

WAGANAKISING ODAWAK STATUTE #2015-017
ELDER AND ADULT CONSERVATORSHIP AND GUARDIAN STATUTE

SECTION I. PURPOSE

The purpose of this Statute is to provide Guardianship or conservatorship to help and protect a person when that person is incapable of self-care or of acting in his or her own best interest. A guardianship or conservatorship should be used only as a method of last resort and be considered only after all other lesser restrictive alternatives have been explored.

SECTION II. DEFINITIONS

- A. “Accounting” means a detailed written summary of all financial actions done by the conservator on behalf of the conservatee.
- B. “Adjudication” means the hearing process in which the court makes a finding of whether or not a person is determined to be legally in need of a guardian or conservator, or both.
- C. “Adult with an impairment in need of a guardian or a conservator, or both” means a person 18 years of age or older, whose ability to receive and evaluate relevant information, or to effectively communicate decisions, or both, even with the use of assistive technologies or other supports, is impaired such that the person lacks the capacity to manage such person’s estate, or to meet essential needs for physical health, safety or welfare, and who is in need of a guardian or a conservator, or both.
- D. “Appropriate or Least Restrictive Alternative” means any program or service, or the use of a legal device or representative, which enables a person with an impairment to adequately meet essential needs for physical health, safety or welfare, or to reasonably manage the person’s estate. Least restrictive method of intervention shall be used to protect the freedom and independence of the adult. Appropriate alternatives may include, but are not limited to: power of attorney, durable power of attorney, power of attorney for health care decisions, living will, trust, joint tenancy and representative payee.

- E.** “Bond” means an insurance policy or similar instrument that is intended to protect the conservatee’s property should the conservator mismanage the person’s estate.
- F.** “Conservatee” means a person for whom a conservator has been appointed.
- G.** “Conservator” means a person appointed by a court to act on behalf of an impaired person, who is called a “conservatee.” A conservator manages a conservatee’s property or “estate,” such as money, personal and real property.
- H.** “Department” means the Little Traverse Bay Bands of Odawa Indians Department of Human Services.
- I.** “Fit and proper person” or “suitable person” means a person of good character and has the qualifications, competence, skills and experience necessary to be guardian or conservator
- J.** “Guardian” means a person appointed by a court to act on behalf of another, who is called a “ward.” A guardian manages a ward’s personal health, safety, and welfare.
- K.** “Immediate Family” means wife, husband, son, daughter, mother, father, brother, sister, step-mother, step-father, step-brother, step-sister, father-in-law, mother-in-law, daughter-in-law, son-in-law, child and step-child, grandmother, grandfather, brother-in-law and sister-in-law.
- L.** “In need of a conservator” means a person who, because of both an impairment and the lack of appropriate alternatives for managing such person’s estate, requires the appointment of a conservator.
- M.** “In need of a guardian” means a person who, because of both an impairment and the lack of appropriate alternatives for meeting essential needs, requires the appointment of a guardian.
- N.** “Meet essential needs for physical health, safety or welfare” means making those determinations and taking those actions which are reasonably necessary in order for a person to obtain or be provided with shelter, sustenance, personal hygiene or health care, and without which serious illness or injury is likely to occur.
- O.** “Tribe” or “Tribal” means the Little Traverse Bay Bands of Odawa Indians.



P. "Tribal Court" means the Little Traverse Bay Bands of Odawa Indians Tribal Court.

Q. "Voluntary Conservatee" means a person who voluntarily requests a court appointed conservator to assist with managing his or her finances and property, and is not adjudicated as in need of a guardian or conservator.

