



What is Guardianship? –
A Guide to the Process in Tribal Court.

Self-Help Information Handout

from

**Shingle Springs Band of Miwok Indians
Tribal Court**

Guardianship Pamphlet

What does this Pamphlet explain?

This pamphlet explains what a guardianship is and how a guardian can be appointed for a child. First, it describes when a guardianship is needed and who can be a guardian. Then, this pamphlet explains the guardianship process, starting with how to file a guardianship petition and following with the different kinds of reports and court proceedings that happen before a guardian is appointed by the Tribal Court. Finally, this pamphlet includes information about making changes to existing guardianships. For additional information on guardianships, contact the Self Help Center.

Index	PAGE
<u>What is Guardianship?</u>	3
<u>When is Guardianship appropriate?</u>	3
<u>Who is appropriate Guardian?</u>	4
<u>The Guardianship Process</u>	5
<u>File the Petition</u>	5
<u>Notice</u>	6
<u>Reports</u>	6
<u>Initial Hearing</u>	7
<u>Guardianship Investigation Reports</u>	7
<u>Trial on the Petition</u>	8
<u>Tribal Court Order</u>	8
<u>Changing the Guardianship</u>	8

What is Guardianship?

Guardianship is a process where the Tribal Court puts a person other than a child's parent(s) in charge of the child's care, custody and education. This includes providing the child food, shelter, clothing, and other necessities as well as making medical, and educational decisions for the child, and deciding whether a child should continue their participation in cultural ceremonies and events.

The person who is trying to become the child's guardian is called the **potential guardian**.

The person who the Tribal Court appoints to take charge of the child's care, custody and education is called the **guardian**.

Types of Guardianships

The main difference between the types of guardianships is how long they last.

- **Permanent Guardianship:** a permanent guardianship is a guardianship that lasts until the child turns 18 years old, or until the Tribal Court decides the guardianship is no longer needed.
- **Temporary Guardianship:** a temporary guardianship is a guardianship that lasts for no more than 60 days. The Tribal Court can order a temporary guardianship for a child while the process to appoint a permanent guardian is still going on. When you are filing a guardianship petition it is important to let the Tribal Court know whether or not you want a temporary guardianship. See the "*How to Fill Out a Guardianship Petition*" form for more information on how to do this.
- **Emergency Guardianship:** an emergency guardianship is a guardianship that lasts for no more than 14 days. The Tribal Court can order an emergency guardianship if the child is in immediate danger. For example, if the child has been abandoned or is in immediate danger because of abuse or neglect, then an emergency guardianship might be ordered. See the "*How to Fill Out a Guardianship Petition*" form for information on how to ask for an emergency guardianship.

When is Guardianship Appropriate?

The Tribal Court will appoint a guardian for a child whenever it is in the child's best interests to do so.

A guardianship might be best for the child if:

- the parent has intentionally inflicted serious physical or emotional harm on the child;

- For example, this would include a parent who physically hurt or emotionally abused the child on purpose.
- there is a substantial risk that the child will suffer serious physical or emotional harm if left in the care of the parent;
- the parent has neglected the child, by failing to adequately supervise, care for, or protect the child;
 - For example, this would include a parent who allows someone to harm the child and the parent doesn't take steps to stop the harm, or when a parent leaves a young child alone in a home for hours or days knowing there is no or little food in the home
- the parent wants a guardian to be appointed and there is someone who wants to be a guardian for the child;
- the child's parent is unable to provide adequate care because they are in jail, in an institution, or for other reasons;
- or the child's parents have passed away.

Note: This list does not include every situation that might support guardianship. There may be other circumstances where a guardianship would be appropriate.

Who is an Appropriate Guardian?

Guardian Requirements

There are only two requirements to be a guardian. A guardian must be:

- 18 years of age or older;
- And subject to the jurisdiction of the Shingle Springs Band of Miwok Indians.

If you meet these two requirements, you are **not automatically** going to be a child's guardian. The Tribal Court will **also consider** the following things when deciding who the child's guardian should be:

- What the parents, relatives, and the child (if the child is 14 years of age or older) want;
- Where the child's siblings live, and if they should all live together;
- The moral character of the potential guardian (which includes a review of any criminal history);
- The relationship between the child and the potential guardian;
- and the ability of the potential guardian to care for the child.

Guardian Preferences

When there is more than one person who would be a good guardian for the child, the Tribal Court prefers to place the child...

- **First**, with a family member or extended family member;
- **Second**, with a tribally approved foster home;
- **Third**, with a member or person eligible for membership in the Shingle Springs Band of Miwok Indians; and
- **Fourth**, with any person who has knowledge of the child’s tribal affiliation and needs and has a desire to help the child maintain their tribal affiliation.

The Guardianship Process

This section describes the process of getting a guardian appointed for a child from start to finish.

1. File the Petition

The guardianship process starts when someone files a petition with the Tribal Court or when the Tribal Court decides to start the process itself.

Who Can File a Petition?

Any of the people listed below can file a petition. If you are unsure whether or not you can file a guardianship petition, contact the Self Help Center.

- Family members of the child;
- The child themselves if they are 14 years of age or older;
- The Tribe;
- Any person with a legitimate interest in the matter.

What to Include in the Petition?

A guardianship petition must include the following information:

- The (1) name, (2) date of birth, (3) residence, and (4) Indian status of:
 - The child;
 - The potential guardian(s);
 - And the child’s parent(s);
- The reason you are filing the petition and a list of specific facts that support your reasons;
- Facts that show why the Tribal Court can hear the case (e.g. the child is a member of the Tribe, the child is a biological child of a Tribal member, or other facts that show a connection between the child and the Tribe);
- A description of any previous court hearings that involved the child, if known;
- Whether or not the petitioner is asking for temporary guardianship;
- Whether or not the petition is asking the Tribal Court to withhold some of the parent’s per capita distribution for support of the child.

