

## **CHAPTER 5 - PROBATE AND GUARDIANSHIP**

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### **Section 5-1 Jurisdiction**

5-1.01 Jurisdiction. The Spokane Tribal Court may regulate the distribution of a decedent's estate provided:

- (a) that such estate consists solely of non-trust personal property including fixtures attached to Indian Trust lands belonging to the decedent, but not included in the probate covering said trust lands;
- (b) that such property is located within the boundaries of the Spokane Reservation;
- (c) that such decedent would have been subject to the jurisdiction of the Tribal Court prior to decedent's death; and
- (d) that such decedent was an Indian as defined by this Code.

Readopted 8/01/06, Resolu. 2006-524.

5-1.02 Authority.

(a) The Tribal Court shall have full and adequate power and authority to administer and settle all estates of decedents, minors, and insane and mentally incompetent persons mentioned in this chapter.

(b) If any of the provisions in this chapter regarding the administration and settlement of such estates should prove inapplicable, insufficient, or doubtful, the Tribal Court shall have full power and authority, nevertheless, to proceed in any manner that to the Court seems correct and proper with such administration and settlement to the end that such estates may be administered and settled by the Tribal Court.

Readopted 8/01/06, Resolu. 2006-524.

5-1.03 Trust Property. Jurisdiction to administer decedent's estates consisting of real property held in trust by the United States, shall be with the Secretary of the Interior pursuant to federal code and regulations.

Readopted 8/01/06, Resolu. 2006-524; Amended 8/4/2009, Resolu. 2009-382.

## **Section 5-2 Wills - Applicable Law Governing**

5-2.01 Applicable Law Governing Wills.

(a) The requirements governing the validity of wills shall be in accordance with the applicable laws of the State of Washington.

(b) Said laws shall also govern the revocation of such wills.

Readopted 8/01/06, Resolu. 2006-524.

## **Section 5-3 Conflicts in Probate**

5-3.01 Conflicts in Probate. In situations where there is both a probate by the Department of the Interior of decedent's Indian trust assets and a probate in Tribal Court of an Indian's non-trust assets, involving the same will, claims, or identical issues of law or fact, the decisions and orders of the Tribal Court regarding the non-trust assets shall take precedence over, and shall be binding upon, the Judge or Board of Indian Appeals in the probate by the Department of the Interior.

Readopted 8/01/06, Resolu. 2006-524; Amended 8/4/2009, Resolu.2009-382

## **Section 5-4 Petition for Appointment of Personal Representative**

5-4.01 Petition for Appointment of Personal Representative. Any person having legal interest in a decedent's estate may petition the Tribal Court for the appointment of himself or his designee as a personal representative for the administration of said decedent's estate as hereinafter provided:

(a) If 2 or more persons petition the Tribal Court for appointment within 60 days of the death of the decedent, the Tribal Judge shall appoint the personal representative with the following priority.

(b) Surviving spouse or his designee, lineal descendant, parent, collateral descendant, creditor, others.

- (c) No petition for appointment by a person other than the surviving spouse of decedent shall be acted upon within 60 days of the date of death unless notice of such petition is first served upon the surviving spouse and more than 20 days have elapsed from the date of service and the surviving spouse or his designate has failed to petition for appointment.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-5 Duty and Liability of Will Custodian**

#### **5-5.01 Duty and Liability of Will Custodian.**

- (a) Every custodian of a will must deliver the will to the Tribal Court or to the personal representative named in said will within 20 days after receipt of information that the maker thereof is deceased.
- (b) Any such custodian who fails and neglects to do so may be liable for damages sustained by a person injured thereby.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-6 Application for Probate Hearing Order**

**5-6.01 Application for Probate Hearing Order.** Upon the receipt of a petition for the probate of a will, the Court shall, on hearing evidence as to the validity of such will, admit the will to probate or reject it as the evidence may justify.

