

# **Chapter 5**

## **Sac and Fox Guardianship and Conservatorship Act**

### **ARTICLE I. GENERAL PROVISIONS**

**§ 5-1-101.     Short Title**

Article I through Article IV of this Act shall be known and may be cited as the "Sac and Fox Guardianship and Conservatorship Act" or as the "SFN Guardianship Act".

**§ 5-1-102.     Articles in Act**

The Sac and Fox Guardianship and Conservatorship Act shall be composed of the following articles: Article I - General provisions; Article II - Minors; Article III - Adults; and Article IV - Miscellaneous.

**§ 5-1-103.     Purpose of Act - Legislative Intent**

(a) It is the purpose of the Sac and Fox Guardianship Act to promote the general welfare of all citizens by establishing a system of general and limited guardianships for minors and for incapacitated and partially incapacitated persons which provides for the protection of their rights and the management of their financial resources.

(b) It is the purpose of the system of general and limited guardianships for incapacitated and partially incapacitated persons established by this act to provide for the participation of such persons, as fully as possible, in the decisions which affect them. It is the intent of the Sac and Fox Nation:

(1) that the court shall exercise the authority conferred by the Sac and Fox Guardianship Act so as to encourage the development of maximum self-reliance and independence of the incapacitated or partially incapacitated person and make appointive and other orders only to the extent necessitated by the mental and adaptive limitations or other condition of the incapacitated or partially incapacitated person warranting the procedure;

(2) that in performing their duties and exercising their powers, guardians and limited guardians of incapacitated or partially incapacitated persons shall:

(A) assure, to the extent reasonably possible, that the rights of the wards for whom they are appointed are protected;

(B) encourage, to the extent reasonably possible, incapacitated or partially incapacitated persons to participate to the maximum extent of their abilities in all decisions which affect them and to act on their own behalf on all matters in which they are able to do so within the limitations imposed by the court; and

(C) as appropriate, assist their wards to develop or regain to the maximum extent possible their capacity to meet the essential requirements for their health or safety, or to manage their financial resources or both.

**§ 5-1-104. Existing Guardianships or Conservatorships - Compliance with Act**

(a) (1) Any guardianship or conservatorship in existence on or created on or after enactment of this Act shall comply with the provisions of the Sac and Fox Guardianship and Conservatorship Act.

(2) Unless otherwise modified or terminated, all guardianships and conservatorships established prior to the effective date of the Sac and Fox Guardianship and Conservatorship Act shall remain in full force and effect.

(3) All guardians or conservators shall retain the powers assigned to them, unless otherwise modified or terminated by the court.

(b) The Chief Judge of the District Court shall establish a schedule by court rule which shall provide for a court review of each active guardianship and conservatorship case.

**§ 5-1-105. Guardian Defined**

A guardian is a person appointed by the court to take care of the person or property of another.

**§ 5-1-106. Guardians Ad Litem Excluded**

The term "guardian" includes persons appointed as general or limited guardians of the person, general or limited guardians of property, and special guardians, but does not include persons appointed as guardians *ad litem*.

**§ 5-1-107. Ward Defined**

A person over whom a guardian is appointed and a person over whose property a guardian or conservator is appointed is called a ward.

**§ 5-1-108. Guardians Classified**

Guardians are either:

- (a) General;
- (b) Limited; or
- (c) Special.

**§ 5-1-109. General Guardian**

(a) A general guardian is a guardian of the person or of all the property of the ward within this jurisdiction or of both such person and property.

(b) A limited guardian is a person authorized by the court to exercise limited powers over the person of the ward, or over the property of the ward within this jurisdiction, or over both such person and property.

**§ 5-1-110. Special Guardian**

A special guardian may be appointed by the court pursuant to Section 5-3-115 of this Act.

**§ 5-1-111. Definitions**

(a) As used in the Sac and Fox Guardianship and Conservatorship Act:

(1) "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;

(2) "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 Sac and Fox Guardianship and Conservatorship Act;

(3) "Court" means a judge of the district court assigned to hear probate matters;

(4) "Estate" means the property of the person whose affairs are subject to a guardianship proceeding;

(5) "Evaluation" means 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 his physical health or safety, or to manage his financial resources, and

(C) the services necessary to provide for the ward;

(6) "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;

(7) "Guardian of an incapacitated person" means a person who has been appointed by the court to serve as the guardian of an incapacitated person to assure that the essential requirements for the health and safety of said person are met, to manage the estate or financial resources of said person, or both;

(8) "Guardian *ad litem*" means, with respect to a guardianship proceeding, a person appointed by the court to assist the subject of the proceeding in making decisions regarding the guardianship proceeding, or to make decisions when the subject of the proceeding is incapable of making decisions even with assistance;

