

DRAFT
REVISED NORTHERN CHEYENNE LAW
& ORDER CODE

TITLE 9
DOMESTIC RELATIONS CODE

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TITLE 9

DOMESTIC RELATIONS CODE

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TITLE 9
DOMESTIC RELATIONS CODE

Chapter 1. MARRIAGE

9-1-1. Short Title.

This Code may be cited as the Northern Cheyenne Uniform Marriage and Divorce Act.

9-1-2. Purpose.

This act will be liberally construed and applied to promote the following:

- A. Provide adequate procedures for the solemnization or declaration and registration of marriage;
- B. Strengthen and preserve the integrity of marriage and safeguard family relationships;
- C. Promote the amicable settlement of disputes that have arisen between parties to a marriage;
- D. Mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;
- E. Make reasonable provision for spouses and minor children during and after litigation; and
- F. Make the law of legal dissolution of marriage effective for dealing with the realities of matrimonial experience by making irrevocable breakdown of the marriage relationship the sole basis for its dissolution.

9-1-3. Application of the Northern Cheyenne Code of Civil Procedure

- A. The Northern Cheyenne Code of Civil Procedure applies to all proceedings under this Code unless otherwise provided in this Code.
- B. A proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage will be titled: "In Re The Marriage of _____ and _____." A custody or support proceeding will be titled: In Re the Custody or Support of _____."
- C. The initial pleading in all proceedings under this Code will be denominated a petition. A responsive pleading will be denominated a response. Other pleadings, and all pleadings in other matters under this Code will be denominated as provided in the Civil Procedure Code.

9-1-4. Uniformity of Application and Construction. This act will be applied and construed to effectuate its general purpose to make uniform law with respect to the subject of this act among the Tribes and other jurisdiction which enact it.

9-1-5. Formalities. Marriage is a personal relationship between a man and woman arising out of a civil contract to which the consent of the parties is essential. A marriage license, solemnized or declared and registered and provided in this act is valid in the Northern Cheyenne Tribe. A marriage may be contracted, maintained, invalidated, or dissolved only as provided by the law of the Northern Cheyenne Tribe.

9-1-6. Form of Application, License, Certificate and Consent.

A. The Trial Court will prescribe the form for an application for a marriage license, which must include the following information:

- 1) Name, sex, address, date and place of birth of each party to the proposed marriage;
- 2) If either party has previously married, his name and the date, place and court in which the marriage was dissolved or declared invalid or the date and place of the former spouse;
- 3) Name and address of the parents or guardian of each party;
- 4) Whether the parties are related to each other, if so, their relationship;
- 5) Name and date of birth of any child, of whom both parties are parents, born prior to the making of the application unless their parental rights and the parent and child relationship with respect to the child have been terminated.
- 6) Each applicant must provide a medical certification from a qualified physician who is licensed to practice medicine or any other person authorized by law to make such a medical certificate, which certificate must state that the applicant has been given such an examination, including a standard serological test which will consist of a tests of rubella immunity and syphilis, made not more than twenty (20) days before the date of issuance of the license, and that the report of the results of serological tests has been exhibited to the applicant and that each party to the proposed marriage contract has examined the report of the serological test of the other party to the proposed contract.

B. The Court will provide the forms for the marriage license, the marriage certificate, and consent to marriage or the declaration of marriage.

9-1-7. License to Marry. When a marriage application has been completed and signed by both parties to a prospective marriage, and at least one party has appeared before the Court Clerk, the Clerk must issue the license to marry.

9-1-8. Effective date of License. A license to marry becomes effect throughout the Northern Cheyenne Reservation three days after the date of issuance, unless the Court orders the license is effective when issued, and expires 180 days after it becomes effective.

9-1-9. Judicial Approval.

- A. Any person eighteen (18) years or older is eligible to apply for a license to marry. In addition, the Court may order the Court clerk to issue a marriage license and a marriage certificate form to a party aged sixteen (16) or seventeen (17) years who has no parent capable of consent to the marriage, or has the consent of both parents, or of the parent having actual care, custody, and control, or of his guardian. The Court may require both parties to participate in a reasonable period of marriage counseling with a designated person as a condition of the order for issuance of marriage license and a marriage certificate form.
- B. A marriage license and a marriage certificate form may be issued under this section only if the Court finds that the under-aged party is capable of assuming the responsibilities of marriage and that marriage will serve his best interest. Pregnancy alone does not establish that the best interest of the party will be served.
- C. The Court will authorize performance of a marriage by proxy upon the showing required solemnization provisions.

9-1-10. Solemnization and Registration.

- A. A marriage may be solemnized by a Judge of the Northern Cheyenne Court or public official who is authorized to solemnized marriages, which include: Justice of the Peace; solemnization recognized by any religious denomination, Tribal Government. Either the person solemnizing the marriage, or if no individual acting alone solemnized the marriage, a party to the marriage must complete the marriage certificate form and forward it to the Clerk of Court.
- B. If a party to the marriage is unable to be present at the solemnization he may authorize in writing a third person to act as his proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage he may solemnize the marriage by proxy. If he is not satisfied, the parties may petition the Court of an order permitting the marriage to be solemnized by proxy.
- C. Upon receipt of the marriage certificate, the Clerk of Court must register the marriage.
- D. The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it if either party believed him qualified. No particular form of solemnization

is required so long as both parties declare in the presence of the person solemnizing the marriage that they take each other as husband and wife.

9-1-11. Existing Marriages.

- A. All marriages performed other than as provided for in this Code, which are valid under the laws of the jurisdiction where and when performed, are valid within the jurisdiction of the Northern Cheyenne Tribe.
- B. All marriages performed on the Reservation prior to the effective date of this Code, including those performed under tribal custom, are valid for purposed of this Code.

9-1-12. Declaration of marriage without Solemnization.

- A. A person desiring to consummate a marriage by written declaration with the solemnizations provided for in 9-1-10 must, prior to executing the declaration, meet all of the provisions of the Northern Cheyenne Domestic Relations Coe, and a certificate attesting to this must be attached to the declaration and must be filed by the Clerk of court when the contract is executed on the Northern Cheyenne Reservation. A declaration of marriage must contain the following:
 - 1) The names, ages, and residence of the parties;
 - 2) The fact of the marriage;
 - 3) The name of the father and maiden name of the mother of both parties and addresses of each;
 - 4) A statement that both parties are legally competent to enter into the marriage of contract.
- B. The declaration must be signed by the parties and attested by at least two witnesses and formally acknowledged before a Judge of the Northern Cheyenne Court.

9-1-13. Declaration- Acknowledged and Recorded. The written declaration of marriage must be filed by the Clerk of Court and must serve and be processed as an official record of the marriage of the parties so long as all appropriate provisions of this Code are met.

9-1-14. Validity of Common Law Marriage. Common law marriages are not invalidated by this Code. It is the burden of the party seeking to have the common law marriage recognized to prove that a common law marriage existed by establishing: 1) holding themselves out as a married couple; 2) cohabitation; 3) property held as jointly; and 4) no impediments exist to the marriage.

9-1-15. Prohibited Marriages.

- A. The following marriages are prohibited:
- 1) A marriage entered into prior to the dissolution of an earlier marriage of one or more parties.
 - 2) Marriages between parents and children, between brothers and sisters of the one-half as well as the whole blood, and between uncles and nieces, or aunts and nephew, are incestuous and void from the beginning, whether the relationship is legitimate or illegitimate.
 - 3) All marriages between first cousins.
- B. Parties to a marriage prohibited under this section who cohabit after the removal of the impediment are lawfully married as of the date of the removal of the impediment.
- C. Children born of prohibited marriages are legitimate.

9-1-16. Declaration of Invalidity.

- A. The Court must enter its decree declaring the invalidity of a marriage entered into under the following circumstances:
- 1) A party lacked the capacity to consent to marriage because of the influence of alcohol, drugs or other incapacitating substances, or a party was induced to enter into a marriage by force or duress, or by fraud involving the essentials of marriage; or
 - 2) A party lacked the physical capacity to consummate the marriage by sexual intercourse, and at the time of the marriage was entered into, the other party did not know of the incapacity; or
 - 3) A party was under the age of sixteen (16) or was age sixteen (16) or seventeen (17) and did not have the consent of the parents, or guardian or judicial approval; or
 - 4) The marriage is prohibited.
- B. A declaration of invalidity may be sought by either party, the legal spouse in case of a bigamous marriage, the Tribal Prosecutor, or a child of either party, at any time prior to the death of one of the parties.
- C. Children born of a marriage declared invalid are legitimate.
- D. In no event may a declaration of invalidity be sought after the death of either party to the marriage.

- E. A marriage declared invalid under this Code will be found invalid as of the date of the marriage, except the Court may determine that a non-retroactive decree better serves the interest of all the parties under the circumstances. The provision of the Code relating to the property disposition, maintenance, support and child custody on dissolution of marriage are applicable to decrees of invalidity.

9-1-17. Putative Spouse. Any person who has cohabitated with another whom he is not legally married and had a good faith belief that he was married to that person is a putative spouse until knowledge of the fact he was not legally married terminated his status and prevents acquisition of further right. A putative spouse acquires the rights conferred upon a legal spouse. If there is a legal spouse or other putative spouse the Court will apportion property, maintenance, and support rights among the parties a appropriate under the circumstances.

Chapter 2. DISSOLUTION OF MARRIAGE, SEPARATION, DISPOSITION OF PROPERTY, CHILD SUPPORT, MAINTENANCE

9-2-1. Dissolution of Marriage- Separation.

- A. The Court will enter a decree of dissolution of marriage when:
 - 1) The Court determines that one of the parties, at the time the action is commenced, has been domiciled within the Northern Cheyenne Reservation for 90 days;
 - 2) The Court finds that the marriage is irretrievably broken, and these findings are supported by evidence; and
 - 3) The Court has made determinations concerning child custody and support, maintenance of either spouse, and disposition of property, or set a date for a separate hearing to complete such matters.
- B. If a party requests a decree of separation rather than a decree of dissolution of marriage, the Court must grant the decree in that form unless the other objects.

9-2-2. Procedure - Commencement Pleadings-Abolition of Existing Defenses.

- A. The certified petition in proceeding for dissolution of marriage or separation must allege the marriage is irretrievably broken and must set forth the following:
 - 1) The age, occupation, residence of each party and duration of residence on the Northern Cheyenne Reservation;
 - 2) The date of the marriage and the place at which it was registered;
 - 3) Facts which establish the Northern Cheyenne Tribal Court has jurisdiction, citing appropriate sections of this Code;

- 4) A statement that the marriage is irretrievably broken;
 - 5) The names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;
 - 6) Any arrangements as to support, custody and visitation, and maintenance; and
 - 7) The relief sought, as described in 9-2-1 A or B.
- B. Either or both parties to the marriage may initiate the proceeding.
- C. If a proceeding is commenced by one of the parties, the other party must be served in the matter provided by the Northern Cheyenne Civil Procedure Code, and may, within twenty (20) days of receiving the service, file a response. No decree can be entered until twenty (20) days after the date of service.
- D. Previously existing defenses to divorce and separation, including but not limited to connivance, collusion, recrimination, insanity and lapse of time are abolished.
- E. The Court may join additional parties to gather information in order to exercise its authority to implement this Code.

9-2-3. Temporary Order to Temporary Injunction.

- A. In a proceeding for dissolution of marriage or separation, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion must be accompanied by an affidavit setting forth the factual basis for the motion and amounts requested.
- B. Either as a part of the motion for temporary maintenance or support, or by a separate motion accompanied by an affidavit as a factual basis for the motion, either party may request the Court to issue a temporary injunction which:
- 1) Restrains any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and if so restrained, requiring him to notify the moving party of any extraordinary expenditures made after the order is issued;
 - 2) Enjoins a party from disturbing the peace of the other party, a child or any person concerned in the proceeding;
 - 3) Excludes a party from the family home or from the home of one of the parties upon the showing that physical or emotional harm would otherwise result;

- 4) Enjoins a party from removing a child from the jurisdiction of the court; or
 - 5) Provides other injunctive relief under the circumstances.
- C. The court may issue a temporary injunction without requiring notice to the other party if it determines that irreparable injury will result to the moving party if the injunction is not issued immediately.
- D. A response may be filed within twenty (20) days after service or at a time specified in the temporary injunction.
- E. On the basis of the facts alleged in accordance with this section, the Court may issue a temporary maintenance or support order, or a temporary injunction in amounts and on term just and proper in the circumstances.
- F. A temporary order or temporary injunction:
- 1) Does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings on the proceedings;
 - 2) May be revoked or modified before final decree on the showing by sworn affidavit of the facts necessary to revocation or modification of a final decree under this Code;
 - 3) Terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

9-2-4. Irretrievable.