- (a) An order shall be entered by the Court admitting or rejecting such will to probate.
- (b) This order shall be final for all purposes unless a contest is begun pursuant to the procedure set out in this chapter.
- (c) All evidence pertaining to the validity of the will shall be reduced to writing, signed by the witnesses and certified by the Judge of the Court.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-7 Appointment of Personal Representative**

#### **5-7.01 Appointment of Personal Representative.**

- (a) If, after receipt of the petition for appointment of personal representative, it shall initially appear to the Court that the value of the estate does not exceed the sum of \$45,000, the Court shall appoint an executor, if the decedent's will has been admitted to probate, or an administrator, if the decedent left no will or the will has been rejected by the Tribal Court.
- (b) The term "personal representative" shall be inclusive of the terms "executor" and "administrator" as used in this Code.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-8 Qualification of Personal Representative**

**5-8.01 Qualification of Personal Representative.** A person shall not be qualified to act as a personal representative who is of unsound mind, has been adjudged incompetent, has been convicted of a crime involving moral turpitude, and is below the age of 18 years.

Readopted 8/01/06, Resolu. 2006-524; Amended 8/4/2009, Resolu.2009-382

### **Section 5-9 Inventory**

#### **5-9.01 Inventory.**

(a) Every personal representative shall, within 60 days of his appointment, make and return upon oath to the court a true inventory of all of the property of the estate including any encumbrances against the said property.

(b) The Court shall have the discretion to grant a longer period of time upon a sufficient showing of necessity.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-10 Appointment of Appraisers**

#### **5-10.01 Appointment of Appraisers.**

(a) Upon the appointment of the personal representative of the estate, the Court may authorize 1 or more parties of discretion (not related to the decedent or interested in the administration of the estate) to appraise the goods and chattels listed in the inventory.

(b) On the death or the refusal or neglect to act as an appraiser, another may be appointed to act in his place.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-11 Compensation of Appraisers**

#### **5-11.01 Compensation of Appraisers.**

(a) The appraiser shall receive as compensation for his services an amount to be set by the Court in consideration of the circumstances, but to be not less than \$10 nor more than \$50.

(b) Such sums shall constitute a claim against the estate.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-12 Return of Appraisal**

#### **5-12.01 Return of Appraisal.** The appraisers shall list each article with its value in dollars and cents.

(a) When the appraisal is completed, the appraisers shall attest to its accuracy in writing and attach such document to the appraisal and deliver it to the Court with a copy to the personal representative.

(b) If any goods and chattels come within the knowledge of a personal representative which are not included in previous appraisals, they shall be appraised and a return thereof shall be made in like manner within 30 days of their discovery.

(c) The Clerk shall record all appraisals filed with him.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-13 Notice to Creditors**

#### **5-13.01 Notice to Creditors.** Immediately after his appointment, the personal representative shall cause to be posted, in 2 public places on the Reservation, and published in the Tribal Newspaper or, if there is none, in a newspaper of general circulation on or adjacent to the Spokane Reservation, a notice that he has been appointed personal representative in the named probate proceedings.

(a) Such notice shall require all creditors of the deceased and all persons having claims against the deceased to serve such claims upon the personal representative and file them with the Clerk of the Court, within 2 months from the date of the first publishing of the notice.

(b) The notice is to be posted for a period of 3 weeks and published once in the Tribal newspaper or once a week in a non-Tribal newspaper for 3 consecutive weeks, such posting and publishing to be concurrent.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-14 Exception to Notice Requirement**

5-14.01 Exception to Notice Requirement. Where all of the property is awarded to the surviving spouse or children as provided, the notice to creditors may be omitted.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-15 Order of Claim Preference**

5-15.01 Order of Claim Preference. All claims shall be preferred in the following order:

- (a) Expenses of administration;
- (b) Expenses of last illness and burial;
- (c) Any amount due the Spokane Tribe; and
- (d) All other claims.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-16 Sale of Estate by Personal Representative**

5-16.01 Sale of Estate by Personal Representative. A personal representative may, by petitioning the Court in writing and obtaining an authorizing order there from, sell, mortgage or pledge all or part of the estate of the decedent when reasonably necessary for the proper administration of said estate.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-17 Notification of Acceptance or Rejection of Claim**

5-17.01 Notification of Acceptance or Rejection of Claim.

- (a) Upon the expiration of the 2 month period provided in this Chapter for the filing of claims against the decedent, the personal representative shall examine each claim filed and within 30 days thereafter he shall notify the claimant in writing, whether he will recommend its acceptance or rejection and file a copy of such notice.
- (b) If he rejects the claim or does not approve it within 60 days after filing the claimant may begin legal action to establish his claim. Such action must be commenced within 30 days of notification of rejection or if there is no rejection or approval within 100 days after filing.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-18 Petition for Determination of Heirs and Distribution of Estate;**

5-18.01 Petition for Determination of Heirs and Distribution of Estate.