(9) "Guardianship plan" means the plan for the care and treatment of a ward, the plan for the management of the financial resources of a ward, or both;

(10) "Guardianship proceeding" means a proceeding for the appointment of a guardian, or for other orders regarding the condition, care or treatment or for the management of the financial resources of a ward;

(11) "Guardianship report" means any report required by the provisions of Sections 5-4-305 and 5-4-306 of this Act;

(12) "Incapacitated person" means a person eighteen (18) years of age or older:

(A) who is impaired by reason of:

- (1) mental illness,
- (2) mental retardation or developmental disability,
- (3) physical illness or disability,
- (4) drug or alcohol dependency, or
- (5) such other similar cause, and

(B) whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that said person:

- (1) lacks the capacity to meet essential requirements for his physical health or safety, or
- (2) is unable to manage his financial resources.

Whenever in the Sac and Fox Codes the term "incompetent person" appears and refers to a person who has been found by the district court to be an incompetent person because of an impairment or condition described in this paragraph it shall have the same meaning as "incapacitated person" but shall not include a person who is a partially incapacitated person;

(13) "Least restrictive dispositional alternative" means the form of assistance that least interferes with the legal ability of an incapacitated or partially incapacitated person to act in his own behalf;

(14) "Intangible personal property" means cash, stocks and bonds, mutual funds, money market accounts, certificates of deposit, insurance contracts, commodity accounts, and other assets of a similar nature;

(15) "Letters" means a document issued by the court subsequent to the appointment of a guardian which designates the name of the guardian and specifies the authority and powers of said guardian. Such document shall be endorsed thereon with the oath of the guardian that he will perform the duties of his office as guardian according to law;

(16) "Limited guardian" means a person appointed by the court to serve as the guardian of a partially incapacitated person and who is authorized by the court to exercise only:

- (A) some of the powers of a guardian of the person or whose power as

guardian of the person extends only to certain matters pertaining to the care or control of the ward as specified by the court, or

(B) certain powers as guardian of the property over the estate or financial resources of the ward, or whose powers as guardian of the property extend only to some portion of the estate or financial resources of the ward;

(17) "Manage financial resources" or "manage the estate" means those actions necessary to obtain, administer, and dispose of real property, business property, benefits and income, and to otherwise manage personal financial or business affairs;

(18) "Meet the essential requirements for physical health or safety" means those 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;

(19) "Minor" means a person under eighteen (18) years of age;

(20) "Neglect" means the failure to provide protection for an incapacitated person, a partially incapacitated person, or a minor; 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;

(21) "Organization" means a corporation, trust, business trust, partnership, association, or other legal entity;

(22) "Partially incapacitated person" means an incapacitated person whose impairment is only to the extent that without the assistance of a limited guardian said person is unable to:

(A) meet the essential requirements for his physical health or safety, or

(B) manage all of his financial resources or to engage in all of the activities necessary for the effective management of his financial resources.

A finding that an individual is a partially incapacitated person shall not constitute a finding of legal incompetence. A partially incapacitated person shall be legally competent in all areas other than the area or areas specified by the court in its dispositional or subsequent orders. Such person shall retain all legal rights and abilities other than those expressly limited or curtailed in said orders;

(23) "Party" means the person or entity filing a petition, application, motion, acceptance of a testamentary nomination, or objection; the subject of a guardianship

proceeding; and the guardian, the guardian ad litem and the conservator, if any such persons have been appointed;

(24) "Person" means an individual;

(25) "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;

(26) "Restrictions on the legal capacity of a person to act in his own behalf" means powers of an incapacitated or partially incapacitated person which are assigned to a guardian;

(27) "Subject of the proceeding" means a minor or an adult:

(A) who is the subject of a petition requesting the appointment of a guardian, limited guardian or special guardian,

(B) for whom a guardian or limited guardian has been appointed by the court, or

(C) an adult for whom a conservator is requested or appointed; and

(28) "Surcharge" means the imposition of personal liability by a court on a guardian or limited guardian for willful or negligent misconduct in the administration of the estate or other financial resources of a ward.

(b) Nothing in this Act shall

(1) be construed to mean an incapacitated or partially incapacitated person, or a minor is abused or neglected for the sole reason that a guardian or other person responsible, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious faith, or traditional Indian customs for the treatment or cure of disease or remedial care of the person or minor in their trust, and, in the case of an adult, in accordance with the practices of or the express consent of the incapacitated or partially incapacitated person.