- A. If both or one of the parties have stated under oath, affirmation, by petition or otherwise that that the marriage is irretrievably broken, and the other party has not denied it, the Court must determine whether the marriage is irretrievably broken.
- B. If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken the Court must consider all relevant factors as to the prospect for reconciliation and will:
- 1) Determine whether the marriage is irretrievably broken; or
 - 2) Continue the matter for further hearing no earlier than thirty (30) days but before sixty (60) days from the date that the denial of irretrievable breakdown is received. The Court may recommend the parties seek counseling. At the next hearing date the Court must make a finding of whether or not the marriage is irretrievably broken.
- C. A finding of irretrievable breakdown is a determination that there is no reasonable prospect of reconciliation.

9-2-5. Separation Agreement.

- A. To promote amicable settlement of disputes between parties the parties may enter into a written separation agreement containing provision for disposition of property, support, custody and visitation of their children, and maintenance.
- B. In a proceeding of dissolution of marriage or fore legal separation, the terms of the separation agreement, except those providing for the support, custody, and visitation of children, are binding upon the Court unless if finds that due to the economic circumstances of the parties or any relevant circumstances that the separation agreement is unconscionable.
- C. If the Court finds the separation agreement is appropriate under the circumstances:
 - 1) Its terms must be set forth in the decree of dissolution or legal separation and the parties will be ordered to perform them, except when the agreement it self provides to the contrary;
 - 2) If the agreement provides that its terms will be set forth in the final decree, the decree must identify the agreement, and incorporate the terms in the final decree, stating that the terms are appropriate under all of the circumstances.
- D. Terms of the agreement set forth in the decree are viewed as a contract and are enforceable bay all remedies available for enforcement of a judgment, including contempt of court.
- E. If the Court finds that the separation agreement is not appropriate under all of the circumstances it may request the parties to submit to a revised agreement or make order for the disposition of property, maintenance, and support.
- F. Except for terms concerning the support, custody, or visitation of children, the decree may expressly preclude or limit modification of terms set forth in the decree if the separation agreement expressly states that preference.

9-2-6. Disposition of Property.

- A. In a proceeding or a dissolution of marriage, separation, or disposition of property following a decrees of dissolution of marriage or separation the Court, without regard to marital misconduct, will apportion between the parties all property and assets of the marital estate acquired by either or both during the marriage whether the title is in the name of the husband, wife or both, except as otherwise provided by law. In making the apportionment, the court must consider:
 - 1) The duration of the marriage;

- 2) Antenuptial agreements, if any, of the parties;
 - 3) The age, health, occupation, amount and source of income, skills and employability, liabilities and needs of the parties;
 - 4) Child custody provisions; and the child support provisions;
 - 5) Whether or not the apportionment is in lieu of or in addition to maintenance;
 - 6) The contribution of dissipation of value of the respective estates; and
 - 7) The contribution of a spouse as a homemaker or the family unit.
- B. The Court may protect and promote the best interest of a child by setting aside a portion of the property or assets or either or both parties in a separate fund or trust for the support, maintenance, education, and general welfare of any minor, dependent, or incompetent children of the parties.
- C. Property of the Marital Estate. Property acquired during the marriage of both parties is considered property of the marital estate and subject to disposition and apportionment in this Title. However, property received through an inheritance or gift to the party is not considered part of the estate, unless provided to both parties. Property acquired before the marriage is not considered part of the marital estate, unless the property, such as an account, transformed to the marital estate through both parties contribution and usage of the account.

9-2-7. Maintenance.

- A. In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following a final decree in a dissolution of marriage the Court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:
- 1) Lacks sufficient property to provide for his reasonable needs; and
 - 2) Is unable to support himself through appropriate employment or is a custodian of a child whose condition or circumstances make it appropriate that the custodian not seek employment outside the home.
- B. The maintenance order will be in an amount and for a period of time that the Court deems just, without regard to marital misconduct, (unless where authorized by law) after considering all relevant facts, including:
- 1) The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with he party includes a sum of the a child's custodian;

- 2) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;
- 3) The standard of living established during the marriage;
- 4) The duration of the marriage;
- 5) The age, and physical and emotional condition of the spouse seeking maintenance; and
- 6) The ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

9-2-8. Child Support. In a proceeding for dissolution of marriage, separation, maintenance or child support, the Court may order either or both parents owing a duty of support to pay an amount reasonable or necessary for his support, without regard to marital misconduct, and after considering all relevant circumstances.

9-2-9. Representation of the Child. The Court may, upon its own motion or the motion of an interest person, appoint an attorney or lay counselor to represent the interest of the a minor child. The Court may enter an order for expenses and fees in favor of the child's attorney or lay counselor. The order may be charge either one or both of the parents except when one or both or indigent.

9-2-10. Payment of Maintenance or Support to the Court

- A. Upon its own motion or upon the motion of either party, the Court may order at any time that the maintenance or support payment will be paid to the Clerk of Court as a trustee for the remittance to the person entitle to receive the payments.
- B. The Clerk of Court must maintain records showing the amount of the payments, the date payments are required to be made, the date payment are received by the Court, and the date of distribution of the payment to the person entitled to receive the payment, and the names and addresses of the parties affected by the order.
- C. The parties subject to the order must inform the Clerk of Court of any change of address or other condition, which may affect the administration of the order.

9-2-11. Assignments. The Court may order the person obligated to pay support or maintenance to make an assignment of a part of his periodic earnings or trust income to the person entitled to receive the payments. The assignment is binding on an employer, trustee, or other payer of the funds two (2) weeks after the service upon him of notice that it has been made. The payer must withhold from the earning or trust income payable to

the person obligated to support the amount specified in the assignment, and must transmit the payment to the person specified in the order. The payer may deduct from each payment a sum not exceeding one (\$1.00) dollar as reimbursement of cost. An employer must not discharge or otherwise discipline an employee as a result of a wage or salary wage assignment authorize by Court order.

9-2-12. Cost – Attorneys Fees. The Court after considering the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this Code and for attorney’s fee, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

9-2-13. Decree.

- A. A decree of dissolution of marriage or separation is final when entered, subject to the right of appeal. Appeal from the decree of dissolution which does not challenge the finding that the marriage is irretrievably broken does not delay the finality of the provision of the decree which dissolves the marriage beyond the time for appealing from that provision. Either party may remarry pending appeal.
- B. After (6) months entry of a decree of separation, the Court must convert the separation to a decree of dissolution of marriage.
- C. The Clerk of Court must give notice of the entry of the decree of dissolution or separation to the appropriate official where the marriage is registered with the request that the fact of dissolution in the appropriate record.
- D. Upon request by a wife whose marriage is dissolved or declared in valid, the Court may order her maiden name or former name restored.

9-2-14. Independence of Provision of Decree or Temporary Order. If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party as to payments for support or maintenance or to permit visitation is not suspended; but he may move the Court to grant an appropriate order.

9-2-15. Modification and Termination of Provision of Maintenance, Support, and Property Disposition.

- A. Except as otherwise provided in this Code, the provision of any decree concerning maintenance or support may be modified by a Court only as to

installments accruing subsequent to the motion for modification and either:

- 1) Upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable; or
 - 2) Upon written consent of the parties. The provision as to property disposition may not be revoked or modified by the Court except:
 - i. Upon written consent of the parties; or
 - ii. If the Court finds the existence of conditions that justify a reopening of a judgment under the Northern Cheyenne Code.
- B. Unless otherwise agreed in writing or expressly provided in the decree, the obligations to pay future maintenance is terminated upon the death of either party or the remarriage or cohabitation with another person of the party receiving maintenance.
- C. Unless otherwise agreed in writing or expressly provided in the decree, provision for the support of a child are terminated by emancipation of the child, but not by the death of the parent obligated to support the child. When a parent obligated to pay support dies, the amount for support may be modified, revoked or commuted to a lump sum payment to the extent that the Court determines is appropriate in the circumstances.

Chapter 3. CHILD CUSTODY

9-3-1. Jurisdiction – Commencement of Proceedings.

- A. The Northern Cheyenne Tribal Court has jurisdiction to make a child custody determination by initial or modification decree if:
- 1) The Northern Cheyenne Reservation:
 - i. is the home of the child at the time of commencement of the proceedings in Tribal Court; or
 - ii. has been the child's home six (6) months prior to the commencement of proceedings and the child is absent from this home because of the removal or retention by a person claiming custody or for other reasons, and a parent or person acting as parent continues to live within the Northern Cheyenne Reservation;
 - 2) It is in the best interest of the child that the Court assumes jurisdiction because:
 - i. The child and his parents or the child and at least one contestant have a significant connection with the Northern Cheyenne Reservation; and

- ii. There is substantial evidence concerning the child's present or future care, protection, training, and personal relationships available to the Court;
 - 3) The child is physically present within the Northern Cheyenne Reservation and:
 - i. has been abandoned; or
 - ii. it is necessary in an emergency to protect him because he has been subject to or threatened with mistreatment, abuse, neglect or is dependent; or
 - 4) No state, tribe or other government has jurisdiction under provision substantially in accord with this Code, or another state or reservation has declined to exercise jurisdiction on the grounds that the Northern Cheyenne Tribal Court is a more appropriate forum to determine custody of the child.
- B. Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine custody in the Northern Cheyenne Court.
- C. A child custody proceeding is commenced in the Court:
- 1) By a parent filing a petition for:
 - i. Dissolution or legal separation; or
 - ii. Custody of the child; or
 - 2) By a person other than a parent, but only if he is not in the physical custody of one of his parents.

9-3-2. Best Interest of the Child. The Court must determine custody in accordance with the best interest of the child; relevant factors include but are not limited to:

- A. The wishes of the child's parents;
- B. The wishes of the child as to his custodian;
- C. The interaction and relationship of the child with his parent or parents, his siblings, his extended family, and any other person who may significantly affect the child's best interest;
- D. The child's adjustment to his home, school and community;
- E. The mental and physical health of all individuals involved;
- F. Whether or not the child has been incorporated into the home of one of the parents.

9-3-3. Temporary Orders.

- A. A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in this Code. The court may award temporary custody after a hearing determining the best interest of the child, or if there is no objection, solely on the basis of the affidavits.
- B. If a proceeding for dissolution of marriage or a legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the Court finds that circumstances of the parents and the best interest of the child require that a custody decree be issued.
- C. If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any temporary order is vacated.

9-3-4. Interviews.

- A. The Court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation. The Court may permit counsel to be present at the interview. The Court must make a record of the interview and make that record part of the record of the entire proceeding.
- B. The Court may seek the advice of professional personnel, whether or not employed by the Court on a regular basis. The advice given must be in writing and made available by the Court to counsel upon request. The counsel may examine as a witness any professional personnel consulted by the Court.

9-3-5. Investigations and Reports.

- A. In contested custody proceedings, if a parent or child's custodian so requests, the Court may order an investigation and report concerning custodial arrangements of the child. The investigation and report may be made by the Northern Cheyenne Social Services or the appropriate county welfare department.
- B. The investigator may consult any person who may have information about the child and his potential custodial arrangements. Upon order of the Court the investigator may refer the child to professional personnel for evaluation and advice as to the best interest of the child. The investigator may consult with and obtain information from medical psychiatric or other expert persons who have served the child without obtaining the consent of the parent or the child's custodian, except the child must consent if he has reached the age of sixteen (16) unless the Court determines that he lacks the mental capacity to consent. The investigator's report may be received as evidence at the custody hearing.

- C. The Court must mail the investigator's report to counsel and to any party with a substantial interest in the outcome of the proceedings who is not represented by counsel, at least ten (10) days prior to the hearing. The investigator must make available to counsel and the appropriate parties not represented by counsel, the investigator's file of underlying data and reports, complete text of diagnostic information, and the names and addresses of all persons who the investigator has consulted. Any party to the proceeding may call the investigator and any person who he has consulted for cross-examination prior to the hearing.