- (a) The personal representative shall as soon as reasonably possible after the administration of the estate as set out above is completed file with the Clerk of the Court a petition for the determination of heirs and distribution of the estate.
- (b) This petition shall include the names of all claimants entitled to payment, a statement of heirs and devisees entitled to receive the net proceeds and assets of the estate and such other information as may be necessary to assist the Court in the distribution of the estate.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-19 Court Hearing on Petition for Determination of Heirs and Distribution of Estate**

5-19.01 Court Hearing on Petition for Determination of Heirs and Distribution of Estate.

(a) Upon the filing of the petition for determination of heirs and distribution of the estate, the Tribal Court shall set a date for hearing said petition and notice of said hearing shall be given to all interested parties.

(b) Such notice shall be posted no later than 10 days before the date of said hearing in 2 public places on the Reservation with written notice being given via United States mail to all claimants, heirs and devisees and all persons claiming an interest in said estate.

(c) A copy of said notice shall also be forwarded to the Superintendent.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-20 Hearing Proceedings**

5-20.01 Hearing Proceedings. At the time set for hearing the petition for distribution of heirs and distribution of the estate, the Tribal Court shall hear and examine all evidence relating to the distribution of decedent's estate and determine any controversy relating to claims or to those entitled to receive the estate.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-21 Final Order and Discharge of Personal Representative**

5-21.01 Final Order and Discharge of Personal Representative. Upon conclusion of the hearing or hearings, the Tribal Court shall enter its order determining heirs or devisees and providing for distribution of the estate and the payment of claims.

(a) The Tribal Court shall distribute the estate according to the terms of the decedent's will if said will has been admitted to probate; otherwise, the estate shall be distributed in accordance with the laws of the State of Washington relating to descent and distribution.

(b) Within 30 days after the entry of said order, the personal representative shall file his report with the Court showing that he has fully discharged his duties and shall file receipts or other proof of delivery of all property of decedent and the making of all payments in accordance with the order of the Tribal Court.

(c) The Court, upon finding that the personal representative has faithfully discharged his duties, shall enter an order closing the estate and discharging said personal representative.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-22 Compensation of Personal Representative**

5-22.01 Compensation of Personal Representative. A personal representative of an estate may be compensated from the assets and income of the estate in an amount determined by the Court as being fair and reasonable taking into consideration the complexities of the administration and the value of the estate.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-23 Bond of Personal Representative**

5-23.01 Bond of Personal Representative.

(a) Every person appointed by the Court as a personal representative in any probate proceeding shall, except in the case of the probate of a will that provides that the named executor not be bonded before such appointment becomes effective, execute a bond to the Spokane Tribal Court, in a sum equal to the estimated value of the estate.

(b) Such bond shall be through a surety company or 2 reliable members of the community, resident within the boundaries of the Spokane Reservation, who shall execute an agreement in compliance with the form provided therefore by the Spokane Tribal Court.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-24 Exceptions to Bond Requirements**

5-24.01 Exceptions to Bond Requirements. If it appears to the Court on the basis of evidence presented at the time the personal representative is appointed that the estate shall not exceed a value of \$500, and that the rights of heirs and creditors will not be jeopardized by so doing, the Court may waive the bond requirement when the personal representative is the surviving spouse or a principal heir.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-25 Liability for Mismanagement**

5-25.01 Liability for Mismanagement. A personal representative and the surety on his bond may be liable to any person who suffers monetary loss or damage by any mismanagement of the estate.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-26 Limitations of Action**

5-26.01 Limitations of Action. An action against a personal representative or his surety for mismanagement of an estate must be commenced within 2 years from the date of the order of the final distribution of the estate.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-27 Will Contests**

5-27.01 Will Contests.

(a) The right to institute or continue a proceeding to contest the validity of a will survives and descends to the heir, legatee, devisee, executor, administrator, grantee, or assignee of the person entitled to institute the proceeding.

(b) Upon the filing of the petition, process shall be issued, served and proof of service given as prescribed in other civil cases.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-28 Grounds of Will Contest**

5-28.01 Grounds of Will Contest.

