

Pala Band of Mission Indians
Ordinance No. 33
PALA ADULT PROTECTION ORDINANCE



Executive Committee Amended
March 16, 2022

PALA ADULT PROTECTION ORDINANCE

1.0 Policy.

- (a) It is the Pala Band of Mission Indians' policy to protect the health, safety, and welfare of vulnerable and/or mentally incompetent adults who are incapacitated, unable to resist fraud or undue influence, or otherwise unable to provide for themselves by providing a process for care and assistance.
- (b) This Ordinance is designed to provide a mechanism for conservatorships in the Pala Tribal Court in which the initiating party has a legitimate interest in the Proposed Conservatee and in which a conservator is in the best interests of, and the least restrictive alternative for, the Proposed Conservatee.
- (c) All provisions contained within this Ordinance shall be interpreted by the Court with the policies set forth in (a) and (b) in mind.
- (d) The Court shall resolve any ambiguities in this Ordinance in favor of the Proposed Conservatee.

1.1 Definitions.

- (a) **"Band"** means the Pala Band of Mission Indians.
- (b) **"Conservatee"** means a person for whom or over whose property a Conservator has been appointed.
- (c) **"Conservator of the Estate"** means a person or entity appointed to protect and grow the assets, income, and financial interests of a Conservatee, subject to a duty of disclosure and reporting to the Court regarding such matters no less frequently than annually. Any such order shall fix a date or dates for the filing of such reports, and shall require the posting of a bond or other conditions to protect the Conservatee's interests.
- (d) **"Conservator of the Person"** means a person appointed to exercise custody and the power to make decisions regarding a Conservatee's health, support, and welfare. A Conservator of the Person may not manage the financial interests of the Conservatee unless he or she has been appointed by the Court as General Conservator, in which case any such management shall occur pursuant to his or her duties as Conservator of the Estate.

- (e) **“Court”** means the Pala Tribal Court.
- (f) **“Fiduciary”** means a professional fiduciary acting as a conservator who manages the financial and/or personal affairs of incompetent persons and/or vulnerable adults.
- (g) **“General Conservator”** means a person appointed as the Conservator of both the Person and Estate of the Proposed Conservatee.
- (h) **“Family Member”** means the Proposed Conservatee’s spouse, child, parent, brother, sister, grandparent, grandchild, aunt, uncle, niece, nephew, and step-parent or step-child.
- (i) **“Incompetent Adult”** means a person, other than an unemancipated minor, who is unable, without assistance, to properly manage or take care of himself or herself or their personal affairs as determined by an evaluation by a psychiatrist or physician, licensed in California and who has observed the person for the purposes of determining their ability to manage themselves.
- (j) **“Interested Party”** means any of the following: (1) domestic partner, heir, devisee or beneficiary, who may be affected by the proceeding; (2) any person having a close and significant connection to the Proposed Conservatee; (3) the Proposed Conservatee’s fiduciary. Notwithstanding the foregoing, the Pala Band shall always be considered by the Court as an Interested Party for the purpose of conservatorship proceedings.
- (k) **“Pala Band Member”** means an enrolled member of the Pala Band of Mission Indians.
- (l) **“Proposed Conservatee”** means an Incompetent or Vulnerable Adult over whom a Conservatorship is sought.
- (m) **“Tribe” or “Tribal”** means the Pala Band of Mission Indians.
- (n) **“Vulnerable Adults,”** which means adults who are unable to resist fraud or undue influence that has resulted, or will likely result, in demonstrable harm. A Vulnerable Adult does not require a lack of capacity finding by the Court.

1.2 Who May Be the Subject of a Conservatorship.

- (a) Pala Band Members – The Court shall have authority to appoint Conservator of the Estate when the person for whom the conservatorship is sought is a member of the Pala Band, whether or not he or she lives on the Pala Indian Reservation.
- (b) Non-Members – The Court shall also have authority to appoint Conservators for Non-Pala Band Members when the Proposed Conservatee (1) voluntarily submits to the jurisdiction of the Pala Tribal Court; (2) is a Family Member or Spouse of a Pala Band Member; and (3) is domiciled within the boundaries of the Pala Indian Reservation.

