

COQUILLE INDIAN TRIBAL CODE

Chapter 643

ADOPTIONS, GUARDIANSHIPS AND LONG-TERM CARE

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ADOPTIONS, GUARDIANSHIPS AND LONG-TERM CARE

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ADOPTIONS

643.010 Policy It is the policy of the Tribe that its children should be adopted only as a matter of last resort, and alternative long-term placements such as guardianship and long-term foster placement should first be considered which maintain the connection between the child and the parent and family. A decree of adoption shall not terminate the legal relationship between the child and the child's natural family members, except by order of the Court.

643.100 Who May Adopt The following persons may adopt:

- (1) Any adult may file a petition to adopt;
- (2) In the case of married persons, not legally separated, both spouses shall be petitioners except that, if one of the spouses is the natural parent of the minor to be adopted, the natural parent shall not be a party to the petition.
- (3) A married person legally separated may adopt without the consent of his spouse.

643.110 Who May Be Adopted A minor subject to the jurisdiction of the Coquille Tribal Court.

643.120 Conditions to Adoption

- (1) The welfare of the child shall be primary;
- (2) The proposed adoption must be in the best interests of the child;
- (3) A person adopting shall be at least 10 years older than the minor.

643.130 Order of Preference for Adoption Preference in adoption shall be given in the following order:

- (1) A member of the child's immediate family; or
- (2) A member of the child's extended family; or
- (3) A member of the child's Tribe; or,
- (4) A person designated by the child's parent or approved by the Tribal Social Services Department; or,

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- (5) A member of an Indian Tribe to which the child has hereditary connections; or,
- (6) A member of any Indian tribe; or,
- (7) An appropriate non-Indian person.

643.200 Petition for Adoption To initiate an adoption in Tribal Court, a petition for adoption shall be filed with the Tribal Court. In circumstances in which parental rights have been involuntarily terminated and the child placed is placed within the care and custody of the Social Services Department, the Tribal prosecutor or Social Services Department may file the adoption petition. In all other circumstances, a petition for adoption may be filed by the proposed adoptive parent(s). It shall be verified under oath by the adoptive parent(s) or Social Services caseworker and shall contain:

- (1) The full name, residence, place of birth, date and sex of the child, with attached documentary proof of the date and place of the birth of the child to be adopted.
- (2) Documentary proof of the child's membership status in the Tribe, if such proof exists;
- (3) The full name, residence, date and place of birth, occupation of the adoptive parent (s), statement of relationship to the child, documentary proof of marital status, provided this not be interpreted to prohibit single parent adoptions, and Tribal membership or Indian status;
- (4) Proof of parental consent to the adoption where the petitioners are relatives of the child by blood or marriage; except
 - (a) where the natural parents have abandoned the child and cannot be located; or
 - (b) There is a court order terminating parental rights of the parents to said child.
- (5) An agreement by the adopting parent of the desire that a relationship of parent and child be established between them and the child;
- (6) A full description and statement of value of all property owned, possessed or held in trust by and for the child.
- (7) A citation to the specific section of this Ordinance giving the Court jurisdiction of the proceedings; and

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(8) A brief and concise statement of the facts which may aid the Court in its determination.

643.210 Investigative Report

(1) Role of Social Services Caseworker

The caseworker shall prepare and present to the Court a report within 30 days of the filing of a petition for adoption or a supplemental report as ordered by the Court as to the suitability of the child for adoption, as well as to the financial, moral, physical fitness, general background of the adoptive home, and adoptive parent or parents. A home study shall be conducted as part of this procedure and shall be filed with the court as part of the adoption petition when the Social Services Department files the petition for adoption. The Tribal caseworker shall contact appropriate agencies and individuals who have relevant knowledge and such contacts and relevant information shall be included in the report. The Tribal caseworker shall make written recommendations on the proposed adoption.

(2) Other Agencies; Individuals.

The Court may order other agencies or individuals to prepare and file written reports with the Court to aid in the Court's determination on the suitability of the proposed adoption.

(3) Copies of reports shall be served on petitioner at the same time they are presented to the Court.

643.220 Consent to Adoption

(1) When required. Written consent to adoption is required of:

- (a) Each biological, adoptive and acknowledged parent whose parental rights have not been involuntarily terminated, who has not voluntarily terminated his or her parental rights or has not been declared incompetent;
- (b) The guardian or custodian, if empowered to consent;
- (c) The Court, if the guardian or custodian is not empowered to consent; and
- (d) The minor, if he or she is eleven (11) years of age or older.

(2) When not required. Written consent to an adoption is not required if:

- (a) The parent's rights have been involuntarily terminated;

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- (b) The parent has voluntarily terminated his or her parental rights; or
- (c) The parent has been declared incompetent.