(a) If anyone appears to contest the will, he must file written grounds or opposition to the probate thereof, and serve a copy on the individual petitioning for the probate of the will and other heirs in the estate within 2 months after the admission of the will to probate.

(b) Issues of fact and law that may be considered by the court will be as follows:  
(1) The competency of the decedent to make the Last Will and Testament.  
(2) Whether the will was the result of duress, menace, fraud or undue influence.  
(3) Whether the will is in legal form and was properly executed.

(c) Any other questions substantially affecting the validity of the will under applicable laws of the State of Washington.

Readopted 8/01/06, Resolu. 2006-524.

## **Section 5-29 Hearing Upon Will Contest**

### **5-29.01 Hearing Upon Will Contest.**

- (a) A hearing shall be held to determine the issues raised by the contest.
- (b) If the court, for any reason, decides that the will is invalid, or that it was not sufficiently proven to have been the Last Will and Testament of the testator, the will itself and the resultant probate thereof shall be void and any powers of the personal representative shall cease.
- (c) The personal representative shall not be liable for any act done in good faith previous to such voiding.

Readopted 8/01/06, Resolu. 2006-524.

## **Section 5-30 Appeal**

**5-30.01 Appeal.** Any party aggrieved by the action of the Court in sustaining or rejecting a will contest shall have the right to appeal the determination in the same manner as prescribed in civil cases.

Readopted 8/01/06, Resolu. 2006-524.

## **Section 5-31 Power to Appoint Guardian Ad Litem**

**5-31.01 Power to Appoint Guardian Ad Litem.** Upon the filing of a petition contesting a will the Tribal Court shall appoint a guardian ad litem for any minor, incompetent or person not in being who might be legally affected by the outcome of the will contest.

Readopted 8/01/06, Resolu. 2006-524.

## **Section 5-32 Duties of Guardian Ad Litem**

**5-32.01 Duties of Guardian Ad Litem.** Any guardian ad litem appointed under this Chapter shall appear and defend on behalf of the minor, incompetent or person not in being whom he represents.

Readopted 8/01/06, Resolu. 2006-524.

## **Section 5-33 Compensation of Guardian Ad Litem**

**5-33.01 Compensation of Guardian Ad Litem.** The guardian ad litem shall be entitled to such reasonable compensation as may be fixed by the Court to be taxes as costs in the proceedings and paid in the course of the administration of the estate.

Readopted 8/01/06, Resolu. 2006-524.

## **Section 5-34 Surviving Spouse and Child's Award**

**5-34.01 Surviving Spouse and Child's Award.** The surviving spouse of a decedent, whose estate is being administered by the Spokane Tribal Court, shall be allowed as the surviving spouse's own property free from execution, garnishment or attachment such sums of money from the estate of the decedent as the Court deems reasonable for the support of the surviving spouse for a period of 6 months after the death of the decedent.

- (a) The Court may award such additional sums of money as it deems reasonable for the support, during such period, of minor and adult dependent children of the decedent who resided with the surviving spouse at the time of the decedent's death.
- (b) The award shall in no case be more than the appraised value of the estate.
- (c) The award shall be paid to the surviving spouse at such time or times, not exceeding 6 installments, as the Court directs.

Readopted 8/01/06, Resolu. 2006-524.



### **Section 5-35 Dwelling Exemption**

5-35.01 Dwelling Exemption. Upon appraisal of an estate and determination that a dwelling inventoried in said estate is personal property in which other heirs and/or creditors have an interest, and the dwelling is occupied by the surviving spouse and/or children of the deceased, and it being further determined that said dwelling is necessary for the welfare and protection of such surviving spouse and/or children, the Court may order such dwelling set aside for the benefit of said surviving spouse and/or children as a homestead for a period of 10 years, or the Court, in its discretion, may grant to the surviving spouse and/or children additional rights of occupancy and use up to and including permanently setting aside said property or passing title thereto, provided, however, that this exemption shall not preclude the claims of secured creditors who perfected liens prior to death of decedent.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-36 Notice**

#### 5-36.01 Notice.

(a) Except where specifically provided for in this Chapter, no notice to interested persons need be given.

(b) Sufficiency of notice where required, shall be in accordance with the provisions of Chapter 5.