9-3-6. Hearings.

- A. The Court may order one of the parties or both of the parties to pay the travel costs and other necessary expenses incurred by any person whose presence at the hearing the Court deems necessary to determine the best interest of the child.
- B. The Court must determine questions of law and fact without a jury. If it determines that a public hearing will be detrimental to the child's best interest, the Court may exclude the public from a custody hearing admitting only persons who have a direct and legitimate interest in the particular case or legitimate educational or research interest in the work of the Court.
- C. When the Court determines the child's welfare is best protected by keeping the records of interviews, reports, investigations, or testimony confidential in a custody proceeding, the Court may make an order sealing the record.

9-3-7. Parental Visitation.

- A. A parent not granted custody of the child is entitled to reasonable visitation rights unless after a hearing the Court determines that visitation would endanger the child's physical, mental, moral or emotional health.
- B. The Court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child. The Court must not restrict a parent's visitation rights unless it determines that the visitation would seriously endanger the child's physical, mental, moral or emotional health.

9-3-8. Grandparent – Extended Family – Former Custodian – Visitation.

Visitation rights may be granted to a child's grandparents, a former custodian, or extended family members when the Court finds such visitation to be in the best interest of the child.

9-3-9. Determination of Custody Upon Death of Custodial Parent.

- A. Upon the death of a parent granted custody of a child, the child becomes a ward of the Northern Cheyenne Reservation. The Northern Cheyenne Court may award physical custody to any of the following:

1. The noncustodial natural parent;
 2. The surviving spouse of the deceased custodial parent;
 3. A person nominated by the will of the deceased custodial parent;
 4. Any person nominated by the child if the child is at least twelve (12) years old;
 5. Any other person if that person has actual physical control over the child; or
 6. Any other party whom, upon showing of good cause, the Court permits to intervene as an interested party.
- B. The noncustodial parent must be a party in any proceeding brought under this Section.
- C. Upon the death of a parent granted custody of a child, any of the parties listed in Subsection (A) may request a custody hearing and seek custody of the child.

9-3-10 Award of Joint or Separate Custody. In custody disputes involving both parents of a minor child, custody must be awarded to the following according to the best interests of the child; and the Court may require the submission to the Court of a plan for the implementation of the custody order:

- A. To either parent. In making an award to either parent, the Court must consider, along with the factors set out in 9-3-2, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent and may not prefer a parent as custodian because of the parent's sex or tribal status.
- B. To both parents jointly pursuant to 9-3-11.

9-3-11. Joint Custody – Modification – Consultation with Professionals.

- A. Upon application of both parents for joint custody, the Court must consider whether or not joint custody is in the best interests of the minor child. If the Court declines to award joint custody it must state in its decision the reasons for denial of joint custody.
- B. For the purposes of this Section, "joint custody" means an order awarding custody of the minor child to both parents and providing that the residency of the child must be shared by the parents in such a way as to assure the child frequent and continuing (but not necessarily equal) contact with both parents.
- C. Any order for joint custody may be modified to terminate the joint custody.
- D. The Court may direct the parties to consult with appropriate professionals for the purpose of assisting the parties to formulate a plan for implementation of the custody order or to resolve any controversy that has

arisen in the implementation of a plan for custody, with the consent of both parties.

9-3-12. Access to Records by Noncustodial Parent. Access to records and information pertaining to a minor child, including but not limited to medical, dental, law enforcement and school records, may not be denied to a parent because such parent is not the child's custodial parent.

9-3-13. Judicial Supervision.

- A. Except as otherwise agreed to by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his education, health care, and religious training, unless the Court, after a hearing, finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or his emotional development significantly impaired.
- B. If both parents or all contestants agree to the order, or if the Court finds the absence of the order would cause a risk that the child's physical health would be endangered or his emotional development significantly impaired, the Court may order the Northern Cheyenne Social Services or the appropriate county welfare department to exercise continuing supervision over the case to assure that the custodial and/or visitation terms of the decree are carried out.

9-3-14. Modification.

- A. No motion to modify a custody decree may be made earlier than two (2) years after its date unless the Court permits it to be made on the basis of affidavits that there is reason to believe that the child's present environment may endanger seriously his physical, mental, moral or emotional health.
- B. The Court must not modify a prior custody decree unless it finds upon the basis of facts that have arisen since the prior decree or that were unknown to the Court at the time of the prior decree, that a change has occurred in the circumstances of the child or his custodian, and that modification is necessary to serve the best interests of the child. In applying these standards, the Court must retain the custodian appointed under the prior decree unless:
 - 1. The custodian agrees to the modification;
 - 2. The child has been integrated into the family of the petitioner with consent of the custodian; or
 - 3. Attorney fees and costs may be assessed against the party seeking modification if the Court finds that the modification action is vexatious and constitutes harassment.

9-3-15. Affidavit Practice. A party seeking a temporary custody order or modification of a custody decree must file an affidavit setting forth facts

supporting the requested order or modification and must give notice, together with a copy of his affidavit to other parties to the proceeding who may file opposing affidavits. The Court must deny the motion unless it finds an adequate cause for hearing the motion as established by the affidavits, in which case it must set a date for hearing on an order to show cause why the requested order or modification should not be granted.

9-3-16. Application.

- A. This Code applies to all proceedings commenced on or after the date of its approval by the Secretary of the Interior.
- B. This act applies to all pending actions and proceedings prior to its effective date on which a judgment has not been entered. Pending actions for dissolution of marriage or separation are deemed to have been commenced on the basis of irretrievable breakdown. Evidence adduced after the effective date of this Code must be in compliance with the Code.
- C. This Code applied to all proceedings commenced after its effective date for the modification of a judgment or order entered prior to the effective date of this Code.
- D. In any action or proceeding in which an appeal was pending or a new hearing was ordered prior to the effective date of this Code, the provisions in effect at the time of the order sustaining the appeal or the new hearing governing the appeal, the new hearing and any subsequent hearing or appeal.

Chapter 4. CHILD CUSTODY JURISDICTION

9-4-1. Purpose – Construction.

- A. The general purposes of this Section are to:
 - 1. Avoid jurisdictional confusion with courts of other tribes and states in matters of child custody which have in the past resulted in the shifting of children from place to place with harmful effects on their well being;
 - 2. Promote cooperation with courts of other tribes and states to the end that an appropriate forum will be provided as it serves the best interest of the child;
 - 3. Discourage, as much as possible continuing controversies over child custody and encourage a stable home environment and secure family relationships for the child;
 - 4. Deter abductions and other unilateral removals of children undertaken to obtain custody awards;
 - 5. Avoid relitigation of custody decisions of this Court, other tribal courts and state courts in so far as is feasible;

6. Promote and expand the exchange of information and other forms of mutual assistance between this Court and other tribal and state courts concerned with the same child.
- B. This Code Section does not constitute waiver of any provisions of the Indian Child Welfare Act.
- C. This Code Section will not be construed as a waiver of any jurisdiction of the Northern Cheyenne Tribal Court.
- D. Provisions of this Code Section apply only to child custody jurisdiction and must be applied to serve the best interest of the child.

9-4-2. Definitions.

- A. Contestant – a person, including a parent, who claims a right to custody or visitation rights with respect to a child.
- B. Custody Determination – a court decision and court orders and instructions providing for the custody of a child, including visitation rights. It does not include a decision relating to child support or any other monetary obligation of any person.
- C. Custody Proceeding – a proceeding in which a custody determination is one of several issues, such as an action for dissolution of marriage or legal separation. A custody proceeding may include issues of adoption and guardianship concerning a tribal member. A custody proceeding does not include issues such as dependent, abused, neglected, abandoned, or delinquent children or children in need of care.
- D. Decree of Custody Decree – a child custody determination contained in a judicial decree or order made in a custody proceeding and includes an initial decree and a modification decree.
- E. Home Place – the place where the child, immediately preceding the time involved, lived with his parents, a parent, or a person acting as parent for at least six (6) consecutive months and in the case of a child less than six (6) months old the place where the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six (6) month or other period.
- F. Initial Decree – the first custody decree concerning a particular child.
- G. Modification Decree – a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the decree or by another court.
- H. Physical Custody – actual possession and control of a child.
- I. Person Acting as a Parent – a person other than a parent who has physical custody of a child and who has either been awarded by a court or claims a right to custody.

9-4-3. Notice and Opportunity to be Heard.

Before making a decree under this Section, reasonable notice and opportunity to be heard must be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons are outside the exterior boundaries of the Northern Cheyenne Reservation, notice and opportunity to be heard must be given pursuant to the Northern Cheyenne Civil Procedure Code.

9-4-4. Simultaneous Proceedings in Other Courts.

- A. Subject to the limitations in 9-4-1, the Northern Cheyenne Court may not exercise its jurisdiction under this Section if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another tribe or of a state exercising jurisdiction in conformity with this Code unless the proceeding is stayed by the other court because the Northern Cheyenne Court is a more appropriate forum, or the other court has taken no action for a period in excess of one (1) year, or for other reasons relating to the best interest of the child.
- B. Before hearing the petition in a custody proceeding, the Northern Cheyenne Court must examine the pleadings and other information supplied by the parties and must consult the child custody registry established under this Code concerning the pendency of proceedings with respect to the child in other courts. If the Court has reason to believe that proceedings may be pending in another court, it must direct an inquiry to that court administrator or other appropriate personnel.
- C. If the Court is informed during the course of its proceeding that a proceeding concerning the custody of the child was pending in another court before the Northern Cheyenne Court assumed jurisdiction, it must stay the proceeding and communicate with the court in which the other proceeding is pending to the end that information be exchanged. If a custody decree has been made in the Northern Cheyenne Court before being informed of a pending proceeding in another court, it must immediately inform that court of the fact. If the Northern Cheyenne Court is informed that a proceeding was commenced in another jurisdiction, it must inform the other court to the end that the issues may be litigated in the more appropriate forum.

9-4-5. Inconvenient Forum.

- A. When the Northern Cheyenne Court has jurisdiction under this Section to make an initial or modification decree it may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that another tribal court or a state court is a more appropriate forum.
- B. A finding of inconvenient forum may be made upon the Court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

- C. In determining if it is an inconvenient forum, the Court must consider if it is in the best interest of the child that another tribal court or state court assume jurisdiction. For this purpose, it may take into account the following factors, among others:
1. If another location is or recently was the child's home place;
 2. If another court has a closer connection with the child and one or more of the contestants;
 3. If substantial evidence concerning the child's present or future care, protection, training and personal relationships is more readily available in another court;
 4. If the parties have agreed on another forum which is no less appropriate; or
 5. If the exercise of jurisdiction by the Court would contravene any of the purposes stated in 9-4-1.
- D. Before determining whether to decline or retain jurisdiction, the Court may communicate with another court and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to parties.
- E. If the Court finds that it is an inconvenient forum and that another court is a more appropriate forum, it may dismiss the proceedings or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named court or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.
- F. The Court may decline to exercise its jurisdiction under this Chapter if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.
- G. Upon dismissal or stay of proceedings under this Section, the Court must inform the court found to be the more appropriate forum of this fact.
- H. Any communication received from another court informing this Court of a finding of inconvenient forum because this Court is the more appropriate forum must be filed in the custody registry of the Court. Upon assuming jurisdiction, the Court must inform the original court of this fact.
- 9-4-6. Jurisdiction Declined by Reason of Conduct.
- A. If the petitioner for an initial decree has wrongfully taken the child from another reservation or state or has engaged in similar reprehensible conduct, the Court may decline to exercise jurisdiction if this is just and proper under the circumstances.

- B. Unless required in the interest of the child, the Court may not exercise its jurisdiction to modify a custody decree of another court if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody, or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another tribal court or state court, the Court may decline to exercise its jurisdiction if this is just and proper under the circumstances.
- C. In appropriate cases, a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorney's fees, incurred by other parties or their witnesses.

9-4-7. Information Under Oath to be Submitted to the Court.

