

# **COQUILLE INDIAN TRIBAL CODE**

## **Chapter 375 Part 3 - Human Services**

### **Conservatorship and Guardianship Ordinance**

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**375.001 Short Title**

This Ordinance may be referred to as the Coquille Conservator and Guardian Ordinance.

**375.010 General**

1. Purpose – The Tribal Council adopts this Ordinance to create a formal Tribal court procedure to provide for the protection of the property and welfare of persons closely tied to the Reservation who are determined to be incapacitated as defined below.
2. Background and Intent – The Tribal Council has the responsibility for the governance, social, and economic well-being of the Tribe and its members. The Tribal Council is concerned about the legal options available for the protection of Incapacitated Persons as defined below and wishes to authorize the Tribal Court to hear such matters. In particular, Tribal Council is concerned about the welfare of Tribal Elders, who bring so many invaluable and irreplaceable qualities to the Tribal community and who serve as our link to the past.

**375.020 Jurisdiction [RESERVED]**

**375.040 Definitions**

1. “Conservator” means a person appointed as caretaker and protector to look after the property of an Incapacitated Person, with the duties and powers described in this Ordinance.
2. “Guardian” means a person appointed as custodian of an Incapacitated Person.
3. “Incapacitated Person” means a person, other an unemancipated minor, who is unable, without assistance, to properly manage or take care of himself or herself or their personal affairs as determined by the majority vote of the Tribal Council and by a letter from a psychiatrist, psychologist or physician, licensed in any of the United States who has observed the person for the purposes of determining their ability to manage themselves.

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4. "Minor" means an married and unemancipated person under eighteen years of age.
5. "Ward" means a person for whom a guardian or conservator has been appointed.
6. "Tribe" or "Tribal" means the Coquille Indian Tribe.
7. "Known Creditors" means those persons to whom the proposed ward owes money and who, with reasonable inquiry into the proposed ward's personal records, can be identified.
8. "Indian" means, unless otherwise specified, a member of the Coquille Indian Tribe, or any other person of Indian blood who is a member of a federally recognized Indian tribe, or any other person on the Reservation who is recognized by the community as an Indian, including a Canadian Indian or Alaska native.
9. "Reservation" has the same meaning as under the Coquille Tribal Restoration Act, 25 U.S.C. § 715 et seq.

**375.100 Jurisdiction**

The Coquille Tribal Court shall have jurisdiction to hear and rule on petitions regarding the appointment of conservators and/or guardians for members of the Tribe.

**375.150 Commencement of Proceedings**

Proceedings for the appointment of a conservator and/or guardian shall be commenced by the filing of a petition in the Coquille Tribal Court in the form prescribed by this Ordinance.

**375.200 Contents of Petition**

A petition for the appointment of a conservator and/or guardian shall contain the following information:

1. The name and address of the petitioner
2. The name, age and address of the proposed ward.

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3. The reason(s) why the appointment of a conservator and/or guardian is necessary.
4. The basis for jurisdiction over the proposed ward (see 375.100, above).
5. The name, age and address of the proposed guardian or conservator and the relationship of the proposed guardian or conservator to the proposed ward. If an alternate proposed guardian or conservator is proposed, include the same information for the alternate.

**375.250 Notice of Proceedings**

1. Within ten days after the filing of a petition for the appointment of a conservator and / or guardian, the petitioner shall give notice of the proceedings to the following persons, who shall be referred to collectively in this Ordinance as “Interested Persons”:
  - a. The children, parents, siblings and spouse of the proposed ward.
  - b. If the petition is for the appointment of a conservator, to the Known Creditors of the ward at the time the petition is filed. Later discovered Known Creditors will also be “Interested Persons”.
  - c. If the proposed ward is a resident of the Reservation, to the Coquille Indian Housing Authority.
  - d. The Coquille Tribal Attorney
  - e. The Coquille Indian Tribal Social Services Director
2. After giving the notice required by this section, the petitioner shall file a certificate of mailing showing the names and addresses of all notice recipients and the date(s) of mailing.

**375.300 Preference in Appointing Conservator and/or Guardian**

The parents of an Incapacitated Person, or either of them, if qualified and suitable, shall be preferred over all others for the appointment as conservator and/or guardian for the proposed ward. These preferences are rebuttable. Notwithstanding the previous provisions of this section, the Tribal Court may appoint a conservator and/or guardian

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who is most suitable and willing to serve, considering factors including, without limitation:

1. Any request for the appointment as conservator and/or guardian for a proposed ward contained in a written instrument executed by the proposed ward while competent.
2. The relationship by blood or marriage of the proposed conservator and/or guardian to the proposed ward.
3. The ability of the proposed conservator and/or guardian to carry out duties identified in this Ordinance, in light of:
  - a. The complexity of the proposed ward's estate;
  - b. The criminal, educational, and credit background of all possible conservators and / or guardians.
  - c. The geographic distance between the proposed conservator and/or guardian and the proposed ward.

**375.350 Hearings; Notice**

The Tribal Court shall schedule and conduct a hearing to consider the appointment of a conservator and/or guardian. At the hearing, Interested Persons appearing shall be entitled to present testimony. At least twenty days advance notice of the hearing shall be sent via U.S. first class mail to all Interested Persons whose addresses can be determined using due diligence.

**375.375 Emergency Orders**

When necessary for the protection of the proposed ward or the ward's property, the Tribal court may issue an emergency order appointing a conservator and/or guardian pending a formal hearing provided for in this Ordinance. The emergency order shall be effective for no longer than sixty days.

**375.400 Home Evaluations; Physical and Mental Examinations**

Upon request or upon its own motion, the Tribal Court may order the proposed ward to be examined by a physician, psychologist or other person who shall submit a

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report in writing to the Tribal Court and may order a home study of the home of the proposed conservator and/or guardian. The results of any such examination or home evaluation and any report must be distributed only the Court, the parties and their attorneys or spokespersons.