Readopted 8/01/06, Resolu. 2006-524

### **Section 5-37 Wrongful Slayer Provision**

5-37.01 Wrongful Slayer Provision. No slayer who has participated either as a principal or as an accessory before the fact in the willful and unlawful killing of the decedent shall in any way acquire any property or receive any benefit as the result of the death of the decedent.

(a) Said slayer is to be deemed to have predeceased the decedent as to property which would have passed from the decedent or his estate to the slayer under the provisions of this Chapter.

(b) This provision shall also apply to any statutory right of the surviving spouse relating to community property agreements made with the decedent under the provisions of the laws of the State of Washington.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-38 Escheat to Tribe for Want of Heirs**

5-38.01 Escheat to Tribe for Want of Heirs. Whenever any person shall die leaving property which would be subject to the jurisdiction of the Spokane Tribal Court, without being survived by any person entitled to said property under the provisions of this Chapter, such property shall be designated as escheat property and title to such property shall vest in the Spokane Indian Tribe.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-39 Simultaneous Death Provision**

5-39.01 Simultaneous Death Provision. Where the title to property covered under this Chapter or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived except where provided otherwise in this Chapter.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-40 Adult Guardianship**

5-40.01 Intent. The intent of this document is to establish a guardianship code for the Spokane Tribe of Indians for the purpose of protecting the health and welfare of all persons on all lands within the Tribe's jurisdiction.

Readopted 8/01/06, Resolu. 2006-524.

5-40.02 Jurisdiction. The Tribal Court of the Spokane Indian Tribe shall have authority, whenever it appears necessary, to appoint guardians over the person and estate of a natural person over the age of 18 years incapacitated only by reason of physical or mental sickness or deficiency, advanced age, or chronic use of drugs or alcohol.

- (a) The Tribal Court shall have authority to appoint guardians when the person for whom the guardianship is sought is a member of the Spokane Indian Tribe, whether or not he or she resides on the Reservation.
- (b) The Tribal Court must refer matters concerning the custodianship of a minor, under the age of 18 years, to the Youth Court of the Spokane Tribe of Indians.
- (c) The minor shall be under the jurisdiction of the youth court in accordance with Chapter 6 of the Law and Order Code of the Spokane Tribe of Indians.
- (d) The Tribal Court shall, in the process of administering an estate for which there is a valid will containing a designation of a guardian or custodian for minor children, appoint the person therein designated as guardian or custodian in accordance with Chapter 6 of the Law and Order Code of the Spokane Tribe of Indians.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-41 Guardianship Petitions**

#### 5-41.01 Petition.

- (a) Guardianship proceedings shall be initiated by the filing of a petition by a relative or other person on behalf of the alleged incapacitated person.
  - (1) The Court may initiate proceedings to appoint a guardian if such appointment reasonably appears necessary and no other person has initiated such proceedings.
- (b) The petition shall set forth the name of the petitioner; the petitioner's relationship to the alleged incapacitated person and shall list all known relatives of the alleged incapacitated person and their addresses, relationships, and ages insofar as is known to petitioner.
  - (1) It shall list all property of the person, real and personal, known to petitioner and shall list in detail the present conditions and circumstances that warrant the appointment of a guardian.
  - (2) The petition shall pray that Letters of Guardianship be issued to him/herself or some other suitable person to act as guardian of the alleged incapacitated person.

Readopted 8/01/06, Resolu. 2006-524.

#### 5-41.02 Notice; Hearing.

- (a) The petitioner, or the Clerk of the Court, shall cause notice to be given in accordance with this code to all known interested persons listed on the petition not less than 15 days before a scheduled hearing.
- (b) Upon filing of the petition with the Court, the Court shall appoint an independent third party to act as a guardian-ad-litem pursuant to the Law and Order Code of the Spokane Tribe of Indians.
  - (1) The guardian-ad-litem shall represent the interests of the alleged incapacitated person for the purpose of and duration of all guardianship hearings.
  - (2) The guardian-ad-litem shall represent the alleged incapacitated person until such time the Court issues Letters of Guardianship, at which time the guardian-ad-litem shall be discharged.

(c) Hearing for alleged incapacitated person. At a hearing conducted to appoint a guardian for an alleged incapacitated person, the Court shall: examine the petition; determine the need to have a guardian appointed by taking such testimony as any interested party wishes to present, but including not less than 2 independent doctors' reports, written or oral, under oath, to the effect that the alleged incapacitated person is not presently able to handle his property or affairs, the anticipated duration of the incapacity, and that the best interests of the incapacitated person will be served by having a guardian appointed.

