

# An Act

## Legislative Act 39-12

### ACT RELATING TO CHEROKEE NATION GUARDIANSHIP AND CONSERVATORSHIP CODE

#### BE IT ENACTED BY THE CHEROKEE NATION:

#### Section 1. Title and Codification

This Act shall be known and may be cited as the Cherokee Nation Guardianship and Conservatorship Act of 2012. This Act shall be codified at Title 30, Section 1 et seq. of the Cherokee Nation Code Annotated.

#### Section 2. Purpose

It is the purpose of this Chapter to promote the general welfare of minor Cherokee Nation citizens or minors eligible to be Cherokee Nation citizens by establishing a system of general and limited guardianships for minors which provides for the protection of their rights and the management of their financial resources.

#### Section 3. Legislative History

Cherokee Nation Constitution Article VI, Section 7; JAT-AD-06-02, effective April 27, 2006.

#### Section 4. Substantive Provisions of Law

Title 30 of the Cherokee Nation Code Annotated is hereby ratified as follows:

### Guardianships

#### §1. Short Title – Codification

This Act shall be known and may be cited as the Cherokee Nation Guardianship and Conservatorship Act of 2012. This Act shall be codified at Title 30, Section 1 et seq. of the Cherokee Nation Code Annotated.

#### §2. Purpose

It is the purpose of this Chapter to promote the general welfare of minor Cherokee Nation citizens or minors eligible to be Cherokee Nation citizens by establishing a system of

general and limited guardianships for minors which provides for the protection of their rights and the management of their financial resources.

**§3. Existing guardianships or conservatorships-Compliance with Act**

1. Any guardianship or conservatorship in existence on or created on or after the effective date of this Act shall comply with the provisions of the Cherokee Nation Guardianship and Conservatorship Act.
2. Unless otherwise modified or terminated, all guardianships and conservatorships established prior to the effective date of this 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.

**§4. Definitions**

1. As used in the Cherokee Nation Guardianship and Conservatorship Act:
  - A) "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, and financial records and information submitted to the Court in connection with a proceeding pursuant to this Chapter;
  - B) "Court" means the District Court of the Cherokee Nation;
  - C) "Estate" means the property of the person whose affairs are subject to a guardianship proceeding;
  - D) "Guardian" means a person appointed as general or limited guardian of the person, general or limited guardian of the property, special guardian and temporary guardian, but does not include a person appointed as guardian ad litem;
  - E) "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 with regard to the guardianship proceeding, or to make said decisions when the subject of the proceeding is wholly incapable of making said decisions even with assistance;
  - F) "Guardianship of the person" means legal custody or the duty and authority vested by law to make major decisions affecting a child including, but not limited to:
    1. The authority to consent to marriage, enlistment in the armed forces, and to extraordinary medical and surgical treatment; and
    2. The authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning a child; and

3. The authority to consent to the adoption of a child when the parent-child relationship has been terminated by judicial decree or the death of the parents; and
  4. The rights and responsibilities of the physical and legal care, custody, and control of a child when legal custody has not been vested in another person, or agency, or institution; and
  5. The duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for the child. Guardianship of the person of a child, or legal custody of a child, may be taken from its parents only by Court action, notwithstanding the emergency protection of a child;
- G) "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;
- H) "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 minor;
- I) "Guardianship report" means any report required by the provisions of Section 23 of this Chapter;
- J) "Initial review hearing" means the first hearing held by the Court for review of the guardianship proceeding after entry of the Order appointing a guardian for a minor;
- K) "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 or she will perform the duties of their office as guardian according to law;
- L) "Minor" means a person less than eighteen (18) years of age;
- M) "Person" means an individual;
- N) "Property" means real property, personal property, and income, any interest in such real or personal property and includes anything that may be the subject of ownership;
- O) "Subject of the proceeding" means a minor:
1. who is the subject of a petition requesting the appointment of a guardian, limited guardian, or temporary guardian; or
  2. for whom a guardian or limited guardian has been appointed by the Court; and
- P) "Ward" means the person over whom, or over whose property, a guardian is appointed.

2. Nothing contained in this Act shall prevent the Court from immediately assuming custody of a minor, pursuant to the Cherokee Nation Children's Code, and ordering whatever action may be necessary, including medical treatment, to protect the minor's health or welfare.

