

BISHOP PAIUTE TRIBE

TRIBAL ADULT GUARDIANSHIP ORDINANCE 2012-04

Adopted May 10, 2012

This Ordinance shall be known as the Tribal Adult Guardianship Ordinance and once adopted by the Bishop Paiute Tribal Council shall be within the adjudicatory jurisdiction of the Bishop Paiute Tribal Court.

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Bishop Paiute Tribe
Adult Guardianship Ordinance No. 2012-04

Purpose and Scope

The Bishop Tribal Council (Tribal Council) the federally recognized governing body of the Bishop Paiute Tribe (Tribe), after careful review and consultation with the Bishop Paiute community, finds and declares that there are adult community members who are unable to manage their property and or business affairs and/or physically care for themselves.

Based on these findings and the Tribe's concern for these adult community members, this Ordinance establishes the procedure for the appointment of guardians for adults who are unable to manage their property and/or the business affairs and/or physically care for themselves.

Definitions

"Guardian" means a person legally entrusted with the care of another's person or property.

"The Court" means the Bishop Paiute Tribal Court.

"Reservation" means the Bishop Paiute Reservation, Bishop California.

"Ward" means an individual age 18 years or older, who has been determined by the Court to be unable to manage their property and or business affairs and or physically care for themselves and is subject to a guardianship under this Ordinance.

Section 100. Jurisdiction

The Bishop Tribal Court shall have jurisdiction to hear petitions for guardianship when any of the following criteria are met:

- (a) The potential ward is a non-Indian residing on the Reservation and the non-Indian consents in writing to the jurisdiction of the Tribal Court.
- (b) The potential Ward is an Indian residing on the Reservation.
- (c) If the potential ward is a Bishop Paiute Tribal member, the potential ward may reside on or off the Reservation.

Section 101. Commencement of the Action

Any person may file a petition for a guardianship, including the person to be placed under guardianship.

Section 102. Procedure

- (a) A petition requesting a guardianship shall be filed with the Clerk of the Court. The Petition shall comply with the requirements of Section 103.
- (b) A summons shall be issued and served in accordance with Rules 9.1, 9.5, 10 and 11 of the Bishop Paiute Tribal Court Rules on all persons including the proposed Ward and spouse if any, who are listed on the Petition as relatives.
- (c) The Tribal Court shall hold a hearing on the Petition whether or not the matter is contested.

Section 103. Form and Content of Petition

The petition shall be verified or under penalty of perjury and shall state:

- (a) The name, age, and residence of the proposed ward.
- (b) Whether the proposed guardianship is of the property and/or business affairs and/or of the physical care of the proposed ward and the reason for the guardianship stated in detail.
- (c) The name, age and relationship to the proposed ward of the person filing the petition.
- (d) The name of a proposed guardian, and the relationship of the proposed ward to the proposed guardian.
- (e) A description of the proposed ward's income and property.
- (f) Name and address (residence and business if known) of the proposed Ward's spouse, if any.
- (g) Name and address of all known relatives of the proposed Ward which would include brothers, sisters, parents, sons, daughters and grandparents of the proposed Ward.

Section 104. Standards Applied in Evaluating a Petition

- (a) The petitioner must show that a guardianship is necessary for the wellbeing of the person and/or the management of his or her property and business affairs.
- (b) The necessity of the guardianship must be shown by clear and convincing evidence.

- (c) Any interested person or friend of the proposed Ward may support or oppose the filing of the Petition.
- (d) In the event there is a dispute or opposition to the filing of the petition the Tribal Court may order the petitioner and disputing parties into mediation if the Tribal Court determines that mediation could be beneficial. The Tribal Court can either choose a trained mediator or friends or family members to be agreed upon by the petitioner and the disputing parties. Each side of the mediation to share mediation costs and expenses equally.

Section 105. Selection and Approval of Guardians

- (a) The Court shall appoint a guardian only after the hearing required by Section 102 (c). The Court may approve the guardian requested by the petition, or may appoint any other person, as the best interests of the Ward require. A proposed Ward may suggest their own guardian.
- (b) If the Ward's estate exceeds \$10,000 in value, a financial institution may be appointed to manage the estate.
- (c) The duties of the guardian may be split, with one guardian chosen to care for the Ward and another guardian or an institution chosen to manage the property (assets) and or business of the Ward.
- (d) The Court in making its decisions where appropriate shall take into consideration Tribal customs, practices and traditions.

Section 106. Duties of a Guardian

- (a) General- The duties of a guardian shall be set forth below, depending on the age of the ward, the reason for the guardianship, and whether or not the duties of the guardian are split.
- (b) Guardians of the Person - Guardians of a ward's physical person are responsible for providing the necessities of life to the ward, to consent to medical treatment, to obtain any state or Indian benefits for the ward, and to exercise similar duties' and authority.

- (c) Guardians of the Estate - Guardians of a ward's property or business affairs shall manage the ward's property in the manner in which a prudent person would manage his own property.
- (d) Other Specified Duties - In addition to the duties listed above the Court may enumerate specific duties for the guardian in its order, if such duties would be in the best interests of the ward.

Section 107. Costs and Fees

Guardians may request the Court to approve payment for costs and fees arising from the care and management of the Ward and or the property, and as reasonable compensation for their services. The financial assets of the ward shall be used to pay any fees, costs or compensation approved by the Court.

Section 108. Posting of Bond

Guardians may be required by the Court to post a bond to insure protection of the ward's property.