1.3 May File or Oppose a Petition for a Conservatorship.

- (a) A petition for a conservatorship may be filed or opposed by any of the following persons:
 - (1) Family Members;
 - (2) An Interested Party; or
 - (3) A Vulnerable Adult.
- (b) If the Proposed Conservatee’s Family Members do not approve an Interested Party, the Court shall make a preliminary factual determination whether a person has a close and significant connection to the Proposed Conservatee to be considered an Interested Party for the petition case.

1.4 Who May Serve as Conservator.

- (a) Any person eighteen (18) years of age or older and subject to the jurisdiction of the Pala Band may serve as a Conservator, subject to the discretion of the Court.
- (b) Preference shall be given to Family Members of the Proposed Conservatee in order of their closeness of the relationship. Some preference may be given to a person with whom the Proposed Conservatee is living at the time of the Conservatorship hearing.
- (c) Such Proposed Conservatee shall be able to post a bond.

- (d) Notwithstanding the preferences established above, the Court shall always consider and give the greatest weight to the best interests of the Proposed Conservatee in selecting a Conservator.

2.0 Types of Conservator.

The types of the conservatorship shall include Conservatorship of the Estate and Conservatorship of the Person and includes temporary and permanent Conservatorships of these types of Conservatorships.

2.1 Permanent Conservatorship.

- (a) Of an Incompetent or Vulnerable Adult – If the Court finds by clear and convincing evidence that (1) the Proposed Conservatee is an Incompetent or Vulnerable Adult as defined in this Ordinance, and (2) it is in the best interests of the Proposed Conservatee to have a permanent Conservator appointed, the Court may appoint a permanent Conservator under such terms and conditions as it sets forth in the written order.
- (b) Any permanent conservatorship shall be the least restrictive alternative for the Proposed Conservatee.
- (c) A permanent conservatorship of an Incompetent or Vulnerable Adult may only be terminated in accordance with this Ordinance.

2.2 Temporary Conservatorship.

- (a) In emergency situations involving imminent or ongoing bodily harm and/or neglect to the Proposed Conservatee, or the loss of the Proposed Conservatee’s property, and with good cause shown, the Court may appoint *ex parte*, a temporary Conservator under such terms and conditions as it sets forth in the written order.
- (b) A temporary conservatorship may be terminated if the Court determines that it is in the best interests of the Conservatee to do so.
- (c) The Court shall have the power to grant, continue, or deny a petition for Temporary Conservatorship provided that full notice and an opportunity to be heard is given to all parties no later than five (5) days after the filing of the *ex parte*, petition. This time may be shortened on the order of the Court.

- (d) An Interested Party shall be entitled to support, oppose, or otherwise participate in any hearing regarding a Temporary Conservatorship. No Conservator so appointed shall sell, dispose of, convey, or otherwise alienate title to or interest in the Conservatee's property during such temporary period absent Court order.

2.3 Conservatorship of the Estate.

The Court may appoint a temporary or permanent Conservator of the Estate under such terms and conditions as it sets forth in the written order. The conservatorship may cover all real and personal property until terminated by the Court.

2.4 Conservatorship of the Person.

- (a) The Court may appoint a temporary or permanent Conservator of the Person of a Proposed Conservatee under such terms and conditions as it sets forth in the written order. The powers of the Conservator include the ability to exercise custody and the power to make decisions of importance to the Conservatee's health, support, and welfare. Provided, that the powers of the Conservator may for good cause be limited by the Court to only specific actions set forth in the written order.
- (b) A Conservator of the Person may not manage the finances or assets of the Conservatee unless such Conservator is also appointed by the Court as General Conservator, in which case any such financial management shall occur pursuant to his or her duties as Conservator of the Estate. A Conservatorship of the Person may only be terminated by the Court.