### **§5. Types of Guardianships**

There are four types of guardianships: general, limited, temporary and special.

1. A general guardian is a guardian of the person or of all the property of the ward or both.
2. 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 or both.
3. A temporary guardian is a person appointed by the Court in accordance with Section 19 of this Chapter.
4. A special guardian is all other guardians who may be appointed by the Court for a situation not covered by this Chapter and appointed in the same manner as for the appointment of a temporary guardian.

### **§6. Persons and property subject to Act – Parental rights**

1. Except as otherwise specifically provided by law, the Cherokee Nation Guardianship and Conservatorship Act applies to:
  - A. Minor Cherokee Nation citizens or minors eligible to be Cherokee Nation citizens residing within the territorial jurisdiction of the Cherokee Nation; and
  - B. Property located in the Cherokee Nation of non-domiciliaries who are minors, or property coming into the control of a guardian who is subject to the laws of the Cherokee Nation.
2. No person, whether a parent or otherwise, has any power as a guardian, except by appointment by a court. The provisions of the Cherokee Nation Guardianship and Conservatorship Act shall not be construed to limit the parental rights of parents as the natural guardians of their children.

### **§7. Jurisdiction**

- A. Territorial jurisdiction and subject matter jurisdiction shall be in accordance with Title 20, Section 24 et seq. of the Cherokee Nation Code.
- B. The Court shall have the authority, whenever it appears necessary, to appoint a guardian for the person and/or property of any child who is subject to the jurisdiction of the District Court.
- C. 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 has exclusive jurisdiction 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.

#### **§8. Jurisdiction of Court over Guardians and Guardianship Proceedings**

1. 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.
2. The Court has jurisdiction over guardianship proceedings and cases, and has the following powers, which must be exercised in the manner prescribed by this Chapter, to:
  - a. Appoint and remove guardians for minors;
  - b. Issue and revoke letters of guardianship;
  - c. Control the conduct of guardians with regard to the care and treatment provided to their wards;
  - d. Control the conduct of guardians with regard to the management of the financial resources of their wards;
  - e. Compel guardians to submit plans, reports, inventories and accountings, to the Court;
  - f. Compel payment and delivery by guardians of property belonging to their wards;
  - g. 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;
  - h. Settle the accounts of guardians;
  - i. Appoint appraisers of the property of wards;
  - j. Compel the attendance of witnesses and the production of documents and property;
  - k. 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 thirty (30) days from the time of making such order, to show cause why the order should not be granted for guardianship; and

1. Exercise all powers conferred by this Chapter and to make such orders as may be necessary for the exercise of said powers.

**§9. Guardians ad litem**

- A. Nothing contained in this Chapter 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.

**§10. Duties and Powers of Guardians-Annual review**

- A. Except as otherwise ordered or limited by the Court:
  - (1) A guardian of a child shall have the right to take or provide for his physical custody and shall be required to care for his health, safety and welfare, and provide for his education and medical care.
  - (2) In a legal action, the guardian shall have the authority to represent the interests of the child in actual, threatened or contemplated litigation or other proceedings of a legal nature. The guardian may employ counsel and settle or compromise suits or claims subject to the approval of the Court.
  - (3) A guardian of the property of the child shall have the authority to invest, manage and dispose of the child's property in a prudent and reasonable manner. The guardian may expend such portions of the property, income and principal as shall be reasonably necessary for the education of the child and care of the child, including medical care, unless the guardianship order states that the child's property may not be used for the child's care and support, but rather that it be managed for the child until he reaches the age of eighteen (18) or an emancipation occurs.
- B. A guardian may petition the Court at any time for authority to do any act, if he is uncertain of his authority. The Court may grant such authority, after notice and hearing, if this appears to be consistent with the best interests of the child.

- C. A guardian shall report to the Court any change in the residence of a ward within ten (10) days following such change unless a prior order of approval of such change has been entered by the Court.
- D. Every guardian, whether of the person and/or property of a child, shall:
  - (1) Stand in a fiduciary relationship to the child
  - (2) Exercise a high degree of care in managing the child's property;
  - (3) Derive no personal benefit from the management of the child's property; and
  - (4) Shall be liable to the child for any losses attributable to breach of these duties.
- E. Any action to enforce liability against the guardian may be brought by the child or a subsequently appointed guardian on behalf of the child within two (2) years after the appointment of a new guardian, or the discovery of the breach of duties, or attainment of the age of eighteen (18) by the child, whichever comes first.
- F. The Court shall hold annual review hearings in guardianship cases. Upon request by the Court, a guardian shall file a progress report with the Court at least thirty days prior to the annual review hearing.