- A. Each party in a custody proceeding in his first pleading or in an affidavit attached to that pleading must give information under oath as to the child's present address, the places where the child has lived within the last five (5) years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit, each party must further declare under oath whether:
 - 1. He participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other court;
 - 2. He has information of any custody proceeding concerning the child pending in another court; and
 - 3. He knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.
- B. If the declaration as to any of the above items is in the affirmative, the declarant must give additional information under oath as required by the Court. The Court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the Court's jurisdiction and the disposition of the case.
- C. Each party has a continuing duty to inform the Court of any custody proceeding concerning the child in this or any other location of which he obtained information during this proceeding.

9-4-8. Additional Parties.

If the Court learns from information furnished by the parties under 9-4-7 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it must order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside the Northern Cheyenne Reservation, he must be served

with process or otherwise notified in accordance with the Northern Cheyenne Civil Procedure Code.

9-4-9. Appearance of Parties and Child.

- A. The Court may order any party to the proceeding who is inside this reservation to appear personally before the Court. If that party has physical custody of the child, the Court may order that he appear personally with the child.
- B. If a party to the proceeding whose presence is desired by the Court is outside this Reservation with or without the child, the Court may order that the notice given under the Northern Cheyenne Civil Procedure Code include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.
- C. If a party to the proceeding who is outside this reservation is directed to appear under Subsection (B) of this Section or desires to appear personally before the Court with or without the child, the Court may require another party to pay to the Clerk of the Court travel and other necessary expenses of the party so appearing and of the child, if this is just and proper under the circumstances.

9-4-10. Legal Effect of Custody Decree.

A custody decree rendered by the Northern Cheyenne Court under proper jurisdiction binds all parties who have been served on the Reservation or notified in accordance with 9-4-3 or who have submitted to the jurisdiction of the Court and who have been given an opportunity to be heard. As to those parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this Code.

9-4-11. Recognition of Off-Reservation Custody Decrees.

The Northern Cheyenne Court must recognize and enforce an initial or modification decree of a court which assumed jurisdiction under statutory provisions substantially in accord with this Code which was made under factual circumstances meeting the standards of this Code, so long as this decree has not been modified, except when the other tribal or state court has refused to recognize decrees of the Northern Cheyenne Court.

9-4-12. Modification of Custody Decree of Another Court.

- A. If another tribal court or a state court has made a custody decree, the Northern Cheyenne Court may not modify that decree unless it appears to the Court that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this Code or has declined to assume jurisdiction to modify the decree and the Northern Cheyenne Court has jurisdiction.

- B. If the Northern Cheyenne Court is authorized under Subsection (A) of this Section and 9-4-1 to modify a custody decree of another court, it must give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it.

9-4-13. Filing and Enforcement of Custody Decree of Another Court.

- A. A certified copy of a custody decree of another tribal court or a state court may be filed in the office of the Clerk of the Court. The Clerk must treat the decree in the same manner as a custody decree of the Northern Cheyenne Court. A custody decree so filed has the same effect and must be enforced in like manner as a custody decree rendered by the Northern Cheyenne Court.
- B. A person violating a custody decree of another court, which has been filed with the Northern Cheyenne Court, which makes it necessary to enforce the decree in the Northern Cheyenne Court, may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody of his witnesses.

9-4-14. Registry of Custody Decrees and Proceedings of Other Courts.

The Clerk of the Northern Cheyenne Court, at the request of the court of a state or of another tribal court or at the request of any person who is affected by or has a legitimate interest in a custody decree, must certify and forward a copy of the decree to that court or person.

9-4-16. Taking Testimony Off-Reservation.

In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in a location off of the Northern Cheyenne Reservation. The Court on its own motion may direct that the testimony of a person be taken off of the Reservation and may prescribe the manner in which and the terms upon which the testimony will be taken.

9-4-17. Hearing and Studies Off-Reservation – Orders to Appear.

- A. The Northern Cheyenne Court may request the appropriate court of another tribe or of a state to hold a hearing or appoint a special master to hold a hearing to adduce evidence to order a party to produce or give evidence under procedures of that court, or to have social studies made with respect to the custody of a child involved in proceedings pending in the Northern Cheyenne Court; and to forward to the Northern Cheyenne Court certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or of any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or if necessary, ordered paid by the Northern Cheyenne Reservation.

- B. The Court may request the appropriate court of another tribe or a state court to order a party to custody proceedings pending in the Northern Cheyenne Court to appear in the proceedings and, if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise paid.

9-4-18. Assistance to Other Courts.

- A. Upon request of another tribal court or of a state court which is competent to hear custody matters, the Northern Cheyenne Court may order a resident of the Northern Cheyenne Reservation to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available under the Northern Cheyenne Codes or may request social studies to be made for use in a custody proceeding in another tribal court or a state court. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies prepared must be forwarded by the Clerk of the Court to the requesting court. The Court may condition compliance with the request upon assurance by another court that necessary expenses will be advanced or reimbursed.
- B. A resident of the Northern Cheyenne Reservation may voluntarily give his testimony or statement in the Northern Cheyenne Court for use in a custody proceeding off of the Northern Cheyenne Reservation.
- C. Upon request of the court of another tribe or of a state court, the Northern Cheyenne Court may order a person in residence on the Northern Cheyenne Reservation to appear with the child in a custody proceeding off of the Reservation. The Court may condition compliance with the request upon assurance by the other court that travel and other necessary expenses will be advanced or reimbursed.

9-4-19. Preservation of Documents for Use in Other Courts. In any custody proceedings in the Northern Cheyenne Court the Court must preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents. Upon appropriate request of another tribal court or of a state court, the Court must forward to the other court certified copies of any or all of such documents.

9-4-20. Request for Records of Another Court. If a custody decree has been rendered in another court concerning a child involved in a custody proceeding pending in the Northern Cheyenne Court, the Court upon taking jurisdiction of the case must request of the other court a certified copy of the transcript of any court record and other documents mentioned in 9-4-19.

9-4-21. Priority.

A custody proceeding which raises a question of the existence or exercise of jurisdiction under this Code must be given calendar priority and handled expeditiously.

CHAPTER 5: GUARDIANSHIP AND CONSERVATORSHIP

9-5-1. Definitions. Unless the context requires otherwise, as used in this Article:

- (a) “Clerk” means the clerk of the Tribal Court of the Northern Cheyenne Nation.
- (b) “Conservator” means a person appointed by the court to have the custody and control of the property of a ward under the provisions of this Guardianship and Conservatorship Code.
- (c) “Court” means the Tribal Court of the Northern Cheyenne Nation.
- (d) “Estate” means the real and personal property of a ward.
- (e) “Family member” means spouse, children, siblings, parents, uncles, aunts, nieces, nephews, grandparents, grandchildren, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, and daughter-in-law, of the ward.
- (f) “Functional limitations” means the behavior or condition of a person which impairs the person's ability to care for the person's personal safety or to attend to or provide for necessities for the person.
- (g) “Guardian” means the person appointed by the court to have the custody of the person of the ward under the provisions of this Guardianship and Conservatorship code.
- (h) “Hearing” means a proceeding before the Tribal Court of the Northern Cheyenne Nation.
- (i) “Incompetent” means the condition of any person who has been adjudicated by a court to meet at least one of the following conditions:
 - (1) To have a decision-making capacity which is so impaired that the person is unable to care for the person's personal safety or to attend to or provide for necessities for the person such as food, shelter, clothing, or medical care, without which physical injury or illness may occur.
 - (2) To have a decision-making capacity which is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person's financial affairs.
 - (3) To have a decision-making capacity which is so impaired that both paragraphs
 - (4) “(1)” and “(2)” are applicable to the person.
- (j) “Letters” means and includes letters of guardianship and/or letters of conservatorship.

- (k) "Settlement" and "Northern Cheyenne Tribe" may be used interchangeably and means all land within the exterior boundaries of the Northern Cheyenne Reservation.
- (l) "Minor" means a person under the age of eighteen (18) years.
- (m) "Non-member" means a person who is not an enrolled member of the Northern Cheyenne Nation.
- (n) "Person" includes enterprises, corporations, and departments of the Northern Cheyenne Nation, and includes other natural persons, and entities, agencies, and departments, whether public or private, if the other natural person, entity, agency or department is qualified to act as a guardian and/or conservator and has no proprietary or legal interest in an organization which provides direct services to the ward and if authorized to act in a fiduciary capacity and otherwise found to be suitable by the court. Notwithstanding the foregoing, Northern Cheyenne Family Services and any enterprise, corporation and department of the Tribe is a person eligible to be appointed as guardian and conservator pursuant to this Article.
- (o) "Property" means and includes both real and personal property.
- (p) "Trial" means a proceeding before the Tribal Court of the Northern Cheyenne Nation.
- (q) "Trial court" means the Trial Court of the Northern Cheyenne Nation.
- (r) "Tribal Code" means the law Code of the Northern Cheyenne Nation.
- (s) "Tribal Council" means the members of the Tribal Council of the Northern Cheyenne Nation.
- (t) "Tribal Court" means the court of the Northern Cheyenne Nation.
- (u) "Tribal land" means all trust and fee land owned by the Tribe.
- (v) "Tribal member" means an enrolled member of the Northern Cheyenne Nation.
- (w) "Tribe" means the Northern Cheyenne Tribe and its Tribal Council, commissions, boards, agencies, departments, corporations, divisions, instrumentalities, economic enterprises, Tribal Council members, commissioners, board members, officials, agents, officers and employees.
- (x) "Ward" means a person who has a guardian or conservator appointed by the court to care for and take responsibility for that person or that person's financial and other affairs.

9-5-2. Declaration Of Purpose And Policy

- (a) The Tribal Council of the Northern Cheyenne Nation hereby declares that in order to provide for vulnerable adults and minors, either enrolled or residing within the Reservation, and to promote the social and economic welfare and to protect the peace, safety, and general welfare of the Tribe, it is necessary to adopt a guardianship and conservatorship code.
- (b) The Tribe recognizes that under the Code of the Northern Cheyenne Tribe, the Tribal Council has been delegated the powers and duty to provide for the appointment of guardians for minors and mental incompetents by ordinance or resolution subject to review by the Secretary of the Interior.

9-5-3. Authority. Consistent with 1-1-1 of this Code and Northern Cheyenne Reservation is adopted pursuant to the authority vested in the Northern Cheyenne Tribal Council under Article IV, Section 1(h), (i), (k), (m), (o), (p), (q) and (n) of the Amended Constitution of the Northern Cheyenne Tribe. The Northern Cheyenne Tribe retains inherent sovereign powers that have existed since time immemorial. The inherent sovereign powers include those authorities delegated to the Tribe's government in the Northern Cheyenne Tribe's Amended Constitution. All other inherent sovereign powers are retained and reserved and will cease to exist only when the Northern Cheyenne Tribe and its members cease to exist.

9-5-4. Jurisdiction. The Tribal Court of the Northern Cheyenne Nation will have personal jurisdiction as set forth in the Code of the Northern Cheyenne Nation as it may be amended. The Tribal Court of the Northern Cheyenne Nation will have subject matter jurisdiction of conservatorship and guardianship proceedings and will have the power and duty to appoint guardians and conservators, to grant letters of conservatorship and guardianship, to administer, settle and close conservatorship and guardianship proceedings when: (a) the ward or the proposed guardian or conservator is/are enrolled member(s) of the Tribe; or (b) when the ward or the proposed guardian or conservator reside(s) on Tribal land or within the Northern Cheyenne Reservation.

9-5-5. Civil Action. Actions and proceedings arising pursuant to this Guardianship and Conservatorship Code are civil actions.

9-5-6. Severability. If any clause, sentence, paragraph, section or part of this Guardianship and Conservatorship Code will, for any reason be adjudicated by any court of competent jurisdiction, to be invalid or unconstitutional, such judgment will not affect, impair or invalidate the remainder thereof, but will be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which the judgment will have been rendered.

9-5-7. Construction

- (a) This Guardianship and Conservatorship Code will be interpreted and applied in a manner consistent with all other Codes, Laws, Ordinances, Resolutions, and Regulations of the Northern Cheyenne Nation.

- (b) Unless expressly provided otherwise, nothing in this Title will be construed as limiting, waiving or abrogating the sovereignty or the sovereign immunity of the Northern Cheyenne Nation or any of its agencies, departments, corporations, enterprises, agents, officials, or employees.
- (c) Inclusion of or reference to language, definitions, procedures, or other statutory or administrative provisions of other jurisdictions in this Title will not be deemed an action deferring to or consenting to such other jurisdiction by the Northern Cheyenne Nation.

