

INSTRUCTIONS FOR FILLING OUT FORM

PURPOSE. This form is to be used when you are seeking guardianship of someone else's child(ren). If you are seeking custody of your own child(ren), use the paternity form if paternity and custody have not been determined or the modification of custody if custody has been determined by the court.

FORMS INVOLVED. The first form is a **Petition for Guardianship of a Minor(s)**. You will need to fill in the necessary information with help from the instructions below and then file the forms with the appropriate court. The second form is an **Affidavit of Consent to Guardianship**. This form is only to be used if one of the natural parents (mother or father) of the child(ren) you are seeking guardianship of is going to consent. Do not use this form unless one or both parents consent. Make two (2) copies of this form (one for each parent to sign) if both parents consent.

FILE THE GUARDIANSHIP PETITION AND ANY AFFIDAVIT OF CONSENT WITH THE CLERK OF COURTS OF THE TRIBAL COURT WHERE YOU ARE FILING YOUR PETITION. No summons is required. The clerk will send notices to all interested relatives so it is important that you list all immediate relatives and their correct address. If not the clerk will have to publish notice in a local newspaper and you will be responsible for the cost of such publication.

HOW TO FILE FOR GUARDIANSHIP

You can file for guardianship over a minor child(ren) of another person by filing a petition for guardianship with the tribal court. Use the **Guardianship (minor) Petition** form to file for guardianship of minor child(ren).

What is a petition. A petition is a document similar to a complaint except it does not require an answer from the respondent. It is a document where the petitioner formally requesting the court to order something and sets out the petitioner's version of the facts.

How to file a petition. A petition is filed when you take it to the courthouse and file it along with the filing fee with the clerk of courts. When you file your petition with the clerk, please date and sign the form in front of the clerk so they can notarize your signature.

Filing and service fees. The court will require payment of a filing fee unless waived to file your petition with the court. Use the **Motion to Waive Filing and Service Fees** form to ask the court to waive the filing fee or for a partial waiver of the fee.

Jurisdiction. In order for Rosebud Sioux Tribal Court to hear your claim the court must have jurisdiction. The court will need to have jurisdiction over the child(ren) you are seeking guardianship over and over you as guardian. The RST Law and Order Code requires that the child(ren) be tribal members or the parent(s) of the child(ren) be tribal members for guardianship purposes. If the child(ren) is a member or eligible for membership of the tribe, the court will find

that it has jurisdiction. If one or both parents are members of the tribe, the court will probably find that it has jurisdiction.

GUARDIANSHIP HEARING

Once you file your petition for guardianship the court clerk will schedule a guardianship hearing. Notices will be sent to all interested persons (next of kin) of the adult or minor children by the clerk. If the natural parents whereabouts is unknown the court may require that you publish notice of hearing in a local paper at your own expense. The court may require that you publish the notice of hearing in the Todd County Tribune for 4 consecutive weeks at your own expense (the newspaper will charge you for publishing the notice of hearing). You will need to bring an affidavit of publication to the hearing to prove to the court that notice of hearing was in fact published in the newspaper. You must get the affidavit of publication from the newspaper in which the notice was published.

At the hearing the Court will examine the Petition and Petitioner and hear all evidence relative to whether or not a guardian should be appointed; determine if any person nominated by a Will is available and consents to act as guardian; determine if the proposed child(ren) ward is of sufficient age or mental capacity to make an intelligent decision regarding a preference and given due consideration to the proposed child(ren) ward's preference of a guardian. If the court grants the guardianship it will set out the scope of the guardian's authority, whether security bond for his performance will be required, and the duration of such appointment.

Any interested party (next of kin) may appear after receiving notice. An interested party may object to the guardianship or object to the petitioner being appointed the guardian for various reasons and present evidence at any hearing regarding their objection.

BURDEN OF PROOF. In a guardianship case you have the burden of proving your claim by clear and convincing evidence. This means that by representing your self in a legal matter it is your responsibility to prove your case. Don't expect the judge to prove your case for you. Proving something by clear and convincing evidence means evidence with greater weight or that is more convincing than the evidence of the opposing party(s). You as the petitioner have the burden of proving by clear and convincing evidence the following to the court:

1. You should either be closely related to the child(ren) you are seeking guardianship over or that you have some type of close connection or relationship with them. The court will probably give first preference as guardian to a close relative or someone nominated by the natural parents of the child(ren).