2.5 General Conservator.

The Court may appoint a person to serve as a General Conservator if such appointment is in the best interests of the Proposed Conservatee. The General Conservator shall serve as both Conservator of the Estate and the Person, and under such terms and conditions as the Court sets forth in the written order.

3.0 How Conservators are Appointed.

- (a) Where a Proposed Conservatee needs a Conservator, and no Conservator is appointed pursuant to a valid living will, health care directive, or otherwise, the Court may appoint a Conservator to promote the best interests of the Proposed Conservatee following the filing of a petition in Court.

- (b) In each case where a Conservator is to be appointed, either by will, health care directive, or otherwise, a hearing shall be held following notice to the Family Members, the Pala Band, and any other Interested Party who has requested such notice.

3.1 Appointment of Conservator.

- (a) Of an Incompetent or Vulnerable Adult – After the filing of an authorized petition, the Court may appoint a Conservator for an Incompetent or Vulnerable Adult who, by a showing of clear and convincing evidence, is unable, without assistance, to properly manage or take care of himself or herself, or their finances, or personal affairs.
- (b) In any conservatorship proceeding, the Court shall consider as persuasive evidence an evaluation by a qualified psychiatrist, clinical psychologist, or physician licensed in California who has evaluated the person for the purposes of determining his or her ability to manage his or her personal affairs and/or whether the conservatorship is in the Proposed Conservatee’s best interests.
- (c) A petitioner or the Proposed Conservatee shall choose and hire a qualified licensed psychiatrist, clinical psychologist, or physician to conduct such an evaluation.
- (d) The decision to allow a person to petition for the appointment of a Conservator shall be in the Court’s discretion. The Court may impose any restriction or limitation on the powers of a Conservator or condition its appointment on the Conservator’s performance of specified duties, not inconsistent with this Chapter, if the Court finds it will help protect the Proposed Conservatee’s best interest.
- (e) A person may be a General Conservator, or the Court may appoint separate Conservators in its discretion.

3.2 Proposed Conservatee May Nominate Conservator.

- (a) If the Proposed Conservatee has the capacity to provide a nomination, they may nominate their own Conservator. Such nomination shall be given primary preference by the Court; provided it is freely given, the nominee is a suitable Conservator, and the appointment is in the best interests of the Proposed Conservatee. Provided further that a Family Member or an Interested Party may present evidence and testimony at a hearing in support of or in opposition to a Proposed Conservatee’s nomination of a Conservator.

- (b) If the Conservator nominated refuses to serve or is not approved by the Court, or if, after being duly noticed by the Court, the Proposed Conservatee fails to nominate an alternative suitable person within ten (10) days, the Court may nominate and appoint a Conservator according to the best interests of the Proposed Conservatee.

3.3 Successor Conservators.

- (a) If a Conservator becomes unable or unwilling to serve, or for any other reason a vacancy occurs in the Office of Conservator, the Court may appoint a successor Conservator for the Conservatee upon providing notice of such vacancy to all proper parties to the proceeding.
- (b) The Conservatee shall have the same rights with respect to the nomination of a successor Conservator.

4.0 Conservatorship Petition.

- (a) Conservatorship proceedings shall be initiated by the filing of a petition by the Proposed Conservatee, Family Members, or an Interested Party. The Pala Band may initiate proceedings to appoint a Conservator if such appointment reasonably appears necessary and no other person has initiated such proceedings.
- (b) Contents of Petition. The petition for conservatorship shall include the following information:
 - (1) The name, sex, date of birth, present address, and tribal affiliation of the Proposed Conservatee;
 - (2) The name and address of the Petitioner and the nature of the relationship between the Petitioner and the Proposed Conservatee;
 - (3) The names, dates of birth, address, and tribal affiliation of the Vulnerable or Incompetent Adult's Family Members;
 - (4) The name of the proposed Conservator;
 - (5) The name and address of any person or agency having legal or temporary custody of the Proposed Conservatee;