9-5-8. Effect Of Headings. Headings contained herein will not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any portion of this Guardianship and Conservatorship Code.

9-5-9. Applicability Of Rules Of Civil Procedure. All actions triable in guardianship and/or conservatorship will be governed by the Rules of Civil Procedure of the courts of the Northern Cheyenne Nation.

**PROCEDURES AND PROVISIONS APPLICABLE TO
GUARDIANSHIPS AND CONSERVATORSHIP**

9-5-10. Pleadings And Trial – Rules Of Civil Procedure. All pleadings, hearings, and the trial of the case will be governed by the Rules of Civil Procedure of the Northern Cheyenne Nation. The cause will be tried as a civil action at law, and neither party will be entitled to a jury trial.

9-5-11. REPORTS AND APPLICATIONS FOR ORDERS. All petitions, reports, and applications for orders in guardianship and conservatorship proceedings must be in writing, verified, acknowledged or certified, and self-explanatory.

9-5-12. COMBINING PETITIONS. The petitions for the appointment of a guardian and a conservator may be combined and the cause tried in the same manner as a petition for the appointment of a conservator.

9-5-13. SAME PERSON AS GUARDIAN AND CONSERVATOR. The same person may be appointed to serve as both guardian and conservator.

9-5-14. Service. Service of process of the petition to commence a proceeding for guardianship or conservatorship will be effected as set forth in the Rules of Civil Procedure and the Code of the Northern Cheyenne Nation for civil actions and will be served on persons designated in this Article.

9-5-15. Waiver Of Notice. Any notice required under this Guardianship and Conservatorship Code or by order of the court may be waived in writing by the person, guardian or conservator entitled to receive such notice.

9-5-16. Proof Of Service. Proof of service of any notice required by this Guardianship and Conservatorship Code or by order of the court, including those by publication, will be filed with the clerk.

9-5-17. Notice – Commencement Of Action

(a) Proposed ward is an adult.

(1) If the proposed ward is an adult, notice of the filing of the petition must be served upon the proposed ward in the manner of an original notice and the content of the notice is governed by the rules of civil procedure governing original notice.

(2) Notice shall also be served upon the ward's spouse. If the ward has no spouse, notice shall be served upon the ward's adult children, if any.

(b) Proposed ward is a minor. If the proposed ward is a minor, notice of the petition shall be served upon the minor and upon the parent(s) or legal guardian(s) of the minor in the manner of an original notice and the content of the notice is governed by the rules of civil procedure governing original notice.

(c) If the court determines, pursuant to this Chapter, Section 10 that the proposed ward is entitled to representation, notice in the manner of original notice or another form of notice ordered by the court, given to the attorney representing the ward, if any, is notice to the proposed ward.

(d) Proof of service shall be made by affidavit, which affidavit shall list all of the documents that were served.

9-5-18. Notice Of Hearing Or Trial

(a) Court prescribes notice of hearing or trial. Unless otherwise provided in this Code the court shall fix the time and place of hearing of any matter requiring notice and shall prescribe the time and manner of service of the notice of such hearing.

(b) Notice by publication. In the case of proceedings against unknown persons or persons whose address or whereabouts are unknown, the court may, after application by the party seeking to serve by publication, prescribe that notice of hearing or trial may be served by publication within the time and manner provided by the Rules of Civil Procedure of the Northern Cheyenne Nation.

(c) Notice otherwise provided. In its discretion the court's notice may direct each interested party to file the party's objections/responses thereto in writing, if any, within twenty after the day the notice is served upon the party, and that unless the party does so file objections/response in writing that the party will be forever barred from making any objections thereto. Said notice shall be served upon each interested party in compliance with the rules of civil procedure. In the event objections thereto

are timely filed, the court shall fix the time and place of the hearing for the judicial determination of the issues raised.

9-5-19. Representation

(a) In a proceeding for the appointment of a guardian and/or conservator:

- (1) If the proposed ward is an adult the proposed ward is entitled to representation. Upon the filing of the petition, or as soon thereafter as reasonably possible, the court shall appoint an attorney to represent the proposed ward if the ward has not retained counsel, subject to the provisions set forth in this Chapter, Section 10(c), below, and the court shall set a hearing on the petition and date therefor, and provide for notice of the appointment of counsel if counsel is appointed by the court.
- (2) If the proposed ward is a minor the court shall determine in its sole discretion whether, under the circumstances of the case, the proposed ward is entitled to representation. The determination regarding representation may be made with or without notice to the proposed ward, as the court deems necessary. If the court determines that the proposed ward is entitled to representation and if the minor has not retained counsel, the court shall appoint an attorney to represent the proposed ward subject to the provisions of this chapter, Section 10(c), below. After making the determination regarding representation, the court shall set a hearing on the petition and the date thereof and provide for notice on the determination regarding representation and notice of appointment of counsel if counsel is appointed by the court.
- (3) The court may take action under paragraph (1) or (2) above prior to the service of the original notice upon the proposed ward.
- (4) The court may reconsider the determination regarding representation upon application by any interested person.
- (5) The court may discharge the attorney appointed by the court if it appears upon the application of the proposed ward or any other interested person that the ward has privately retained an attorney who has filed an appearance on behalf of the proposed ward.

(b) The court shall ensure that all proposed wards entitled to representation have been provided with notice of the right to representation and the right to be personally present at all proceedings and shall make findings of fact in any order of disposition setting out the manner in which notification was provided.

(c) The cost of court appointed or privately retained counsel for the ward shall be paid by the ward or the estate of the ward, except if the ward does not have sufficient assets and funds to pay the cost of legal counsel, the court shall pay such reasonable costs. If the ward subsequently is able to pay the cost of the ward's legal counsel and

reimburse the court for legal expenses of the ward paid by the court, the ward shall do so.

(d) An attorney representing a ward shall:

- (1) Ensure that the proposed ward has been properly advised of the nature and purpose of the proceeding.
- (2) Ensure that the proposed ward has been properly advised of the ward's rights in a guardianship and/or conservatorship proceeding.
- (3) Personally interview the proposed ward.
- (4) File a written report stating whether there is a return on file showing that proper service on the proposed ward has been made and also stating that specific compliance with paragraphs (1) through (3) immediately above has been made or stating the inability to comply by reason of the proposed ward's condition.
- (5) Represent the proposed ward.
- (6) Ensure that the guardianship and/or conservatorship procedures conform to the statutory and due process requirements of the Rules of Civil Procedure and Code of the Northern Cheyenne Nation.
- (7) Inform the proposed ward of the effects of the order entered for appointment of guardian and/or conservator.
- (8) Advise the ward of the ward's right to petition for modification or termination of the guardianship and/or conservatorship.
- (9) Advise the ward of the rights retained by the ward.

9-5-20. PREFERENCE FOR APPOINTMENT OF GUARDIAN AND/OR CONSERVATOR – MINOR AND ADULT

(a) Minor. The parents or legal guardian(s) of a minor, if qualified and suitable, shall be preferred over all others for appointment as guardian and/or conservator. Preference shall then be given to any person, if qualified and suitable, nominated as guardian and/or conservator for a minor child by a will executed by the parent having custody of a minor child, any qualified and suitable person requested by a minor fourteen years of age or older, or to any family member. Subject to these preferences, the court shall appoint as guardian and/or conservator a qualified and suitable person who is willing to serve in that capacity and the preferences herein are recommended but not mandatory.

(b) Adult. The spouse of an adult, if qualified and suitable, shall be preferred over all others for appointment as guardian and/or conservator. Preference shall then be given to

any adult child and then to any family member, if qualified and suitable, nominated as guardian and/or conservator for an adult. Subject to these preferences, the court shall appoint as guardian and/or conservator a qualified and suitable person who is willing to serve in that capacity.

9-5-21. AFFIDAVIT OF GUARDIAN AND/OR CONSERVATOR

Prior to being appointed as a guardian or conservator, and prior to issuance of letters of guardianship or conservatorship, the proposed appointee shall complete, sign under oath, and file with the clerk, an affidavit stating whether the proposed appointee has:

- (a) Ever been convicted of a felony in any jurisdiction;
- (b) Acted as guardian or conservator in any jurisdiction for any person within three years of the filing of the petition in this matter;
- (c) Reviewed and has a working knowledge of the powers and duties imposed on a guardian and/or conservator, as applicable;
- (d) Acted in a fiduciary capacity pursuant to a power-of-attorney for any person in any jurisdiction within three years of the filing of the petition in this matter;
- (e) Ever been listed in an Elder Abuse or Sex Offender Registry in any jurisdiction at any time and whether any enterprise in which the proposed appointee has an interest has ever been listed in an Elder Abuse or Sex Offender Registry or in any jurisdiction at any time;
- (f) If appointed as a guardian or conservator for any person within three years prior to the filing of the petition in this case, whether the proposed appointee in this case has ever failed to file any Report of Guardian or Conservator in any jurisdiction later than three months after the date the report was due;
- (g) Ever been removed as a guardian or conservator for any person in any jurisdiction at any time;
- (h) Ever received anything of value exceeding a total of one hundred dollars in any one year, by gift, devise, or bequest from any individual, or estate of an individual, to whom the proposed appointee is not related by blood or marriage and for whom the proposed appointee served at any time as guardian, conservator, trustee, or attorney-in-fact;
- (i) Ever had an interest in an enterprise that received anything of value exceeding a total of one hundred dollars in any one year, by gift, devise, or bequest from any individual, or estate of an individual, to whom the proposed appointee is not related by blood or marriage and for whom the enterprise and/or proposed appointee served at any time as guardian, conservator, trustee, or attorney-in-fact;

- (j) Been named as a personal representative, trustee or other type of beneficiary of any individual to whom the proposed appointee is not related by blood or marriage and for whom the proposed appointee served as guardian, conservator, trustee, or attorney-in fact;
- (k) Ever had an interest in an enterprise where the enterprise was or is named as a personal representative, trustee or other type of beneficiary of any individual to whom the proposed appointee is not related by blood or marriage and for whom the enterprise and/or proposed appointee served as guardian, conservator, trustee, or attorney-in fact;
- (l) Any interest in any enterprise providing housing, health care, or comfort care services to any individual;
- (m) The proposed appointee shall state the nature of his/her relationship with the proposed ward.

9-5-22. Guardianships And Conservatorships – Burden Of Persuasion; General Provisions

- (a) The determination of incompetency of the proposed ward or ward and the determination of the need for the appointment of a guardian or conservator or of the modification or termination of a guardianship or conservatorship shall be supported by clear and convincing evidence.
- (b) The burden of persuasion is on the petitioner in an initial proceeding to appoint a guardian or conservator. In a proceeding to modify or terminate a guardianship or conservatorship, if the guardian or conservator is the petitioner, the burden of persuasion remains with the guardian or conservator. In a proceeding to terminate a guardianship or conservatorship, if the ward is the petitioner, the ward shall make a prima facie showing of some decision-making capacity. Once a prima facie showing is made, the burden of persuasion is on the guardian or conservator to show by clear and convincing evidence that the ward is incompetent.
- (c) In determining whether a guardianship or conservatorship is to be established, modified, or terminated, the court shall consider whether a limited guardianship pursuant to this Chapter, Section 3(e) and, Section 6(b), of this Article is appropriate. In making the determination, the court shall make findings of fact to support the powers conferred on the guardian or conservator.
- (d) In proceedings to establish, modify, or terminate a guardianship or conservatorship, in determining if the proposed ward or ward is incompetent as defined in this Chapter, Section 1(i) of this Article, the court shall consider credible evidence from any source to the effect of third-party assistance in

meeting the needs of the proposed ward or ward if such evidence is offered. However, neither party to the action shall have the burden to produce such evidence relating to third-party assistance.

- (e) Except as otherwise provided in this Chapter , Section 10(a)(1) and (2), and, Section 10(c), in proceedings to establish a guardianship or conservatorship, the costs, including attorney fees and expert witness fees, shall be assessed against the ward or the ward's estate or as may be otherwise ordered by the Court. If the proceeding is dismissed either voluntarily or involuntarily the fees and costs may be assessed against the petitioner for good cause shown.

