

“Disclaimer: The Nooksack Indian Tribe attempts to ensure that the most current version of its laws is published. Interest parties should contact the Tribal Council Offices to verify whether subsequent ordinances and/or resolutions were passed that may affect the validity of those posted herein.”

TITLE 18

NOOKSACK INDIAN TRIBE ELDER AND VULNERABLE ADULT PROTECTION CODE

TABLE OF CONTENTS

| | Page |
|--|------|
| Chapter 18.01 – GENERAL PROVISIONS | |
| 18.01.010 Purpose..... | 4 |
| 18.01.020 Construction..... | 4 |
| 18.01.030 Jurisdiction..... | 5 |
| 18.01.040 Funding | 5 |
| 18.01.050 Standard of Proof..... | 5 |
| Chapter 18.02 – DEFINITIONS..... | 6 |
| Chapter 18.03 – REPORTING | |
| 18.03.010 Reporters..... | 11 |
| 18.03.020 Immunity for Reporting | 12 |
| 18.03.030 Failure to Report: Civil Penalty | 12 |
| 18.03.040 Bad Faith Report: Civil Penalty | 12 |
| 18.03.050 Contents of the Report | 13 |
| 18.03.060 Reserved..... | 13 |
| 18.03.070 Retaliation or Intentionally Interfering with an Investigation Prohibited..... | 13 |
| Chapter 18.04 – EMERGENCY PROTECTION ORDERS | |
| 18.04.010 Emergency Protection Order Procedures..... | 15 |
| 18.04.020 Emergency Protection Orders..... | 16 |
| 18.04.030 Contents of Emergency Protection Order | 17 |
| 18.04.040 Service and Duration of Emergency Protection Orders..... | 17 |
| Chapter 18.05 – RESPONSIBILITIES OF SOCIAL SERVICES | |
| 18.05.010 Role of the Nooksack Indian Tribe Social Services Department | 19 |
| 18.05.020 Access to Investigate – Court Order | 20 |
| 18.05.030 Investigations | 20 |
| 18.05.040 Proposed Protection Plan..... | 21 |
| Chapter 18.06 – PROCEDURES FOR PROTECTION ORDERS | |
| 18.06.010 Who may File a Petition and Parties..... | 22 |
| 18.06.020 Contents of Petition..... | 22 |
| 18.06.030 Preliminary Hearing and Appointment of Guardian ad Litem or Other Professional for Elder/Vulnerable Adult..... | 23 |
| 18.06.040 Fact Finding Hearings..... | 23 |
| 18.06.050 Time and Notice of Hearings..... | 24 |
| 18.06.060 Reserved | 24 |
| 18.06.070 Agreed Order | 24 |
| Chapter 18.07 – PROTECTION PLAN | |
| 18.07.010 Elder/Vulnerable Adult Protection Plan | 26 |

| | | |
|--|--|-----------|
| 18.07.020 | Additional Recommendations..... | 26 |
| 18.07.030 | Hearing on the Plan..... | 26 |
| 18.07.040 | Conduct of Hearing on the Plan..... | 27 |
| 18.07.050 | Review Hearings..... | 28 |
| 18.07.060 | Confidentiality of Records..... | 28 |
| 18.07.070 | Confidentiality of Proceedings | 28 |
| Chapter 18.08 – GUARDIAN AND PROTECTIVE PAYEE | | |
| 18.08.010 | Purpose..... | 30 |
| 18.08.020 | Appointment of Guardian ad Litem and Professional Evaluation | 30 |
| 18.08.030 | Petition for Appointment of Guardian/Protective Payee | 30 |
| 18.08.040 | Petition for Appointment of Guardian/Protective Payee Contents..... | 31 |
| 18.08.050 | Hearing on Petition for Appointment of Guardian/ Protective Payee – Setting | 32 |
| 18.08.060 | Notice of Hearing..... | 32 |
| 18.08.070 | Guardian ad Litem | 33 |
| 18.08.080 | Guardian ad Litem Qualifications and Duties | 33 |
| 18.08.090 | Appointment of a Temporary Guardian..... | 34 |
| 18.08.100 | Hearing on Appointment of Guardian/Protective Payee – Conduct | 34 |
| 18.08.110 | Grounds for Appointing Guardian/Protective Payee | 35 |
| 18.08.120 | Agreed Order | 36 |
| 18.08.130 | Order Appointing Limited Guardian, Full Guardian or Protective Payee..... | 37 |
| 18.08.140 | Inventory and Reports..... | 38 |
| 18.08.150 | Limited Guardian, Full Guardian or Protective Payee may Petition Court for Clarification..... | 38 |
| 18.08.160 | Removal of Limited Guardian, Full Guardian or Protective Payee..... | 39 |
| 18.08.170 | Modification and Termination of Guardianship | 39 |
| 18.08.180 | Guardianship Records..... | 40 |
| Chapter 18.09 – MISCELLANEOUS | | |
| 18.09.010 | Severability | 41 |
| 18.09.020 | Sovereign Immunity..... | 41 |
| 18.09.030 | Amendments | 41 |
| 18.09.040 | Headings | 41 |
| 18.09.050 | Repealer and Savings Clause | 41 |
| 18.09.060 | Effective Date | 41 |
| LEGISLATIVE HISTORY..... | | 41 |
| CERTIFICATION..... | | 42 |

Chapter 18.01

GENERAL PROVISIONS

18.01.010 Purpose.

The purpose of this Code is to identify and protect elders and vulnerable adults within the jurisdiction of the Nooksack Indian Tribe who may be the subject of abuse, neglect, or exploitation and to thereby promote the health, safety and welfare of these members of the Nooksack Tribal community. It is the policy of Nooksack Indian Tribe to continue the traditional respect and care for Tribal elders and vulnerable adults. The elders of our community are the custodians of Tribal history, culture, and traditions, which are vital to our native culture. Thus, it is in the interest of, and serves the welfare of the Tribe to protect Tribal elders and vulnerable adults. The Code provides for:

- A. Reporting abuse, neglect, or exploitation to the proper agency;
- B. Receiving reports of and investigating suspected abuse, neglect, or exploitation; and
- C. Delivering elder/ vulnerable adult services, including guardians and protective payees.

18.01.020 Construction.

- A. This Code shall be liberally interpreted in order to achieve its intended purposes.
- B. This Code provides for civil remedies to address abuse, neglect, or exploitation of elders or vulnerable adults.
- C. The Nooksack Tribal Court System and Title 10 of the Nooksack Code of Laws shall apply to all civil actions authorized under this Code, unless this Code provides for specific procedures that will then govern.
- D. Nothing in this Code shall preclude a criminal prosecution, in addition to civil penalties, for criminal conduct.
- E. The use of the term "elder" throughout this Code may be interpreted to include and mean a "vulnerable adult" or "incapacitated adult."

- F. The standard of proof for protection orders and guardianship proceedings shall be proof by a preponderance of the evidence, unless specified otherwise.

18.01.030 Jurisdiction.

- A. This Code shall apply to all Nooksack Tribal members within the civil jurisdiction of the Nooksack Indian Tribe. The civil jurisdiction is defined by the Nooksack Tribal Constitution and Bylaws.
- B. This Code shall apply to any enrolled member of a federally recognized Indian Tribe residing within the territorial jurisdiction of the Nooksack Indian Tribe as defined in the Nooksack Tribe's Constitution and Bylaws.