2. Notice

Once the petition has been filed with the Tribal Court, all the people involved (like the biological parents, the potential guardian, the Tribe's Legal Department) need to receive a copy of the petition. This is called giving notice. If the parents are on the reservation, the Tribal Police can help you give notice to the parents.

3. Reports

Next, the (1) Home Safety Check and (2) the Criminal History Report need to be prepared. These reports make sure the child is safe and help the Tribal Court determine if a temporary guardianship – where the child stays with the potential guardian for no more than 60 days – is appropriate.

a. Home Safety Check

The Home Safety Check determines whether or not it is safe for the child to temporarily stay in the home of the proposed guardian.

The Home Safety Check will be completed by the Tribal Services Department within five days of the Tribal Court asking for preparation of the report.

During a Home Safety Check, the Tribal Services Department visits the potential guardian's home to look at the conditions of the home. You can expect the Service Department to discuss the following things at the home visit:

- The names and ages of all of the people living in the home;
- Anything about the home that could be a safety concern to the child;
- and any changes the petitioner can make to resolve any safety concerns.
 - For example, you might store your cleaning products in a cupboard that is low to the ground and easily accessible to a child. That would likely be a safety concern because the child could get into these products. But, installing child locks on the cupboard or moving the products to a location that is difficult for a child to reach would resolve this safety concern.

b. Criminal History Report

After the Home Safety Check is complete, the Tribe's Legal Department will put together a Criminal History Report. The Criminal History Report looks into the criminal history of the potential guardian and any other people that live with the potential guardian.

The Legal Department is **not** looking for minor traffic violations. They are looking to see if any of the individuals have more serious offenses on their criminal record.

4. Initial Hearing

Within a week of receiving the reports, the Tribal Court will schedule an initial hearing.

At the initial hearing the Tribal Court will review the Petition, the Home Safety Check, and the Criminal History Report and decide whether a temporary guardianship is appropriate. A temporary guardianship would place the child with the potential guardian for up to 60 days.

Note: guardianship hearings are **closed**. That means the general public cannot see them. The only people who can be at the hearing are the child, family members of the child, the Tribe, and any person with a legitimate interest in the case.

The Tribal Court does not have to order a temporary guardianship at the initial hearing. The Tribal Court could also decide to deny the Petition and drop the case or postpone the hearing to a later date in order to consider other people as guardians.

5. Guardianship Investigation Report

After the initial hearing, a licensed social worker will complete the Guardianship Investigation Report. The Guardianship Investigation Report gives the Tribal Court information about the parent(s) and potential guardian based on home visits. Based on these visits, the social worker will recommend where they think the child should live.

The social worker will work with the parent(s) and the potential guardian to schedule the home visits. Someone from Tribal Services will also be present at the home visits.

What is in the Guardianship Investigation Report?

The Guardianship Investigation Report will address the following things:

- What the parents, relatives, and child want (if the child is age 14 or older);
- Where any siblings are placed, and if they should all be placed together;
- The moral character of the potential guardian (which includes an assessment of their criminal history);
- The relationship between the child and the potential guardian;
- And the ability of the potential guardian to provide:
 - Food, clothing, housing and other necessities;
 - A stable environment;
 - Assistance with schooling;
 - Care;
 - Compliance with Tribal Court orders;
 - and compliance with visitation schedules.

6. Trial on the Petition

After receiving the Guardianship Investigation Report, the Tribal Court will schedule a trial. At least five days before the trial, the parent(s), the prospective guardian, and other interested parties must be given all of the documents created so far: the Petition, the Home Safety Check, the Criminal History Report, and the Guardianship Investigation Report.

The trial will determine whether a guardianship is in the best interest of the child. If the Tribal Court decides a guardianship is in the child's best interests, the Tribal Court will also decide who the guardian will be.

7. Tribal Court Order

If the Tribal Court decides a guardianship is in the child's best interests, then it will issue an order. The order will include the following information:

- who the guardian is;
- the responsibilities of the guardian;
- how long the guardianship will last;
- visitation requirements with the parent(s);
- how to deal with financial matters;
- the dates of any review hearings;
- and other things related to how the guardianship will work.

Changing the Guardianship

Sometimes the guardianship order needs to be changed. This can happen when circumstances change making it best for the child to have some other kind of arrangement or live somewhere else.

For example, if a family member is the guardian of the child due to the parents' drug and alcohol use, but then the parents get and stay sober, the biological mom or dad may want to have the child returned to their care. The parents can file a petition to change the guardianship order or end the guardianship.

Another example is if a child's grandparent is appointed as a guardian, but they are later placed in a nursing home due to an accident. The child would probably need a new guardian.

To change the guardianship order, an interested person (the biological parents, a family member, potential guardian, or other interested person) needs to file a new petition that describes why the guardianship should change. Once the petition is filed, the guardianship process starts again (see "The Guardianship Process").

Emergency Changes

If circumstances change that make the placement of the child unsafe, Tribal Police or Tribal Services can temporarily remove the child from the situation. Then, Tribal Services will assess the situation and will work with family members to file for a new guardianship for the child. In some cases, Child Protective Services from the county may get involved and will remove the child and place them in a temporary home.

Additional information on Guardianships may be obtained by contacting the Tribal Court or the Self Help Center:

Shingle Springs Band of Miwok Indians
Tribal Court

5281 Honpie Road
Placerville, CA
95667
(530) 698 – 1446

<https://www.shinglespringsrancheria.com/tribal-court/>

Self Help Center
Open 8-5, M-F
Attorney consultation by appointment only.