**§11. Confidential Information Filed with Court**

- 1. Confidential information filed with or submitted to the Court in conjunction with any proceeding pursuant to this Chapter shall not constitute a public record. Access to confidential information shall be strictly controlled. Except upon Court order, no confidential information shall be disclosed to persons other than:
  - a. the subject of the proceeding and his attorney,
  - b. the guardian ad litem;
  - c. if the subject of the confidential information is a ward, the guardian or conservator of such ward;
  - d. if the subject of the confidential information is the guardian or conservator, the ward and his attorney, and the attorney of such guardian or conservator; and
  - e. the Cherokee Nation and any Cherokee Nation or Bureau of Indian Affairs governmental entities necessary to provide services to the ward.
- 2. The fact of the existence of a guardianship or conservatorship of a person or that person's estate shall not be considered confidential information.

**§12. 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.

**§13. Filing of Petition and Eligibility – Costs**

- A. Guardianship proceedings shall be started by the filing of a petition. Any person, not otherwise prohibited, eighteen (18) years of age or older or any representative of the Cherokee Nation Department of Youth and Family Services may file a petition.
- B. Any person, not otherwise prohibited, eighteen (18) years of age or older and subject to the jurisdiction of the District Court may serve as guardian.
- C. Preference shall be given to relatives and to the person preferred by a child of sufficient age to form an intelligent preference; however, in all cases, the Court shall determine the guardian on the basis of the best interests of the child.
- D. The petitioner shall be responsible for bearing the costs of filing any petition for guardianship and the costs associated with any required additional information.

**§14. Contents of Petition – Additional information submitted prior to hearing on petition**

- 1. The petition shall set forth the following:
  - a. The basis for the Court's jurisdiction;
  - b. The full name, address and tribal affiliation of the petitioner;
  - c. The full name and date of birth of any and all adults residing in the home of the petitioner;
  - d. The full name, sex, date of birth, residence and tribal affiliation of the child;
  - e. The petitioner's relationship to the child;
  - f. The name and address of the person or agency having custody of the child;
  - g. The names and addresses of all known relatives of the child, insofar as these are known to the petitioner;
  - h. A concise statement as to whether the petitioner or any adult residing in the home of the petitioner has been convicted of a felony. Such statement shall include the nature of the felony, the date of conviction and the jurisdiction of the conviction;



- i. A concise statement of any and all Child Welfare history involving the child, the petitioner or any adult residing in the home of the petitioner;
  - j. A statement regarding whether the person proposed to serve as guardian is insolvent or has declared bankruptcy during the five (5) years immediately prior to filing the petition proposing such person to serve as guardian;
  - k. The type of guardianship requested; and
  - l. A concise statement of the reasons for which the guardianship should be granted.
2. Prior to the hearing on the petition for guardianship, the petitioner shall submit the following additional information to the Court; provided that a temporary emergency guardianship order may be granted by the discretion of the Court prior to full compliance with the requirements of this subsection:
    - a. Complete Oklahoma State Bureau of Investigation background checks for the petitioner and any adult residing in the home of the petitioner;
    - b. Sworn affidavits attesting that neither the petitioner nor any adult residing in the home of the petitioner is or has been subject to the registration requirements of a sex offenders act or any similar act in any jurisdiction;
    - c. An Oklahoma Department of Human Services child welfare history report on petitioner and any adult residing in the home of the petitioner;
    - d. A complete financial assessment affidavit.