18.01.040 Funding.

Any services ordered by the Nooksack Tribal Court, or functions of the Nooksack Indian Tribe provided for in this Code shall be subject to the availability of funding and resources. The Tribe shall not be required to expend additional funds or resources beyond those budgeted and appropriated.

18.01.050 Standard of Proof.

Unless stated otherwise in this Code, the standard of proof in all protection order proceedings herein, and guardianship proceedings shall be proof by a preponderance of the evidence.

Chapter 18.02

DEFINITIONS

For the purposes of this Code, unless otherwise expressly provided, the following definitions apply:

- A. "Abandonment" means the action or inaction by a person or entity having a duty of care for an elder/vulnerable adult that leaves the elder/vulnerable adult without the means or ability to obtain essential services.
- B. "Abuse" means physical, verbal, or mental mistreatment, intimidation or injury, which harms or threatens a person's wellbeing. Abuse includes:
 - 1. subjecting an elder/vulnerable adult to intentional or negligent infliction of bodily injury; confinement, including by chemical or physical means; forced isolation; ridicule; coercion; harassment or stalking, including by electronic means; physical harm; pain; or emotional abuse or mental anguish. If an elder/vulnerable adult is unable to communicate the abuse, then the abuse is presumed if the acts would be considered abuse to a reasonable person;
 - 2. subjecting an elder/vulnerable adult to non-consensual sexual contact for the purpose of obtaining sexual gratification. Consent is not voluntary if it is obtained by threat, coercion, intimidation, or fraud, or if the elder/vulnerable adult is not competent, or does not have the capacity to consent; and/or
 - 3. exploitation of an elder/vulnerable adult's funds, accounts, retirement, social security or any government benefits, property, credit, utilities, services, or other resources for another person's profit or advantage, through improper or unauthorized means including, but not limited to, coercion, force, deception, extortion, fraud, forgery, undue influence, violation of fiduciary duty or theft. Exploitation also includes use of an elder's home or resources to engage in illegal activities. Any act or omission by a person who knows or should know that the act or omission will leave the elder/vulnerable adult unable to pay for food, clothing, shelter, health care or shelter, may be deemed exploitation.

- C. "Adult Protective Services" means the Nooksack Indian Tribe's Social Services Division, or another Tribal or state agency as may be authorized by the Nooksack Indian Tribe to act under this Code to: (1) carry out investigations and provide reports to the Nooksack Tribal Court regarding alleged abuse; (2) assist elder/vulnerable adults and their families by convening an Adult Protection Team; (3) provide protective services and protection plans; and (4) be responsible for Adult Protective Services under this Code being carried out by qualified professional staff or contractors, or by cooperative contracts or agreements with Washington State Adult Protective Services.
- D. "Capacity" means the ability of a person to receive and evaluate information or to make and communicate decisions unimpaired by mental or physical disability. The person has the demonstrated ability to provide for their own physical health or safety and ability to manage their own financial affairs.
- E. "Care Provider" is an adult person, institution or agency required by law, or contract, to provide services or resources to an elder/vulnerable adult; or an adult person who volunteers to provide such services; or a person or agency who has undertaken authority to act for an elder /vulnerable adult under a power of attorney, guardianship, protective payee, or similar relationship.
- F. "Clear, cogent, and convincing" means an element has been shown by the evidence to be highly probable.
- G. "Consent" is written consent granted after the person has been fully informed of the nature of the services to be offered and understands that receiving services is voluntary. Consent also means agreement given without intimidation or coercion by a person with the capacity to make the agreement.
- H. "Elder" means a person subject to the jurisdiction of the Nooksack Indian Tribe who is at least fifty-five (55) years of age.
- I. "Elder Task Force" means representatives from Tribal law enforcement, Housing, Health, seniors, and other Tribal service agencies/ departments, who are brought into consultation by Nooksack Elder Protective Services in order to create a protection plan for an elder/vulnerable adult.

- J. "Emergency" means a situation in which an elder/vulnerable adult is immediately at risk of death or injury, including substantial financial loss through exploitation or unfair practices, and is unable to consent to services, which would remove this risk.
- K. "Family member" means immediate family, including children, parents, and siblings, and grandparents or grandchildren of an elder/vulnerable adult, as well as extended family members with significant contacts with or responsibilities to care for the elder/vulnerable adult.
- L. "Exploitation" means the illegal or improper use of an elder/vulnerable adult or that adult's resources for another person's profit or advantage. Exploitation includes but is not limited to:
1. any unauthorized use or occupation of the elder/vulnerable adult's property, food, telephone, utilities services, residence, and assignment, vehicles, money or other resources. Specific examples of unauthorized use include the sale of illegal drugs in or on the elder/vulnerable adult's property, consuming alcohol and partying in or on the elder/vulnerable adult's property without the approval of the adult, and failure to repay loans of money or other's property to the elder vulnerable adult;
 2. use of an elder/vulnerable adult's possessions or utilities, which exceeds the authorization he or she has given; and/or
 3. unreasonable imposition on the elder/vulnerable adult's time or resources, such as leaving children in the care of the elder/vulnerable adult for extended periods or under circumstances in which the adult cannot adequately care for the children.
- M. "Good Faith" is an honest belief or purpose and the lack of intent to defraud.
- N. "Guardian" is a person or agency appointed by the Nooksack Tribal Court to exercise rights of an elder/ vulnerable adult to provide for their basic needs, including conservatorship of their property.
- O. "Guardian – limited" (or "limited guardian") is a limited guardian appointed to exercise rights and provide for the basic needs to the extent that the elder/

vulnerable adult is incapacitated from performing those functions without the assistance of a guardian.

- P. "Incapacity" is the current inability of a person to sufficiently understand, make and communicate responsible decisions about him or herself as a result of mental illness, mental deficiency, physical illness or disability, or chronic use of drugs or alcohol, and to understand the consequences of any such decision. Incapacity may vary in degree and duration and shall not be determined solely on the basis of age.
- Q. "Least Restrictive Means" means the services or resources ordered by the Nooksack Tribal Court are only those reasonably necessary to protect the elder/vulnerable adult, while allowing the elder/vulnerable adult to maintain the maximum independence and freedom from undue intrusion consistent with the elder/vulnerable adult's needs.
- R. "Neglect," including "self-neglect," is any action or inaction by a caregiver, or failure by the elder/vulnerable adult, which leaves the elder/vulnerable adult without the means or ability to obtain food, clothing, shelter or health care, and to be able to maintain minimum physical and mental health. Neglect also includes, but is not limited to, any interference with the delivery of necessary services and resources, or provision of social and health services to maintain the elder/vulnerable adult's physical and mental health. Self-neglect does not include the conscious and voluntary decisions made as a matter of personal choice of a mentally competent elder/vulnerable adult to live in circumstances that may threaten his or her own health or safety.
- S. "Preponderance of the evidence" means an element has been shown by the evidence to be more probably true than not true.
- T. "Protective payee" is a person or agency appointed by the Nooksack Tribal Court to protect the financial resources of an elder/ vulnerable adult who shall have authority to: (1) receive and secure the elder/ vulnerable adult's funds, property, services or other resources; (2) disburse funds so that the elder/ vulnerable adult's needs for food, clothing, shelter and health care are being met; and (3) provide an accounting as required by the Nooksack Tribal Court.