- (6) The basis for the Court’s jurisdiction, the facts upon which the conservatorship is sought, and the anticipated effects of the conservatorship; and
 - (7) In the case of a Conservatorship of the Estate, a statement describing the property owned, possessed, or in which the Vulnerable or Incompetent Adult has an interest and the value of such property or property interest.
- (c) If the information required under subdivisions (1), (2), (3), and (6) of subsection (b) above is not stated, the petition may be dismissed. If any of the other facts required hereunder are not known or cannot be ascertained by the Petitioner, the Petitioner shall so state in the petition. The Petitioner shall sign and date the petition and attest to the veracity of the information contained therein.

4.1 Notice.

- (a) Notice of the hearing and a copy of the petition, certified by the Petitioner or his or her representative or Court Clerk (if applicable), shall be served at least fifteen (15) days before the date of the hearing on the Petitioner to the Proposed Conservatee, any counsel for the Proposed Conservatee, the Pala Band, Family Members of the Proposed Conservatee, and an Interested Party.
- (b) Personal service is required on the Proposed Conservatee unless waived by counsel for the Proposed Conservatee.
- (c) For service other than the Proposed Conservatee, notice shall be given by registered or certified mail, return receipt requested. Service by publication or other means may only be made by Petitioner upon application to and approval of the Court provided an affidavit is submitted explaining why an alternate means of service is not possible, and the Court finds good cause exists.

4.2 Conservatorship Report.

- (a) Upon the filing of a conservatorship petition, the Court shall immediately request that a qualified court-appointed qualified psychiatrist, clinical psychologist, or physician licensed in California to prepare a conservatorship report on the proposed Conservator and the Proposed Conservatee. Provided that the parties to the proceeding may stipulate to the selection of a qualified psychiatrist, clinical psychologist, or physician licensed in California to prepare and submit the conservatorship report to the Court within 30 days.

- (b) If the parties cannot agree within ten (10) days on an above licensed professional to evaluate the Proposed Conservatee, then the Court shall appoint such professional to prepare the Report.
- (c) The conservatorship report shall contain all pertinent information necessary to assist the Court in determining the best interests of the Proposed Conservatee, including information obtained through interviews with the Proposed Conservatee, the Proposed Conservatee's spouse or domestic partner, Family Members, Interested Parties, and any objectors to the petition, where applicable. The Report should, to the greatest extent practical contain information regarding the following:
 - (1) the Proposed Conservatee's wishes regarding the conservatorship and who should serve as Conservator;
 - (2) the ability of the Proposed Conservatee to attend the hearing;
 - (3) whether the Proposed Conservatee suffers from any mental deficits that would impair the Proposed Conservatee's ability to understand the nature of the proceedings;
 - (4) whether the Proposed Conservatee wishes to be represented by counsel and who counsel might be; and
 - (5) the Proposed Conservator's fitness to serve.
- (d) The conservatorship report shall be submitted to the Court no later than ten (10) days before the hearing on the petition for appointment of a Conservator. The Court may order additional reports as it deems necessary, provided that any such additional reports must be submitted no later than thirty (30) calendar days after the date originally scheduled for the hearing on the petition. No determination can be made on a permanent petition for conservatorship until all required reports have been completed, submitted to, and considered by the Court.
- (e) The Report submitted to the Court pursuant to this section is confidential. The Report shall be considered by the Court and shall be made available only to one designated Family Member who can share it with other Family Members as long as they keep it confidential.

- (f) A Family Member and/or Interested Party may review the report in-camera with the Court, and the Court may provide a copy to such person at the Court's discretion.
- (g) A Court-appointed fiduciary shall also be provided with the Report.
- (h) The expenses of any examination and Report ordered by the Court shall be paid by the Petitioner or, if ordered on motion by a party, shall be paid for by that party.