**§15. Appointment of guardian of minor – Notice – Intervention**

1. Before making the appointment, the Court must cause notice of the hearing on the petition for appointment of a guardian for a minor to be given in the form required by the Court to the following persons:
  - a. the minor himself if the minor has attained the age of fourteen (14) as of the date the petition is filed;
  - b. the Cherokee Nation Department of Youth and Family Services;
  - c. the Cherokee Nation Office of Attorney General;
  - d. the then-living parents of the minor and any other person having care of the minor;
  - e. if the minor has no then-living parent, then to one of the then-living grandparents who is not one of the petitioners and who is not married to one of the petitioners; and

- f. if there is no such then-living grandparent or if there is no such then-living grandparent whose address is known to the petitioner, then notice shall be given to an adult relative, if any, of the Minor, who resides within the territorial jurisdiction of the Cherokee Nation.
2. Such notice shall be mailed to each person entitled to notice at that person's address as last-known to the petitioner, at least ten (10) days prior to the date set by the Court for hearing on the petition. Provided, the Court may direct a shorter notice period if the Court deems such shorter notice period to be appropriate under the circumstances.
3. If there is no person, other than the minor, who is entitled to notice, or if the address of any person entitled to notice is not known to the petitioner, the petition shall so allege. The Court may direct that notice be waived or be given to any person or persons by publication or in any such manner as the Court determines and directs.
4. The Cherokee Nation may intervene in any case subject to the requirements of this Act.

**§16. Nomination and appointment by minor-Age of minor**

If the minor is under the age of fourteen (14) years, the Court may name and appoint his guardian. If the minor has attained the age of fourteen (14) years, the minor may nominate his own guardian who, if approved by the Court, shall be appointed accordingly.

**§17. Appointment of guardian when minor has attained 14 years of age**

If a guardian nominated by a minor who has attained the age of fourteen (14) years is not approved by the Court or if, after being notified by the Court, the minor neglects for ten (10) days to nominate a suitable person, the Court may name and appoint a guardian in the same manner as if the minor was under the age of fourteen (14) years.

**§18. Order of preference**

A. In accordance with Title 10, Section 21.1 of the Cherokee Nation Code, a guardianship shall be appointed in the following order of preference according to the best interests of the child to:

1. a parent or to both parents jointly except as otherwise provided in subsection B of this section;
2. a grandparent;
3. a person who was indicated by the wishes of a deceased parent;
4. a relative of either parent;
5. the person in whose home the child has been living in a wholesome and stable environment; or

6. any other person deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

B. When a parent having physical custody and providing support to a child becomes deceased, in appointing as guardian of the child the noncustodial parent, the court may deny the custody or guardianship only if:

1. the noncustodial parent has willfully failed, refused, or neglected to contribute to the support of the child for a period of at least twelve (12) months immediately preceding the determination of custody or guardianship action:

a. in substantial compliance with a support provision contained in a decree of divorce, or a decree of separate maintenance or an order adjudicating responsibility to support in a reciprocal enforcement of support proceeding, paternity action, juvenile proceeding, guardianship proceeding, or orders of modification to such decree, or other lawful orders of support entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support, or

b. according to such parent's financial ability to contribute to such child's support if no provision for support is provided in a decree of divorce or an order of modification subsequent thereto;

2. the noncustodial parent has abandoned the child; or

3. the court finds it would be detrimental to the health or safety of the child for the noncustodial parent to be appointed guardian.

C. The court may consider the preference of the child in awarding guardianship of said child if the child is of sufficient age to form an intelligent preference.

#### **§19. Temporary Guardianship**

A. The Court may appoint a temporary guardian under such terms and conditions as the Court deems appropriate.

B. Temporary guardianship shall be for a limited duration, and the length of the guardianship shall be set forth in the court order along with such other terms and conditions as the Court finds appropriate.

C. A temporary guardianship may be terminated if the Court determines that it is in the child's best interests to change guardians or to return the child to the parent(s) or custodian(s).

D. The child's parents, grandparents and other family members shall have rights of reasonable visitation unless the Court finds that the visitation would endanger the child or significantly impair his emotional development.

#### **§20. Cessation of power of guardian**

The power of a guardian appointed for a minor ceases upon:

1. the removal of the guardian;
2. the solemnized marriage of the ward; or
3. the ward's attaining majority.

**§21. Minor ward at majority-Release of guardian**

After a minor ward has reached the age of majority, the ward may settle accounts with his guardian and give the guardian a valid release, subject to approval of the Court, if such release is obtained fairly and without undue influence.

**§22. Discharge of guardian by Court**

A guardian of a minor appointed by the Court is not entitled to discharge until one (1) year after the majority of the ward unless the Court determines that the minor has earlier validly released said guardian after a final accounting.

