

WHITE MOUNTAIN APACHE
PROBATE CODE

Effective October 2, 2019

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CHAPTER ONE GENERAL PROVISIONS

SECTION 1.1 PURPOSE

The purposes of this Code are to provide procedures and mechanisms for:

- A. The orderly and efficient management and distribution of property of deceased persons; and
- B. The care of persons who are incapacitated because of age, illness or disability and for the management of those persons' property, through appointment of a guardian.

SECTION 1.2 JURISDICTION

- A. Probate. Pursuant to this Code and the Tribe's inherent sovereignty, the Tribal Court shall have jurisdiction to manage and distribute the property of a deceased person when that person was domiciled on the Reservation or was a member of the Tribe domiciled elsewhere and had property located on the Reservation.
- B. Guardianship. The Court shall have the jurisdiction to grant guardianships over persons who are members of the Tribe or who are domiciled on the Reservation.

SECTION 1.3 DEFINITIONS

Except where context would render it impracticable, these words in this Code shall have the following meanings:

- A. "Agent" means a person entrusted with legal authority under a Power of Attorney.
- B. "Capacity" means the ability of a person, at the time of creation of the will, to understand their property, who they are leaving property to, and the practical effects of creating the will; or the ability of a Principal to understand what legal rights they are delegating to another.
- C. "Code" means this Code.
- D. "Codicil" means a supplement that alters, amends or modifies a will.
- E. "Community Property" includes all property acquired by married parties, individually or jointly, during the term of the marriage.
- F. "Court" means White Mountain Apache Tribal Court.
- G. "Decedent" means the deceased person who is the subject of the probate or related action.
- H. "Descendant" means lineal descendant, including: child, grandchild, great-grandchild, etc., including those legally adopted.
- I. "Devisee" means a person who inherits through a will.

- J. "Estate" means the collection of property and debts of a decedent.
- K. "Fiduciary" means a person or qualified legal entity who must exercise a high standard of care in the management of the property of another.
- L. "General Guardian" means a guardian of the person and all property of the protected person.
- M. "Guardian" means a person or qualified legal entity appointed to take care of the person and/or property of another.
- N. "Guardian ad Litem" means a person appointed by the court to investigate and advocate for the best interests of a minor devisee or heir, or an incapacitated adult.
- O. "Heir" means a person who has a legal right to inherit through intestacy.
- P. "Holographic Will" means a will that is entirely handwritten and signed by the Testator.
- Q. "Intestacy" means the laws and procedures that govern the distribution of property of a person who died without a will.
- R. "Minor" means a person who has not yet reached the age of eighteen.
- S. "Person" means a human being or a legal entity, such as a corporation or association, recognized as having the rights of personhood.
- T. "Principal" means a person who delegates their own legal rights to another using a Power of Attorney.
- U. "Probate" means the judicial procedure to administer the estate of a decedent.
- V. "Property" means property that exceeds the value of \$250.00 per item. This does not include real property or improvements attached to real property, as those are governed by the Land Code, unless the real property or improvements thereon are not the subject of a beneficiary designation.
- W. "Protected Person" means a person who is the subject of a guardianship.
- X. "Reservation" means the Fort Apache Indian Reservation of the White Mountain Apache Tribe.
- Y. "Special Guardian" means any guardianship that grants less than the powers of a General guardian.
- Z. "Testator" means the person who created a will.
- AA. "Tribe" means the White Mountain Apache Tribe.
- BB. "Undue Influence" means that the testator's free will was overcome by influence of another person and the resulting disposition does not reflect the true desires of the testator.
- CC. "Will" means a document by which a testator directs the testator's estate to be distributed to devisees upon the Testator's death.

SECTION 1.4 STANDARD OF PROOF; BURDEN OF PROOF

The standard of proof in proceedings brought under this Code shall be by a preponderance of the evidence. The party asserting the existence or absence of a fact shall bear the burden of persuasion as to the fact asserted.

SECTION 1.5 LIMITATIONS ON ACTIONS

Unless good cause to the contrary is shown, a petition to probate an estate, whether through a will or intestacy, must be filed within five (5) years of the date of death of the decedent.

SECTION 1.6 PERSONS FELONIOUSLY CAUSING DEATH OF ANOTHER PROHIBITED FROM INHERITING FROM THAT PERSON

No person who feloniously takes or causes or procures another so to take the life of another shall inherit from such person, or receive any interest whatsoever in the estate of the decedent or any portion of his or her estate whether through a will or through intestacy.

CHAPTER TWO PROBATE PROCEEDINGS

SECTION 2.1 INITIATION OF A PROBATE ACTION

A probate action is initiated by filing with the Court a Petition to Appoint a Personal Representative of an Estate.

SECTION 2.2 SCOPE OF A PROBATE ACTION

A probate action shall govern the distribution of property of a decedent, whether through will or intestacy. To the extent the transfer of a decedent's property is governed by another lawful process, such as a Land Code assignment, a beneficiary designation or transfer on death instruction under a registered instrument, or by the law of another jurisdiction, such items of property are not included in the decedent's estate and are not within the scope of a probate action.

SECTION 2.3 PERSONAL REPRESENTATIVE OF AN ESTATE: QUALIFICATIONS

To serve as Personal Representative, a person must:

- A. Be an individual at least 21 years old;
- B. Certify that they are a high school graduate or have earned a general equivalency degree ("GED"); and
- C. Not have been convicted of a felony or crime of moral integrity, as defined by Article XII, Section 1 of the Tribe's Constitution; and
- D. If the Personal Representative is not domiciled on the Reservation, the Personal Representative shall be deemed to have submitted to the jurisdiction of the Tribal Court by filing the Petition for Appointment of a Personal Representative and by taking any actions authorized under the authority of the Court.

SECTION 2.4 PETITION TO APPOINT A PERSONAL REPRESENTATIVE OF AN ESTATE; CONTENTS

A Petition to Appoint a Personal Representative of an Estate shall contain, at least, the following information:

- A. The Petitioner's name, mailing address and telephone number;
- B. The full name and birth date of the decedent;
- C. The date of death and place of death of the decedent;
- D. The decedent's tribal affiliation and enrollment number, if any;
- E. A statement that, as of the time of death, the decedent was domiciled on the Reservation or was a member of the Tribe domiciled elsewhere who had property located on the Reservation;
- F. The relationship, if any, between the Petitioner and the decedent;

- G. The reasons for the Petitioner's interest to serve as Personal Representative;
- H. A statement specifying either that the decedent left a will or that, to the knowledge of the Petitioner, the decedent did not leave a will and that a diligent search to locate one has failed;
- I. The names of all heirs and devisees;
- J. Names of all known creditors to the estate;
- K. A signed verification that the Petitioner meets all of the requirements contained in Section 2.3 and that all information contained in the Petition is complete and accurate to the Petitioner's best knowledge;
- L. The death certificate shall be attached to the Petition as "Exhibit A"; and
- M. The will, if any, shall be attached to the Petition as "Exhibit B".