SECTION III. AUTHORITY

A. Pursuant to provisions of the Tribal Constitution, including Article I, B, 2. *"Promote with special care the health, educational and economic interests of all the people, especially our children and Elders, and shall protect them from social injustice and all forms of exploitation;* and 4. *"Establish and maintain within the limits of their economic capacity and development, effect provision for securing the right to work, to education and assistance, in cases of unemployment, old age, sickness and disablement, and in other cases of need".*

B. Pursuant to provisions of the Tribal Constitution, including Article VI., C. "... the Executive Branch to administer such funds, enforce this Constitution and laws passed thereunder, and implement policies and procedures enacted by the Tribal Council in accordance with Article VIII", Article VII of the Tribal Constitution allows the Legislative Branch to approve the creation or dissolution of Executive divisions or departments to promote and protect the peace, health, safety, education and general welfare of Little Traverse Bay Bands of Odawa Indians and its members.

SECTION IV. JURISDICTION

The Little Traverse Bay Bands of Odawa Indians shall have jurisdiction over the following:

A. An Elder or Adult, who is "In need of a conservator" or "In need of a guardianship" and is an enrolled Citizen of Little Traverse Bay Bands of Odawa Indians who resides within the exterior boundaries of the Reservation or residing within Tribal Trust Lands;

B. An Elder or Adult, who is "In need of a conservator" or "In need of a guardianship" who resides within Tribal Trust Lands;

C. A person appointed by Tribal Court as a Conservator or Guardian.

SECTION V. PRIORITY OF WHO MAY BE APPOINTED AS GUARDIAN OR CONSERVATOR

A. The court in appointing a guardian or conservator shall give priority in the following order to:

1. The nominee of the proposed ward or proposed conservatee, if the nomination is made within any durable power of attorney;
2. The nominee of the spouse, adult child or other close family member of the proposed ward or proposed conservatee;
3. The nominee is the current caretaker or a person that is co-residing of the proposed ward or proposed conservatee;
4. The nominee of the petitioner.

B. The court in appointing a guardian or conservator shall consider the workload, capabilities and potential conflicts of interest of the proposed guardian or conservator. In appointing a guardian for a person who is an adherent of a religion or culture, the court shall consider, but shall not be limited to, the appointment of an individual as guardian who has an understanding of the religion or culture and is willing to support this system of beliefs.

C. The court shall determine that the individual who is eligible for appointment is required to be a "fit and proper person" or a "suitable person" The court may investigate the past history and character of a proposed nominee.

D. The court may appoint as guardian of an individual with any suitable individual or agency, public or private, including a private association capable of conducting an active guardianship program.



**SECTION VI. GENERAL DUTIES, RESPONSIBILITIES, POWERS AND
AUTHORITIES OF GUARDIANS GUARDIAN DUTIES**

A. The individual or corporation appointed by the court to serve as the guardian shall carry out diligently and in good faith, the general duties and responsibilities; shall at all times be subject to the control and direction of the court; and, shall act in accordance with the provisions of any guardianship plan if one is filed with the court.

B. The guardian shall:

1. Become and remain personally acquainted with the ward, the spouse of the ward and other interested persons associated with the ward and who are knowledgeable about the ward, the ward's needs, and the ward's responsibilities.
2. Exercise authority only as necessitated by the ward's limitations.
3. Encourage the ward to participate in making decisions affecting the ward.
4. Encourage the ward to act on the ward's own behalf to the extent the ward is able.
5. Encourage the ward to develop or regain the skills and abilities necessary to meet the ward's own essential needs and to otherwise manage the ward's own affairs.

C. In making decisions on behalf of the ward, the guardian shall:

1. Consider the expressed desires and personal values of the ward to the extent known to the guardian.
2. Strive to assure that the personal, civil, and human rights of the ward are protected.
3. At all times act in the best interests of the ward and exercise reasonable care, diligence and prudence.



D. The guardian shall exercise all powers and discharge all duties necessary or proper to implement the following provisions:

1. Take charge of the person of the ward, and provide for the ward's care, treatment, habilitation, education, support and maintenance.
2. Consider and provide on behalf of the ward necessary or required consents or refuse the same.
3. Assure the ward resides in the least restrictive setting appropriate to the needs of the ward and which are reasonably available.
4. Assure the ward receives any necessary and reasonably available medical care and, any reasonably available non-medical care or other services as may be needed to preserve the health of the ward or to assist the ward to develop or retain skills and abilities.
5. Promote and protect the comfort, safety, health and welfare of the ward.
6. Make necessary determinations and arrangements for and give necessary consents for the ward's funeral arrangements, burial or cremation, the performance of an autopsy upon the body of the ward, and anatomical gifts of the ward. Cremation, autopsies and anatomical gifts are subject to limitations and provisions in other areas of the law.