Section 109. Change of Guardian

Persons placed under a guardianship (or through an interested party) may petition the Court at any time for a change of guardian. The standards set out in Section 105 and 106 would be used by the Court in determining any action on the Petition.

Section 110. Review of Guardianships

All guardianships and accounts shall be reviewed by the Court at least once every 12 months as to the continued necessity and as to the suitability of the guardian unless the Court determines that a shorter period of time is necessary.

The Court shall require that the Guardian provide the Court with a satisfactory accounting of all assets of the Ward that are under the control of the Guardian. At a minimum, the accounting shall state all revenue Ward was entitled to receive and a statement as to what was done with the revenues that the Ward was entitled to, whether spent on behalf of the Ward or otherwise.

The Tribal Court Clerk shall keep a calendar on which the review dates shall be entered. The guardian, ward and other interested parties (see Section 101(b) for interested parties) shall receive at least two weeks' notice of any Court review.

Section 111. Termination of Guardianship

- (a) A Ward and or the guardian may petition the Court to have the Ward's guardianship terminated when the Ward claims to have regained the ability to manage his or her business affairs and/or physically care for himself or herself. The Court will review the Petition in accordance with this Ordinance.
- (b) The Court may terminate a guardianship on its own motion, in conjunction with any review conducted in accordance with this Ordinance.

Section 112. Filing of Guardianships Pleadings

All Court Orders and related documents as to guardianships must be filed with the Tribal Court Clerk and must be served on the guardian, ward and other individuals listed in Section 102 (t) and (g). See Rules 9.1 and 9.3 of the Bishop Paiute Tribal Court Rules.

Section 113. Right to Appeal

Any appeal by a Petitioner, Ward or disputing person as defined in Section 104(d) above must be made in accordance with the Bishop Paiute Tribal appellate rules.

Section 114. Amendments

This Ordinance and the procedures promulgated hereunder may be amended or rescinded by the Tribal Council at a duly called regular or special meeting.

Section 115. Effective Date

This Ordinance shall be effective from the date of its approval by the Tribal Council.

Section 116. Bishop Tribal Court

As of the effective date of this Ordinance the Bishop Paiute Tribal Court shall have jurisdiction over this Ordinance.

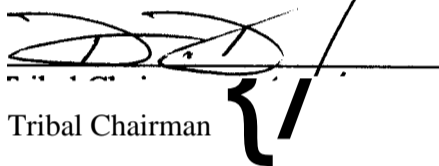
Section 117. Sovereign Immunity

Nothing in this ordinance is a waiver of the sovereign immunity of the Tribe or the Tribal Council or any official, agent or employee of the Tribe while acting in his or her official capacity. The employees and appointees of the Tribe, agents, the members of the Tribal Council, and the personnel of the Tribal Court are cloaked with the sovereign immunity of the Tribe. No individual named above shall be liable for his or her acts or failure to act under this Ordinance while acting in their lawful official capacity.

CERTIFICATION

The foregoing Ordinance was passed at a duly called meeting of the Bishop Tribal Council held on the 10th day of May, 2012 with a quorum present and voting 4 YES, 0 NO, 0 ABSTAINING, and 0 ABSENT and the Chairman not voting.

BISHOP TRIBAL COUNCIL:


Tribal Chairman

Date: 5/17/12

ATTEST:

/s/ Earleen Williams
Secretary/Treasurer
Date: 5-17-12



BISHOP TRIBAL COUNCIL

RESOLUTION T2012-26

SUBJECT: Tribal Adult Guardianship Ordinance No. 2012-04

WHEREAS: The Bishop Tribal Council is the federally recognized governing body of the Bishop Paiute Tribe; and

WHEREAS: It has been determined by the Tribal Council after careful review and consultation with the Bishop Paiute Community, that there are adult community members who are unable to manage their property and or business affairs and/or physically care for themselves; and

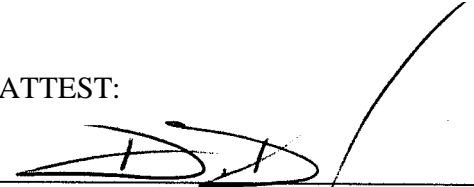
WHEREAS: It has been determined that the Bishop Paiute Tribe through its Bishop Paiute Tribal Court is in a position to assist adult community members who are unable to manage their property and or business affairs and/or physically care for themselves.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS: That the Bishop Paiute Tribal Council hereby authorizes its Tribal Chairman or Vice Chair to execute the Certification portion of the Tribal Adult Guardianship Ordinance No. 2012-04.

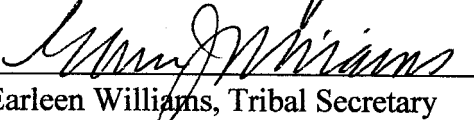
CERTIFICATION

We, the undersigned, as the Chairman and Secretary of the Bishop Tribal Council, hereby certify the Bishop Tribal Council, at a duly called meeting which was convened and held on the 10th day of May, 2012, at the Tribal offices in the State of California approved the foregoing resolution, at which a quorum was present voting 4 FOR, 0 AGAINST, 0 ABSTAINING, with the Tribal Chairman not voting, and that this resolution has not been rescinded or amended in any way.

ATTEST:


Dale Delgado, Jr., Tribal Chairman

Date 5/17/12


Marleen Williams, Tribal Secretary

Date 5-17-12