- 2 If both natural parents consent to the guardianship or fail to appear at the hearing, the court will more than likely grant you guardianship unless the court finds that there is a more suitable person to be guardian. If the natural parents are deceased and left a will nominating another person guardian, the court will normally follow the deceased parents wishes if it is in the child(ren)'s best interest. Preference of a guardian is first given to those persons named in a will of the deceased parent. Next preference is given to relatives of the child(ren) in the order of

closeness of the relationship. The court will also give consideration to the person with whom the child(ren) has been living with. The court may also consider the wishes of the child(ren) if the child(ren) are old enough and wise enough to make a choice. The court in choosing a guardian is always guided by what is in the best interest of the child(ren).

3 If either natural parent or both appear at the hearing and object to the guardianship, you must make a clear showing to the court that the natural parent(s) engaged in gross misconduct, is unfit or that there is some other compelling reason (meaning a very strong and good reason) why the parent should not have custody of the child(ren) and that you should be appointed their guardian. This means that you must show the court more than that you are a better custodian of the child(ren).

How to Prove Unfitness of a Parent. You can do this by introducing documents or through testimony of witnesses that the parent(s) lack the ability or unwillingness to raise the child(ren). This would include the parent's conduct of cruelty, morals, extreme neglect, abandonment, physical or mental infirmity (physically or mentally unable to care for the children).

Any interested party (next of kin) may appear after receiving notice. An interested party may object to the guardianship or object to the petitioner being appointed the guardian for various reasons and present evidence at any hearing regarding their objection.

INSTRUCTIONS FOR FILLING OUT THE FORM. To fill out this form follow these instructions. The numbers to each instruction below is the number on the blank line on the form where the information for that number needs to be inserted on the form.

Instructions for filling out the petition:

- (1) on this line insert the name of each child you are seeking guardianship of and their date of birth.
- (2) on this line insert your name and your spouses name if they too are seeking guardianship.
- (3) on this line insert how you are related to the minor child(ren) you are seeking guardianship over.
- (4) insert your mailing address.
- (5) insert "are" if you are an enrolled member of a tribe. Insert "are not" if you are not an enrolled member of a tribe.
- (6) insert the tribe you enrolled in. If not enrolled insert "none".
- (7) insert the name of each of the minor child(ren)'s immediate relatives. This would include mother, father, brothers and sisters and grandparents.
- (8) for each person listed as an immediate relative insert their mailing address.
- (9) for each person listed as an immediate relative insert their relationship to the minor child(ren).
- (10) for each person listed as an immediate relative insert their age or approximate age.
- (11) for each person listed as an immediate relative insert their date of birth if you know.
- (12) list the personal and real property of each minor child you are seeking guardianship over.
- (13) in detail tell why the minor child(ren) are in need of a guardian and why the natural parents should not have custody of the child(ren). Please read the **Burden of Proof Section** above before you fill out this part of the petition. Attach copies of any relevant documents to the Petition.

(14) insert “are” if the child(ren) are enrolled members of the tribe. Insert “are not but are eligible for enrollment” if they are not enrolled.

(15) insert the name of the tribe the child(ren) is enrolled or are eligible for enrollment.

(16) insert the name of the person where the child(ren) is living and their address.

(17) on this line insert the day.

(18) on this line insert the month.

(19) on this line insert the year.

(20) on this line insert your name by signing.

ROSEBUD SIOUX TRIBAL COURT)
ROSEBUD INDIAN RESERVATION)SS
ROSEBUD, SOUTH DAKOTA)

IN CIVIL COURT

DOCKET _____

IN RE THE MATTER OF:

(1) _____ DOB: _____

PETITION FOR GUARDIANSHIP
OF MINOR CHILD(REN)

(1) _____ DOB: _____

(1) _____ DOB: _____

(1) _____ DOB: _____

(1) _____ DOB: _____

(1) _____ DOB: _____

Comes now (2) _____, petitioner(s) and petitions this Court as follows:

1. That petitioner(s) is the (3) _____ of the above named minor children.
Petitioner(s)'s address is(4) _____
and petitioner(s) (5) _____ member(s) of the (6) _____ Sioux Tribe.

2. That the following is a list of all known immediate relatives of the above named minor children and their last known address, relationships and ages:

a. (10) _____ living at (11) _____
is related to the above named minor child as their (12) _____ and is
(13) _____ years old with a DOB of (14) _____.

b. (10) _____ living at (11) _____
is related to the above named minor child as their (12) _____ and is
(13) _____ years old with a DOB of (14) _____.

c. (10) _____ living at (11) _____
is related to the above named minor child as their (12) _____ and is
(13) _____ years old with a DOB of (14) _____.

d. (10) _____ living at (11) _____

is related to the above named minor child as their (12) _____ and is (13) _____ years old with a DOB of (14) _____.

e. (10) _____ living at (11) _____ is related to the above named minor child as their (12) _____ and is (13) _____ years old with a DOB of (14) _____.

f. (10) _____ living at (11) _____ is related to the above named minor child as their (12) _____ and is (13) _____ years old with a DOB of (14) _____.