E. The guardian shall file with the court at intervals indicated by the court, but not less often than annually, a report which shall contain statements indicating:

1. The ward's current mental, physical, and social condition.
2. The ward's present living arrangement and a description and the address of every residence where the individual lived during the reporting period and the length of stay at each residence.
3. An assessment of the adequacy and appropriateness for the ward of treatment and residential programs in the ward's current residence and a statement on whether the ward



will continue to live at the current residence or whether the guardian recommends a more suitable alternative residence.

4. A summary of the ward's medical, educational, vocational, and other professional services given to the individual.
 5. A resume of the guardian's visits with and activities on behalf of the individual.
 6. A recommendation as to the need for continued guardianship.
 7. An accounting of all financial transactions made by the guardian involving the ward's estate.
 8. Other information requested by the court or useful in the opinion of the guardian.
 9. The guardian shall be given access to information, reports and records from facilities, a community mental health board or agency, court staff, a public or private entity or agency, or a suitable person that are necessary for the guardian to perform his or her duties.
- F. The court shall review the report on the record, in open court, after notice is given to all interested parties. If the court desires to make any changes to the guardianship, the court will hold a hearing after notice to all interested parties.

SECTION VII. LIMITATIONS OF POWERS OF A GUARDIAN

- A. Only the court shall have the power to:
1. Consent to the marriage or divorce of the ward.
 2. Consent to the termination of the ward's parental rights.
 3. Consent to the performance of any experimental biomedical or behavioral procedure on the ward, or to the ward participating in any biomedical or behavioral



experiment, without prior review and approval by an institutional review board or by a review committee established by the agency, institution or treatment facility where the procedure or experiment is to occur.

B. Unless approved by the court, a guardian shall not have the power on behalf of the ward to:

1. Consent to the adoption of the ward.
2. Exercise any control or authority over the ward's estate.
3. Consent to any psychosurgery, removal of a bodily organ, or amputation of a limb, unless, the surgery, removal or amputation has been approved in advance by the court, except in an emergency and when necessary to preserve the life of the ward or to prevent serious and irreparable impairment to the physical health of the ward.
4. Consent to the sterilization of the ward, unless approved by the court following a due process hearing where the ward is represented by a court appointed attorney.
5. Consent to the withholding or withdrawing of life-saving or life-sustaining medical care, treatment, services or procedures, except in accordance with the provisions of any declaration of the ward making a Living Will; or, if the ward, before the appointment of a guardian, executed a durable power of attorney for health care decisions and the document was not revoked by the ward and it includes any provision relevant to the withholding or withdrawal of lifesaving or life-sustaining medical care, treatment, services or procedures.
6. To exercise any control or authority over the ward's estate, unless the court authorizes such specific authority.

SECTION VIII. GUARDIAN LIABILITY

The guardian shall not be personally liable to a third person for the acts of the ward solely by virtue of the guardian's appointment, nor shall a guardian who exercises reasonable care in

selecting a third person to provide any medical or other care, treatment or service for the ward be liable for any injury to the ward resulting from the wrongful conduct of that third person.