- U. "Protective placement" means placement or transfer of an elder/ vulnerable adult in a hospital, nursing home, residential care facility, family or community members home, designated tribal housing, or other suitable placement with the elder's consent or by appropriate legal authority.
- V. "Protective services" are services provided to an elder with the elder's consent or with appropriate legal authority and include, but are not limited to: social case work, health care, case management, guardianship and other services consistent with this Code.
- W. "Retaliation" is threatening a reporter of elder/vulnerable adult abuse or threatening the reporter's family in any way; causing bodily harm to the reporter or the reporter's family; causing the reporter or any of the reporter's family to be terminated or suspended from employment or reprimanded by an employer; or damaging the reporter's or the reporter's family's real or personal property in any way.
- X. "Vulnerable adult" means persons eighteen (18) years of age or older who do not have the functional, mental, emotional or physical ability to protect and care for themselves, or protect themselves from abuse or neglect.

Chapter 18.03

REPORTING

18.03.010 Reporters.

A. Mandated Reporters.

The following professionals, persons, or officials are mandated to report within twenty-four (24) hours of learning of suspected abuse, neglect, exploitation, or abandonment of any elder/vulnerable adult who resides within the territorial jurisdiction of the Nooksack Indian Tribe as defined in the Nooksack Tribe's Constitution and Bylaws, to Tribal Law Enforcement, or the Nooksack Indian Tribe Social Services Department (Social Services):

1. a licensed or paid adult care provider for the elder/vulnerable adult;
2. any health care provider, physician, nurse, dentist, optometrist, pharmacist, or any other medical or mental health professional;
3. social workers and counselors who provide services to elder and vulnerable adults;
4. any person, agency, or employee with a fiduciary duty to the elder or vulnerable adult including, but not limited to, an accountant, a guardian, a financial institution, or a property manager;
5. law enforcement officers;
6. any person or agency, including its employees, with fiduciary duties to elders/vulnerable adults who are employed, licensed or contracted by the Tribe to provide such services to Tribal members or do business on the Nooksack Indian Reservation;
7. any elected official of the Nooksack Indian Tribe; or
8. any medical or osteopathic doctor, coroner or medical examiner, chiropractor, podiatrist, dentist, nurse, health aide, social/human services worker, elders service provider, nursing home provider, any other health

or human service provider, or its employees who deliver services to tribal elders/vulnerable adults.

B. Permissive Reporters.

Any person not identified as a mandated reporter who learns of suspected abuse, neglect, exploitation, or abandonment of any elder/vulnerable adult residing within the territorial jurisdiction of the Nooksack Indian Tribe as defined in the Nooksack Tribe's Constitution and Bylaws, is strongly encouraged to report such information to Tribal Law Enforcement or the Nooksack Indian Tribe Social Services Department.

18.03.020 Immunity for Reporting.

Any person who, in good faith, reports suspected abuse or neglect of an elder or vulnerable adult is immune from any civil or criminal suit based on that person's report.

18.03.030 Failure to Report: Civil Penalty.

- A. Any mandated reporter required by this Code to report suspected elder abuse who fails to do so is subject to a civil penalty not to exceed five thousand dollars, U.S. (\$5,000.00), and may be subject to other disciplinary action if the mandated reporter is a contractor or employee of the Nooksack Indian Tribe.
- B. The Nooksack Tribal Court shall assess a civil penalty only after petition filed by the Tribal Prosecutor, with notice and opportunity for hearing, and a determination that the person had a mandated duty to report, had good reason to suspect elder/vulnerable adult abuse or neglect, and failed to report it as required by this Code.
- C. The Tribal Prosecutor shall notify the appropriate licensing agency or the Director of the Tribal program/department that a person regulated by that agency or supervised by the Director has failed to comply with mandatory reporting requirements. It shall then be the responsibility of that agency or Director to take appropriate disciplinary action according to applicable policies and procedures.

18.03.040 Bad Faith Report: Civil Penalty.

- A. Any person who makes a report of suspected elder/vulnerable adult abuse known to be false is subject to a civil penalty not to exceed five thousand dollars, U.S. (\$5,000.00).

- B. The Nooksack Tribal Court shall assess the penalty only after petition filed by the Tribal Prosecutor, with notice and opportunity for hearing, and a determination that the reporter made the report knowing it to be false.
- C. The Tribal Prosecutor shall notify the appropriate licensing agency or the Director of the Tribal program/department that a person regulated by that agency or supervised by the Director has made a bad faith report. It shall then be the responsibility of that agency or Director to take appropriate disciplinary action according to applicable policies and procedures.

18.03.050 Contents of the Report.

Unless there is a judicial proceeding or if the reporter consents, the identity of the person making the report is confidential. Reports made under this Code shall contain the following information if known:

- A. the name and address of the elder or vulnerable adult or last known whereabouts, and their Tribal status if known;
- B. the nature and extent of the suspected abuse, neglect, or exploitation, including the date, time, and location of the events, and names and identification of those persons suspected of abuse and/or neglect, if known;
- C. evidence of previous abuse, neglect, or exploitation and the current condition of the elder or vulnerable adult, if known;
- D. the name and address of the person making the report; and
- E. any other helpful information.

18.03.060 Reserved.

18.03.070 Retaliation or Intentionally Interfering with an Investigation Prohibited.

- A. Any person who retaliates by intimidating, threatening to cause or causing bodily, emotional, property, or financial harm to a person who reports or investigates abuse or neglect has committed a civil infraction.
- B. Any person who intentionally interferes with a lawful investigation of suspected abuse or neglect of an elder/vulnerable adult has committed a civil infraction.
- C. The Nooksack Tribal Court shall assess a civil penalty up to five thousand dollars, U.S. (\$5,000.00) after a petition by the Tribal Prosecutor, with notice and

opportunity for hearing, and a determination by the Nooksack Tribal Court that the person intentionally interfered with an investigation or retaliated against a reporter of elder/vulnerable adult abuse or neglect.

- D. Notice of a determination that the infraction was committed shall be provided by the Tribal Prosecutor to the person's Tribal employer and/or appropriate licensing agency. It shall then be the responsibility of that agency or Director to take appropriate disciplinary action according to applicable policies and procedures.

Chapter 18.04

EMERGENCY PROTECTION ORDERS

18.04.010 Emergency Protection Order Procedures.

- A. If an initial investigation of a report of abuse or neglect is substantiated by the Tribal Prosecutor and there is probable cause to believe that an emergency exists involving danger or threat of immediate and serious harm to an elder/vulnerable adult or their property, and no competent person is authorized by law or Court order to take necessary steps to protect the elder/vulnerable adult, then upon petition of the Tribal Prosecutor the Nooksack Tribal Court shall issue a temporary protection order, pending a full hearing. The Nooksack Tribal Court may order any emergency remedy it deems proper, including:
1. restrain a person from committing acts of abuse, neglect, or exploitation;
 2. exclude a person from the residence of the elder/vulnerable adult, even if this is a shared residence with the perpetrator;
 3. prohibit contact with the elder/vulnerable adult, including but not limited to contact by mail, telephone, e-mail, or through third parties, except by further order of the Nooksack Tribal Court;
 4. prohibit any party from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;
 5. order emergency removal of the elder or vulnerable adult to protective placement; and/or
 6. implement a Temporary Protection Plan, if one is available, from Nooksack Adult Protective Services in consultation with the Elder Protection Team, pending the full hearing.
- B. Parties entitled to service of the emergency orders, and notice and opportunity to appear at hearings and other non-voluntary proceedings under this Code are:
1. the elder/vulnerable adult;
 2. the third party respondent(s) restrained or otherwise subject to the emergency order;

3. adult children, parents or siblings of the elder/ vulnerable adult, or in the absence of such, the closest known relative of the elder/vulnerable adult; and
4. any guardian or primary caregiver with responsibility for the elder/ vulnerable adult;

The Nooksack Tribal Court shall have discretion to include or exclude any person(s) from the hearings taking into consideration the best interests of the elder/vulnerable adult, protection of the privacy of the elder/vulnerable adult, or a request of the elder/vulnerable adult.