(1) At the hearing the court shall determine which person, either the petitioner or some other person, is most suitable to act as guardian, and that person's willingness to act as such.

(2) The court shall order the appointment of a guardian, setting forth the authority of the guardian, whether or not security for his/her performance is to be required, and the duration of such appointment.

Readopted 8/01/06, Resolu. 2006-524.

## **Section 5-42 Guardian**

### **5-42.01 Who May Serve As Guardian.**

(a) Any adult person 21 years of age or older and subject to the jurisdiction of the Tribal Court may serve as a guardian.

(b) In all cases, the Court shall determine the best interests of the incapacitated person in selecting a guardian.

Readopted 8/01/06, Resolu. 2006-524.

### **5-42.02 Security For Faithful Performance Of Duties.**

(a) The Court may, but need not, require a guardian to provide security in the form of a bond or otherwise to assure the faithful performance of the guardian's duties.

(b) Any surety of any such security will be deemed to have consented to the jurisdiction of the Tribal Court for purposes of action against such security.

Readopted 8/01/06, Resolu. 2006-524.

### **5-42.03 Declaration; Letters Of Guardianship.**

(a) The guardian appointed by the Court shall be required to make a declaration, the form of which is prescribed by and attached to this chapter, to the effect that he/she will faithfully perform his/her duties as guardian.

(b) Upon making the declaration and filing with the Court such security, if any, as may have been required, the guardian shall be issued Letters of Guardianship, issued by the clerk under the seal of the Court, as evidence of his/her appointment.

(1) Any limitations in the authority of the guardian shall be set forth on the Letters of Guardianship so issued.

Readopted 8/01/06, Resolu. 2006-524.

### **5-42.04 Guardian's Compensation.**

(a) No guardian shall receive any compensation for acting as such, without the prior approval of the Court.

(b) The guardian of an estate in excess of \$3,000 in value may receive annual compensation for acting as such in an amount not less than \$25 nor greater than 10% of the gross income of the estate; such compensation must be approved by the Court.

- (c) The guardian of an estate worth less than \$3,000 in value shall receive no compensation unless specifically ordered by the Court for extraordinary service to the estate.

Readopted 8/01/06, Resolu. 2006-524.

#### 5-42.05 Powers and Responsibilities Of Guardian.

- (a) Except as otherwise specifically ordered or limited by the Court:
- (1) A guardian of the incapacitated person shall have the right to take or provide for the custody of the person and shall be required to care for the health, safety and welfare of the person and provide for their education and medical care as needed or appropriate.
- (2) A guardian of the estate and property of an incapacitated person shall have authority to invest, manage and dispose of the personal property of the person in a prudent and reasonable manner and expend such portions of the estate, income and principal, as he/she shall deem reasonably necessary for the support, care, including medical care, and education of the person given the size and nature of the estate and the station in life and needs of the person.
- (3) A guardian shall have power and authority to represent an incapacitated person's best interests in actual, threatened or contemplated litigation or other proceedings of a legal nature (other than of a criminal nature), and to employ counsel, and settle or compromise suits or claims, subject to the approval of the Court.
- (b) A guardian of any kind may petition the Court for authority to do any act which he/she is uncertain of his/her authority, 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 interests of the incapacitated person.
- (c) A guardian of any kind shall stand in a fiduciary relationship to the incapacitated person ward; shall exercise a high degree of care in managing the estate of his/her ward; shall derive no personal benefit of any kind from his/her management of the estate of his/her ward; and shall be civilly liable to said ward for any losses to the estate attributable to a breach of these duties.
- (1) Action to enforce such liability may be brought by the ward or a subsequently appointed guardian on behalf of the ward within 2 years after the appointment of a new guardian or the removal of the incapacity.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-43 Inventory and Appraisalment**

#### 5-43.01 Inventory And Appraisalment.

- (a) Within 45 days after the appointment of a guardian the guardian shall prepare and submit to the Court an inventory and appraisalment of the estate.
- (b) The appraisalment shall be made by 2 disinterested persons, not related to the incapacitated person by blood or marriage, who shall certify under oath to their appraisalment and may receive reasonable compensation for their services.
- (c) No appraisalment shall be required of items of obvious, readily ascertainable value, e.g. bank account assets, or where the value of the entire estate is reasonably believed by the guardian to be less than \$1,000.
- (d) If the appraisalment is required, the guardian shall certify under oath to the obvious or estimated value of the assets not appraised.