SECTION IX. GENERAL DUTIES, RESPONSIBILITIES, POWERS AND AUTHORITIES OF A CONSERVATOR

- A. The individual or corporation appointed by the court to serve as the conservator:
1. Shall carry out diligently and in good faith, the general duties and responsibilities.
 2. Shall at all times be subject to the control and direction of the court.
 3. Shall act in accordance with the provisions of any conservatorship plan if one is filed with the court.
- B. The court shall have the authority to appoint counsel for the conservator, and the fees of the attorney may be assessed as costs.
- C. The shall mandate the following of a conservator:
1. Become aware of the conservatee's needs and responsibilities.
 2. Exercise authority only as necessitated by the conservatee's limitations.
 3. Encourage the conservatee to participate in making decisions affecting the conservatee to the extent the conservatee is able.
 4. Encourage the conservatee to develop or regain the skills and abilities necessary in order for the conservatee to be able to manage the conservatee's own estate to the extent the conservatee is able.
- D. Conservators in making decisions on behalf of the conservatee shall:
1. Consider the expressed desires and personal values of the conservatee to the extent known to the conservator.

2. Strive to assure that the personal, civil, and human rights of the conservatee are protected.

3. At all times act in the best interests of the conservatee and exercise reasonable care, diligence and prudence.

4. File with the court an initial inventory of all of the property, assets and any sources of regular income of the conservatee's estate.

5. File with the court annual accountings and other reports concerning the status of the estate and the actions of the conservator.

E. In fulfilling the general duties and responsibilities the conservator shall:

1. Pay the reasonable charges for the support, maintenance, care, treatment, habilitation and education of the conservatee in a manner suitable to the conservatee's station in life and value of the conservatee's estate.

2. Pay all just and lawful debts of the conservatee and the reasonable charges for the support, maintenance, care, treatment, habilitation and education of the conservatee's spouse and minor children.

3. Possess and manage all the assets of the estate and collect all debts and assert all claims in favor of the conservatee, and, with the court approval, settle or compromise the same.

4. Conservator shall keep any property of the conservatee's estate insured against theft, other loss or damage, in reasonable amounts based on the value of the estate, and for the benefit of the conservatee or the conservatee's estate.

5. Prosecute or defend all actions in the name of the conservatee or as necessary to protect the interests of the conservatee.

6. Sell assets of the conservatee's estate when the interests of the conservatee or the conservatee's estate require the sale thereof.

7. Possess or manage any ongoing business that the conservatee was managing and operating prior to the appointment of the conservator, and divest the conservatee's estate of any interest therein, with court approval, when the conservator deems it in the best interests of the conservatee or the conservatee's estate.

SECTION X. LIMITATIONS ON CONSERVATOR POWERS

A. A conservator shall have the power, with court approval, to:

1. Sell, convey or mortgage any real estate within the conservatee's estate or the conservatee's homestead interest.

2. Lease the possession or use of any real estate within the conservatee's estate.

3. Sell, convey, lease or mortgage any oil, gas or other mineral interest within the conservatee's estate.

4. Sell, convey, lease or mortgage, the inchoate interest of the conservatee.

5. Extend an existing mortgage in favor of the conservatee or conservatee's estate, for a period of more than five years.

6. Make any gift on behalf of the conservatee.

7. Set up an irrevocable trust to enable the ward to qualify for public benefits.

SECTION XI. CONSERVATOR LIABILITY

A. The conservator shall not be personally liable:

1. For the wrongful conduct of a third person whom the conservator selects to provide any service to the conservatee's estate, if the conservator exercises reasonable care in making that selection.
2. On a mortgage note executed by the conservator in his or her representative capacity as authorized by the court.
3. On a contract entered into by the conservator in his or her representative capacity unless the conservator fails to disclose the fiduciary relationship.
4. For obligations arising from ownership or control of the estate or other acts or omissions occurring during its administration, unless the conservator is personally at fault.
5. For any environmental condition on land owned or acquired by the estate.
6. For retaining until maturity any investment which was a part of the conservatee's estate at the time the conservatorship was established even though the investment may not be considered prudent or reasonable.

SECTION XII. PROCEDURES FROM PETITION TO APPOINTMENT OF GUARDIAN OR CONSERVATOR

A. A Petition requesting for a guardian or conservator to be appointed shall include but not limited to the name and address of the proposed ward or conservatee, reasons why the need exists, names and addresses of immediate family, the extent of the estate of the proposed ward or conservatee, and the names and addresses of those who can provide testimony that the person needs a guardian or conservator.

