 14 years of age or older, she/he may nominate her/his own guardian who, if approved by the Court, must be appointed accordingly. If the Guardian nominated by the child is not approved by the Court, or if the child resides outside of the reservation, or if, after the child resides outside of the reservation, or if, after being duly cited by the Court, he neglects for ten days to nominate a suitable person, the Court may nominate and appoint the guardian in the same manner as if the child were under the age of 14 years.
- (C) When a guardian has been appointed by the Court for a child under the age of 14 years, the child, at any time after he attains the age, may nominate his own guardian, after he attains that age, subject to approval of the Court. A guardian appointed may, as specified by the Court, have the custody and care of the education of the child and the care and management of his property until such child reaches the age of 18 years, marries, is emancipated by the Court, or until the guardian is legally discharged; said guardian shall not have the authority, without express written consent of the Court, to dispose of any real or personal property of the child in any matter, including, but not limited to the child's individual Indian Money Account. Said guardian shall also have the authority to consent to medical care and treatment of the child.

Section 120 Types of Guardianship (5 PYTC § 6-120)

The types of guardianship shall include guardianship of property and/or guardianship of the person. Guardianship of the person shall include both temporary and permanent guardianship.

(A) Guardianship of Property.

The Court may appoint a guardian of the property of a child under such terms and conditions as the Court sets forth in written order. The guardianship may cover all property until the child reaches 18 years of age; or it may be limited to only specific property or a specific legal action as set forth in the written order. A temporary or permanent guardianship of the person may also include guardianship of the child's property if set forth in the written order.

(B) Permanent Guardianship.

The Court may appoint a permanent guardian for the child under such terms and conditions as the Court sets forth in the written order. Permanent guardianship provides for permanent custody of the child to someone other than the parent(s), although there is not termination of the parental rights of the parents. There shall be a presumption of continued permanent guardianship in order to provide stability for the child. Permanent guardianship shall only be terminated based upon the unsuitability of the permanent guardian(s) rather than the competency or suitability of the parent(s). The parent(s) and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the Court.

(C) Temporary Guardianship.

The Court may appoint a temporary guardian under such terms and conditions as the Court sets forth in the written order. A temporary guardian may be terminated if the Court determines that it is in the best interests of the child to change custody from temporary guardian to a new guardian or to return the child to the parent, other guardian, or custodian. The parent(s) and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the Court.

Section 130 Guardianship Petition (5 PYTC § 6-130)

(A) Any person may file a Petition for Guardianship. The petition shall be initiated either by the proposed guardian or by the child if at least 14 years of age.

(B) The Petition for Guardianship shall include the following, to the best information and belief of the petitioner:

- (1) The full name, address, and tribal affiliation of the petitioner;
- (2) The full name, sex, date of birth, residence and tribal affiliation of the proposed ward;
- (3) The basis of the Court's jurisdiction;
- (4) The relationship of the proposed guardian to the proposed ward, if applicable;
- (5) The name and address of the person or agency having legal or temporary custody of the proposed ward;
- (6) The type of guardianship requested;

- (7) A full description and statement of the value of all property owned, possessed or in which the proposed ward has an interest, if guardian of property is requested.
- (8) All petitions must be signed and dated by the petitioners, and must be notarized or witnessed by the Clerk of the Court.

(C) Guardianship Report.

Upon the filing of a Guardianship Petition, the Court shall immediately request that the Social Services Department or other qualified agency conduct a guardianship investigation on the proposed guardian and report on the proposed ward. The guardianship report shall contain pertinent information necessary to assist the Court in determining the best interests of the proposed ward.

No determination can be made on a Guardianship Petition until the report has been completed and submitted to and considered by the Court. The guardianship reports shall be submitted to the Court no later than five days before the hearing. The Court may order additional reports as it deems necessary.

(D) Guardianship Proceedings.

The procedures for guardianship hearings shall be in accordance with 3 PYT R.Juv.P. Rule 260.

Section 140 Management of Property (5 PYTC § 6-140)

(A) Bond Requirement.

In the event that any guardian shall receive any money or funds of any child during his or her term of office as guardian, before taking and receiving into custody such money or funds, the Court must require of such person a bond with sufficient surety to be approved by the Court and in such sum as he shall order, conditioned that the guardian will faithfully execute the duties of his trust, and the following conditions shall form the part of such bond without being expressed therein:

- (1) To make an inventory of all the estate of this ward that comes into his possession or knowledge and to return the same within such time as the Court may order; and
- (2) To dispose of and manage the estate according to law and for the best interests of the ward, and faithfully to discharge his trust in relation thereto, and also in relation to the care, custody and education of the ward; and
- (3) To render an account on oath of the property, estate and money of the ward in his hands and all proceeds or interests derived therefrom, and of the management and disposition of the same, within three months after his appointment, and at such other times as the Court directs, and at the expiration of his trust, to settle his accounts with the Court or judge or with the ward if he be of full age, or his legal representative, and to pay over and deliver all the estate, monies and effects remaining in his hands, or due from him on such settlement to the person who is legally entitled thereto.

(B) Use of Funds.

The funds of any child must be used by his guardian solely for the support and education of such child, and shall be expended by the guardian in a reasonable manner according to the circumstances and station in life of such ward, and in such manner as can be reasonably afforded according to the income and estate of said ward.

(C) Management of Funds.

If determined to be appropriate, the Court, by written order may set forth that the child's property may not be used for the child's care, but rather to be managed for the child until the child reaches the age of 18 years or is emancipated by the Court.

DISPOSITION TABLE

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