3. That the above named minor child(ren) owns the following personal and/or real property:
(12) _____

_____.

4. That the above named minor child(ren) are in need of appointment of a guardian for the following reasons:
(13) _____

_____.

5. That the above named minor child(ren) (14) _____ member(s) of

the (15) _____ Sioux tribe. The above named minor child(ren) currently resides with (16) _____ at _____.

6. That petitioner(s) are unaware of any will nominating a guardian of the above named minor child(ren).

7. That it would be in the best interest of the above named minor child(ren) to have petitioner(s) be appointed temporary guardians over them until hearing on this matter.

WHEREFORE, Petitioner prays that this Court order that:

A. This court has jurisdiction over the parties and subject matter herein;

B. Petitioner(s) be appointed the guardians of the estate(s) and/or person(s) of the above named minor child(ren);

C. This matter be set for hearing and that the court send notices to the immediate relatives of the minor child(ren).

D. No bond be required of petitioner(s) to serve as guardian of the above named minor child(ren).

E. Petitioner(s) be appointed temporary guardians of the above named minor child(ren) until final hearing on this matter.

F. For such other and further relief the Court finds just and equitable.

Dated this (17) _____ day of (18) _____, (19) _____.

(20) _____
Petitioner(s)

VERIFICATION

Rosebud Indian Reservation)
)SS
Rosebud, South Dakota)

(2) _____, being first duly sworn on oath, state and depose that they are the petitioner in the foregoing Petition for Guardianship, that they have duly executed said Petition after reading the same, they know the content thereof to be true to their own knowledge, except those matters stated to be on information and belief, which matters they believe to be true.

Dated this (17) _____ day of (18) _____, (19) _____.

(20) _____
Petitioner(s)

Subscribed and sworn to before me this ____ day of _____, _____.

(SEAL)

Notary Public
My commission expires:

Instructions for filling out the affidavit of consent:

**DO NOT USE THIS FORM IF NEITHER NATURAL PARENT IS NOT CONSENTING.
USE THIS FORM IF ONE OR BOTH NATURAL PARENT CONSENTS OR AGREES
TO THE GUARDIANSHIP APPOINTMENT.**

- (1) on this line insert the name of each child you are seeking guardianship of and their date of birth.
- (2) on this line insert the name of the natural parent consenting to the guardianship.
- (3) insert “mother” if the natural mother is consenting or “father” if the natural father is consenting.
- (4) insert the names of each minor child who is the natural child of the person giving consent.
- (5) insert the name of the person with whom the children currently live with.
- (6) insert the address of the person with whom the children currently live with.
- (7) insert your (petitioner’s) name.
- (8) insert the relationship the person giving consent is to you if any.
- (9) on this line insert the day.
- (10) on this line insert the month.
- (11) on this line insert the year.
- (12) on this line insert your name by signing.

Have the consenting parent(s) date and sign this form before a Notary Public.

**ROSEBUD SIOUX TRIBAL COURT)
ROSEBUD INDIAN RESERVATION)SS
ROSEBUD , SOUTH DAKOTA)**

IN CIVIL COURT

IN RE THE MATTER OF:

DOCKET _____

**AFFIDAVIT OF CONSENT
TO GUARDIANSHIP AND
WAIVER OF SERVICE**

(1) _____ DOB: _____

(1) _____ DOB: _____

(1) _____ DOB: _____

(1) _____ DOB: _____

(1) _____ DOB: _____

(1) _____ DOB: _____

(2) _____, being first duly sworn and upon oath, states and
deposes as follows:

1. That I am the natural (3) _____ of the minor child(ren) (4) _____

_____.

2. That the minor child(ren) currently under the care, control and custody of (5) _____
_____ whose address is (6) _____
_____.

3. That I, do hereby voluntarily and of my own free will consent to a grant of Guardianship of
my said minor child(ren) to (7) _____ who is my
(8) _____.

4. That I do believe it is in my minor child(ren)'s best interest that (7) _____
be appointed legal guardian of my child(ren).

5. That I understand that the guardianship will be in effect until I ask the court to vacate the
guardianship or until further order of the court.

6. That I waive my appearance and waive my right to any court notices for hearings on this
matter and agree with the guardianship.

Dated this (9)____ day of (10)_____, (11)_____.

(12)_____
 Natural Parent

Sworn and subscribed to before me this _____ day of _____, _____.

Notary Public
My commission expires:
(SEAL)