**375.425 Findings; Appointment**

1. Subject to acceptance described in CITC 375.500 below, the Tribal Court may appoint a conservator and/or guardian as requested if the Court is satisfied that:
  - a. The proposed ward is an Incapacitated Person
  - b. The appointment is necessary or desirable as a means of providing continuing care and supervision of the proposed ward and/or the property of the proposed ward; and
  - c. The proposed conservator and/or guardian is both qualified and suitable, and is willing to serve.
2. Based on the information provided to the Tribal Court, the Court's guardianship appointment, if any, must be no more restrictive upon the liberty of the ward than is reasonably necessary to protect the ward.

**375.500 Effect of Accepting Appointment as Conservator and/or Guardian**

An appointed conservator and/or guardian, whether a resident or a nonresident of the Reservation, must accept their appointment for it to become effective. An acceptance must be in writing and signed by the appointee, and must include a statement that the appointee submits personally to the jurisdiction of the Tribal Court in any proceeding relating to the Conservatorship and/or guardianship.

**375.525 Investigation of Ward's Estate**

Within sixty days of their appointment, conservators must conduct a due diligence investigation of the ward's estate and mail notice of their appointment to all Known Creditors who were not originally notified of the conservatorship appointment under 375.250. Such notice must include the name and social security number of the ward, all relevant account or policy numbers and the full name, address and telephone number of the conservator.

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**375.550 Termination or Removal of Conservatorship and/or Guardianship**

1. A conservatorship and/or guardianship may be terminated by Tribal Court order upon ten days notice to Interested Persons and a hearing before the Tribal Court on the removal or termination. The court may waive this ten day notice period when it finds that an emergency exists.
2. The Tribal Court may in conjunction with issuing an order accepting any resignation, or at any other time, require the conservator and/or guardian to provide a full account of the financial affairs of the ward and may also direct that an audit be conducted of the ward's financial affairs.

**375.575 Resignation of Conservator and/or Guardian**

Persons desiring to resign as a conservator and/or guardian shall submit their resignation to the Tribal Court. Subject to any Court-ordered accounting of the ward's estate, the Tribal Court may accept the resignation after a showing that no other actions in the interim are necessary to protect the ward or the estate of the ward.

**375.600 General Powers of Guardians**

1. In the general performance of powers and duties respecting the ward, a guardian of an Incapacitated Person may do the following, subject to any qualifications made by the Tribal Court:
  - a. To the extent that it is consistent with the terms of the Court order relating to detention or commitment of the ward, have custody of the person of the ward and establish the ward's place of abode within or without the Reservation.
  - b. If entitled to custody of the ward, provide for the care, comfort and maintenance of the ward and, whenever appropriate, arrange for training and education of the ward. Without regard to custodial rights of the ward's person, the guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and begin protective proceedings if other property of the ward is in need of protection.
  - c. Consent to or approve any necessary medical or other professional care, counsel, treatment or service for the ward.

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- d. Do all other things necessary for the protection of the ward.
2. A guardian is not liable to third persons for the acts of the ward solely by reason of the guardian and ward relationship.

**375.650 General Powers of Conservators**

A conservator, acting reasonably to protect the ward's assets, may act without Tribal Court authorization or confirmation to:

1. Collect, hold and retain assets of the ward's estate including land wherever situated, until, in the conservator's judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator is personally interested;
2. Receive additions to the estate;
3. Continue or participate in the operation of any business or other enterprise;
4. Deposit estate funds in a bank;
5. Insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons;
6. Pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration and protection of the estate;
7. Pay any sum distributable to a ward or dependent of the ward by paying the sum to the proper party; and
8. Execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator.

**375.675 Powers of Conservator Pursuant to Tribal Court Order**

Upon authorization by the Tribal Court, a conservator may exercise the following powers:

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1. Acquire an undivided interest in any estate asset in which the conservator, in any fiduciary capacity holds an undivided interest.
2. Invest and reinvest estate assets and funds as would a trustee;
3. Acquire or dispose of an estate asset including non-trust land wherever situated for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character or, or abandon and estate asset in connection with the exercise of any power vested in the conservator;
4. Make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;
5. Vote a security in person or by general or limited proxy;
6. Employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator, to advise him or her in the performance of administrative duties, to act upon their recommendation without independent investigation;
7. Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his or her duties.
8. Prosecute claims of the protected person including those for personal injury

**375.700 Reports and Accountings to Tribal Court**

The Tribal Court may require the conservator and/or guardian to submit periodic reports and/or accountings in the form prescribed by the Court on not less than an annual basis.

**375.800 Bonds**

The Tribal Court may in its discretion require the posting of a bond by a conservator in an amount to be determined by the Tribal Court.

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**375.850 Penalties**

Any conservator and/or guardian who steals, diverts, or grossly abuses the funds or property of a ward or who knowingly or recklessly abuses a ward or neglects a ward's rights under this Ordinance or any other Tribal law shall be deemed guilty of a civil

offense, in addition to any crime, and may be punished by a fine not to exceed \$750 per occurrence, and is subject to the other provisions of CITC Chapter 650, Civil Offenses.

**375.900 Severability**

If a court of competent jurisdiction finds any provision of this ordinance to be invalid or illegal under applicable tribal and or federal law, such provision shall be severed from this ordinance and the remainder of this ordinance shall remain in full force and effect.

**375.950 Sovereign Immunity**

Nothing in this Ordinance waives the sovereign immunity of the Coquille Indian Tribe, or any of its officers, employees, board members, representatives or agents.