18.04.020 Emergency Protection Orders.

- A. An elder/vulnerable adult may file a petition for an emergency order of protection. Social Services may also file a petition for an order of protection on behalf of any elder/vulnerable adult within the jurisdiction of the Nooksack Indian Tribe.
- B. The Nooksack Tribal Court shall issue an emergency protection order authorizing protective services and/or a protective payee on an emergency basis and without a prior hearing upon petition supported by clear and convincing evidence that an elder or vulnerable adult:
 1. is at risk of immediate and irreparable injury or harm;
 2. is incapacitated and cannot consent to protective services;
 3. has no one who is authorized by law or Court order to give consent on an emergency basis; and
 4. an emergency exists.
- C. A judicial officer shall have the authority to issue emergency protection orders.
- D. An emergency protection order shall be valid and in effect until a full hearing can be arranged as provided under this Code.
- E. The respondent shall be served with a copy of the ex parte emergency protection order along with a copy of the petition and notice of hearing.

18.04.030 Contents of Emergency Protection Order.

- A. The emergency protection order shall make factual findings regarding the nature of the emergency, and shall:
1. set out the specific emergency services to be provided to the elder/vulnerable adult to remove the conditions creating the emergency;
 2. provide only those services which will remove the emergency;
 3. allow protective services only if the evidence shows they are necessary;
 4. designate the agency required to implement the order;
 5. be effective for a fixed period not to exceed five (5) days. A hearing shall be held within seventy-two (72) hours, unless good cause is shown to grant a delay; and
 6. contain the judge's or judicial officer's signature. The judge or judicial officer may transmit an emergency order of protection by facsimile if he/she cannot preside in person.
- B. The emergency protection order may:
1. restrain any person from committing acts of abuse, neglect or exploitation with respect to the elder/vulnerable adult;
 2. exclude any person from elder/vulnerable adult's residence for a specified period;
 3. prohibit contact with the elder/vulnerable adult by any person for a specified period;
 4. require an accounting of the disposition of the elder/vulnerable adults income, property or resources; and
 5. restrain the transfer of income, property or resources belonging to the elder/vulnerable adult for a specified period.

18.04.040 Service and Duration of Emergency Protection Orders.

- A. All persons restrained or otherwise subject to the emergency protection order of an elder/vulnerable adult shall be personally served with a copy of the order by Tribal Law Enforcement when the person(s) to be served is/are located within the

Tribal lands of the Nooksack Indian Tribe as defined by the Nooksack Tribal Constitution and Bylaws. If the person(s) is/are located outside the Tribal lands of the Nooksack Indian Tribe, then service may be accomplished as authorized by the Nooksack Tribal Court System and Title 10 of the Nooksack Code of Laws, or as authorized by the Nooksack Tribal Court.

- B. If law enforcement cannot locate the person within five (5) days, the Nooksack Tribal Court and the elder/vulnerable adult shall be notified.
- C. The Nooksack Tribal Court may extend an emergency protection order for an additional ten (10) day period, if the evidence shows that the emergency is continuing, or to obtain service on the respondent. The Nooksack Tribal Court shall make written findings showing that the emergency is continuing for an extension of an emergency protection order.

Chapter 18.05

REPSONSIBILITIES OF SOCIAL SERVICES

18.05.010 Role of Nooksack Indian Tribe Social Services Department.

The Nooksack Indian Tribe Social Services Department shall:

- A. refer reports of abuse, neglect or exploitation of elders/vulnerable adults to the Nooksack Tribal Police Department for investigation;
- B. investigate reports of abuse, neglect or exploitation of elders/vulnerable adults;
- C. assist Nooksack Tribal Law Enforcement, upon request, with cases being investigated;
- D. work with other Tribal agencies to ensure that appropriate protective services are provided to the elder/vulnerable adult;
- E. accept referrals from Nooksack Tribal Law Enforcement in cases where there is insufficient evidence to refer the case for criminal prosecution and where a civil remedy would be more effective in protecting the elder/vulnerable adult;
- F. take the lead role in securing services for the protection and well-being of elders/vulnerable adults;
- G. develop a plan to assist elder/vulnerable adults and their families to prevent future abuse, neglect or exploitation. This plan may be in the form of a contract between the parties or a recommendation to the Nooksack Tribal Court for a Court ordered plan;
- H. prepare reports and appear in Nooksack Tribal Court as required under this Code or as ordered by the Nooksack Tribal Court; and
- I. coordinate and communicate with all agencies and departments involved in the protection of elders/vulnerable adults.

18.05.020 Access to Investigate – Court Order.

- A. If an individual denies access to Social Services in an investigation of suspected or alleged abuse, neglect or exploitation of an elder/vulnerable adult, Social Services may seek an order from the Nooksack Tribal Court to prevent interference with the investigation.
- B. Access to investigate criminal matters by Tribal Law Enforcement shall be governed by the criminal laws and procedures of the Nooksack Indian Tribe.

18.05.030 Investigations.

- A. Social Services shall promptly refer reported allegations of abuse, neglect, or exploitation to the Nooksack Tribal Police Department, to conduct the investigation. All investigations shall be documented in written reports.
- B. The Nooksack Tribal Police Department shall conduct an initial investigation within twenty-four (24) hours after receiving a report of abuse, neglect or exploitation, and shall prepare a written summary of the investigation results, which shall be completed within seventy-two (72) hours after completion of the investigation of the report of abuse, neglect or exploitation.
- C. If there is good cause for the investigator or law enforcement officer to believe that an emergency exists and an elder/vulnerable adult is at risk of immediate or irreparable harm based on their personal observation, the law enforcement officer shall take immediate steps to protect the abused person, which may include transporting him or her to an appropriate placement.
- D. A copy of the investigative report shall be provided to the Tribal Prosecutor. After the initial investigation, further investigation may take place if warranted.
- E. Upon completion of the investigation, Social Services shall determine:
 - 1. whether an elder/vulnerable adult is in imminent danger of harm;
 - 2. whether an emergency exists;
 - 3. whether the elder/vulnerable adult should be immediately removed from the current situation by emergency order; or
 - 4. whether the report was unfounded.

- F. If Social Services determines that any of the conditions exist as listed in subsection E, subparagraphs 1 through 3 of this Section, then Social Services shall:
1. identify appropriate shelter placement;
 2. determine, in consultation with the Tribal Prosecutor, whether further legal action to assure the protection of the elder/vulnerable adult should be initiated; and
 3. if legal action is not warranted, consider whether voluntary family counseling and other services should be offered to address the problems that led to the report.

18.05.040 Proposed Protection Plan.

After consultation with the Tribal Prosecutor confirming that a petition for protection will be filed, Social Services shall prepare a proposed protection plan in consultation with the elder/vulnerable adult, family members and/or caregivers, and the Adult Protection Team. With the elder/vulnerable adult's consent, appropriate voluntary services may be initiated pending the fact finding hearing.