**§23. Guardianship Report**

- A. Upon the filing of a guardianship petition, the Court may request that the Indian Child Welfare Department conduct, or arrange to have conducted, a guardianship report. The report shall contain information necessary to determine the best interests of the child, including data pertaining to the child, the biological parent(s), the extended family and the circumstances requiring the appointment of a guardian.
- B. The guardianship report shall be submitted to the Court and copies may be furnished to all interested parties.

**§24. Order of Guardianship**

The terms and conditions of the guardianship shall be clearly set forth in the Order of Guardianship, together with any bond requirements. Copies of the order shall be furnished to all parties.

**§25. Guardianship Plan**

Upon request of the Court, a plan for the care and treatment of a ward and/or the plan for the management of the financial resources of a ward shall be filed by the guardian.

**§26. Setting of Initial Review Hearing**

- A. In the order appointing the guardian of a minor, the Court shall set the date for the initial review hearing, which shall be not more than ninety (90) days following the date of entry of the order appointing such guardian.

- B. When any person is appointed guardian of a minor, the Court may include in the order of appointment conditions not otherwise obligatory providing for the care, treatment, education and welfare of the minor.

**§27. Compensation**

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

**§28. Bond**

In the event a guardian receives any funds or property of the child at the time of appointment or during the term of his guardianship, he may be required by the Court to post a bond with sufficient surety in such amount as the Court may order to assure the guardian's faithful performance of the duties of his trust. Any surety of such bond must consent to the jurisdiction of the Court for purposes of an action against the bond.

**§29. Trust Property**

The guardian may be appointed to manage trust property of a child. Any sale of an interest in trust property belonging to the child must be for an adequate and fair price and must be authorized by the Court and approved by the Superintendent of the Bureau of Indian Affairs. The Court may approve the sale if it is in the best interests of the child.

**§30. Annual Accounting**

The guardian of property valued in excess of Five Thousand Dollars (\$5,000.00) shall submit an annual accounting which shall be verified under oath to the Court for approval. The accounting shall be required for every year in which the value of the estate is over Five Thousand Dollars (\$5,000.00), and shall contain information on all additions to and withdrawals from the property. All supporting documentation, including canceled checks, vouchers, receipts and bank statements, shall be attached to the accounting.

**§31. Inquiry to determine suitability of guardian**

1. In conducting an inquiry to determine whether a person is suitable to serve as a guardian, the Court shall determine if:
  - a. the person proposed to serve as guardian is a minor or incapacitated or partially incapacitated person;
  - b. the person proposed to serve as guardian is a convicted felon;
  - c. the person proposed to serve as guardian is insolvent or has declared bankruptcy during the five (5) years immediately prior to filing the petition proposing such person to serve as guardian;

- d. the person proposed to serve as guardian is under any financial obligation to the ward; or
  - e. there exists a conflict of interest which would preclude or be substantially detrimental to the ability of the person to act in the best interest of the subject of the proceeding if such person is appointed.
2. In every case involving guardianship of a minor, the Court shall determine whether any individual seeking guardianship or visitation with the minor:
    - a. is or has been subject to the registration requirements of a sex offenders act or any similar act in any jurisdiction; or
    - b. is residing with a person who is or has been subject to the registration requirements of a sex offenders act or any similar act in any jurisdiction.
  3. There shall be a rebuttable presumption that it is not in the best interests of the minor to have guardianship or unsupervised visitation granted to any individual who:
    - a. is or has been subject to the registration requirements of a sex offenders act or any similar act in any jurisdiction; or
    - b. is residing with a person who is or has been subject to the registration requirements of a sex offenders act or any similar act in any jurisdiction.
  4. If the person proposed to serve is a convicted felon, the Court shall make further inquiry into the nature of the felony and the circumstances surrounding the conviction. The Court shall appoint such person proposed to serve only upon determining that the facts underlying the conviction do not give rise to a reasonable belief that person proposed to serve will be unfaithful to or neglectful of his fiduciary responsibilities, and that the appointment is in the best interest of the ward.
  5. If the person proposed to serve as guardian is insolvent or has declared bankruptcy within five (5) years prior to the filing of the pleading proposing that such person serve, the Court shall appoint such person only after giving due consideration to the nature and extent of the property of the ward and the anticipated actions necessary to manage the estate of the ward, and only upon a determination that such appointment is in the best interest of the ward. Insolvency or bankruptcy shall not automatically preclude a person proposed to serve as guardian.
  6. No minor, partially incapacitated person or incapacitated person shall be appointed.