Readopted 8/01/06, Resolu. 2006-524.

#### 5-43.02 Annual Accounting.

(a) The guardian of every estate in value over \$1,000 shall submit an annual account of the estate to the court for approval. In each year in which the value of the estate is or is reasonably believed to be in excess of \$1,000 the guardian shall have this affirmative duty.

(b) Such accounting shall be verified on the oath of the guardian and shall contain an accounting of all additions to any withdrawals from the estate, and shall be accompanied by, but not by way of limitation, supporting canceled checks, vouchers, receipts and statements.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-44 Discharge of Guardian**

#### **5-44.01 Discharge Of Guardian.**

(a) Every guardian appointed shall serve until discharged by the Court.

(b) An incapacitated person who has had a guardian appointed, the guardian or a relative of such incapacitated person may petition the Court for a determination of his/her restoration to capacity and for the discharge of the guardian.

(1) The Court shall hold a hearing, after such notice to known interested persons as the Court shall direct, and receive evidence, both of a medical nature and otherwise, of the person's capacity.

(2) If it be found that the incapacitated person 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 guardian discharged.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-45 Guardianship Records**

**5-45.01 Guardianship Records.** The clerk shall keep a separate, permanent file for each guardianship proceeding and shall file all relevant papers.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-46 Guardianship of Real and Trust Property**

#### **5-46.01 Guardianship Of Real And Trust Property.**

(a) The Court is hereby authorized to appoint a guardian of the trust estate of the incapacitated person consistent with federal law.

(b) The guardian shall use the procedures and safeguards outlined in this chapter for the purpose of conveying or consenting to the conveyance of an interest in real and trust property owned by such incapacitated person if it appears that the price to be paid is reasonable and adequate and that such sale is to the best interest of the incapacitated person.

(c) The Court must enter an order authorizing such action.

Readopted 8/01/06, Resolu. 2006-524.

### **Section 5-47 Temporary Guardianship and Custody**

**5-47.01 Temporary Guardianship And Custody.** The court shall have the power to entertain and grant or deny petitions for temporary guardianship when it determines it to be in the best interests of the person involved.

Legislative History-Amended 8/5/94, Resolu. 1994-237; Readopted 8/01/06, Resolu. 2006-524.

**SPOKANE TRIBAL COURT  
SPOKANE INDIAN RESERVATION**

Guardianship of:  
NO.

DECLARATION OF GUARDIAN;  
LETTERS OF GUARDIANSHIP

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I. DECLARATION OF GUARDIAN

I, \_\_\_\_\_ declare under penalty of perjury this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ that:

1. I am the person who has been confirmed as guardian by this court of [the person and/or estate] of [\_\_\_\_\_] who has been determined legally incapacitated person by this court.
2. I solemnly swear that I will perform, according to law, the duties of my trust as guardian of [\_\_\_\_\_].
3. As guardian of [\_\_\_\_\_] I understand that I must do the following:

\_\_\_\_\_  
\_\_\_\_\_

Exercise a high degree of care in managing the affairs of [\_\_\_\_\_] and derive no personal benefit from doing so.

Within 45 days of my appointment, prepare and submit an inventory and appraisal of the estate in accordance with law. I must also make a yearly accounting to the court by [date] for each year I am guardian.

Comply with all of the provisions of Chapter 5 of the Law and Order Code of the Spokane Tribe of Indians.

Guardian \_\_\_\_\_

**II. LETTERS OF GUARDIANSHIP**

A. BASIS

1. [\_\_\_\_\_] was found to be incapacitated by this court on \_\_\_\_\_.
2. [\_\_\_\_\_] was appointed the guardian of [\_\_\_\_\_]'s [estate and/or person].
3. The guardian has qualified.
4. Limitations of appointment:

B. AUTHORIZATION

THIS CERTIFIES that: \_\_\_\_\_ is authorized by this court to act as the guardian of \_\_\_\_\_.

DATED: \_\_\_\_\_

\_\_\_\_\_  
JUDGE  
[SEAL]