Chapter 18.06

PROCEDURES FOR PROTECTION ORDERS

18.06.010 Who may File a Petition and Parties.

- A. An elder/vulnerable adult protection order may be filed by:
 - 1. the Tribal Prosecutor, after consultation with Social Services and based on the results of an investigation and report, may file a petition for the protection of the elder/vulnerable adult in the Nooksack Tribal Court; or
 - 2. an elder/vulnerable adult, or a representative on their behalf.
- B. The parties to a protection order action shall be the petitioner, the elder/vulnerable adult and the respondent(s).

18.06.020 Contents of Petition.

The petition shall include:

- A. the name of the petitioner;
- B. name, date of birth and permanent address, or location, of the elder/vulnerable adult;
- C. the facts establishing the Nooksack Tribal Court's jurisdiction;
- D. Tribal status of the elder/vulnerable adult;
- E. a description of the elder's condition and situation with specific facts or circumstances, including: date(s), time(s) and location(s) at which the alleged facts occurred and any previous attempts to obtain the elder/vulnerable adult's consent for protection;
- F. name of person(s) and their relationship to the elder/vulnerable adult sought to be restrained by issuance of a protection order; and
- G. the relief sought to include the proposed protective services.

18.06.030 Preliminary Hearing and Appointment of Guardian ad Litem or Other Professional for Elder/Vulnerable Adult.

Within ten (10) days of filing of the petition, the Nooksack Tribal Court shall hold a preliminary hearing to:

- A. review the sufficiency of the petition to determine whether probable cause exists to set the matter for a fact finding hearing; and
- B. determine whether a guardian ad litem or other professional should be appointed and make such appointments as the Court deems necessary.

The elder or vulnerable adult has the right to be represented by counsel at all proceedings at his or her own expense.

18.06.040 Fact Finding Hearings.

- A. Upon petition, the Nooksack Tribal Court shall conduct a fact finding hearing to determine whether a person is an elder/vulnerable adult in need of protective services.
- B. The Nooksack Tribal Court shall first determine the capacity of the elder/vulnerable adult to understand the proceedings. Upon a finding based on clear and convincing evidence that the elder/vulnerable adult is incapacitated and unable to consent to protective services or to a protective placement, the Nooksack Tribal Court shall proceed with the issue of whether judicial intervention is necessary because the elder/ vulnerable adult has been or is at risk of abuse, neglect or exploitation.
- C. All parties shall be afforded the opportunity to examine and controvert written reports, and cross examine witnesses.
- D. The Nooksack Tribal Court may rely on conference by telephone or other electronic device that permits all those appearing or participating to hear or speak to one another.
- E. At the conclusion of the fact finding hearing, the Nooksack Tribal Court shall determine whether the allegations in the petition have been proven by a preponderance of the evidence. If the allegations are not found proven, then the case shall be dismissed. If the allegations are found proven, then the Nooksack Tribal Court shall enter an order to protect the elder/vulnerable adult.

- F. At the Nooksack Tribal Court's discretion, a hearing to determine the provisions of an order and protection plan may be conducted immediately, or may be set for another hearing for that specific purpose, provided that the hearing shall not be more than fifteen (15) days after the conclusion of the fact finding hearing. The Nooksack Tribal Court may enter a temporary order and temporary protection plan in the interim. Upon a finding of good cause, the hearing to enter the order and protection plan may be continued for an additional period of time not to exceed fifteen (15) days.
- G. If the Nooksack Tribal Court denies the protection order, the Nooksack Tribal Court shall state the reasons in writing. Issuance of an order of protection is a final order subject to appeal. Temporary orders are not appealable.

18.06.050 Time and Notice of Hearing.

- A. The fact finding hearing shall take place within thirty-five (35) days of the date the petition is filed. Hearings shall be closed. The Nooksack Tribal Court shall have discretion to include or exclude any person(s) from the hearings taking into consideration the best interests of the elder/vulnerable adult, protection of the privacy of the elder/vulnerable adult, or a request of the elder/vulnerable adult.
- B. The Tribal Prosecutor, Tribal Law Enforcement or Social Services shall provide the Nooksack Tribal Court clerk with the names of all parties to the proceeding.
- C. The Nooksack Tribal Court clerk shall provide notice of hearing to all parties at least five (5) working days before the hearing. The notice shall include:
 - 1. the date, time and place of the hearing; and
 - 2. a copy of the petition.

18.06.060 Reserved.

18.06.070 Agreed Order.

- A. The parties to a fact finding hearing may agree to a proposed order, which resolves some or all of the issues of the case.
- B. One or more guardians or protective payees may be appointed in an agreed order.
- C. A family meeting or other informal mediation process may be used to help reach an agreement.

- D. Before deciding whether to approve the agreed order, the judge may hold an in-chambers, ex parte discussion with the elder/vulnerable adult or any person who will be subject to the order to:
1. explain the proposed agreed order in detail;
 2. assure that the person's consent to the proposed order is not the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of any person;
 3. explain the person's right to a spokesperson/counsel at his or her own expense;
 4. explain that the petitioner has the burden of proving the allegations in the petition and that the person does not have to agree to the proposed order; and
 5. explain that once the person agrees to the proposed order and it is signed and entered by the Nooksack Tribal Court, the person must adhere to the order.
- E. The in-chambers conversation need not be recorded.
- F. If the person subject to the in-chambers conversation wants a friend, family member, or other person to be present, the judge shall allow it after speaking alone with him or her.
- G. If the Nooksack Tribal Court finds that any consent was the result of fraud or duress, the agreed order may be vacated.

Chapter 18.07

PROTECTION PLAN

18.07.010 Elder/ Vulnerable Adult Protection Plan.

- A. Social Services shall prepare a written plan describing all reasonable and appropriate alternatives for protecting the elder/vulnerable adult. The plan shall:
 - 1. explain why it is necessary and how it benefits the elder/vulnerable adult;
 - 2. detail any recommendations for removal from the home of any person found to have abused, neglected, or exploited the elder/vulnerable adult; and
 - 3. contain the professional opinions of all persons consulted.
- B. The written plan may recommend the appointment of one or more guardians or protective payees to assist the elder/vulnerable adult in conducting business or obtaining necessary services his or her well-being.
- C. Social Services shall file the report with the Nooksack Tribal Court and provide copies to all parties at least five (5) days before any hearing on the plan.

18.07.020 Additional Recommendations.

Any person who is involved in the case may prepare his or her own recommendations to the Nooksack Tribal Court in the form of a vulnerable adult protection plan. Copies shall be provided to all parties to the case at least five (5) days prior to any hearing on the plan.

18.07.030 Hearing On the Plan.

- A. A hearing shall be held to decide which plan will best meet the needs of the elder/vulnerable adult and assist the family.
- B. A hearing on the plan may take place immediately after the fact finding hearing or may take place up to fifteen (15) days from the date of the fact finding hearing.
- C. The Nooksack Tribal Court shall schedule the hearing on the plan and shall serve notice to all parties.