SECTION 2.5 APPOINTMENT

After receipt of the Petition to Appoint a Personal Representative of an Estate, and review to verify compliance with this Chapter, the Tribal Court shall assign the probate matter a case number, appoint the Petitioner as the Personal Representative of the Estate, and issue a letter of appointment, unless good cause to the contrary appears.

SECTION 2.6 LETTER OF APPOINTMENT; CONTENTS

The letter of appointment shall contain the following:

- A. Personal Representative's name, address, and telephone number;
- B. The name of the matter as follows, "In the Matter of the Estate of _____";
- C. The case number;
- D. A statement that the Personal Representative has, upon petition, been appointed by the Court to serve as personal representative of the estate with or without restriction;
- E. The signature of the Judge issuing the letter of appointment and date of the letter;
- F. The notarized signature of the Personal Representative below the statement, "I accept the appointment as Personal Representative of this Estate and do solemnly swear that I will lawfully perform the responsibilities and live up to the fiduciary duties of such."

SECTION 2.7 RESPONSIBILITIES OF THE PERSONAL REPRESENTATIVE

- A. Provide Notice. Promptly after receiving the letter of appointment, the Personal Representative shall serve notice upon all heirs and devisees identified in the Petition. This service may be accomplished by mail or through personal service, or through a combination of both.
 - 1. *Service by Mail.* Service by mail shall be in the form of mailing copies of the letter of appointment to all heirs and devisees via certified mail, restricted delivery, return receipt

requested, and is only accomplished once the return receipts, signed by each heir or potential heir, are received.

2. *Personal Service.* Personal Service may be made by delivering two copies of the letter of appointment to each heir or devisee, and returning to the Court one copy of the Letter of Appointment signed by each heir or devisee, with a statement acknowledging receipt.
- B. *Service by Publication.* Only after attempts to serve of all of the heirs or devisee cannot by mail or personal service have failed, may the Personal Representative serve notice to the heirs and devisees by publication, in the following manner.
1. *Paper.* Notice must be published in the Fort Apache Scout, or other newspaper of local circulation on two consecutive weeks.
 2. *Contents of Notice.* Notices published pursuant to this section shall contain the following information:
 - a. The name of the decedent;
 - b. The name of the Personal Representative;
 - c. A statement that the named person has been appointed by the Court to serve as the personal representative of the decedent's estate;
 - d. A statement that any heir or devisee wishing to object to the appointment of the Personal Representative must do so in writing to the Tribal Court within thirty (30) days after the date of first publishing of the notice, and that failure to timely object may result in loss of legal rights.
- C. *Obtain Estate Property.* The Personal Representative shall use the letter of appointment to obtain all of the property of the estate, by contacting all banks or other financial institutions into which the decedent was known to have accounts, if such accounts did not name any designated beneficiary.
- D. *Complete Inventory Report.* Within ninety (90) days of receiving the letter of appointment, the Personal Representative shall prepare a complete inventory of all property and debts of the estate, noting the value of each item and the amount of each debt.
- E. *Distribute Estate Property.* After all heirs have been served with notice and the inventory report is completed, the Personal Representative shall make disbursements of property to creditors and to devisees according to the language of the will, if there is a will, or if intestate, the Personal Representative shall create a distribution plan which shall be consistent with the Tribe's intestacy provisions contained in this Code, and then distribute the estate property accordingly. The Personal Representative shall obtain a receipt from each heir to whom property was disbursed.
- F. *Prepare and Submit Final Report.* Within thirty (30) days after completing disbursement, the Personal Representative shall submit to the Court a Final Report which shall contain:
1. Proof that all heirs were served notice of the Appointment of the Personal Representative or that notice was published as provided by Subsection B, above;
 2. The inventory report;
 3. A copy of the will or distribution plan;
 4. Receipts from heirs who received estate property;

5. Any other necessary documentation; and
6. An affidavit from the Personal Representative certifying that all of the information provided in the Final Report is accurate and complete, and requesting that the Court discharge the Personal Representative and declare the estate closed.

SECTION 2.8 FIDUCIARY DUTIES OF PERSONAL REPRESENTATIVE

The Personal Representative shall be subject to the following fiduciary duties and obligations, in all of their dealings regarding the estate:

- A. The Duty to Administer Estate. The Personal Representative shall be responsible for diligently fulfilling the court's instructions or those contained in the distribution plan or will. Timelines must be followed and the Personal Representative must do all they can to locate and communicate with heirs, devisees and creditors.
- B. The Duty of Loyalty to the Estate. Even if the Personal Representative is an intestate heir or devisee identified in the will, the Personal Representative shall be under strict obligation to deal evenly and fairly among all other heirs or devisees, and shall not favor themselves nor others in the manner they carry out the duties of Personal Representative. The Personal Representative shall act with the best interests of the estate in mind, and not out of self-interest.
- C. Duty to Report. The Personal Representative shall render a complete and accurate report to the court and the heirs, devisees and creditors. If asked about the probate proceedings by an heir, devisee, creditor or officer of the court, the Personal Representative shall respond promptly and with candor. The Personal Representative shall communicate with the heirs, devisees, creditors and the court regarding difficulties in the administration of the probate proceedings, when appropriate.
- D. Duty to Keep Estate Property Separate. The Personal Representative shall keep the property of the estate separate from the Personal Representative's own property at all times, may not commingle their property with that of the estate, and may not utilize any estate property, except for the payment of debts and distribution to the heirs or devisees.

SECTION 2.9 PROBATE HEARING NOT NECESSARY IN ALL CASES

The court need not hold a probate hearing unless requested to by the Personal Representative, an heir, devisee, or by a creditor.

SECTION 2.10 PROBATE DISPUTES

If an heir, devisee or creditor files a timely objection to the probate action, at any stage before the closure of the estate, the Court may, for good cause shown, hold a probate hearing to determine the issue raised by the objection.

SECTION 2.11 INFORMAL DISPUTE RESOLUTION

The heirs, devisees and creditors may hold an informal meeting to settle any probate disputes prior to and in lieu of a formal probate hearing. After conclusion of the informal dispute resolution meeting, if the dispute was settled, the Personal Representative shall notify the Court, in writing, of the nature of the dispute and the resolution reached. If a resolution was not reached, the Personal Representative shall so notify the Court, and a formal probate hearing shall be held.

SECTION 2.12**REMOVAL OF PERSONAL REPRESENTATIVE**

The heirs, devisees or creditors of the decedent may petition the Tribal Court for removal of the Personal Representative for breach of the fiduciary duties listed in Section 2.8. Upon approval by the Tribal Court, a new Personal Representative shall be selected by the Court.