(2) prevent a court from immediately assuming custody of a minor, pursuant to the Sac and Fox Juvenile Code, and ordering whatever action may be necessary, including medical treatment, to protect the minor's health or welfare.

**§ 5-1-112. Persons and Property Subject to Act - Power of Appointment - Parental Rights**

(a) Except as otherwise specifically provided by law, the Sac and Fox Guardianship and Conservatorship Act applies to:

(1) All minors in this jurisdiction. However, guardianships for minors established pursuant to Sac and Fox Code Title 20, Juvenile Procedure, shall only be subject to provisions of the Sac and Fox Guardianship and Conservatorship Act as provided in subsection (b) of this section. However, upon termination of the juvenile action any continuing guardianship shall be subject to this Act;

(2) Incapacitated and partially incapacitated persons in this jurisdiction;  
and

(3) Property located in this jurisdiction of nondomiciliaries who are minors or incapacitated or partially incapacitated persons, or property coming into the control of a guardian who is subject to the laws of this jurisdiction.

(b) Guardianships created under or subject to Sac and Fox Code Title 20, Juvenile Procedure, shall be subject to Article 1 and Sections 5-4-501, 5-4-503, 5-4-706, 5-4-707, 5-4-801, 5-4-802, 5-4-901 and 5-4-902 of this Act. Upon termination or dismissal of the Title 20 juvenile action concerning a minor, a surviving or continuing guardianship from such juvenile case shall be subject to the requirements of this Act as any other minor guardianship.

(c) No person, whether a parent or otherwise, has any power as a guardian, except by appointment by a court. The provisions of the Sac and Fox Guardianship and Conservatorship Act shall not be construed to limit the parental rights of parents as the natural guardians of their children.

**§ 5-1-113. Appointment of Guardian - Jurisdiction**

(a) A guardian of the person or property, or both, of a person residing in this jurisdiction, who is a minor, or an incapacitated or partially incapacitated person, may be appointed in all cases by the court as provided in this Act.

(b) After the service of notice in a proceeding seeking the appointment of a guardian or other order, in subsequent proceedings pertaining to the guardianship of a ward and until termination of the proceeding, the court shall have exclusive jurisdiction, except as may be limited by federal law, to determine:

(1) the need for a guardian or other order; and



(2) how the estate of the ward shall be managed, expended, or distributed to or for the use of the ward or the dependents of the ward.

**§ 5-1-114. Powers of Court**

(a) In all cases the court making the appointment of a guardian has exclusive jurisdiction to control such guardian in the management and disposition of the person and property of the ward.

(b) The court has jurisdiction over guardianship proceedings, and has the following powers, which must be exercised in the manner prescribed by law, to:

(1) appoint and remove guardians for minors and for incapacitated and partially incapacitated persons;

(2) issue and revoke letters of guardianship;

(3) control the conduct of guardians with regard to the care and treatment provided to their wards;

(4) control the conduct of guardians with regard to the management of the financial resources of their wards, including but not limited to the power to:

(A) compel guardians to submit plans, reports, inventories and accountings to the court,

(B) compel payment and delivery by guardians of property belonging to their wards,

(C) order the payment of debts, the sale of property, and order and regulate the distribution of property which has been placed under the control or management of a guardian, and

(D) settle the accounts of guardians;

(5) appoint appraisers of the property of wards;

(6) compel the attendance of witnesses and the production of documents and property;

(7) after a petition has been filed for appointment of a guardian for a minor, make or modify any temporary order of guardianship during the progress of the proceedings that would be in the best interest of the ward. Any such temporary order may be entered

*ex parte* with written notice sent to all parties directing them to appear before the court, at a time and place therein specified, not more than twenty (20) days from the time of making such order, to show cause why the order should not be granted for temporary guardianship; and

(8) exercise all powers conferred by the Sac and Fox Guardianship and Conservatorship Act, Section 5-1-101 *et seq.* of this Act, and to make such orders as may be necessary for the exercise of said powers.

(c) The chief judge of the district court shall establish by court rule a system for:

(1) the filing of guardianship and conservatorship cases and records which distinguish them from probate cases; and

(2) monitoring the filing of annual reports and inventories required by this Act for the purpose of assuring that the court will be notified of annual reports as they fall due and whether or not said reports are filed.

**§ 5-1-115.     Reserved**

**§ 5-1-116.     Place of Hearing - Order and Decree - Practice**

(a) The power conferred upon the court in relation to guardians and wards may be exercised in chambers or elsewhere in the discretion of the judge. Any hearing held pursuant to the provisions of this act may be held at such place as the court directs.

(b) Any order appointing a guardian must be entered as and become a decree of the court.