18.07.040 Conduct of Hearing on the Plan.

- A. The Nooksack Tribal Court shall hear testimony and consider all elder/vulnerable adult protection plans submitted.
- B. All parties shall be given a chance to contest the facts and conclusions presented in each plan.
- C. The Nooksack Tribal Court shall order that a plan be implemented for the protection and well-being of an elder/vulnerable adult. A protection plan ordered by the Nooksack Tribal Court shall incorporate appropriate services that are the least restrictive while meeting the needs of the elder/vulnerable.
- D. The plan may restrain or exclude from the elder/vulnerable adult's home any person found to have abused, neglected or exploited the elder/vulnerable adult. The Nooksack Tribal Court may make the return to the home conditional upon compliance with its orders.
- E. The Nooksack Tribal Court shall issue any other orders necessary for the protection and well-being of the elder/vulnerable adult and his or her family. Such orders may include but are not limited to: restraining orders; evaluation and treatment (including involuntary residential treatment) of substance abuse, mental illness, and emotional disturbance; and other services or activities for the benefit of the elder/vulnerable adult and his or her family.
- F. The Nooksack Tribal Court may also appoint one or more guardians, limited guardian(s) or a protective payee for the benefit of the elder/vulnerable adult if the Nooksack Tribal Court deems it necessary to assist the elder/vulnerable adult in conducting business or obtaining necessary services. The Nooksack Tribal Court may set terms and conditions on the appointee, including taking an oath, posting a bond, or other provisions to protect the elder/vulnerable adult. Any person(s) appointed shall have a fiduciary duty to protect the assets of the elder/vulnerable adult. The appointee shall be required to submit an initial accounting of the elder/vulnerable adult's income, assets, liabilities and other resources. The Nooksack Tribal Court shall require periodic reports, with supporting documentation, by the person(s) given authority to receive payments of funds, to secure the elder/vulnerable adult's funds, property, services, or other resources, or to expend funds. Reports shall be submitted at least one (1) time per year.
- G. The Nooksack Tribal Court may order removal of the elder/ vulnerable adult to protective placement.

18.07.050 Review Hearings.

- A. The Nooksack Tribal Court shall conduct a hearing to review the elder/vulnerable adult protection plan six months from the date the plan was ordered, or earlier upon motion of any party, and shall set a schedule for future periodic reviews.
- B. The Nooksack Tribal Court shall review compliance with the order and consider whether modification is necessary to protect the elder/vulnerable adult.

18.07.060 Confidentiality of Records.

- A. Records of an investigation of elder/vulnerable abuse, neglect or exploitation, or a hearing regarding elder/vulnerable adult abuse, neglect or exploitation shall be confidential.
- B. Such records shall be open only to:
 - 1. the elder/vulnerable adult;
 - 2. the elder/vulnerable adult's family members (unless the family member(s) is the suspected abuser);
 - 3. Nooksack Tribal Social Services;
 - 4. Tribal Law Enforcement;
 - 5. Nooksack Tribal Court officials;
 - 6. Tribal Prosecutor; and
 - 7. any person whom the Nooksack Tribal Court determines to have good cause to have access.

18.07.070 Confidentiality of Proceedings.

- A. All proceedings held pursuant to this Code shall be closed and confidential.
- B. Persons who may attend proceedings held pursuant to this Code are:
 - 1. the elder/vulnerable adult;
 - 2. the elder/vulnerable adult's family or caretaker(s);

3. Social Services;
 4. Tribal Law Enforcement;
 5. Tribal Prosecutor; and
 6. attorneys representing the parties to the proceeding, if any.
- C. Other persons may be allowed to appear at any proceeding to testify.
- D. No person attending or testifying at any proceeding held pursuant to this Code shall reveal information about the proceeding unless ordered to do so by Nooksack Tribal Court order.
- E. Any person who violates any paragraph of this section shall be subject to a civil penalty not to exceed five thousand dollars, U.S. (\$5,000.00). The Nooksack Tribal Court shall assess such penalty after petition, adequate notice, opportunity to be heard, and a determination that the violation occurred.

Chapter 18.08

GUARDIAN AND PROTECTIVE PAYEE

18.08.010 Purpose.

- A. This chapter provides a process for empowering one or more persons to act on behalf of an elder/vulnerable adult who requires assistance in conducting business or in obtaining necessary services.
- B. The Nooksack Tribal Court may appoint a limited guardian(s), full guardian(s), protective payee(s) or a combination of the two for the benefit of an elder/vulnerable adult.
- C. A guardianship must promote and protect the well-being of the elder/vulnerable adult, and be designed to promote dignity and independence for the elder/vulnerable adult, and may be ordered to the extent that the elder/vulnerable adult's physical or mental limitations require assistance.

18.08.020 Appointment of Guardian ad Litem and Professional Evaluation.

- A. The Nooksack Tribal Court may, if it deems necessary, appoint a guardian ad litem to represent the interests of the elder/vulnerable adult in protection or guardianship proceedings.
- B. The Nooksack Tribal Court may, if it deems necessary, order a medical or other professional evaluation, to assist the Nooksack Tribal Court to determine the degree of capacity or incapacity of the elder/vulnerable adult, and to obtain any relevant evidence of abuse, neglect or exploitation.
- C. Prior to appointing a guardian ad litem or other professional, the Nooksack Tribal Court shall identify an available funding source to pay for guardian ad litem and/or professional fees and expenses. The Nooksack Tribal Court is not mandated to appoint if there are no funds available pursuant to Section 18.01.040 of this Code.

18.08.030 Petition for Appointment of Guardian/Protective Payee.

- A. The Nooksack Indian Tribe, a family member or any other interested person may file a petition with the Nooksack Tribal Court requesting that a limited guardian, or full guardian or protective payee be appointed for an elder/vulnerable adult who is unable to manage some or all of his or her own affairs.

- B. The elder/vulnerable adult may file on his or her own behalf.

18.08.040 Petition for Appointment of Guardian/Protective Payee Contents.

The petition for appointment of an elder/vulnerable adult limited guardian, full guardian, or protective payee shall include:

- A. the name, birth date, residence/ physical address or location of the elder/vulnerable adult if not in his or her own home, and tribal status of the elder/vulnerable adult who is the subject of the petition;
- B. the name, birth date, residence, and tribal status of the petitioner(s) and his or her relationship to the elder/vulnerable adult;
- C. a statement explaining why the petitioner(s) believes the elder/vulnerable adult needs assistance in conducting business or in obtaining necessary services for his or her well-being, including a description of any physical and/or mental limitations that make the elder/vulnerable unable to manager his or her own affairs;
- D. the names, addresses and relationship of the elder/vulnerable adult's spouses and children, if any, and of any other family members or persons who have been significantly involved in the care of the elder/vulnerable adult in the recent past;
- E. whether a limited guardian, full guardian, or protective payee has been appointed by another Court and whether another Court has made a finding of incapacity;
- F. whether the elder/vulnerable adult has a living will (directive to physicians) or has given anyone a power of attorney;
- G. any recommendations the petitioner has regarding who should be appointed to assist the elder/vulnerable adult and to what extent the person(s) should be empowered to provide that assistance;
- H. a description of the elder's/vulnerable adult's property, income or other resources, if assistance with the elder's/vulnerable adult's finances is being requested;
- I. a doctor's report or letter stating that the elder/vulnerable adult is not presently able to handle his or her affairs, the anticipated duration of the incapacity; and

- J. the requested length of time for which the petitioner is requesting the limited guardianship, full guardianship or protective payee.

18.08.050 Hearing on Petition for Appointment of Guardian/ Protective Payee – Setting.

Upon receiving a petition for appointment of limited guardian, full guardian or protective payee, the Nooksack Tribal Court shall set a hearing date, which shall not be more than forty (40) calendar days after the receipt of the petition, unless continued for good cause.