(3) Procedure for Signing the Consent to Adopt. Written consents, where required by this Code, shall be attached to the petition for adoption. Written consent to an adoption shall be signed and acknowledged before a Notary Public. Consent shall not be accepted or acknowledged by the Court unless signed and acknowledged more than ten (10) days after birth of the child, except by order of the Court. An interpreter shall be provided if required by the Court. The Court shall have authority to inquire as to the circumstances behind the signing of a consent under this section.

(4) Withdrawal of Consent to Adopt. Written consent cannot be withdrawn after the entry of a final order of adoption. Consent may be withdrawn prior to the final order of adoption upon showing a preponderance of evidence at a hearing before the Court that consent was obtained by fraud, duress or coercion, or the best interests of the child require the consent to adoption be voided.

643.240 Hearing on Petition for Adoption

(1) Purpose, Time Limit. A hearing shall be held within 60 days of receipt of an adoption petition to determine if it is in the minor's best interest to be placed with petitioners.

(2) Procedure at Hearing. Adoptive parent or parents shall appear personally at the hearing. At or before the hearing, any biological, adoptive or acknowledged parent consenting to the adoption must appear personally before the judge, in open court so the Court can determine the voluntariness and understanding with which consent was given, if the Court determines the validity of the consent is an issue. All other persons whose consent is necessary shall be duly notified and shall personally appear, if the Court determines the validity of the consent is as issue.

The judge shall examine all persons appearing as to the suitability of the child for adoption, the validity of consent to adoption, the financial, moral and physical fitness, responsibility of the adoptive parents, and whether the best interests of the child will be promoted by the adoption.

The Court shall also hear natural extended family members to decide whether the child's legal relationship to the extended family should be terminated.

643.250 Order on Petition for Adoption

(1) Granting the Petition. If the Court is satisfied it is in the best interest of the child

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to grant the petition, the Court may enter a final decree of adoption as follows:

- (a) In the case of a child who has lived with the adoptive parent for more than six months before the adoption petition has been filed, the final decree of adoption shall be entered immediately; and
 - (b) In all other cases, the Court shall order the child be placed in the legal custody of the adoptive parent for at least six months; at that time, the Court shall request a supplemental report and, if the Court determines that the best interest of the child are served, shall enter the final decree of adoption immediately.
- (2) Contents of Adoption Order. The final order of adoption shall include such facts necessary to establish that the child is eligible and suitable for adoption, and that the adoptive home and parents are adequate and capable of providing the proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence produced at the hearings.
- (3) Denying the Petition. If satisfied the adoption petition is not in the best interests of the child, the petition shall be denied. The Court may request the Social Services Department or other agencies authorized to provide such services to assist in the placement and care of the child. Where the Court finds the best interest of the child will not be served by the adoption, a guardian shall be appointed and suitable arrangements made for the care of the child, in accordance with the applicable provisions of this Ordinance.

643.300 Adoption Records

- (1) Confidentiality. All records, reports, proceedings and orders are confidential, permanent records of the Court, shall be sealed and shall not be available for release for inspection by the public, except by Order of the Court.
- (2) Release of Information, Notice to Biological Parent. Information contained in such records shall be released upon petition to the Court by the adopted person after reaching legal age or majority, or upon order of the Court upon showing of good and sufficient cause by persons other than the adopted person who have petitioned for such information. In either case, no information shall be released unless:
- (a) The biological parent(s) has been given actual and confidential notice by the Court of a petition for release of information or notice of intent to issue such information has been published in a local newspaper of general distribution without revealing the name of the biological parent; and
 - (b) The biological parent has consented in writing before the Court to release

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information; the Court determines the need for information is greater than the parent's right to privacy. The Court may refuse to divulge the biological parent's name but release other information so long as the information will not lead to the discovery of the parent's name.

643.310 Adoptive Birth Certificate; Release of Original Certificate Within five (5) days of the final decree of adoption entered by the Court, the Division of Vital Statistics of the State Board of Health of the State which issued the original certificate of birth shall be notified by the Clerk of Court that the adoption has taken place, giving the full name, sex, birthday and names of natural parents, in order that a new record of birth in the new name and with the name or names of the adopting parents to be recorded; said Division shall be provided with a certified copy of the final decree of adoption.

643.320 Name of Legal Status of Adopted Child Minor children adopted by order of the Court shall assume the surname of the persons by whom they are adopted, unless the Court orders otherwise. They shall be entitled to the same rights as natural children of the persons adopting them. However, adoption does not confer tribal membership status on adopted children who would not be otherwise eligible. Adoption does not terminate the rights of natural extended family members of the child, as a group, except by Order of the Court.

GUARDIANSHIPS

643.410 Policy It is the policy of the Coquille Tribe that guardianship is an acceptable and sometimes preferable placement instead of adoption or long-term foster care.

643.430 Permanent Guardianships

(1) At any time following establishment of jurisdiction and wardship under CITC 640.020, but prior to filing of a petition under CITC 642.050, or after dismissal of a petition filed under CITC 642.050, or person granted rights of limited participation for the purpose of filing a guardianship petition, may file, and the court may hear, a petition for permanent guardianship.