SECTION 2.13**CLOSING THE ESTATE**

If no objections are received by the Court within thirty (30) days of the submission of the Final Report, the Tribal Court shall issue an order discharging the Personal Representative and closing the estate.

CHAPTER THREE INTESTACY

SECTION 3.1 INTESTACY; GOALS

Traditionally, the White Mountain Apache people disbursed the property of a deceased relative to that person's family according to their needs. Personal Representatives should consider the needs of the family, foremost. They should try and distribute the decedent's property as they feel the decedent would. They should also consider any sentimental attachments that family members may hold towards particular objects. Family harmony and unity should be treasured above any material goods.

SECTION 3.2 INTESTACY; DATE OF CALCULATION

Heirship shall be calculated as of the date of death of the decedent, not at the time of distribution of the estate.

SECTION 3.3 INTESTATE ESTATE; MODIFICATION BY WILL

- A. Any part of a decedent's estate not effectively disposed of by will or through an instrument designating a beneficiary shall pass by intestate succession to the decedent's heirs as prescribed in this chapter.
- B. A decedent by will may expressly exclude or limit the right of a person or class to succeed to property of the decedent that passes by intestate succession.

SECTION 3.4 INTESTATE SHARE OF SURVIVING SPOUSE AND CHILDREN

- A. The following part of the intestate estate, as to both separate property and the one-half of the community property that belonged to the decedent, passes to the surviving spouse, provided that the surviving spouse and the decedent were married at the time of death:
 - 1. If there are no surviving children of the decedent or if the surviving children of the decedent are also the surviving spouse's children, the entire intestate estate; or
 - 2. If there are surviving children, one or more of whom is not also the child of the surviving spouse, one half of the intestate separate property and no interest in the one-half of the community property that belonged to the decedent.
- B. Former Spouses. Former spouses have no interest in that portion of the decedent's estate that is subject to Probate, unless as otherwise provided for by ERISA or other applicable federal law.
- C. Common-Law. As common-law marriages are not provided for by nor recognized under the Tribe's Domestic Relations Code, common-law "spouses" shall not be intestate heirs.

SECTION 3.5 INTESTATE SUCCESSION IN ABSENCE OF SURVIVING SPOUSE

- A. With Descendants. If a decedent has no surviving spouse but the decedent has descendants, the descendants shall be heirs and inherit per stirpes.
- B. No Descendants. If a decedent has no surviving spouse and no descendants, the intestate property shall be inherited in the following order:

1. To the decedent's surviving parents, in equal shares, unless no parents are still living; then;
2. To the decedents' siblings , per capita with representation, unless there were no siblings; then;
3. To the descendants of the decedent's grandparents, per capita with representation, unless there are no living descendants; then
4. Escheat to the Tribe, at the Tribe's option.

SECTION 3.6 PER STIRPES DISTRIBUTION; DEFINITION

Per Stirpes distribution means that shares are divided among the children of the decedent, each child receiving one equal share. If a child is deceased at the time of distribution, then that child's one share is divided equally amongst that child's's heirs.

For example, if the deceased left no spouse and was survived by four of his five children, then the estate would be divided into five equal shares. The four surviving children would each be given their share, and the descendants of the deceased child (if any), would split that one share equally, by generation in this same manner. If the deceased child has no descendants, then the estate would only be divided into 4 shares and equally distributed amongst the surviving children of the deceased.

For the purposes of this Section, "child" shall mean the son or daughter of the decedent, regardless of the age of the son or daughter.

SECTION 3.7 CEREMONIAL OBJECTS

Ceremonial objects should be placed with consideration of their power and the great responsibility that comes with stewardship over sacred things. Accordingly, they may be entrusted to medicine people if the family feels that is appropriate, retained by the family, or put away.

CHAPTER FOUR WILLS

SECTION 4.1 FORMS OF WILLS

Valid wills may take the form of either an Attested Will or a Holographic Will.

SECTION 4.2 ATTESTED WILLS; EXECUTION

To be valid, an attested will must contain all of the following elements:

- A. Must show intent from the testator that the document operate as their will;
- B. Must show that the testator, at the making of the will, was at least eighteen (18) years old and of sound mind;
- C. Must be signed by the testator, or if the testator is unable to write, be marked by a notarized thumbprint of the testator; and
- D. Must also be signed by two competent attesting witnesses, present during testator's signing, and signed in the testator's presence, and who are not devisees under the will.

SECTION 4.3 HOLOGRAPHIC WILLS; EXECUTION

To be valid, a holographic will must contain all of the following elements:

- A. Must show intent from the testator that the document operate as their will;
- B. Must show, that the testator, at the time of the making of the will, was at least 18 years old and of sound mind;
- C. Must be entirely in the testator's own handwriting and must be signed by the testator.

SECTION 4.4 CODICILS

Codicils, amending, revoking, or modifying a previously executed will shall be valid if they comply with the requirements of Sections 4.2 or 4.3.

SECTION 4.5 REVOCATION

A will may be revoked by the testator, in whole or in part, by:

- A. Executing a subsequent will that revokes the previous one; or
- B. By performing a revocatory act on the will if the testator performs the act with this intent or if another person performs the act in the testator's conscious presence and by the testator's direction. For purposes of this paragraph, "revocatory act on the will" includes burning, tearing, canceling, obliterating or destroying the will or any part of it.

SECTION 4.6 ANTI LAPSE STATUTE

If a device or gift in a will lapses because the devisee died before the testator, that gift or device shall be distributed to the heirs of the devisee, unless the will provides otherwise.

SECTION 4.7 SURVIVAL OF THE DECEDENT

In order to inherit, a devisee must outlive the decedent by 120 hours.

SECTION 4.8 RESIDUARY

If the will fails to dispose of the entirety of the testator's property, the remaining property shall be distributed to the intestate heirs in accordance with Chapter Three.

SECTION 4.9 CONTESTING THE WILL

Any devisee, heir, or creditor may contest a will by filing an objection with the Tribal Court between the time that they were served notice or the first date of notice being published and not later than thirty (30) days after the submission of the Final Report, and subject to the provisions of Chapter Two. The person filing the objection shall send copies of the objection by registered mail, return receipt requested, to the personal representative, all devisees, and all creditors.

SECTION 4.10 GROUNDS FOR CONTESTING A WILL

A will, either in whole or in part, may be contested for any of the following reasons:

- A. Defective execution;
- B. Revocation;
- C. Lack of testamentary capacity;
- D. Lack of testamentary intent;
- E. Undue influence;
- F. Fraud;
- G. Mistake.