9-5-23. Letters Of Guardian Or Conservator Issued

Upon the guardian or conservator filing an affidavit of guardian or conservator pursuant to this Chapter , Section 13, and filing proof of bond if any bond is required, the clerk shall issue letters under the seal of the court giving the guardian or conservator the powers authorized by law with said powers to be enumerated in the letters.

9-5-24. Oath – Acceptance Of Appointment

Every guardian and conservator, before entering upon the duties herein, shall subscribe an oath or certify under penalty of perjury that the guardian or conservator will faithfully discharge the duties imposed by law according to the best of the guardian's or conservator's ability.

9-5-25. Effect Of Appointment – Ward

The appointment of a guardian or conservator shall not constitute an adjudication that the ward is of unsound mind.

9-5-26. Legal Effect Of Appointment – Guardian Or Conservator

By qualifying as guardian and/or conservator any person, whether a resident or nonresident of the Northern Cheyenne Reservation, whether a Tribal member or non-Tribal member, submits to the jurisdiction of the Tribal Court, and, in addition, shall be deemed to agree that:

- (a) All property coming into the guardian's and/or conservator's control or possession as a result of the guardianship and/or conservatorship appointment is subject to the jurisdiction of the Tribal Court; and
- (b) The guardian and/or conservator is subject to all orders entered by the court in the proceedings in which the guardian and/or conservator is serving and that notices served upon the guardian and/or conservator with respect thereto in compliance with the procedure prescribed in this Code shall have the same force and effect as if such service had been personally made upon the guardian and/or conservator within the jurisdiction and boundaries of the Northern Cheyenne Reservation; and
- (c) The guardian and/or conservator shall be subject to the jurisdiction of the Tribal Court in all actions and proceedings against the guardian and/or

conservator arising from or growing out of the guardianship and/or conservatorship relationship and activities and that the service of process in such actions and proceedings may be made upon the guardian and/or conservator by serving the original notice upon the guardian and/or conservator outside the Northern Cheyenne Reservation and that such service shall have the same force and effect as though the service had been personally made upon the guardian and/or conservator within the Northern Cheyenne Reservation.

9-5-27. Compensation Of Guardian Or Conservator

The guardian or conservator may be compensated from the estate of the ward at such reasonable amount as may be determined by the court for services rendered and for good cause shown upon application to the court and after hearing and determination and order by the court as to said request for compensation.

9-5-28. Self-Dealing By Guardian Or Conservator

No guardian or conservator shall in any manner engage in self-dealing, except on order of the court after notice to all interested persons, and shall derive no profit other than the amounts to be paid to said conservator or guardian after application therefor by the guardian or conservator and after approval by and order of the court. Every application of a guardian or conservator seeking an order under the provisions of this section shall specify in detail the reasons for such application and the facts justifying the requested order.

9-5-29. Liability Of Guardians And Conservators

Guardians and conservators shall not be held personally liable for actions or omissions taken or made in the official discharge of the guardian's or conservator's duties, except for any of the following:

- (a) A breach of fiduciary duty imposed by this Guardianship and Conservatorship Code.
- (b) Willful or wanton misconduct in the official discharge of the guardian's or conservator's duties.

9-5-30. Tort Liability Of Guardians And Conservators

The fact that a person is a guardian or conservator shall not in itself make the person personally liable for damages for the acts of the ward.

9-5-31. Cause Of Termination

A guardianship shall cease and a conservatorship shall terminate upon the occurrence of any of the following circumstances:

- (a) If the ward is a minor, when the ward reaches the age of majority.

- (b) The death of the ward.
- (c) A determination by the court that the ward is no longer a person whose decision-making capacity is so impaired as to bring the ward within the categories of section this Chapter Sections 1 of Section 1- in a proceeding to terminate a guardianship or a conservatorship, the ward shall make a prima facie showing that the ward has some decision-making capacity. Once the ward has made that showing, the guardian or conservator has the burden to prove by clear and convincing evidence that the ward's decision-making capacity is so impaired, as provided in this Chapter Section 1(b)(1) and/or this Chapter , Section 1(b)(1) that the guardianship or conservatorship should not be terminated.
- (d) Upon determination by the court that the conservatorship or guardianship is no longer necessary for any other reason.

9-5-32. Petition To Terminate -Request For Voting Rights Reinstatement

At any time after the appointment of a guardian or conservator, the person under guardianship or conservatorship may apply to the court by petition, alleging that the person is no longer a proper subject thereof, and asking that the guardianship or conservatorship be terminated. A person under an order appointing a guardian which order found the person incompetent to vote may include a request for reinstatement of the person's voting rights in a petition to terminate the guardianship or by filing a separate petition for modification of this determination.

9-5-33. Limit On Application To Terminate

If any petition for terminating such guardianship or conservatorship shall be denied, no other petition shall be filed therefor until at least six months shall have elapsed since the denial of the former one.

GUARDIANSHIP

9-5-40. Petition For Appointment Of Guardian

Any person may file with the clerk a verified petition for the appointment of a guardian. The petitioner shall state the following information so far as known to the petitioner.

- (a) The name, age and physical address of the proposed ward and post office box address if there is no physical address where mail is regularly delivered.
- (b) The petitioner's relationship to the ward.
- (c) That the proposed ward is in either of the following categories and the factual basis in support thereof:
 - (1) Is a person whose decision-making capacity is so impaired that the person is unable to care for the person's personal safety or to attend to or provide for

necessities for the person such as food, shelter, clothing, or medical care, without which physical injury or illness might occur.

- (2) Is a minor.
- (d) The name and physical address of the proposed guardian and post office box address if there is no physical address where mail is regularly delivered, and that such person is qualified to serve in that capacity.
- (e) That the proposed ward is an enrolled Tribal member or resides within the Northern Cheyenne Reservation, or that the proposed guardian is an enrolled Tribal member or resides within the Northern Cheyenne Reservation, and that the proposed ward's best interests require the appointment of a guardian.
- (f) The name and address of the person or institution, if any, having the care, custody or control of the proposed ward.

9-5-41. Notification Of Guardianship Powers

In a proceeding for the appointment of a guardian, the proposed ward shall be given written notice by the court or the person designated by court order, which advises the proposed ward that if a guardian is appointed, the guardian may, without court approval, provide for the care of the ward, manage the ward's personal property and effect, assist the ward in developing self-reliance and receiving professional care, counseling, treatment or services as needed, and ensure that the ward receives necessary emergency medical services. The notice shall also advise the proposed ward that, upon the court's approval, the guardian may change the ward's permanent residence to a more restrictive residence, and arrange for major elective surgery or any other nonemergency major medical procedure. The notice shall clearly advise the proposed ward of the right to counsel and the potential deprivation of the proposed ward's civil rights. The notice shall also state that the proposed ward may use the ward's own attorney instead of an attorney appointed by the court. In an involuntary guardianship proceeding, the notice shall be served upon the proposed ward with the notice of the filing of the petition as provided in this Chapter, Section 8.

9-5-42. Responsibilities Of Guardian

- (a) Based upon the evidence produced at the hearing, and upon the appointment of a guardian, the court may grant a guardian the following powers and duties which may be exercised without further court approval:
 - (1) Providing for the care, comfort and maintenance of the ward, including the appropriate training and education to maximize the ward's potential.
 - (2) Taking reasonable care of the ward's clothing, furniture, vehicle and other personal effects.
 - (3) Assisting the ward in developing maximum self-reliance and independence.

- (4) Ensuring the ward receives necessary emergency medical services.
 - (5) Ensuring the ward receives professional care, counseling, treatment, or services as needed. If necessitated by the physical or mental disability of the ward, the provision of professional care, counseling, treatment, or services limited to the provision of routine physical and dental examinations and procedures under anesthesia is included, if the anesthesia is provided within the scope of the health care practitioner's scope of practice.
- (b) A guardian may be granted the following additional powers which may only be exercised only upon court approval:
- (1) Changing, at the guardian's request, the ward's permanent residence if the proposed new residence is more restrictive of the ward's liberties than the current residence.
 - (2) Arranging for the provision of major elective surgery or any other non-emergency major medical procedure. For the purposes of this paragraph "major elective surgery" and "non-emergency major medical procedure" do not include the provision to the ward of professional care, counseling, treatment, or services limited to the provision of routine physical and dental examinations and procedures under anesthesia, if the use of anesthesia is necessitated by the physical or mental disability of the ward, and if the anesthesia is provided within the scope of the health care practitioner's scope of practice.
 - (3) Consent to the withholding or withdrawal of life-sustaining procedures.
- (c) For the purposes of this section:
- (1) "Routine dental examinations and procedures" means and includes preventive services, diagnostic services, restorative services, periodontal services, endodontic services, oral surgery, prosthetic services, and orthodontic services.
 - (2) "Routine physical examinations and procedures" means and includes examinations and procedures performed for the purpose of general treatment or diagnosis or for the purpose of treatment or diagnosis related to a specific illness, symptom, complaint, or injury.
- (d) The court may take into account all available information concerning the capabilities of the ward and any additional evaluation deemed necessary, including the availability of third-party assistance to meet the needs of the ward or proposed ward.
- (e) The court may direct that the guardian have only a specially limited responsibility for the ward. In that event, the court shall state those areas of responsibility which shall be supervised by the guardian and all other shall be retained by the ward.
- (f) The court may make a finding that the ward lacks the capacity to contract a valid marriage.

(g) From time to time, upon a proper showing, the court may modify the respective responsibilities of the guardian and the ward, after notice to the ward and an opportunity to be heard. Any modification that would be more restrictive or burdensome for the ward shall be based on clear and convincing evidence that the ward continues to fall within the categories of this chapter and that the facts justify a modification of the guardianship. Section 14 applies to the modification proceedings. Any modification that would be less restrictive for the ward shall be based upon proof in accordance with the requirements of this chapter.

9-5-43. Qualification Of Guardian – Resident

- (a) Any natural person over the age of eighteen years who is a family member of the ward, or who resides within the Northern Cheyenne Reservation, or who is an enrolled member of the Northern Cheyenne Nation, or who is the Director of Northern Cheyenne Family services or the Director's designee and who is an employee of Northern Cheyenne Family Services, or any other person as defined in this Article who is qualified to serve as a guardian except the following:
- (b) One who is under legal incompetency or is a chronic alcoholic, substance abuser, or a spendthrift.
- (c) Any other person whom the court determines to be unsuitable.

9-5-44. Qualification Of Guardian – Nonresident

- (a) The court may, upon application, appoint the following nonresidents as guardian: A person who does not reside within the exterior boundaries of the Northern Cheyenne Reservation and who is not an enrolled member of the Northern Cheyenne Nation and who is otherwise qualified under the provisions of this Chapter, Section 4. provided there is a resident guardian appointed to serve with such nonresident guardian; and provided further that the court, for good cause shown, may appoint such nonresident guardian to serve alone without the appointment of a resident guardian.

9-5-45. Appointment Of Guardian

- (a) If the allegations of the petition as to the status of the proposed ward and the necessity for the appointment of a guardian are proved by clear and convincing evidence, the court may appoint a guardian. If the court appoints a guardian based upon mental incapacity of the proposed ward the court shall make a separate determination as to the ward's competency to vote. The court shall find a ward incompetent to vote only upon a determination that the person lacks sufficient mental capacity to comprehend and exercise the right to vote.
- (b) In all proceedings to appoint a guardian, the court shall consider the functional limitations of the proposed ward and whether a limited guardianship as set forth in this Chapter, Section 3(e) is appropriate.

(c) This Chapter, Section 14 applies to the appointment of a guardian.

9-5-46. Appointment Of A Temporary Guardian

(a) A temporary guardian may be appointed, but only after a hearing on such notice, and subject to such conditions, as the court shall prescribe.

9-5-47. Bond

(a) A guardian shall not be required to give bond unless the court, for good cause, finds that the best interests of the ward require a bond. If the court orders a guardian to post a bond, the provisions of this Chapter of this Title apply insofar as the provisions relate to a bond and reporting.

9-5-48. Reporting Requirements – Guardian

(a) A guardian appointed under this chapter shall file with the court the following written verified reports:

- (1) An initial report within sixty days of the guardian's appointment.
- (2) An annual report every year within ninety days of the annual anniversary of appointment of the guardian, unless the court otherwise orders that a report should be filed every six months or at some other interval to be determined by and in the discretion of the court.
- (3) A final report within thirty days of the termination of the guardianship under Sec. Section 23 and Section 11 unless that time is extended by the court.