**§32. Applications to Court for relief-Contents-Notice and hearing-Order-Appointment of counsel-Joinder-Hearing without notice**

1. After the appointment of a guardian, the ward, any person interested in the welfare of the ward, or a guardian may make application to the Court for:
  - a. termination of the guardianship;

- b. removal of the guardian;
  - c. resolution of a dispute pertaining to the guardianship plan; or
  - d. a review hearing.
2. Such application shall set forth:
- a. the names and addresses of the individuals and entities entitled to notice;
  - b. the relief requested; and
  - c. the alleged facts and reasons supporting the request.
3. Any person entitled to notice of the hearing on an application filed pursuant to this Section may object to the relief requested in the application. Notice shall be as provided as set forth in this Chapter.
4. The Court shall set an application filed pursuant to this Section for hearing on a date certain and shall cause notice to be given to the persons entitled thereto by regular first-class mail at least ten (10) days prior to such date. However, except for an order terminating a guardianship, the Court may enter an order granting the relief requested in the application without notice if the Court determines that such relief should be granted immediately. In that event, the Court may grant such relief on a temporary basis and proceed to set the application for further hearing following the giving of notice as provided by this subsection. At the hearing, based upon the evidence adduced, the judge may continue, modify or vacate his temporary order.
5. At the hearing held upon an application filed pursuant to this Section for which notice is required, the Court may, based upon the evidence presented, enter an order granting or denying the relief requested. At such hearing, the Court may also make any other order which the Court deems to be in the best interests of the ward or the estate of the ward. The Court may also set for further hearing, with prior notice to be given as provided in this Section, any other matter which the Court deems should be considered in the best interest of the ward or the estate of the ward.
6. With respect to any matter set for hearing pursuant to this Section, the Court may appoint an attorney to represent a ward at such hearing, in the same manner as provided in this Chapter for appointment of an attorney for the subject of the proceeding following the filing of a petition for appointment of a guardian. The appointment of such attorney shall cease:
- a. upon the entry by the Court of an order pertaining to the matters considered at such hearing, unless the Court otherwise directs, either in the order appointing such attorney or in the order pertaining to the matters considered at such hearing;
  - b. unless an appeal is taken from the order of the Court pertaining to the matters considered at such hearing, in which event such attorney shall continue to

represent the ward until final disposition or as otherwise ordered by the Court;  
or

- c. upon application of said attorney, the Court may allow the attorney to withdraw from the case and shall appoint another attorney to represent the subject of the proceeding in any appeal proceeding.
7. After notice, the Court may join the issues raised in separate applications or separate objections for determination at a single hearing, unless the Court determines joinder would be prejudicial to the interests of the ward.
8. The Court may hear an application other than with respect to the matters set forth in subsection A of this Section, with or without notice as the Court determines. If the Court requires notice to be given, the Court shall specify the persons to whom notice shall be given and the manner and time in which such notice shall be given.

**§33. Two or more guardians**

1. If there are two (2) guardians who are citizens of the Cherokee Nation, the act of one (1) alone shall be effectual if a co-guardian has given the other co-guardian authority in writing to act for both.
2. If there are more than two (2) guardians, the act of a majority of them is valid.

**§34. Death of one of two or more joint guardians**

On the death of one (1) or two (2) or more joint guardians, the power continues to the survivor until a further appointment is made by the Court.

**§35. Nonresident ward's guardian-Notice**

When a minor, otherwise liable to be put under guardianship according to the provisions of this Chapter, resides outside the territorial jurisdiction of the Cherokee Nation and has estate therein, any friend of such minor or anyone interested in the minor's estate may apply to the Court for the appointment of a guardian. If, after notice is given to all interested in such manner as the judge orders and a full hearing and examination is held, the Court deems it proper, a guardian for such absent minor may be appointed.

**§36. Powers of guardian of nonresident ward**

Every guardian appointed under the preceding Section has the same powers and performs the same duties, with respect to the estate of the ward found within the Cherokee Nation, as are prescribed with respect to any other guardian appointed under this Chapter.

**§37. Jurisdiction of first appointment**

The guardianship which is first lawfully granted, of any minor residing outside the Cherokee Nation, extends to all the estate of the ward within the Cherokee Nation, and excludes all other jurisdictions.



