

# INSTRUCTIONS

## Petition for Guardianship—Adult

### *Confederated Salish & Kootenai Tribal Court*

**THE FOLLOWING INFORMATION IS NOT LEGAL ADVICE AND  
CANNOT REPLACE THE ADVICE OF A LAWYER OR ADVOCATE.**

**These instructions provide legal information and resources only.** Legal advice depends on the specific circumstances of each situation. The information contained in this document is not guaranteed to be up to date. The information cannot replace the advice of an attorney or advocate licensed to practice law. **If you choose to represent yourself, you are bound by the same rules and procedures as an attorney or advocate.**

Instructions have been developed to assist you with processing the **Petition for Guardianship-Adult** case. Read the instructions first to determine which forms you may need, based on your personal circumstances, as it may not be necessary to complete all forms listed below.

#### **GENERAL INFORMATION AND ASSISTANCE**

- ◆ **For additional information**, please review CSKT Laws Codified (2013) and other applicable laws and ordinances at <https://csktribes.org/judicial/cskt-laws-codified>.
- ◆ **Tribal Court Forms** can be found at <http://csktcourt.org> by clicking on the “FORMS & FILINGS” tab.
- ◆ **The State Law Library** can help you find and use legal resources such as books, forms, and websites. You can visit the Law Library website at [www.lawlibrary.mt.gov](http://www.lawlibrary.mt.gov). Or you can contact a Reference Librarian at 1-406-444-3636 or by email at [mtlawlibrary@mt.gov](mailto:mtlawlibrary@mt.gov).
- ◆ **CSKT Tribal Defender’s Office Civil Division** offers legal assistance to Tribal members in certain civil matters. To find out if you qualify, call (406) 275-2897. <https://csktribes.org/judicial/tribal-defenders>
- ◆ **Montana Legal Services Association (MLSA)** gives free legal help to low-income people. To find out if you qualify for MLSA, call the MLSA HelpLine at 1-800-666-6899.

#### **COMMON TERMS**

- ⇒ **Petitioner:** A person who files a Petition for an Appointment of Guardian -Adult.
- ⇒ **Guardian:** A person at least 21, resident or non-resident, who has qualified as a Guardian of a minor or incapacitated person based on an appointment by the Court.
- ⇒ **Interested Person:** Persons identified by CSKT Law who must be given notice of the guardianship/conservatorship proceeding. **See Step 3 for a complete list.**
- ⇒ **Letters:** Official document identifying the authority of the Guardian.
- ⇒ **Guardian Nominee:** A person named in the Petition to serve as the Guardian.
- ⇒ **Respondent:** A person for whom the appointment of Guardian is requested.
- ⇒ **Ward:** The title of the Respondent once the Court appoints a Guardian.

- ⇒ **Court Visitor:** A person who will interview the Respondent in person who will explain their rights and make recommendations to the Court.
- ⇒ **Order:** Official document identifying the authority of the Guardian and his/her responsibilities during the Guardianship.

***If you do not understand this information, please contact an attorney or advocate.***

**FEES**

A filing fee is required when filing a **Petition for Guardianship-Adult**. Please check with the <http://csktcourt.org> by clicking on the “FEE SCHEDULE” tab to determine what the current fee schedule is for filing Petitions. If you cannot afford the filing fees, you may ask the Tribal Court Clerk to apply for a **Fee Waiver [TCF 0008]** and the Court will determine if you qualify.

**FORMS**

Please note that the forms referenced in these Instructions are available with <http://csktcourt.org> by clicking on the “FORMS & FILINGS” tab.