(c) Except as otherwise specifically provided by this Act, the provisions of the Sac and Fox Nation Probate Ordinance of 1994, (SF-94-57) as may be amended, relative to the estates of decedents, so far as they relate to the practice in the court, apply to proceedings under this Act. The Rules of Civil Procedure including the rules concerning discovery, vacation of orders and appellate review, govern proceedings subject to the Sac and Fox Guardianship and Conservatorship Act unless otherwise provided in this Act or Probate Ordinance of the Sac and Fox Nation.

**§ 5-1-117.     Guardians Ad Litem - Power to Appoint - Appointment**

(a) Nothing contained in this Act affects or impairs the power of the court to appoint a guardian *ad litem* to defend the interests of any minor interested in any suit or matter pending therein.

(b) At any point in a guardianship proceeding, the subject of the proceeding, his attorney, the guardian of the subject of the proceeding or anyone interested in the welfare of the subject of the proceeding may file an application to have a guardian *ad litem* appointed by the court, or the court on its own motion may appoint a guardian ad litem. If not precluded by a conflict of interest, a guardian *ad litem* may be appointed to represent several persons or interests.

**§ 5-1-118. Guardian of Nonresident**

A guardian of the property, within this jurisdiction, of a person not residing within the Nation, who is a minor, or an incapacitated or partially incapacitated person, may be appointed by the court.

**§ 5-1-119. Powers of Guardian**

A guardian has only those powers over the person or the property of the ward, or both such person and property, as ordered by the court pursuant to this Act.

**§ 5-1-120. Power of Guardian of the Person - Power of Limited Guardians**

(a) A guardian, including a special guardian, of the person is charged with the custody of the ward, and must look to the support, health and education of the ward. Except as provided by Section 5-3-113 of this Act, he may fix the place of abode of the ward at any place within the reservation, but not elsewhere, without permission of the court. Any change in the place of abode of a ward within the reservation shall be reported to the court.

(b) Limited guardians of partially incapacitated persons shall not have custody of the person of the ward and shall have only those powers or controls over the person of the ward specifically ordered in a dispositional order or other order of the court.

**§ 5-1-121. Guardian of the Property - Power - Fiduciary Duty**

(a) A guardian of the property must safely keep the property of his ward. He must not permit any unnecessary waste or destruction of the real property, nor make any sale of such property without order of the court, but must so far as in his power, maintain the same, with its buildings and appurtenances, out of the income or other property of the estate, and deliver it to the ward or the successors of the ward at the close of his guardianship, in as good condition as he received it.

(b) A guardian of the property, in relation to powers conferred pursuant to the provisions of the Sac and Fox Guardianship and Conservatorship Act, shall act as a fiduciary and shall

perform, diligently and in good faith, as a prudent person would in managing his own property, not with regard to speculation but with regard to conservation and growth, and the specific duties and powers assigned by the court.

**§ 5-1-122. Confidential Information Filed with Court**

(a) Confidential information filed with or submitted to the court in conjunction with any proceeding pursuant to the Sac and Fox 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. Except upon court order, no confidential information shall be disclosed to persons other than:

(1) The subject of the proceeding and the subject's attorney;

(2) The guardian *ad litem*;

(3) If the subject of the confidential information is a ward, the guardian or conservator of such ward;

(4) If the subject of the confidential information is the guardian or conservator, the ward and the subject's attorney, and the attorney of such guardian or conservator;

(5) Abstractors properly licensed pursuant to their jurisdiction's law, for the purpose of having access to records regarding minors and determinations of persons as incapacitated or partially incapacitated persons pursuant to the Sac and Fox Guardianship Act. Abstractors shall maintain the confidentiality of this data, except for such parts as are relevant to the land title being researched;

(6) An authorized representative of the United States Department of Veterans Affairs upon presentation of proper identification; and

(7) An authorized representative of the Sac and Fox Social Services, Indian Child Welfare or Juvenile Department for official purposes.

(8) A federal officer or official in fulfillment of their federal trust obligation towards the ward or as required by federal law.

(b) The fact of the existence of a guardianship or conservatorship of a person or that person's estate shall not be considered confidential information.

**§ 5-1-123.     Letters of Guardianship**

Letters of guardianship are evidence of the transfer of the management or administration of all assets, or the part thereof specified in the letters, of a ward to the guardian. An order terminating a guardianship is evidence of transfer of the management or administration of all assets subject to the guardianship from the guardian to the ward, or to successors of the ward.

**§ 5-1-124.     Reserved**

**§ 5-1-125.     Computation of Time**

The time within which an act is to be done shall be computed by excluding the first day and including the last day. If the last day is a Sac and Fox legal holiday it shall be excluded.