**§38. Payment of just debts**

Every guardian appointed under the provisions of this Chapter shall pay all just debts due from the ward out of the personal estate and income from the real estate of the ward, if sufficient. If said estate and income is not sufficient, then payment shall be made out of the real estate of the ward, upon obtaining an order from the Court for the sale thereof.

**§39. Collection and settlement of accounts-Appearance for ward**

A guardian must settle all accounts of the ward and demand, sue for, and receive all debts due to the ward. A guardian may, with approval of the Court, compromise or compound for the same and give discharges to the debtors on receiving a fair and just settlement of such claim. A guardian shall appear for and represent the ward in all legal suits and proceedings, unless another person is appointed for that purpose as guardian or next friend. A guardian, with the approval of the court exercising jurisdiction in the suit or proceeding, may compromise and settle any claim made by, on behalf of or against the ward in such suit or proceeding.

**§40. Estate management-Income applied to maintenance and support of ward-Sale of realty**

Every guardian must manage the estate of his ward frugally and without waste, and apply the income and profits thereof, as may be necessary, for the comfortable and suitable maintenance and support of the ward. If such income and profits be insufficient for that purpose, the guardian may sell the real estate, upon obtaining an order of the Court as provided, and must apply the proceeds of such sale, as may be necessary, for the maintenance and support of the ward.

**§41. Execution of waivers or consents for wards**

The duly appointed and acting guardian, limited guardian, conservator, attorney in fact, or any other person legally authorized to act on behalf of any minor may execute waivers or consents for his ward as authorized by the Court. There shall be attached to each waiver or consent a certified copy of the instrument authorizing him to perform such act.

**§42. Causes for removal of guardians**

A guardian may be removed by the Court for any of the following causes:

- a. for abuse of his fiduciary responsibility;
- b. for continued failure to perform his duties;
- c. for incapacity to perform his duties;
- d. for gross immorality;
- e. for having an interest adverse to the faithful performance of his duties;
- f. if the instrument in which the person was nominated as guardian is judicially determined to be invalid;

- g. in the case of guardian of the property, for insolvency; or
- h. when it is no longer proper that the ward should be under guardianship.

**§43. Removal or resignation of guardian**

1. The authority and responsibility of a guardian terminates upon the death of the guardian, conservator, or the ward, the determination of incapacity of the guardian or conservator, or upon removal or resignation of guardian or conservator. Termination does not affect the liability of a guardian or conservator for prior acts or the obligation to account for any funds and assets of the ward under the control of the guardian or conservator. The authority and responsibility of a guardian also terminates upon the marriage or majority of the ward.
2. The Court, after notice and hearing, may remove a guardian or conservator for cause if the guardian or conservator has failed for thirty (30) days, after he is required to do so, to render an account or make a report and compel him to surrender the estate of the ward to the person found to be lawfully entitled thereto.
3. Every guardian or conservator may resign when it appears proper to allow the same and upon the resignation or removal of a guardian or conservator the Court may appoint a successor guardian or conservator in the place of the guardian or conservator who has resigned or has been removed or make other appropriate orders pursuant to the provisions of this Chapter.

**§44. Discharge of unnecessary guardianship**

The guardian of a minor may be discharged by the court when it appears to the Court, on the application of the ward or other interested person, that the guardianship is no longer necessary.

**§45. Civil liability of guardians or petitioners-Damages-Willful or malicious filing of false petition or application**

1. Any guardian who willfully violates the duties or willfully misuses the powers assigned by the Court and thereby causes injury to the ward or damages to the financial resources of the ward shall, in addition to any criminal penalties, be liable in a civil action for any actual damages suffered by the ward. Nothing in this subsection shall limit the authority of the Court to surcharge a guardian as otherwise provided by law.
2. Any person who willfully or maliciously files a false petition or application pursuant to the provisions of this Chapter or a petition or application without a reasonable basis in fact for such a petition pursuant to the provisions of this Chapter may be liable in a civil suit for any actual damages suffered by the subject of the petition or application.

**§46. Concealment or embezzlement citation**

Upon complaint made to the Court by any guardian, ward, creditor, or other person interested in the ward's estate, against anyone suspected of having concealed or conveyed away any of

the money, goods or effects, or an instrument in writing, belonging to the ward or to his estate, the Court may require such suspected person to appear before the Court and may examine and proceed with such person on such charge in the manner provided by law with respect to persons suspected of, and charged with, concealing or embezzling the effects of a decedent.