SECTION 4.11 RULES OF INTERPRETATION

In reaching a decision regarding a will contest, the Court shall seek to honor the actual, expressed intent of the testator in the will, and remedies shall adhere as closely to that intent as possible. The primary indicator of testator's intent is the language of the will. Only when the language is unclear may extrinsic evidence be introduced to clarify intent. In the absence of a provision, the Court may not imply or infer what the Testator likely would have done.

When the will's language is ambiguous, the Court shall apply the following rules of interpretation in deciphering the testator's intent, in this order:

- A. Favor those who would inherit intestate;
- B. Favor the construction that avoids intestacy;
- C. Favor the construction that is consistent with the perceived pattern of disposition;
- D. Every portion of the will should be given effect if possible; and
- E. Between totally inconsistent clauses, the latter is most likely the final intent.

CHAPTER FIVE GUARDIANSHIP

SECTION 5.1 APPOINTMENT OF GUARDIAN

- A. Minors. A permanent or temporary guardian may be appointed for a minor by the Tribal Court for the person or property, or both, of a minor who has no guardian legally appointed by will or deed, and who is a member of the White Mountain Apache Tribe or is domiciled on the Fort Apache Indian Reservation, and whose parents are deceased or unwilling or unable to care for them. A petition shall be filed and notice given thereof as provided in Section 5.2, except that notice shall be given to all of the adult relatives of the minor residing on the Fort Apache Indian Reservation. For the purpose of this Section, "adult relatives" shall include grandparents, aunts and uncles, and cousins.
- B. Adult Guardianship. A temporary or permanent guardian may be appointed for an adult when it is determined, as hereinafter provided, that said person is unable, without assistance, to properly manage and take care of their person or property, and would be harmed if a guardian were not so appointed.

SECTION 5.2 PETITION FOR GUARDIANSHIP; NOTICE TO THE SUBJECT AND RELATIVES; HEARING

Adult Guardianship. When it is represented to the Tribal Court by verified petition of any person that a member of the White Mountain Apache Tribe or an individual domiciled on the Reservation is incapable of caring for themselves or managing their property, the Tribal Court shall cause notice to be given to the subject of the Petition and to the nearest relatives of the subject, of the time and place of hearing such guardianship petition, not less than five (5) days before the time of such hearing, and such person, if able to attend, must be brought before the Tribal Court. For the purposes of this sub-section, "nearest living relatives" shall mean spouse and adult children (if any), or living brothers and sisters.

If, after a full hearing and examination upon such petition, it appears to the Court that the person in question is incapable of taking care of themselves and managing their property, the Court shall appoint a temporary or permanent guardian of their person and/or estate with general duties as hereinafter specified.

SECTION 5.3 QUALIFICATIONS OF GUARDIAN

To be appointed a guardian by the White Mountain Apache Tribal Court, a person must:

- A. Be responsible;
- B. Residing on the Fort Apache Indian Reservation;
- C. Be and at least twenty-one (21) years of age; and
- D. Be cleared to become a guardian, as determined by Section 5.4.

SECTION 5.4 GUARDIANSHIP REPORT BY CPS

Upon the filing of a guardianship petition when the child and the child's family are not-currently involved in a pending CPS case, the court shall immediately request that the social services department or other qualified agency conduct a guardianship report on the proposed guardianship. The guardianship report shall contain all pertinent information necessary to assist the court in determining the best interests of the proposed ward,

and shall consist of a home study safety and tribal, state and federal background checks.

No determination can be made on a petition for guardianship until the report has been completed and submitted to and considered by the court. The guardianship report shall be submitted to the court no later than ten (10) days before the hearing. The court may order additional reports as it deems necessary.

SECTION 5.5 APPOINTMENT OF GUARDIAN; PREFERENCE

- A. Appointment of Guardian Preference. In considering whom to appoint as guardian, the Court shall, amongst interested parties, apply the following preference in order, unless good cause to deviate is established:
 - 1. A parent;
 - 2. One who was designated by the wishes of the deceased parent of the minor, if applicable;
 - 3. One who already stands in the position of a trustee of a fund to be applied to the child's support; or
 - 4. To a relative.
- B. Best Interest Controlling. This order of preference is not controlling when its application would not be in the best interests of the ward.
- C. Minor's Own Preference. In the case of minor over the age of thirteen (13), the minor's preference may also be considered.

SECTION 5.6 DUTIES OF GUARDIAN

- A. To make an inventory of all property of the estate, real and personal, of the protected person and that which comes to the guardian's possession or knowledge, and to return the same within such time as the Court may order.
- B. To render an account, on oath, of the property of estate of the protected person in his hands, and all proceeds or interest derived therefrom, and of the management and disposition of same, at least once a year thereafter, and at such other times as the Court directs, and, at the expiration of the guardian's trust to settle the guardian's account with the Tribal Court, and to pay over and deliver all of the property of the estate, moneys and effects remaining in his hands, or due them on such settlement, to the person who is lawfully entitled thereto.
- C. To have power over the person and property of the protected person, unless otherwise ordered; to be charged with the custody of the protected person, and look to the protected person's support, health, and education as a fiduciary. To keep safely the property of his ward and not permit any unnecessary waste or destruction of the property nor to sell, lease or encumber any of such property without the order of the Tribal Court. To, so far as it is in the guardian's power, maintain the property out of the income or other property of the estate, and deliver it to the ward at the close of the guardianship in as good condition as the guardian received it.

SECTION 5.7 AUTHORITY OF GUARDIANS

- A. A Permanent Guardian appointed by an order of the court may have authority over the custody and care of the protected person, including the authority to consent to the protected person's medical care and treatment. The permanent guardian of a minor may also have authority over the education of the

minor, and the care and management of the minor's property and assets until such minor arrives at the age of eighteen (18), marries, is emancipated by an order of the court, or until the permanent guardian is legally discharged. In no instance shall the permanent guardian have the authority, without an order of the court, to dispose of any real or personal property of the minor in any manner, including, but not limited to, the minor's Individual Indian Money Account, but shall manage all of the minor's assets, monies, or support payments consistent with the principles of a trustee and a fiduciary.

- B. A Temporary Guardian shall have all of the above-listed authorities, but shall not be appointed for a term longer than one year if not renewed by the Court at the annual Review Hearing required by Section 5.11.

SECTION 5.8 PARENTAL RESPONSIBILITY OF SUPPORT

Unless so drafted and ordered, guardians appointed under this Code have the right to obtain child support from the natural parents of the minor who is the subject of the guardianship.

SECTION 5.9 SUPPORT FOR PROTECTED PERSONS; USAGE

Any support payment the guardian receives on the protected person's behalf, from any source, must be only used by the guardian for the purpose of covering expenses incurred in the care and custody of the protected person, and administered in keeping with the principles of fiduciary duties. The use of said funds for any purpose other than those described in this section shall subject the guardian to contempt of court and to criminal and civil liability.