18.08.060 Notice of Hearing.

- A. Notice of hearing shall be given at least twenty (20) calendar days before the hearing date, unless the parties waive this time limit.
- B. The notice shall include the date, time and place of the hearing and a copy of the petition.
- C. The notice shall be personally served upon:
 - 1. the petitioner(s);
 - 2. the elder/vulnerable adult;
 - 3. the elder/vulnerable adult's spouse and children, if any;
 - 4. Social Services or its designated representative;
 - 5. any other family members or persons who have been significantly involved in the care of the elder/vulnerable adult in the recent past; and
 - 6. any person the Nooksack Tribal Court or the parties deem necessary for proper adjudication.
- D. If the Nooksack Tribal Court discovers that additional persons should be notified after proceedings are in progress, it may continue the proceedings in order to give those persons notice and the opportunity to respond.
- E. A hearing on the petition for guardianship shall be held within forty-five (45) days from the date of service of the notice and petition on the elder/vulnerable adult, or from the date of filing if the petition was filed by the elder/vulnerable adult. The time for hearing may be extended by the Nooksack Tribal Court upon a finding of good cause.

18.08.070 Guardian ad Litem.

The Nooksack Tribal Court may appoint a guardian ad litem at its discretion in order to represent the interests of the elder/vulnerable adult, if it appears from medical or other reports that his/her interests will not be adequately represented, or that he/she may not be able to participate in or assist in the guardianship hearings. The Nooksack Tribal Court is not mandated to appoint if there are no funds available pursuant to Section 18.01.040 of this Code.

18.08.080 Guardian ad Litem Qualifications and Duties.

- A. To be qualified to be a guardian ad litem, a person must be eighteen (18) years of age or older, and:
1. must have demonstrated experience and familiarity with the Nooksack Tribal Community;
 2. be able to make independent, mature and informed decisions on issues involving elders and/or vulnerable adults;
 3. be impartial, open-minded and fair;
 4. have not represented a person or party in the pending litigation or parties that may have or had interests adverse to the elder/ vulnerable adult;
 5. have not been convicted of any felonies, or any crimes involving moral turpitude, narcotics and controlled substances, domestic violence, or sex offenses.
 6. have received appropriate training or has experience as follows:
 - a. court procedures;
 - b. interviewing techniques and investigation skills;
 - c. guardian ad litem report drafting and requirements;
 - d. record keeping and confidentiality of information;
 - e. guardian ad litem roles and ethical duties; and
 - f. elder/vulnerable adult financial issues, available benefits and resources, and basic health and medical issues.

B. Guardian ad Litem Duties:

It shall be the primary duty of a guardian ad litem to represent the best interests of the person for whom the guardian ad litem is appointed. A guardian ad litem is an officer of the Nooksack Tribal Court and must maintain independence, conduct herself or himself professionally, avoid conflicts of interest, treat parties with respect, become informed about the case, timely inform the Nooksack Tribal Court of relevant information, limit duties to those ordered by the Nooksack Tribal Court, inform individuals about a guardian ad litem's role in the case, maintain the parties' privacy, perform duties in a timely manner, maintain documentation, and maintain confidentiality of records and documents. Violation of these duties may subject the guardian ad litem to dismissal or discipline.

18.08.090 Appointment of a Temporary Guardian.

Upon showing that irreparable harm or damages to the allegedly incapacitated elder/vulnerable adult's health or property is likely to occur before a hearing can be held, upon motion of the petitioner, the Nooksack Tribal Court may appoint with or without notice, a temporary guardian for the allegedly incapacitated elder/vulnerable adult, for a specified period not to exceed sixty (60) days. The Nooksack Tribal Court shall not grant the temporary guardian with more powers than are required by the circumstances necessitating the temporary appointment.

18.08.100 Hearing on Appointment of Guardian/Protective Payee – Conduct.

- A. The Nooksack Tribal Court shall first determine its jurisdiction over the elder/vulnerable adult, and whether another court of competent jurisdiction has previously issued orders of incapacity, guardianship, or any other orders providing for care of the elder/vulnerable adult.
- B. A hearing on the petition for appointment of a guardian/protective payee is an opportunity for all parties to provide testimony or other evidence to assist the Nooksack Tribal Court in determining whether the appointment of a guardian or protective payee, or both, is necessary to assist the adult to conduct business or to obtain the necessary services.
- C. The elder/vulnerable adult named in the petition shall be present at all hearings unless:
 - 1. the elder/vulnerable adult is incapacitated and unable to appear as documented by a physician, or files a notarized affidavit with the Nooksack Tribal Court requesting that the hearing proceed without them;

2. an appointed guardian ad litem may file an affidavit with the Nooksack Tribal Court stating:
 - a. the guardian ad litem has fully explained the nature of the hearing to the elder/vulnerable adult and to the best of his or her belief the elder/vulnerable adult understood the nature of the hearing and clearly expressed a desire not to be present; or
 - b. to the best of the guardian ad litem's information and belief, the elder/vulnerable adult is incapable of understanding the nature of the hearing or participating at the hearing;
3. upon a finding from the evidence presented that the elder/vulnerable adult cannot participate in the hearing(s), the Nooksack Tribal Court may waive his or her appearance; or
4. telephonic appearances or appearances by other electronic means may be at the discretion of the Nooksack Tribal Court.

18.08.110 Grounds for Appointing Guardian/Protective Payee.

- A. The Nooksack Tribal Court may appoint a guardian or protective payee when the elder/vulnerable adult has consented in writing, and the Nooksack Tribal Court is satisfied that the consent is valid, and made knowingly and voluntarily.
- B. The Nooksack Tribal Court may appoint a guardian or protective payee without the elder/vulnerable adult's consent if the Nooksack Tribal Court finds the elder/vulnerable adult cannot protect and care for himself or herself due to diminished functional, mental, emotional or physical ability.
- C. Rules of evidence and burden of proof shall be the same as those which apply to civil actions before the Nooksack Tribal Court, or as otherwise expressly defined in this Chapter.
- D. The Nooksack Tribal Court shall examine the petition and take evidence. The petitioner must prove by a preponderance of the evidence that the elder/vulnerable adult is unable to manage his or her own affairs due to:
 1. loss of memory or reasoning ability;
 2. acute alcoholism or dependence on drugs;

3. mental illness or other medical condition or incapacity; and/or
4. that the elder/vulnerable adult lacks the ability to manage his or her own affairs to the extent that his or her personal health, or physical or financial security is measurably threatened, and there is no less restrictive alternatives reasonably available to remedy these problems.

18.08.120 Agreed Order.

- A. The parties to a hearing on petition for appointment of a guardian/protective payee may agree to a proposed order which resolves some or all of the issues of the case.
- B. Before approving an agreed order, the judge shall hold an in-chambers, ex parte discussion with the elder/vulnerable adult to:
 1. explain the proposed agreed order;
 2. assure that the person's consent to the proposed order is not the result of coercion, threat, duress, fraud, overreaching, or improper promise on the part of any person;
 3. explain the person's right to a spokesperson/counsel at his/her own expense;
 4. explain that the person does not have to agree to the proposed order and that the case will then go to a full hearing on all the issues; and
 5. explain that once the agreed order is signed and entered by the Nooksack Tribal Court, the person must adhere to the order.
- C. The in-chambers conversation need not be recorded.
- D. If the elder/vulnerable adult wants a friend/family member, or other person present, the judge shall allow it after first speaking alone with the elder/vulnerable adult.
- E. If the Nooksack Tribal Court finds that consent to the agreed order was the result of fraud or duress, the agreed order shall be vacated.