**Section 6. Provisions as cumulative**

The provisions of this act shall be cumulative to existing law.

**Section 7. Severability**

The provisions of this act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.


**Section 8. Effective Date**

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this Act shall take effect and be in full force after its passage and approval.

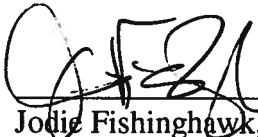
**Section 9. Self-Help Contributions**

To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.

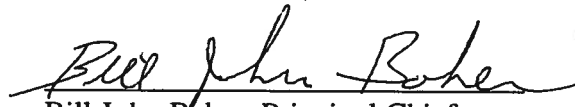
Enacted by the Council of the Cherokee Nation on the 15<sup>th</sup> day of October, 2012.

  
\_\_\_\_\_  
Tina Glory Jordan, Speaker  
Council of the Cherokee Nation

**ATTEST:**

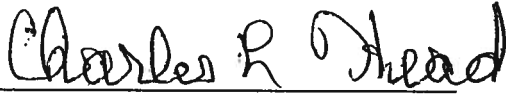
  
\_\_\_\_\_  
Jodie FISHINGHAWK, Secretary  
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 16<sup>th</sup> day of October, 2012.



Bill John Baker, Principal Chief  
Cherokee Nation

**ATTEST:**



Charles Head, Secretary of State  
Cherokee Nation

**YEAS AND NAYS AS RECORDED:**

Tina Glory Jordan	<u>Yea</u>	Meredith A. Frailey	<u>Yea</u>
Joe Byrd	<u>Yea</u>	Dick Lay	<u>Yea</u>
David Walkingstick	<u>Yea</u>	Cara Cowan Watts	<u>Yea</u>
Jodie Fishinghawk	<u>Yea</u>	Buel Anglen	<u>Yea</u>
Janelle Lattimore Fullbright	<u>Yea</u>	Curtis G. Snell	<u>Yea</u>
David W. Thornton, Sr.	<u>Yea</u>	Charles Hoskin, Jr.	<u>Yea</u>
Don Garvin	<u>Yea</u>	Julia Coates	<u>Yea</u>
Lee Keener	<u>Yea</u>	Jack D. Baker	<u>Yea</u>
Frankie Hargis	<u>Yea</u>		

**ADMINISTRATIVE  
CLEARANCE**

**Program/Project Manager:**

Signature/Initial \_\_\_\_\_ Date \_\_\_\_\_

**Department Director:**

*Tina Woodward* 9-9-12  
Signature/Initial \_\_\_\_\_ Date \_\_\_\_\_

**Group Leader:**

Signature/Initial \_\_\_\_\_ Date \_\_\_\_\_

**Government Resources:**

Signature/Initial \_\_\_\_\_ Date \_\_\_\_\_

**Administration Approval:**

*Zell John Fisher* 9/10/12  
Signature/Initial \_\_\_\_\_ Date \_\_\_\_\_

**LEGISLATIVE CLEARANCE:**

**Legal & Legislative Coordinator:**

*Bretton* 9/10/12  
Signature/Initial \_\_\_\_\_ Date \_\_\_\_\_

**Standing Committee & Date:**

*Hyles* 9/27/12

**Chairperson:**

*Hoskin Jr.*  
Signature/Initial \_\_\_\_\_ Date \_\_\_\_\_

**Returned to Presenter:** \_\_\_\_\_

Date \_\_\_\_\_

**Cherokee Nation  
Act/Resolution Proposal Form**

Act  Resolution

**TITLE:** Cherokee Nation Guardianship and Conservatorship Act of 2012

**DEPARTMENT CONTACT:** Heather Baker, ICW

**RESOLUTION PRESENTER:** Robert Garcia, OAG

**COUNCIL SPONSOR:** Meredith Frailey, Tina Glogy-Jordan

**NARRATIVE:**

It is the purpose of this Act to promote the general welfare of minor Cherokee Nation citizens or minors eligible to be Cherokee Nation citizens by establishing a system of general and limited guardianships for minors which provides for the protection of their rights and the management of their financial resources.