SECTION 5.10 TESTAMENTARY GUARDIANSHIP

A guardian of a minor or estate may be appointed by will or by deed to take effect upon the death of both parents.

SECTION 5.11 GUARDIANSHIP REVIEW HEARINGS

- A. First Annual Review Hearing. No later than 365 days after the date of the initial guardianship order, the Court shall hold a review hearing.
- B. Guardian of a Minor's Report. In CPS and non-CPS Minor Guardianship cases, the guardian shall have the duty to prepare and submit an annual report to the Court no later than 30 days before the annual guardianship review hearing. This report shall contain, at a minimum:
1. School progress notes;
 2. Progress notes from all other services the child is receiving from pertinent agencies;
 3. An accounting of uses of the Minor's property and assets, as required by Section 5.6(A) and
 4. Any comments or concerns that the guardian wishes to bring before the court.
- C. Subsequent Review Hearings. In cases of Permanent Guardianship, review hearings shall be subsequently held not less infrequently than every two (2) years. In cases of Temporary Guardianship, review hearings shall be held not less infrequently than annually.

SECTION 5.12 MODIFICATION OF GUARDIANSHIP ORDERS; STANDARD

Persons moving the Court for the modification of a guardianship order must prove that a substantial change of circumstances has occurred that warrants the proposed modification.

SECTION 5.13 CAUSES FOR REMOVAL OF GUARDIAN

A Guardian shall be removed if it is shown that the guardian:

- A. Has abused their trust;
- B. Has continuously failed to perform their mandated duties;
- C. Has become incapacitated and is unable to perform their duties;
- D. Has abused the protected person;
- E. Uses illegal drugs or habitually uses alcohol;
- F. Has a substantial interest adverse to the faithful performance of their duties; or
- G. When it is no longer proper that the protected person should be under guardianship.

SECTION 5.14 TERMINATION OF GUARDIANSHIP

The following shall be grounds for termination of the guardianship:

- A. Removal of guardian, as provided in Section 5.13;
- B. Expiration of a temporary guardianship order;
- B. Marriage of the minor protected person;
- C. The minor protected person reaching the age of 18; or
- D. The adult protected person being restored to competency by the Court.

SECTION 5.15 FEES AND COMPENSATION

- A. Fees. The Court shall set reasonable fees for guardianship proceedings.
- B. The Court can authorize reasonable compensation to be paid to the guardian by the parents of the protected person, and by Tribal Social Services in guardianships initiated pursuant to Child Protective Services Case.

SECTION 5.16 JURISDICTION

The White Mountain Apache Tribal Court shall have exclusive jurisdiction over a guardian appointed by this Tribal Court.

CHAPTER SIX POWERS OF ATTORNEY

SECTION 6.1 POWERS OF ATTORNEY DELEGATING PARENTAL POWERS

- A. Purpose and Definition. A power of attorney delegating parental powers is executed by a person who has legal responsibility for the custody and care of a minor for the purpose of giving certain legal authorities over that minor to another, temporarily. Ordinarily this includes granting the legal authority to act on the principal's behalf in making educational and health care decisions affecting the minor who is the subject of the power of attorney.
- B. Execution. To be legally effective, a power of attorney over a minor must clearly state the following:
1. The name(s) of the principal(s);
 2. The names of the agent(s);
 3. The name(s) of the minor child(ren) who are the subject of the Power of Attorney;
 4. The authority that the principal is giving the agent through of the Power of Attorney, whether it be custodial, educational and/or health care in nature; and
 5. Notarized and dated signatures of the principal(s) and agent(s).
- C. Effective Date and Expiration. Powers of attorney over minors shall become effective on the date of the last notarized signature and shall expire six (6) months thereafter, unless the parent is an active duty member of the military, in which case the power of attorney shall expire twelve (12) months after its execution.
- D. Renewal. Powers of attorney may be renewed by the parties through a notarized amendment, executed before the expiration date.
- E. Filing with the Court. Powers of Attorney need not be filed nor recorded at the Tribal Court to be effective.

SECTION 6.2 POWERS OF ATTORNEY OVER ADULTS

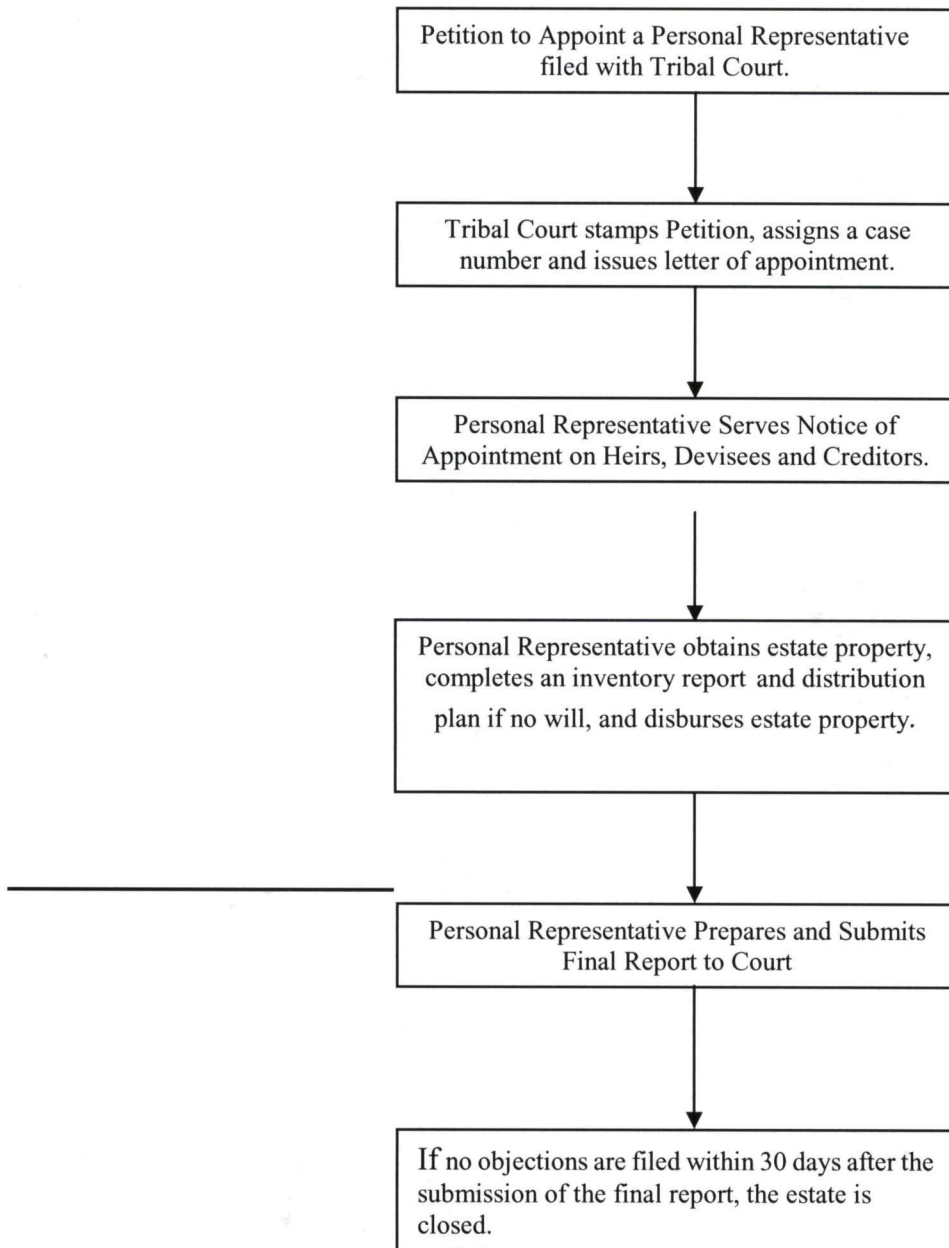
- A. Purpose. A Power of Attorney is used by one adult to grant to another adult the legal authority to make decisions and act on their behalf, provided that the adult principal possesses the necessary capacity.
- B. Types. Powers of Attorney may be granted in, or in combination of, the following types:
1. General. The Principal gives the Agent the comprehensive authority to make all legal decisions and conduct all business on the Agent's behalf;
 2. Limited. The Principal gives the agent the authority to act in their place for a limited purpose, for example to sign a legal document on their behalf or administer a certain item or property;