(2) The Court shall grant a permanent guardianship if it finds beyond a reasonable doubt evidence that:

(a) The grounds cited in the petition are true; and

(b) It is in the best interest of the ward that the parent will never have physical custody of the ward but that other parental rights and duties should not be terminated.

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(3) Unless vacated under CITC 643.470, a guardianship established under this section continues as long as the ward is subject to the Court's jurisdiction.

643.440 Guardianships

(1) A party, or a person granted rights of limited participation for the purpose of filing a guardianship motion, may file a motion to establish a guardianship. The motion must be in writing and state with particularity the factual and legal grounds for the motion.

(2) The facts supporting any finding made to establish a guardianship for a child, including the finding that continued custody by the parents or custodian would result in serious emotional or physical harm to the child, must be established by clear and convincing evidence.

(3) In a proceeding under this section, the Court may receive testimony and reports.

(4) If the Court has approved a plan of guardianship, the Court may grant the motion for guardianship if the Court determines, after a hearing, that:

- (a) The child cannot safely return to a parent within a reasonable time;
- (b) Adoption is not an appropriate plan for the child;
- (c) The proposed guardian is suitable to meet the needs of the child and is willing to accept the duties and authority of a guardian; and
- (d) Guardianship is in the child's best interests. In determining whether guardianship is in the child's best interests, the Court shall consider the child's wishes.

(5) Unless vacated pursuant to CITC 643.470, a guardianship established under this section continues as long as the child is subject to the Court's jurisdiction.

643.450 Issuance of Letters of Guardianship (1) Upon granting a permanent guardianship under CITC 642.430 or upon granting a guardianship under CITC 642.440, the Court shall issue letters of guardianship to the guardian. A guardian may disclose letters of guardianship when necessary to fulfill the duties of a guardian. Letters of guardianship must be in substantially the following form:

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) LETTERS OF
) GUARDIANSHIP

BY THESE LETTERS OF GUARDIANSHIP be informed:

That on _____ (month) _____ (day), 2____, the Coquille Indian Tribal Court, Coos County, State of Oregon, appointed _____ (name of guardian) guardian for _____ (name of child) and that the named guardian has qualified and has the authority and duties of guardian for the named child including legal custody of the child, except as provided below.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed the seal of the court at my office on _____ (month) _____ (day), 2____.

(Seal)

_____, Clerk of the Court

By _____, Deputy

643.460 Court review The Court shall review a guardianship or long-term foster care placement at least once every 12 months. The review shall be conducted as a review under CITC 641.600 of Juvenile Dependency. If the long-term placement is not a permanent placement, the court shall also conduct a review in accordance with CITC 641.650 of Juvenile Dependency.

643.470 Review, modification, or vacation of guardianship order (1) The Court, on its own motion or upon the motion of a party and after such hearing as the Court may direct, may review, modify or vacate a guardianship order.

(2) The Court may modify a guardianship order if the court determines to do so would be in the child's best interests.

(3) The Court may vacate a guardianship order, return the child to the custody of a parent and make any other order the Court is authorized to make under this chapter if the Court determines that:

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- (a) It is in the child's best interests to vacate the guardianship;
- (b) The conditions and circumstances giving rise to the establishment of the guardianship have been ameliorated; and
- (c) The parent is presently able and willing to adequately care for the child.

(4) The Court may vacate a guardianship order after determining that the guardian is no longer willing or able to fulfill the duties of a guardian. Upon vacating a guardianship order under this subsection, the court shall conduct a hearing within 14 days and make any order directing disposition of the child that the court is authorized to make under this chapter.

(5) In determining whether it is in the child's best interests to modify or vacate a guardianship, the Court shall consider, but is not limited to considering:

- (a) The child's emotional and developmental needs;
- (b) The child's need to maintain existing attachments and relationships and to form attachments and relationships, including those with the birth family;
- (c) The child's health and safety; and
- (d) The child's wishes.

(6) In addition to service required under the Coquille Rules of Civil Procedure, except as otherwise provided in the juvenile code, a party filing a motion to vacate a guardianship shall serve the motion upon the Tribal Social Services Department.

(7) Notwithstanding subsection (1) of this section, a parent may not move the court to vacate a permanent guardianship once a guardianship is granted under CITC 643.430.

643.480 Home study of proposed guardian The Court shall order a guardianship study of the proposed guardian's home and provide a report to the Court regarding the suitability of the proposed guardian and whether guardianship is in the child's best interests.

643.995 Severability If any provision of this ordinance or the application of any provision of this ordinance to any person or circumstance is held invalid by a court of competent jurisdiction, that provision shall be severed from the ordinance and the remainder of this ordinance shall remain in full force and effect.

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History of Amendments to Chapter 643 Adoptions, Guardianships and Long-Term Care:

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