(b) Reports required by this section must include:

- (1) The current mental and physical condition of the ward.
- (2) The present living arrangements of the ward, including a description of each residence where the ward has resided during the reporting period.
- (3) A summary of the medical, educational, vocational and other professional services provided for the ward.
- (4) A report of the ward's income, assets, debts, disbursements and other relevant financial information for the reporting period.
- (5) A description of the guardian's visits with and activities on behalf of the ward.
- (6) A recommendation as to the need for continued guardianship.
- (7) Other information requested by the court or useful in the opinion of the guardian.

- (c) Reports of the guardian shall be reviewed by the court and either approved or not approved. If the report is not approved notice shall be given to the guardian as to the deficiencies in the report and the court shall set a deadline by which the report must be resubmitted.
- (d) Reports required by this section shall be served on any attorney representing The ward in the guardianship proceeding and all other parties appearing in the proceeding.

9-5-49. Property Delivered – Penalty

- (a) Upon the removal of any guardian pursuant to this Chapter, Section 11 or upon termination of guardianship pursuant to this Chapter, Section 3, the guardian shall be required by order of the court to deliver to the person who may be entitled thereto all the property in the guardian's possession or under the guardian's control belonging to the ward no later than thirty (30) days following the removal or termination and if the guardian fails or refuses to comply with any proper order of the court, the guardian may be sanctioned, fined, and/or committed to jail until the guardian complies.

9-5-50. Removal Of Guardian

- (a) When any guardian is, or becomes, disqualified under this Chapter, Section 4 or this 3, Section 5, or has failed to perform any duty imposed by law, or by any lawful order of court, then the court may remove the guardian. The court may upon its own motion, and shall upon the filing of a verified petition by any person interested in the estate, including a surety on the guardian's bond if any, order the guardian to appear and show cause why the guardian should not be removed. Any such petition shall specify the grounds of complaint. The removal of a guardian after letters are duly issued to the guardian shall not invalidate the guardian's official acts performed prior to removal.

9-5-51. Appointment Of Successor Guardian

- (a) When any guardian fails to qualify, dies, is removed by the court, or resigns, and such resignation is accepted by the court, the court may, and if the guardian were the sole or last surviving guardian, the court shall appoint another guardian in the former's place.

9-5-52. Powers Of Successor Guardian

- (a) When a successor guardian is appointed, the successor shall have all the rights, powers, titles and duties of the predecessor, except that the successor shall not exercise powers given in any order creating the power that by its express terms are personal to the guardian therein designated.

CONSERVATORSHIP

9-5-60. Petition For Appointment Of Conservator

- (a) Any person may file with the clerk a verified petition for the appointment of a conservator. The petition shall state the following information, so far as known to the petitioner.
- (b) The name, age and address of the proposed ward.
- (c) That the proposed ward is in either of the following categories and the factual basis therefor:
 - (1) Is a person whose decision-making capacity is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person's financial affairs.
 - (2) Is a minor.
- (d) The name and address of the proposed conservator, the relationship of the proposed conservator to the ward, and that such person is qualified to serve in that capacity.
- (e) The estimated present value of the real estate, the estimated value of the personal property, and the estimated gross annual income of the estate of the ward. If any money is payable, or to become payable, to the proposed ward by any third party, entity or agency of the Northern Cheyenne Nation Tribal government, or federal, or state government, the petition shall so state.
- (f) The name and address of the person or institution, if any, having the care, custody or control of the proposed ward.
- (g) That the proposed ward resides with the exterior boundaries of the Northern Cheyenne Reservation and/or is an enrolled member of the Northern Cheyenne Nation, is a non-resident, is not enrolled, or that the proposed ward's residence is unknown, and that the proposed ward's best interests require the appointment of a conservator.

9-5-61. Notification Of Conservator Powers

- (a) In a proceeding for the appointment of a conservator, the proposed ward shall be given written notice which advised the proposed ward that if a conservator is appointed, the conservator may, without court approval, manage the proposed ward's principal, income, and investments, sue and defend any claim by or against the ward, sell and transfer personal property, and vote at corporate meetings. The notice shall also advise the proposed ward that, upon the court's approval, the conservator may invest the ward's funds, execute leases, make payments to or for the benefit of the ward, support the ward's legal dependents, compromise or settle any claim, and do any other thing that the court determines is in the ward's best interests. The notice

shall clearly advise the proposed ward of the right to counsel and the potential deprivation of the proposed ward's civil rights. The notice shall also state that the propose ward may use the ward's own attorney instead of an attorney appointed by the court. The notice shall be served upon the proposed ward as provided in Chapter 2, Section 8.

9-5-62. Appointment Of Conservator

- (a) If the allegations of the petition as to the status of the proposed ward and the necessity for the appointment of a conservator are proved by clear and convincing evidence, and if the proposed ward has assets in an amount exceeding Twenty Five Thousand Dollars (\$25,000.00), then the court may appoint a conservator.

9-5-63. Appointment Of A Temporary And/Or Limited Conservator

- (b) A temporary and/or limited conservator may be appointed but only after a hearing on such notice, and subject to such conditions, as the court shall prescribe.

9-5-64. Duties Of Conservator

- a) It is the duty of the conservator of the estate to protect and preserve it, to Invest it prudently, to account for it as herein provided, and to perform all other duties required of the conservator by law, and at the termination of the conservatorship, to deliver the assets of the ward to the person entitled thereto.
- (b) The conservator shall report to the court at least annually unless the court otherwise orders that a report should be filed every six months or at some other interval to be determined by and in the discretion of the court, and the report shall comply with the provisions of this Chapter, Section 18.

9-5-65. Powers Of The Conservator Without Further Order Of Court

Upon appointment by the court as the ward's conservator, the conservator shall have the full power, without further order of the court, with relation to the estate of the ward:

- (a) To collect, receive, and provide receipts for, any principal or income, and to enforce, defend against or prosecute any claim by or against the ward or the conservator; to sue on and defend claims in favor of, or against, the ward or the conservator.
- (b) To sell and transfer personal property of a perishable nature and personal property for which there is a regularly established market.
- (c) To vote at corporate meetings in person or by proxy.
- (d) To receive additional property from any source.
- (e) To continue to hold any investment or other property originally received by the conservator and also any increase therefor, pending the timely filing of the first annual report.

9-5-66. Powers Of Conservator Subject To The Approval Of The Court

Upon appointment, a conservator shall have the following powers subject to prior approval of the court after hearing on such notice, if any, as the court may prescribe:

- (a) To invest the funds belonging to the ward.
- (b) To execute leases.
- (c) To make payments to, or for the benefit of, the ward in any of the following ways:
 - (1) Directly to the ward;
 - (2) Directly for the maintenance, welfare and education of the ward;
 - (3) To the legal guardian of the person of the ward; or
 - (4) To anyone who at the time shall have the custody and care of the person of the ward.
- (d) To apply any portion of the income or of the estate of the ward for the support of any person for whose support the ward is legally liable.
- (e) To make an election for the ward who is a surviving spouse.
- (f) To do any other thing that the court determines to be in the best interest of the ward and the ward's estate.
- (g) Under order of court, for good cause shown, after such notice as the court may prescribe, a conservator shall have the power to breach contracts of the ward entered into by the ward prior to the appointment of a conservator, thereby incurring such liability of the ward's estate for such breach as the ward would have incurred for such breach if the ward had been competent.
- (h) Under order of court, for good cause shown, after such notice as the court may prescribe, a conservator shall have the power to sell, mortgage, exchange, pledge and lease real and personal property belonging to the ward, including the homestead and exempt personal property, when it appears to be to the best interests of the ward, upon such terms and conditions that the court may order and as permitted by law.

9-5-67. Powers Of Ward

- (a) A ward for whom a conservator has been appointed shall not have the power to convey, encumber, or dispose of property in any manner, other than by will if the ward possesses the requisite testamentary capacity, unless the court determines that the ward has a limited ability to handle the ward's own funds. If the court makes such

a finding, it shall specify to what extent the ward may possess and use the ward's own funds.

- (b) Any modification of the powers of the ward that would be more restrictive of the ward's control over the ward's financial affairs shall be based upon clear and convincing evidence and the burden of persuasion is on the conservator. Any modification that would be less restrictive of the ward's control over the ward's financial affairs shall be based upon proof in accordance with the requirements of this Chapter, Section 23.

9-5-68. Qualification Of Conservator – Resident

Any natural person over the age of eighteen years who is a family member of the ward, or who resides within the Northern Cheyenne Reservation, or who is an enrolled member of the Northern Cheyenne Nation, or who is the Director of Northern Cheyenne Family services or the Director's designee and who is an employee of Northern Cheyenne Family Services, or any other person as defined in this Article who is qualified to serve as a conservator except the following:

- (a) One who is under legal incompetency or is a chronic alcoholic or substance abuser or a spendthrift.
- (b) Any other person whom the court determines to be unsuitable.

9-5-69. Qualification Of Conservator – Nonresident

The court may, upon application, appoint the following nonresidents as conservator: A person as defined in this Article who does not reside within the exterior boundaries of the Northern Cheyenne Reservation and who is not an enrolled member of the Northern Cheyenne Nation and who is otherwise qualified under the provisions of this Chapter Section 9, provided there is a resident conservator appointed to serve with such nonresident conservator; and provided further that the court, for good cause shown, may appoint such nonresident conservator to serve alone without the appointment of a resident conservator.

9-5-70. Bond

Whenever a conservator is appointed, or upon the court determining that a guardian shall be required to post bond, the court shall determine the amount of bond as set forth in this Chapter , Section 12, below and the terms and conditions thereof. Upon such determination by the court, the conservator and/or guardian shall file with the clerk a certified copy of the conservator's official bond with sufficient surety or sureties and it shall be conditioned upon the faithful discharge of all the duties of the conservator and/or guardian according to law, including the duty to account. The bond shall be procured at the expense of the estate if an approved surety bond is furnished. The bond shall be duly authenticated by the clerk and the court or clerk shall also file as a court record a receipt for the property of the ward received by the conservator or guardian, which receipt shall be provided to the clerk by the guardian or conservator. The clerk shall file and record the bond(s) and receipt(s).

9-5-71. Amount Of Bond

Except as otherwise set forth herein or as may be otherwise ordered by the court for good cause shown, the court or the clerk shall fix the penalty of the bond in an amount equal to the value of the personal property of the estate, plus the estimated gross annual income of the estate during the period of administration. The court shall not exempt a conservator from giving a bond in a conservatorship with total assets of more than Twenty Five Thousand Dollars (\$25,000.00) except for good cause shown.

9-5-72. Bond – Approval By Court

The bond shall not be deemed sufficient until it has been examined and approved by the clerk who shall endorse such approval thereon. In the event the bond is not approved, the conservator or guardian shall, within such time as the court directs, secure and file a bond with satisfactory surety or sureties.

9-5-73. Review By Clerk When Inventory Is Filed

At the time the inventory of the estate is filed, the clerk shall review the amount of bond, and report to the court as to any apparent insufficiency thereof.

9-5-74. Bond Changed

The court may at any time require a new bond, or increase or decrease the amount of the penalty of the bond of any conservator or guardian when good cause therefore appears.’

9-5-75. Obligees Of Bond – Joint And Several Liability

The bond of the conservator or guardian shall run to the use of all persons interested in the estate, and shall be for the security and benefit of such persons. The sureties shall be jointly and severally liable with the conservator or guardian and with each other.

9-5-76. Order For Delivery

Upon the filing of the bond as provided above, the court being satisfied with the amount thereof, it shall order the personal property of the ward delivered to such conservator or guardian.