3. Springing. Becomes effective upon the occurrence of a specified event, usually at the incapacity of the Principal. A springing power of attorney may be General or Limited, but is usually General; and
 4. Durable. Becomes effective on the date of execution and survives the incapacity of the Principal. A durable power of attorney may be General or Limited, but is usually general.
 5. Term. Powers of Attorney shall expire either upon a specified date, upon revocation by the Principal or upon the Principal's death. In no case shall a Power of Attorney be of any effect after the Principal's death.
- C. Capacity. To be valid, the Principal must be at least eighteen (18) years old, have the capacity at the time of execution of the power of attorney to understand the legal rights they are giving up and who they are giving those right to, and must free and willingly grant it.
- D. Execution. To be effective, a Power of Attorney over an adult must satisfy the following requirements:
1. Contains language that indicates the Principal intends to create a Power of Attorney and clearly identifies the Agent;
 2. Is signed by the Principal in the presence of a notary, or, if the Principal is incapable of writing, is signed by another person at the direction of the Principal, and so indicated, in the presence of a notary;
 3. Is witnessed by a third party, other than the Principal, the Principal's spouse, the Principal's children, or the Notary;
 4. Contains the following attestation clause:

I, _____, sign my name to this power of attorney this ____ day of _____ and, being first duly sworn, do declare to the undersigned authority that I sign this instrument as my power of attorney and that I sign it willingly, or willingly direct another to sign for me, that I execute it as my free and voluntary act for the purposes expressed in the power of attorney and that I am eighteen years or older, of sound mind and under no constraint or undue influence.
- E. Revocation; Termination; Amendment. Unless specifically made irrevocable at the time of execution, the Principal may revoke or terminate the Power of Attorney, in whole or in part at any time by signed written instrument. Revocation need not be notarized to be effective. However, any amendments that contain new grants of authority to the same or different persons must be executed in the same manner as Sub-Section D, above, to become effective.

APPENDICES

APPENDIX 1- PROBATE PROCEDURE CHART



**APPENDIX 2
PROBATE FORMS**

A. PETITION TO APPOINT A PERSONAL REPRESENTATIVE OF AN ESTATE

Petitioner's Name:

Address:

Address:

Phone Number:

E-Mail Address:

IN THE WHITE MOUNTAIN APACHE TRIBAL COURT

WHITERIVER, ARIZONA

In Re: Estate of _____.

Case No.

**PETITION TO APPOINT PERSONAL
REPRESENTATIVE OF AN ESTATE**

I, (Affiant's Name) hereby file this Application to Settle the Estate of (deceased's name), who is deceased, and state the following in support:

1. The decedent's full name was _____.
2. The decedent passed away on (date) _____. Attached hereto as "Exhibit A" is a copy of the death certificate.
3. The decedent's tribal affiliation was _____ and the decedent's enrollment number was _____.
4. As of the date of death, the Deceased was (domiciled on the Fort Apache Indian Reservation/ was a Tribal member who was not domiciled on the Reservation, but who owned property located thereon [select one]).

5. The relationship between the decedent and the Petitioner is as follows: _____
_____.
6. The Petitioner wishes to serve as Personal Representative of the Estate because: _____

_____.
7. The decedent (left a will attached hereto as "Exhibit B"/ to the knowledge of the Petitioner, the decedent did not leave a will and a diligent to locate one has failed [select one]).
8. The names of all (devisees in the will/ intestate heirs/ devisees and heirs) are attached as "Exhibit C".
9. The names of all known creditors of the Estate are attached as "Exhibit D".

Petitioner hereby certify that the information contained in this Application is complete and accurate to the best of their knowledge and that the Petitioner meets all of the qualifications required by Section 2.3 of the Tribe's Probate and Guardianship Code.

WHEREFORE, the Affiant respectfully requests the following:

- A. That this Court issue a letter appointing the Petitioner as the Trustee of the above-captioned estate, and granting to the Petitioner the authority to take possession of the estate property and distribute it amongst the Estate's heirs, devisees and creditors.

RESPECTFULLY SUBMITTED this _____ day of _____, 20____.

By: _____

**B. LETTER OF APPOINTMENT OF PERSONAL REPRESENTATIVE IN THE WHITE
MOUNTAIN APACHE TRIBAL COURT**

WHITERIVER, ARIZONA

In Re: Estate of _____.

CASE NO.

**LETTER OF APPOINTMENT OF
PERSONAL REPRESENTATIVE**

_____ (name) is hereby appointed as Personal Representative
of this Estate without restriction , except as follows: _____

_____.

Judge, White Mountain Apache Tribal Court

//

//

Acceptance of Appointment

I accept the appointment as Personal Representative of this Estate and do solemnly swear that I will lawfully perform the responsibilities and live up to the fiduciary duties of such. If I am not domiciled on the Fort Apache Indian Reservation, I hereby consent to the jurisdiction of the White Mountain Apache Tribal Court for purposes related to my appointment as Personal Representative.