B. The petition shall also include the name, age, date of birth, gender, address, place of employment, relationship to the petitioner, if any, of the individual or corporation whom the petitioner suggests the court appoint as the guardian or conservator, and any personal or agency interest of the proposed guardian or conservator that may be perceived as self-serving or adverse to the position or best interest of the proposed ward or conservatee.

C. The court shall order the following:

1. The date, time and place of the hearing on the petition that shall be held within 30 days of the filing of the petition.
2. Appearance of the proposed ward or proposed conservatee at the hearing, unless there is a court finding that the person's presence will be injurious to the person's health or welfare.
3. Appointing of an attorney
4. an order fixing the date, time and a place for the proposed ward or proposed conservatee to consult with his or her court appointed attorney
5. an order for an examination and evaluation if no report accompanies the petition, or if the court finds that the examination and evaluation does not meet statutory requirements.

D. Examination and evaluation report should contain a description of the person's physical and mental condition, cognitive and functional abilities and limitations, adaptive behaviors, social skills, educational and developmental potential, prognosis for improvement and recommendation for treatment or rehabilitation as appropriate. The professional completing the report must also state his or her opinion as to whether the person is impaired and in need of a guardian or conservator, or both, and whether the person could meaningfully participate in the proceedings.

E. The court shall send notices to all persons involved in the hearing, proposed ward or conservatee, attorney of the proposed ward or conservatee, and any other persons whom the court believes it appropriate. The proposed ward or conservatee has a right to be present. This notice must be personally served on the proposed ward or conservatee and the attorney of the proposed ward or conservatee.

F. The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure.



G. If at the completion of the hearing, the judge may find that by clear and convincing evidence the proposed ward or conservatee has not been shown to be an adult in need of a guardian or conservator, the court shall terminate the proceedings. If, however, the court or the jury finds by clear and convincing evidence that the proposed ward or conservatee is need of a guardian or conservator, the court shall set forth the findings of fact in the court's order and issue the appropriate letters.

H. Before the letters of guardianship or conservatorship or both are issued, the individual or the corporation that is to be appointed guardian or conservator shall file a written oath reflecting that they will faithfully discharge all duties assigned by the court.

I. The Court shall, by Judiciary Court rule, establish a schedule of payment for services as a guardian, conservator or both.

J. If the conservator assumes responsibility for some or all of the estate of the conservatee, the court shall require the filing of a bond in such an amount as the court may direct.

K. Within a thirty day period after appointment, the conservator, as a fiduciary, shall file with the court an initial inventory of all the property and assets of the conservatee's estate.

SECTION XIII. GUARDIANSHIP AND CONSERVATORSHIP PLANS

A. At any time the court may require the guardian or the conservator, or the guardian or conservator may at any time choose to develop and file with the court a plan of care of the ward.

B. A guardianship or a conservatorship plan may not be required in every case, however, in those cases where the person is capable of making some decisions, the plan can set out which decisions should be left to the individual.

C. The guardianship plan may provide for, but need not be limited to provisions regarding where the ward will reside, what restrictions may be placed upon the persons with whom the ward may associate and how much autonomy the ward will have to make decisions regarding, for example, employment, education and travel. The plan may also contain provisions regarding use of the ward's financial assets if no conservator has been appointed.



D. A conservatorship plan may include provisions regarding the type and amount of funds over which the conservatee may have control, and how the conservator may protect the eligibility of the conservatee for public benefits.

E. Once a plan is filed, the court may order notice to all interested parties, and may also order a hearing if requested.

F. The court may order a plan to be withdrawn or amended.

SECTION XIV. REVIEW PROCEDURE BY THE COURT

A. The court, on an regular basis, but not less than annually shall require a report that contains a review of any guardianship or conservatorship plan, prior orders in the case, and any accountings and previous reports or accountings, including all costs and fees charged by the guardian or conservator or both.