9-5-77. Inventory – Reporting Requirements

- (a) A conservator appointed under this chapter has a duty to make a diligent search to determine and discover the debts and property, real and personal, of the ward and the conservator shall file with the court:
 - (1) An inventory within sixty days of the conservator's appointment. This inventory shall include all debts and property of the ward that has come into the conservator's possession or of which the conservator has knowledge. When additional debts and/or property come into the possession of the conservator or to the knowledge of the conservator, a supplemental inventory shall be filed within thirty days.
 - (2) Written verified reports and accountings as follows:

- (i) Annually, within ninety days of the anniversary of the date of appointment of the conservator, unless the court otherwise orders that a report should be filed every six months or at some other interval to be determined by and in the discretion of the court.
 - (ii) Within thirty days following the date of removal of the conservator.
 - (iii) Upon filing resignation and before the resignation is accepted by the court.
 - (iv) Within sixty days following the date of termination.
 - (v) At other times as the court may order.
- (3) The report and accounting shall account for all of the period since the close of the accounting contained in the most recent previously filed report to the date of the present report and shall include the following information as far as applicable:
- (i) The balance of funds on hand at the close of the accounting contained in the most recent previously filed report and all amounts received from whatever source during the present accounting period.
 - (ii) All disbursements made during the present accounting period.
 - (iii) Any changes in investments during the present accounting period, including a list of all assets, and the recommendations of the conservator for the retention or disposition of any property, real or personal, held by the conservator.
 - (iv) A list of all debts and indebtedness as of the date of the present accounting.
 - (v) The amount of the bond and the name of the surety on it.
 - (vi) The residence address or the physical location of the ward.
 - (vii) The general physical and mental condition of the ward.
 - (viii) Such other information as shall be necessary to show the condition of the affairs of the conservatorship.
- (b) Reports of the conservator shall be reviewed and either approved or not approved by the court. If the court does not approve a report of the conservator the court shall, by order, instruct the conservator as to the deficiencies in the report and set a deadline by which the report must be resubmitted.
- (c) No order shall be entered approving an annual report of a conservator until the court costs which have been docketed have been paid or provided for. The court may, upon application, enter an order waiving payment of the court costs in indigent cases. However, if the conservatorship subsequently becomes financially capable of paying any waived costs, the conservator shall immediately pay the costs. Court costs include the following:
- (1) Guardian's fees, if any.
 - (2) Fees of the attorney for the guardian, if any.

- (d) The court shall settle each and every account filed by the conservator by allowing or disallowing it, either in whole or in part, or by surcharging the account against the conservator.
- (e) Reports required by this section shall be served on the attorney representing the ward in the conservatorship proceeding and all other parties appearing in the proceeding.

9-5-78. Title To Ward's Property

The title to all property of the ward is in the ward and not the conservator, subject however, to the possession of the conservator and to the control of the court for the purposes of administration, sale or other disposition, under the provision of the law.

9-5-79. Conservator's Right To Possession

Every conservator shall have a right to, and shall take, possession of all of the real and personal property of the ward. The conservator shall pay the taxes and collect the income therefore until the conservatorship is terminated. The conservator may maintain an action for the possession of the property, and to determine the title to same.

9-5-80. Presumption Of Fraud

If a conservator is appointed, all contracts, transfers and gifts made by the ward after the filing of the petition shall be presumed to be a fraud against the rights and interest of the ward except as otherwise directed by the court pursuant to this Chapter ,Section 8.

9-5-81. Claims Against The Ward, The Conservatorship Or Conservator In That Capacity

Claims accruing before or after the appointment of the conservator, and whether arising in contract or tort or otherwise, after being allowed or established as provided in this Chapter Section 23, Section 24, Section 25, shall be paid by the conservator from the assets of the conservatorship.

9-5-82. Forms And Verification Of Claims – General Requirements

No claim shall be allowed against the estate of a ward upon application of the claimant unless it shall be in writing, filed in duplicate with the clerk, stating the claimant's name and address, and describing the nature and the amount thereof, if ascertainable. It shall be accompanied by the affidavit of the claimant, or of someone for the claimant, that the amount is justly due, or if not due, when it will or may become due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the affiant, except as therein stated. The duplicate of said claim shall be mailed by the clerk to the conservator or the conservator's attorney of record; however, valid contract claims arising in the ordinary course of the conduct of business or affairs of the ward by the conservator may be paid by the conservator without requiring affidavit or filing.

9-5-83. Requirements When Claim Founded On Written Instrument

If a claim is founded upon a written instrument, the original of such instrument, or a copy thereof, with all endorsements, must be attached to the claim. The original instrument must be exhibited to the conservator or to the court, upon demand, unless it has been lost or destroyed, in which case, its loss or destruction must be stated in the claim.

9-5-84. How Claim Entitled

All claims filed against the estate of the ward shall be entitled in the name of the claimant against the conservator as such, naming the conservator, and in all further proceedings thereon, this title shall be preserved.

9-5-85. Filing Of Claim Required

The filing of a claim in the conservatorship tolls the statute of limitations applicable to such claim.

9-5-86. Compelling Payment Of Claims

No claimant shall be entitled to compel payment until the claimant's claim has been duly filed and allowed.

9-5-87. Allowance By Conservator

When a claim has been filed and has been admitted in writing by the conservator, it shall stand allowed, in the absence of fraud or collusion.

9-5-88. Execution And Levy Prohibited

No execution shall issue upon, nor shall any levy be made against any property of the estate of a ward under judgment against the ward or conservator, but the provisions of this section shall not be so construed as to prevent the enforcement of a mortgage, pledge or other lien upon property in an appropriate proceeding.

9-5-89. Claims Of Conservators

If the conservator is a creditor of the ward, the conservator shall file the claim as other creditors, and the court shall appoint some competent person as temporary conservator to represent the ward at the hearing on the conservator's claim. The same procedure shall be followed in the case of co-conservators where all such conservators are creditors of the ward; but if one of the co-conservators is not a creditor of the ward, such disinterested conservator shall represent the ward at the hearing on any claim against the ward by a co-conservator.

9-5-90. Claims Not Filed

The conservator may pay any valid claim against the estate of the ward even though such claim has not been filed, but all such payments made by the conservator shall be at the conservator's own peril.

9-5-91. Waiver Of Statute Of Limitations By Conservator

It shall be within the discretion of the conservator to determine whether or not the applicable statute of limitation shall be invoked to bar a claim which the conservator believes to be just, and the conservator's decision as to the invoking of such statute shall be final.

9-5-92. Liens Not Affected By Failure To File Claim

Nothing in Chapter 4, Section 23, and Chapter 4, Section 26 shall affect or prevent an action or proceeding to enforce any mortgage, pledge or other lien upon the property of the ward.

9-5-93. Separate Actions And Claims

- (a) Any action pending against the ward at the time the conservator is appointed shall be considered a claim filed in the conservatorship if notice is served on the conservator as defendant, and a duplicate of the proof of service of notice of such proceeding is filed in the conservatorship proceeding.
- (b) A separate action based on a debt or other liability of the ward may be commenced against the conservator as such in lieu of filing a claim in the conservatorship. Such an action shall be commenced by serving an original notice on the conservator and filing proof of service of notice of such proceeding in the conservatorship proceeding. Such an action shall also be considered a claim filed in the conservatorship. Such action may be commenced only if jurisdiction and venue vested in the Tribal Court of the Northern Cheyenne Nation would have been proper if there were no conservatorship and the action had been commenced against the ward.

9-5-94. Denial And Contest Of Claims

The provisions this Chapter Section 26 through Chapter Section 41 shall be applicable to the denial and contest of claims against conservatorship, but shall not be applicable to actions continued or commenced under Chapter Section 33.

9-5-95. Disallowance Of Claim By Conservator

At any time after the filing of a claim against an estate, the conservator may give the claimant and the claimant's attorney of record, if any, written notice of disallowance of claim. The notice shall be given by certified mail addressed to the claimant at the address stated in the claim and to the claimant's attorney of record, if any.

9-5-96. Notice Of Disallowance And Request For Hearing

A notice to a claimant of disallowance of claim shall advise the claimant that the claim has been disallowed and will be forever barred unless the claimant shall within twenty days after the date of mailing the notice, file a request for hearing on the claim with the clerk, and mail a copy of such required for hearing to the conservator and the conservator's attorney of record, if any, by certified mail.

9-5-97. Proof Of Service

Proof of service of the notice of disallowance shall be made by affidavit, shall show the date and place of mailing, and shall be filed with the clerk.

9-5-98. Claims Barred After Twenty Days

Unless the claimant shall within twenty days after the date of mailing the notice of disallowance, file a request for hearing with the clerk and mail a copy of the request for hearing to the conservator and to the conservator's attorney of record, if any, the claim shall be deemed disallowed, and shall be forever barred.

9-5-99. Request For Hearing By Claimant

At the time of the filing of a claim against an estate, or at any time thereafter prior to the time that the claim may be barred by the provisions of this Chapter, Section 39, or the approval of the final report of the conservator after notice to the claimant, the claimant may file a request for hearing with the clerk, and mail a copy of the request for hearing to the conservator and the conservator's attorney of record, if any.

9-5-100. Applicability Of Rules Of Civil Procedure To Hearing On Claim

Within twenty days from the filing of a request for hearing on a claim, the conservator shall move or plead to said claim and file any counterclaim against the claimant for an offset against the claim or other counterclaim in the same manner as though the claim were a petition filed in an ordinary action, and thereafter, all provisions of the law and rules of civil procedure shall apply.

9-5-101. Payment Of Claims In Insolvent Conservatorships

When it appears that the assets in a conservatorship are insufficient to pay in full all the claims against such conservatorship, the conservator shall report such matter to the court, and the court shall, upon hearing, with notice to all persons who have filed claims in the conservatorship, make an order for the pro rata payment of claims giving claimants the same priority, if any, as they would have if the ward were not under conservatorship.

9-5-102. Conservator May Make Gifts

For good cause shown and under order of court, a conservator may make gifts on behalf of the ward out of the assets under a conservatorship to persons or religious, education, scientific, charitable, or other nonprofit organizations to whom or to which such gifts were regularly made prior to the commencement of the conservatorship, or on a showing to the court that such gifts would benefit the ward or the ward's estate from the standpoint of income, gift, estate or inheritance taxes. The making of gifts out of the assets must not foreseeably impair the ability to provide adequately for the best interests of the ward.

9-5-103. Assets Exhausted

At any time that the assets of the ward's estate do not exceed the amount of the charges and claims against it, the court may direct the conservator to proceed to terminate the conservatorship.

9-5-104. Accounting To Ward Upon Termination – Notice

Upon the termination of a conservatorship, the conservator shall pay the costs of administration and shall render a full and complete accounting to the ward and the ward's attorney, if any, or on the ward's guardian and attorney for the guardian, if any, and to the court. Notice of the final report shall be served on the ward and the ward's attorney, if any, or the ward's guardian and attorney for the guardian, if any, in accordance with Chapter 2, Section 9 unless notice is waived. An order prescribing notice may be made before or after the filing of the final report.

9-5-105. Delivery Of Assets

Upon the termination of a conservatorship, all assets of the conservatorship shall be delivered under direction of the court to the person or persons entitled to them.

9-5-106. Discharge Of Conservator And Release Of Bond

Upon settlement of the final accounting of a conservator, and upon determining that the property of the ward has been delivered to the person or persons lawfully entitled thereto, the court shall discharge the conservator and exonerate the surety on the conservator's bond.

9-5-107. Removal Of Conservator

When any conservator is, or becomes, disqualified under this Chapter , Section 9 and/or 4, Section 10, or has mismanaged the estate, dies, fails or failed to perform any duty imposed by law, or by any lawful order of court, then the court may remove the conservator. The court may upon its own motion, and shall upon the filing of a verified petition by any person interested in the estate, including a surety on the conservator's bond, order the conservator to appear and show cause why the conservator should not be removed. Any such petition shall specify the grounds of complaint. The removal of a conservator after letters are duly issued to the conservator shall not invalidate the conservator's official acts performed prior to removal.

9-5-108. Appointment Of Successor Conservator

When any conservator fails to qualify, dies, is removed by the court, or resigns, and such resignation is accepted by the court, the court may, and if the conservator were the sole or last surviving conservator, and the conservatorship is not terminated the court shall appoint another conservator in the former's place.

9-5-109. Powers Of Successor Conservator

When a successor conservator is appointed, the successor shall have all the rights, powers, titles and duties of the predecessor, except that the successor shall not exercise powers given by court order that by its express terms are personal to the conservator therein designated.

9-5-110. Property Delivered – Penalty

Upon the removal of any conservator, the conservator shall be required by order of the court to deliver to the person who may be entitled thereto all the property in the conservator's possession or under the conservator's control belonging to the estate of the ward and if the conservator fails or refuses to comply with any proper order of the court, the conservator may be sanctioned, fined, or committed to jail until the conservator does.