4.3 Consent to Conservatorship of a Minor Child.

- (a) If a petition indicates that either or both parents of a minor consent to a conservatorship, or if at any time following the filing of a petition and before the entry of a final decree, a parent consents to the conservatorship, each consenting parent shall acknowledge such consent in the Court's presence, that the parent has voluntarily and knowingly consented to the conservatorship and its terms and consequences.
- (b) No voluntary consent to conservatorship by a parent shall be executed prior to or within ten (10) days after the birth of a minor. A parent who is a minor shall have the right to consent to the conservatorship, and such consent shall not be voidable by reason of such minority.
- (c) In any voluntary proceeding, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree, and where the minor has been placed out of the family, the minor shall be returned to the parent unless the Court finds good cause to the contrary not to return the minor.

4.4 Right to Counsel.

A Proposed Conservatee who is the subject of a conservatorship proceeding has the right to engage their own counsel.

4.5 Hearing.

- (a) At the hearing held on the petition for the conservatorship, any party to whom notice was given shall have the right to appear and be heard with respect to the petition, including if requesting an evidentiary hearing.

- (b) Upon finding at the hearing or at any time during the pendency of the petition that reasonable cause exists to warrant an examination, the Court, on its own motion or on motion of any party, may order the Proposed Conservatee to be examined by a qualified physician, psychiatrist, or licensed clinical psychologist, licensed in California, and appointed by the Court.
- (c) The expenses of any examination ordered by the Court shall be paid by the Petitioner or, if ordered on motion by a party, shall be paid for by that party. If a moving party nominates a specific licensed physician, psychiatrist, or clinical psychologist to conduct the examination, the Court shall honor such request provided that the nominee is qualified to conduct the examination and the moving party agrees to pay for the nominee's services. The Court shall consider the results of the examination in ruling on the merits of the petition.
- (d) The Court may, in any contested case, request the appropriate Tribal department, qualified agency, or court-appointed physician, psychiatrist, or licensed clinical psychologist to make an investigation and submit a written report to the Court within thirty (30) calendar days from receipt of such request. The Report shall contain such facts as may be relevant to determine whether the proposed conservatorship will be in the best interests of the Proposed Conservatee, including the physical, mental, social, and financial condition of the proposed Conservator and any other factors the Court deems relevant to determine whether the proposed conservatorship will be in the best interests of the Proposed Conservatee. The Report may also be prepared by a licensed and qualified psychiatrist chosen by stipulation of the parties. The Report shall be confidential, and the Court may, in its discretion, require that any such report be filed under seal.
- (e) If such a report is requested, the Court shall schedule a hearing not more than thirty (30) calendar days from the date of the expiration of the thirty (30) day time period or receipt of the Report, whichever is earlier. The Court shall give reasonable notice of the investigation hearing to all parties to the first hearing.
- (f) The Report shall be admissible in evidence, subject to the right of any Family Member and/or Interested Party to require that the person making the Report as a witness and subject him/herself to examination.

- (g) At either the investigation hearing or the first hearing, if no investigation and Report has been requested, the Court may approve the petition for a conservatorship and may appoint a Conservator if it finds by clear and convincing evidence, including the testimony of a qualified expert witness that the conservatorship is in the best interests of the Conservatee, and, with respect to any consenting adult, that such consent was voluntarily and knowingly given.
- (h) In considering the best interests of the Proposed Conservatee, the Court shall consider, among other relevant factors, the Proposed Conservator's:
 - (1) health, safety, and welfare;
 - (2) fitness to serve, including but not limited to whether the Proposed Conservator has (i) a criminal history, (ii) a history of bankruptcy, (iii) a demonstrated history of unreliable, irresponsible, or destructive behavior, or (iv) a disqualifying conflict of interest that render the Proposed Conservator unfit to serve;
 - (3) ability of the Proposed Conservator to help maintain the Proposed Conservatee's ties to, and involvement with, his or her family and Tribal culture and community;
 - (4) qualifications of the Proposed Conservator to serve in a fiduciary role;
 - (5) ability to manage and to preserve the estate;
 - (6) whether the Proposed Conservator is bonded; and
 - (7) ability to make personal decisions on behalf of the Proposed Conservatee.