18.08.130 Order Appointing Limited Guardian, Full Guardian or Protective Payee.

- A. The Nooksack Tribal Court shall make specific findings, and orders appointing guardians or protective payees shall be tailored for the elder/vulnerable adult's benefit.
- B. The Nooksack Tribal Court shall have broad discretion in fashioning an order that will best meet the elder/vulnerable adult's needs and circumstances in the least restrictive manner, subject to the following provisions:
 - 1. the Nooksack Tribal Court shall identify who shall serve as the guardian or protective payee and shall specify his or her powers and duties;
 - 2. if the elder/vulnerable adult has named a guardian in a durable power of attorney or has otherwise stated a preference, the Nooksack Tribal Court will honor the elder's/vulnerable adult's choice unless good cause to the contrary is shown; and
 - 3. the guardian's powers shall extend only to such areas specifically stated in the findings and order, and such powers shall be no more extensive than necessary to address the facts proven by the petitioner.
- C. If more than one guardian or protective payee is appointed, the Nooksack Tribal Court shall state whether the duties are to be shared or whether each shall have separate duties.
- D. The Nooksack Tribal Court shall set forth requirements for guardians and protective payees vested with financial responsibilities to make periodic accountings to the Nooksack Tribal Court and to the elder/vulnerable adult. Requirements may include expenditure guidelines and limits, a schedule for reporting and any other requirements the Nooksack Tribal Court finds necessary to protect the elder/vulnerable adult's financial resources.
- E. The Nooksack Tribal Court may vest guardians with the duty to provide timely informed consent to necessary medical procedures, provided that placement of the elder/vulnerable adult in a nursing home shall require prior Nooksack Tribal Court approval.
- F. The Nooksack Tribal Court shall state in all orders appointing a guardian or protective payee whether review hearings shall be required and the frequency of such hearings.

- G. No guardian may transfer, encumber, or dispose of the elder/vulnerable adult's real estate, or have a will prepared on behalf of the elder/vulnerable adult, without a finding and order from the Nooksack Tribal Court that such action is in the best interest of the elder/ vulnerable adult. The Nooksack Tribal Court may hold a hearing on such requests.

18.08.140 Inventory and Reports.

- A. Guardians/ protective payees overseeing the income and property of the elder/vulnerable adult shall file an inventory with the Nooksack Tribal Court of all such income, and personal and real property prior to the appointment, or at such time as may be extended by the Nooksack Tribal Court upon a showing of good cause.
- B. The Nooksack Tribal Court may require that the income or funds of the elder/vulnerable adult be placed into a judicially blocked bank account.
- C. Every guardian/protective payee shall provide written reports at least one (1) time per year, or more frequently upon order of the Nooksack Tribal Court. The report shall include, but is not limited to:
 - 1. actions taken to provide necessary and appropriate medical or therapeutic treatment, and other services that the elder/vulnerable adult is receiving, along with names of service providers;
 - 2. the elder/vulnerable adult's current address and living situation, including: names, contact information, and responsibilities of all caregivers and/or family members providing assistance to the elder/ vulnerable adult;
 - 3. proposed changes to improve the elder/vulnerable adult's living situation; or additional assistance or services required;
 - 4. proposed transfers of property, or making of a will; and
 - 5. a financial accounting of income, expenditures, assets and liabilities.

18.08.150 Limited Guardian, Full Guardian or Protective Payee may Petition Court for Clarification.

The limited guardian, full guardian or protective payee may petition the Nooksack Tribal Court for authority to do any act of which he/she is uncertain of his/her authority, and the Nooksack Tribal Court may grant such authority after notice and hearing if found necessary by the Nooksack Tribal Court.

18.08.160 Removal of Limited Guardian, Full Guardian or Protective Payee.

- A. The Nooksack Tribal Court may remove a limited guardian, full guardian or protective payee and appoint a replacement whenever necessary for the elder/vulnerable adult's benefit.
- B. The limited guardian, full guardian, or protective payee may be removed for failure to file an initial inventory, or to appear and file a written report at the time of a regularly scheduled review hearing. Prior to removal, the limited guardian, full guardian, or protective payee shall be given 15 days' notice and an opportunity to request a rescheduling of his or her appearance and/or to file a late report within such period to avoid termination of the limited or full guardianship or of protective payee duties. The Nooksack Tribal Court may extend the date of the hearing for good cause.
- C. Removal may occur upon a finding, after hearing, of failure to fulfill limited guardianship, full guardianship, or protective payee duties in a reasonable and responsible manner. Hearing on the proposed removal may be filed on the Nooksack Tribal Court's own motion or on the motion of any interested party and shall be scheduled not less than 15 days from service of the motion upon the limited or full guardian or protective payee.
- D. If the Nooksack Tribal Court removes a limited guardian, full guardian, or protective payee and the elder/vulnerable adult continues to be in need of a limited guardian, full guardian, or protective payee, the Nooksack Tribal Court shall appoint a temporary guardian/ protective payee.

18.08.170 Modification and Termination of Guardianship.

- A. An order appointing a limited guardian, full guardian, or protective payee may be modified by the Nooksack Tribal Court for good cause upon motion of any party following adequate notice and a hearing.
- B. Generally, a guardianship shall terminate upon the death of the adult or upon order of the Nooksack Tribal Court.
- C. The Nooksack Tribal Court may appoint the guardian or protective payee to administer the elder/vulnerable adult's estate after death, if the person dies intestate.
- D. Within thirty (30) days of the death of the elder/ vulnerable adult, a final report shall be filed with the Nooksack Tribal Court. The final report shall include a

final accounting of the estate and, if the person dies intestate, a proposed disposition of the estate of the elder/ vulnerable adult.

18.08.180 Guardianship Records.

- A. The Nooksack Tribal Court Clerk shall keep a permanent file of all records pertaining to each guardianship/ protective payee proceeding.
- B. Any guardian/ protective payee appointed by the Nooksack Tribal Court shall be entitled to receive, without charge, certified copies of letters of guardianship/ protective payee.

Chapter 18.09

MISCELLANEOUS

18.09.010 Severability.

If any provision of this Code or its application to any person or circumstance is held invalid, the remainder of this Code, or the application of the provision to other persons or circumstances is not affected, and to this end the provisions of this Code are declared to be severable.

18.09.020 Sovereign Immunity.

Nothing in this Code shall be deemed or construed to be a waiver of the sovereign immunity of the Nooksack Indian Tribe, its officials, its entities, or employees acting within their official or individual capacities.

18.09.030 Amendments.

The Nooksack Tribal Council may amend this Code by a majority vote of a quorum at duly called meeting.

18.09.040 Headings.

The titles to the sections of this Code are solely for convenience and shall not be used to explain, modify, simplify, or aid in the interpretation of the requirements of this Code.

18.09.050 Repealer and Savings Clause.

All prior enactments pertaining to the subject matter of this Code are hereby repealed.

18.09.060 Effective Date.

This Code, as herein revised, shall become effective immediately upon approval by the Nooksack Indian Tribal Council.

LEGISLATIVE HISTORY:

Title Adopted December 5, 2000, by Resolution No. 00-040;
Title Amended IN FULL October 8, 2013, by Resolution No. 13-152.