- [TCF 0043] AP-Guardianship-Adult-Appoint-PETITION
- [TCF 0054] AP-Guardianship-Adult-Appoint-PHYSICIAN’S REPORT
- [TCF 0044] AP-Guardianship-Adult-Appoint-REQUEST FOR HEARING
- [TCF 0045] AP-Guardianship-Adult-Appoint-NOTICE OF PROCEEDING TO INTERESTED PERSONS
- [TCF 0055] AP-Guardianship-Adult-Appoint-NOTICE OF PROCEEDING & AFFIDAVIT OF SERVICE
- [TCF 0046] AP-Guardianship-Adult-Appoint-WAIVER & ACCEPTANCE OF SERVICE
- [TCF 0047] AP-Guardianship-Adult-Appoint-RESPONSE
- [TCF 0048] AP-Guardianship-Adult-Appoint-ACCEPTANCE OF OFFICE & RESPONSIBILITIES
- [TCF 0049] AP-Guardianship-Adult-Appoint-LETTERS OF GUARDIANSHIP
- [TCF 0050] AP-Guardianship-Adult-Appoint-ANNUAL REPORT

**STEPS TO FILING YOUR CASE**

**Step 1: Complete Forms.** Selecting these instructions indicates that you are planning on filing a **Petition for Guardianship-Adult**. The caption below needs to be completed on all forms filed. Make sure that you make a copy of all the forms you file with the Court for your own records.

IN THE TRIBAL COURT OF THE CONFEDERATED SALISH AND KOOTENAI  
TRIBES OF THE FLATHEAD RESERVATION, PABLO, MONTANA

IN RE INTEREST OF:  Respondent. _____  UPON THE PETITION OF:  Petitioner(s) _____	Cause No. _____  <i>Insert Name of Form</i>
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- ❑ **[TCF 0043] Petition for Guardianship for an Adult**
  - Petitioner must **complete all applicable sections on the form.**
  - Petitioner should include a completed **Physician’s Report [TCF 0054]** with the Petition or request that the Court order one be completed by the treating physician.
  - Petitioner must sign the Petition in the presence of a Court Clerk or Notary Public.
  - The Court will give you a hearing date when you file the Petition.
  
- ❑ **[TCF 0048] Acceptance of Office & Acknowledgment of Responsibilities**
  - Complete, sign, and file the **Acceptance of Office & Responsibilities Guardian** and include it with the Petition.
  
- ❑ **[TCF 049] Letters of Guardianship-Adult**
  - Complete only the caption on the form.
  - The Court will complete the remainder of the form and sign it following the appointment of the Guardian.

## **Step 2: File Your Papers with the Court**

Provide the Court with the documents completed as described in **Step 1** above and pay the filing fee. You may receive a hearing date from the clerk at the time of filing your paperwork or you may need to contact the clerk later to obtain the hearing date. The date and time of this hearing is important, as you will need it to complete the **Notice of Proceeding** described in **Steps 3** and **4**.

## **Step 3: Service of Petition and Notice of Hearing to Interested Persons**

After the **Petition for Guardianship-Adult** is filed and a hearing is set, you (the Petitioner) must give notice of the time and place of the hearing along with a copy of the Petition to the following people/entities listed below.

Different requirements for service are explained below for serving interested persons and Respondent’s spouse, if any, living within the exterior boundaries of the Flathead Reservation.

Petitioner is responsible for serving copies of all documents filed with the Court with the applicable **Notice of Hearing** at least **20 days before the time set for the hearing** (*see* CSKT Laws Codified, § 3-5-112(3)(e)).

### ❑ **Service in Person—Rule 9(1), CSKT Rules of Practice**

- ❑ Petitioner is responsible to arrange for personal service of the **Notice of Hearing [TCF 0055]** and copy of the **Petition for Guardianship-Adult** on the following individuals:
  - **Respondent**
  - **Respondent’s spouse residing within the exterior boundaries of the Flathead Reservation**, if any, unless such person waives, in writing, personal service of notice and petition.

- ❑ An **Affidavit of Service [TCF 0055]** shall be filed with the Court unless Respondent’s spouse agrees to **Waive Acceptance of Service [TCF 0046]**.