Dated: _____ Signature of Personal Representative: _____

State of: _____

County of: _____

Subscribed and sworn or affirmed before me this: _____ (date) by _____

_____.

(notary seal)

Notary Public: _____

My commission expires: _____

**APPENDIX 3
GUARDIANSHIP FORMS**

A. PETITION FOR APPOINTMENT OF A GUARDIAN FOR AN ADULT

Petitioner's Name:
Address:
Address:
Phone Number:
E-Mail Address:

**IN THE WHITE MOUNTAIN APACHE TRIBAL COURT
WHITERIVER, ARIZONA**

Re: _____,
Name of Subject of the Petition

Case No.

**PETITION FOR APPOINTMENT
OF A GUARDIAN FOR AN ADULT**

I, (Petitioner's Name) hereby file this Petition for Appointment of a Guardian for an Adult, and state the following in support:

1. The subject of this Petition's name is:_____.
2. This person's date of birth is:_____.
3. This person is an enrolled member of the White Mountain Apache Tribe, with an enrollment number of:_____.
4. This person is domiciled on the Fort Apache Indian Reservation, and has an address of:_____.
5. This person is unable to care for themselves because:_____.

6. Because of this circumstance, the subject of this Petition: lacks sufficient understanding or capacity to make or communicate responsible decisions concerning their own care / lacks the capacity to manage their own estate or financial affairs (circle one or both).

7. The nature of the relationship between the Petitioner and the subject of this petition is:_____.

8. The names and addresses of the Subject's nearest relatives are:

Name	Relationship	Address
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I hereby certify that the information contained in this Petition is complete and accurate to the best of my knowledge.

WHEREFORE, the Petitioner respectfully requests the following:

- A. That the Court schedule a Hearing for Appointment of a Guardian for an Adult, not sooner than 5 days after the filing of this Petition;
- B. That the Court issue a Summons for service of notice of the Hearing upon the Subject and the Subject's closest relatives.
- C. That following the hearing, the Court appoint the Petitioner as the Guardian of the Subject's _____ Person _____ Property _____ Person and Property.

RESPECTFULLY SUBMITTED this _____ day of _____, 20__.

By:_____

B. PETITION FOR APPOINTMENT OF A GUARDIAN FOR A MINOR

Petitioner's Name:

Address:

Address:

Phone Number:

E-Mail Address:

IN THE WHITE MOUNTAIN APACHE TRIBAL COURT

WHITERIVER, ARIZONA

Re: _____,

Name of Subject of the Petition

Case No.

**PETITION FOR APPOINTMENT
OF A (PERMANENT/ TEMPORARY)**
(circle one)

GUARDIAN FOR A MINOR

I, (Petitioner's Name) hereby file this Petition for Appointment of a (Permanent/Temporary)
Guardian for a Minor, and state the following in support:

1. The Minor subject of this Petition's name is: _____.
2. The Minor's date of birth is: _____.
3. The Minor is an enrolled member of the White Mountain Apache Tribe, with an enrollment
number of: _____.
4. The Minor is domiciled on the Fort Apache Indian Reservation, and has an address
of: _____.

5. The Minor currently resides with: _____,
and has resided with them at this location since _____.
6. The Minor's parent or legal guardian's name(s) is/are _____
_____.
7. The Minor's parent(s) or legal guardian's address(es) is/are _____
_____.
8. The Minor's parent(s) or legal guardian is unable or unwilling to care for the Minor
because: _____

_____.
9. (Pick One): The Minor's parent(s) or legal guardian(s) consent to the Petition for
Guardianship and a notarized affidavit giving consent is attached /(Or) The Minor's parent(s)
or legal guardians have not consented to the Petition for Guardianship and a summons will
need to be issued to them concerning the hearing in this matter.
10. The nature of the relationship between the Petitioner and the Minor subject of this Petition
is: _____

I hereby certify that the information contained in this Petition is complete and accurate to the best
of my knowledge.

WHEREFORE, the Petitioner respectfully requests the following:

- A. That the Court schedule a Hearing for Appointment of a Guardian for a Minor, not sooner
than 5 days after the filing of this Petition.
- B. (If applicable) That the Court issue a Summons for service of notice of the Hearing upon
the Minor subject's parents or legal guardians.

- C. That the Court order Tribal Child Protective Services to complete and submit to the Court a Guardianship Report regarding the household of the Petitioner, not later than 30 days after the filing of this Petition.
- D. (If applicable and desired) That the Court enter an order mandating that the parent(s) of the Minor contribute to the Minor's support, consistent with the Tribe's guidelines for Child Support.
- E. That following the hearing, the Court appoint the Petitioner as the ____ Temporary ____
_Permanent Guardian of the Minor subject's ____ Person ____ Property ____ Person
and Property.
- F. That the Court schedule a review hearing in this matter to occur not later than six months from the date of the order if a Temporary Guardianship and no later than one year after the date of the order if a Permanent Guardianship.

RESPECTFULLY SUBMITTED this ____ day of _____, 20__.

By: _____

**APPENDIX 4
POWER OF ATTORNEY FORMS**

A. GENERAL POWER OF ATTORNEY

Type

Mark one type of Power of Attorney:

____ General Power of Attorney (has a beginning and end date), OR

____ General DURABLE Power of Attorney (ends upon Principal's death or revocation).

Identifying Information

The Principal's (person giving the Power of Attorney) name is: _____

The Principal's address is: _____

The Principal's date of birth is: _____

The Agent's (person receiving the Power of Attorney) name is: _____.

The Agent's address is: _____.

The Agent's date of birth is: _____.

Principal, an individual, hereby appoints the above-named Agent to act in name and place of Principal to perform the following general matters and exercise all of the following powers concerning:

Scope and Extent of Powers (Check all that apply)

___ a. Personal Finances: to manage all of my personal finances, including but not limited to the right to withdraw or deposit funds in to my bank accounts, to manage funds or benefit payments received by me, to pay my bills, to sue for debts owed to me, to satisfy or negotiate any debts demanded of me, and all other financial decisions that may arise on my behalf.

___ b. Real Property: to manage all of my real property, or interests therein, to execute needed documents regarding assignments or leases on my behalf to lease, transfer, relinquish. To sell, lease, purchase, mortgage, exchange, subdivide, grant or otherwise convey interests in fee lands that I may possess.

___ c. Personal Property: to manage, contract for, lease, sell, buy, transfer, or in any other legal manner deal in and with my personal property.

___ d. Business Transactions: to manage my business transactions of any kind and act in my place in all decisions and necessary actions.

___ e. Plenary: To perform any and all acts required, necessary or appropriate to be done as fully as

Principal might or could do if personally able and present, hereby ratifying and approving all that Agent shall lawfully do or cause to be done by virtue of this General Power of Attorney.

Durability (check only the one type that applies to you and complete all information asked for in this section)

☐ **General Regular Power of Attorney** (has a set beginning and end date).

Effective Date and Expiration Date: This Power of Attorney shall be effective beginning

_____ and shall expire on: _____, unless the Principal revokes it before that date.

☐ **General Durable Power of Attorney** (has a beginning date and lasts until death of revocation).