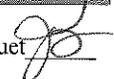
B. The court is to determine whether the report or accounting shows reasonable administration of the guardianship or conservatorship, whether the fiduciary is performing his or her duties and responsibilities, and whether the fiduciary's powers should be expanded or limited or any other modifications made.

C. The court may then set a hearing on the matter.

D. In addition to the usual annual reports and accountings, the court may order additional filing of a special report or accounting if specific circumstances require it.

E. The court will require a reporting of any of the following:

1. Change of address of the guardian or conservator.
2. Change of residence or placement of the ward or conservatee.
3. Significant change in the health or impairment of the ward or conservatee.



4. The acquisition, receipt or accumulation of property or income by the ward which would cause the value of the ward's estate to equal or exceed \$10,000.
5. The death of the ward or conservatee.
6. A change in the circumstances of the guardian, or conservator, ward or conservatee that may constitute a conflict of interest.

SECTION XV. RESTORATION TO CAPACITY PROCEDURES

- A. An adult in need of a guardian or a conservator, or both, may be restored to capacity.
- B. Upon a petition being filed, the court must review to determine whether probable cause exists to warrant further proceedings. If probable cause is found, the court shall set the petition for hearing and may appoint an attorney for the ward or conservatee. If probable cause does not exist, the court may dismiss the petition.
- C. At the conclusion of the hearing, if the court does not find by clear and convincing evidence, that the ward or conservatee is an Adult with an impairment in need of a guardian or a conservator, or both, the court shall order that the ward or conservatee is restored to capacity and shall proceed to terminate the guardianship or conservatorship, or both.

SECTION XVI. TERMINATION OF GUARDIANSHIP AND CONSERVATORSHIP

- A. The court at any time may enter an order summarily terminating a guardianship or a conservatorship in any of the following circumstances:
 1. The ward or conservatee is deceased.
 2. No further need for the guardianship or conservatorship exists.

SECTION XVII. COSTS AND FEES

A. The court may require payment of costs and fees for filing a petition with the court. Costs and fees may be waived if a person is unable to pay by reason of indigence. Any costs for filing of a petition by the department shall be waived.

B. Costs and fees may be allowed for the following:

1. Any professional services ordered performed by the court.
2. Counsel for the proposed ward or proposed conservatee when counsel is appointed by the court.
3. Counsel for the petitioner and any respondent.
4. Other costs and fees may be allowed and paid as are allowed by law for similar services in other cases.

C. The costs shall be taxed to the estate of the proposed ward or conservatee, to those bound by law to support the proposed ward or conservatee, to other parties whenever it would be just and equitable to do so.

SECTION XVIII. SAVING CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution, laws, ordinances or statutes of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be deleted from this statute, the entirety of the balance of the statute to remain in full and binding force and effect.

SECTION XIX. EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

CERTIFICATION

As the Tribal Council Treasurer and Tribal Council Secretary, we certify that this Statute was duly passed by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on October 08, 2015 at which a quorum was present, by a vote of 7 in favor, 0 opposed, 0 abstentions, and 1 absent as recorded by this roll call:

	<u>In Favor</u>	<u>Opposed</u>	<u>Abstained</u>	<u>Absent</u>
Bill A. Denemy	X			
John W. Keshick III	X			
Beatrice A. Law	X			
Michael J. Naganashe	X			
Aaron Otto	X			
Winnay J. Wemigwase				X
Julie A. Shananaquet	X			
Marcella R. Reyes	X			

Date: 10-8-2015 Marcella R. Reyes
 Marcella R. Reyes, Treasurer

Date: 10-8-15 Julie Shananaquet
 Julie A. Shananaquet, Secretary

Received by the Executive Office on 10-9-15 by JL-J-K

Pursuant to Article VII, Section D, Subsection 1 of the Little Traverse Bay Bands of Odawa Indians Constitution adopted on February 1, 2005 the Executive concurs in this action of the Tribal Council.

Date: 10-12-15 Regina Gasco Bentley
 Regina Gasco Bentley, Tribal Chairperson