**Helpful Hints to complete personal service:**

- Select the law enforcement department, a private process server, or someone you know who is 18 years or older, who is not involved in the case, and who knows the rules of service.
- Request the law enforcement officer, private process server, or other person serving the documents to deliver personally to the Respondent the Notice of Hearing and copies of all documents filed with the Court.
- Request that the sheriff, private process server, or other person serving the documents complete the Affidavit of Service.
- Petitioner should then file with the Court, the Notice of Hearing to Respondent with the completed Affidavit of Service.

❑ **Service by Mail— Rule 9(2), CSKT Rules of Practice**

- ❑ Service of **Notice of Hearing to Interested Persons [TCF 0045]** and of the **Petition** shall be served by restricted certified mail with return receipt requested, to the remaining interested persons and entities as follows:
  - Spouse, if residing off of the Flathead Reservation
  - Children of Respondent
  - Grandchildren of Respondent
  - Brothers and/or sisters of Respondent
  - Any other party who has been significantly involved in the care of the Respondent during the past three (3) years.
  - CSKT Department of Human Resources Development and Tribal Social Services.
  - Any other tribal or state agency that may be involved in the welfare of the Respondent.
- ❑ Mail copies of all documents filed with the Court and the **completed Notice of Hearing to Interested Persons**, at least 20 days before the time set for the hearing.
- ❑ **Notice of Hearing to Interested Persons** shall include a description of the documents served on interested persons and entities and shall be filed with the Court.

**Step 4: Tribal Court Appoints Advocate, Physician Examination and a Visitor**

The Tribal Court, upon receipt of the Petition, shall appoint an advocate to represent the Respondent, a physician to examine the Respondent for the purposes of determining capacity, and a court visitor pursuant to CSKT Laws Codified, § 3-5-112(3)(d).

**Step 5: Hearing**

- ❑ Petitioner, Proposed Guardian, Respondent, Respondent’s advocate, and court visitor must appear at the hearing. Respondent may be excused by the Court for good cause.

- If Respondent cannot attend the hearing for medical or other reasons, Respondent’s advocate must file a Motion to Excuse Respondent and attach appropriate documentation to support the motion, such as a physician’s letter/report.
- Respondent may participate in the hearing and present their position to the Court.
- Petitioner should be prepared to present evidence showing why the guardianship is necessary and that the interested persons are aware of the proceeding.
- If the Court appoints a guardian, the Court will issue **Letters of Guardianship [TCF 0049]** as a formal notice of the appointment and provide you with a copy of the **Order Appointing Guardian**.
  - You may need certified copies of the **Letters** and **Order**. The number needed will vary, depending on your circumstances.
  - Copies of the Order must be provided to all interested persons identified in the Order.
- Preparing for the Hearing**
  - Bring your stamped copies of the papers you filed with the Court.
  - Arrive at Court at least 15 minutes before your scheduled hearing and check in with the Clerk. Dress like you were going to an important job interview.
  - Be prepared to explain your position and answer any questions the judge might

**Step 6: Requirements after the Court Appoints a Guardian**

- Complete, sign, and file the **Acceptance of Office & Responsibilities of Guardian [TCF 0048]** with the Court. **Letters of Guardianship [TCF 0049]** will not be issued until this form is filed.
- Refer to the **Order Appointing Guardian for Adult** to determine when the care plan and annual guardian report is due. The purpose of the annual report is to report to the Court and interested persons the well-being of the Ward. The **Guardian’s Report [TCF 0050]** must be provided to the persons listed in the **Order of Appointment**.
- The **Order Appointing Guardian for Adult** shall also notify the Ward and persons given notice of the Petition that they have the right to request termination or modification of the Guardianship.
- The responsibilities of the Guardian continue until the Court terminates the Guardianship.
- The Court may terminate the guardianship if the Ward no longer meets the standard for establishing the Guardianship.
- Resignation of a Guardian does not terminate the Guardianship until approved by the Court.

*If you do not understand this information, please contact an attorney or advocate.*