Effective Date: This Durable Power of Attorney shall become effective:

☐ Upon the incapacity of the Principal (Springing); OR

☐ On this date: _____.

This Power of attorney shall remain in effect until the death of the Principal, or until earlier revocation by the Principal.

Compensation of Agent: None.

Signatures

Principal

I, _____, the Principal, sign my name to this Power of Attorney this _____ day of _____, 20____ and, being first duly sworn, do declare to the undersigned authority that I sign and execute this instrument as my power of attorney and that I sign it willingly, or willingly direct another to sign it for me, that I execute it as my free and voluntary act for the purposes expressed in the Power of Attorney, and that as required by the Tribe's Probate and Guardianship Code, I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Principal: _____

Witness

Probate Code

(may not be the Agent)

I _____, the witness, sign my name to the foregoing Power of Attorney this ____ day of _____, 20____, being first duly sworn, and do declare to the undersigned authority that the Principal signs and executes this instrument as the Principal's Power of Attorney and that the Principal signs it willingly, or willingly directs another to sign it on their behalf, and that I, in the presence and hearing of the Principal sign this Power of Attorney as witness to the Principal's signing, and to the best of my knowledge the Principal is eighteen years of age or older, of sound mind, and under no constraint or influence.

Witness: _____

Notary

State of: _____

County of: _____

Subscribed, sworn to or affirmed, and acknowledged before me by _____, the Principal, and subscribed and sworn to or affirmed before me by _____, the witness, this _____ day of _____ 20____.

(notary seal)

Notary Public

B. SPECIAL POWER OF ATTORNEY

Type

Mark one type of Power of Attorney:

____ Special Power of Attorney (has a beginning and end date), OR

____ Special DURABLE Power of Attorney (ends upon Principal's death or revocation).

Identifying Information

The Principal's (person giving the Power of Attorney) name is: _____

The Principal's address is: _____

The Principal's date of birth is: _____

The Agent's (person receiving the Power of Attorney) name is: _____

The Agent's address is: _____

The Agent's date of birth is: _____

Principal, an individual, hereby appoints the above-named Agent to act in name and place of Principal to exercise the following specific powers:

Scope and Extent of Powers

_____.

To perform any and all acts required, necessary or appropriate to be done as fully as Principal might or could do if personally able and present, hereby ratifying and approving all that Principal shall lawfully do or cause to be done by virtue of this Specific Power of Attorney.

Durability (check only the one type that applies to you and complete all information asked for in this section)

___ **Special Regular Power of Attorney** (has a set beginning and end date).

Effective Date and Expiration Date: This Power of Attorney shall be effective beginning

_____ and shall expire on: _____, unless the Principal revokes it before that date.

___ **Special Durable Power of Attorney** (has a beginning date and lasts until death of revocation).

Effective Date: This Durable Power of Attorney shall become effective:

___ Upon the incapacity of the Principal (Springing); OR

___ On this date: _____.

This Power of attorney shall remain in effect until the death of the Principal, or until earlier revocation by the Principal.

Compensation of Agent: None.

Signatures

Principal

I, _____, the Principal, sign my name to this Power of Attorney this ___ day of _____, 20___ and, being first duly sworn, do declare to the undersigned authority that I sign and execute this instrument as my power of attorney and that I sign it willingly, or willingly direct another to sign it for me, that I execute it as my free and voluntary act for the purposes expressed in the Power of Attorney, and that as required by the Tribe's Probate and Guardianship Code, I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Principal: _____

Witness

(may not be the Agent)

I _____, the witness, sign my name to the foregoing Power of Attorney this ___ day of _____, 20___, being first duly sworn, and do declare to the undersigned authority that the Principal signs and executes this instrument as the Principal's Power of Attorney and that the Principal signs it willingly, or willingly directs another to sign it on their behalf, and that I, in the presence and hearing of the Principal sign this Power of Attorney as witness to the Principal's signing, and to the best of my knowledge the Principal is eighteen years of age or older, of sound mind, and under no constraint or influence.

Witness: _____

Notary

State of: _____

County of: _____

Subscribed, sworn to or affirmed, and acknowledged before me by _____, the
Principal, and subscribed and sworn to or affirmed before me by _____, the
witness, this _____ day of _____ 20____.

(notary seal)

Notary Public

C. POWER OF ATTORNEY DELEGATING PARENTAL POWERS

Principal, the parent or guardian of the minor(s) listed below, hereby appoint the below-named Agent to act in name and place of Principal, to have parental authority and to perform general responsibilities of a parent and execute all of the below-listed specific acts, EXCEPT for authorizing the marriage or adoption of the minor children.

Identifying Information

The current full legal name of the parent who is granting the temporary authority over the child(ren):

The full legal name and date of birth and of each child:

1. _____

2. _____

3. _____

4. _____

5. _____

The full legal name of the Agent (person who agrees to and accepts the delegation of parental authority):

The full physical address of the Principal: _____

Responsibilities Delegated (check one):

☐ I delegate all parental responsibilities I might perform myself

☐ I delegate only the specific parental responsibilities named below:

☐ Educational decisions;

☐ Medical decisions, including the authority to consent to emergency medical treatment;

☐ Other: _____.

Duration (check only one)

___ This Parental Power of Attorney begins on _____ and expires not more than six (6) months later on _____, unless I revoke it earlier.

___ I am an active duty military member who is parent or guardian of the above listed minor chil(ren).

This Parental Power of Attorney begin on _____ and expires not more than twelve (12) months later on _____, unless I revoke it earlier.

Principal

I, _____, the Principal, sign my name to this Power of Attorney this ___ day of _____, 20___ and, being first duly sworn, do declare to the undersigned authority that I sign and execute this instrument as my power of attorney and that I sign it willingly, or willingly direct another to sign it for me, that I execute it as my free and voluntary act for the purposes expressed in the Power of Attorney, and that as required by the Tribe's Probate and Guardianship Code, I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Principal: _____

Witness

(may not be the Agent)

I _____, the witness, sign my name to the foregoing Power of Attorney this ___ day of _____, 20___, being first duly sworn, and do declare to the undersigned authority that the Principal signs and executes this instrument as the Principal's Power of Attorney and that the Principal signs it willingly, or willingly directs another to sign it on their behalf, and that I, in the presence and hearing of the Principal sign this Power of Attorney as witness to the Principal's signing, and to the best of my knowledge the principal is eighteen years of age or older, of sound mind, and under no constraint or influence.

Witness: _____

Notary

State of: _____

County of: _____

Subscribed, sworn to or affirmed, and acknowledged before me by _____, the
Principal, and subscribed and sworn to or affirmed before me by _____, the
witness, this _____ day of _____ 20____.

(notary seal)

Notary Public