4.6 Findings and Orders.

- (a) For a Vulnerable/Incompetent Adult – The Court shall make written findings in determining whether to appoint a Conservator based on a consideration of:
 - (1) the health, psychological and financial needs of the Incompetent/Vulnerable Adult; and

- (2) whether the conservatorship is the least restrictive alternative available for the Incompetent/Vulnerable Adult considering the community-based services available.
- (b) Whenever the Court finds that a Conservator should be appointed, the Court shall appoint either a temporary or permanent Conservator as appropriate under such terms and conditions as it sets forth in the written order.

4.7 Conservatorship of an Incompetent Adult.

- (a) Determination of Vulnerability/Incompetency – In the case of Incompetent Adults, if after a full hearing and examination upon such petition, and upon further proof by the certificate of a qualified physician showing that the Proposed Conservatee is incompetent and consideration of the factors set for the in section 4.6 above, and it appears to the Court by clear and convincing evidence that the Proposed Conservatee is not capable of taking care of himself or herself and of managing his or her property, then the Court must appoint a Conservator of the Person and/or Estate within the powers and duties specified in this Chapter.
- (b) Restoration of Competency – A person who has been declared incompetent, the Conservator, any Family Member, or Interested Person, may apply by petition to the Court in which they were declared incompetent to have the fact of their restoration to capacity judicially determined.
- (c) The petition shall be verified and shall state that such person is then competent.
- (d) The Court shall require notice to be given of a hearing upon said petition at some date after said petition has been filed; and at the hearing upon said petition, witnesses shall be examined, and a determination made by the Court as to whether the petition should be granted and the Incompetent Adult be declared of sound mind and capable of taking care of himself or herself and his or her property, his or her restoration to capacity shall be adjudged, and the conservatorship of such person shall cease.

5.0 Powers and Responsibilities.

- (a) Except as otherwise specifically ordered or limited by the Court:

- (1) A General Conservator or Conservator of the Person shall have the right to take or provide for the custody of the Conservatee and shall be required to care for the health, safety, and welfare of such person and provide for their medical and other care, as needed or appropriate.
 - (2) A General Conservator or Conservator of the Person shall adhere to all instructions expressed in a Conservatee's validly executed advance health care directive or similar instrument in making any decisions covered by such directive or instrument.
 - (3) A General Conservator or Conservator of the Person shall have the power to fix a residence that is in the Conservatee's best interest.
 - (4) A General Conservator or Conservator of the Estate shall have the authority to invest, manage and dispose of the property of such person in a prudent and reasonable manner and expend such portions of the estate, income, and then principle as reasonably necessary for the support, care, including medical and other care of the Conservatee given the size and nature of the estate and the point in life and needs of the Conservatee.
 - (5) A General Conservator shall have power and authority to represent a Conservatee's best interests in actual, threatened, or contemplated litigation or other proceedings of a legal nature and to employ counsel and settle or compromise suit or claims, subject to the approval of the Court.
 - (6) A Conservator of any kind shall stand in a fiduciary relationship to the Conservatee; shall exercise a high degree of care in managing the estate of his or her Conservatee; shall derive no personal benefit of any kind from the management of the estate of his or her Conservatee; and shall be civilly liable to Conservatee for any losses to the estate attributable to a breach of these duties. Action to enforce such liability may be brought by the Conservatee or a subsequently appointed Conservator or the removal of the incompetency or the arriving at the age of majority.
- (b) A Conservator of any kind may petition the Court for authority to do any act about which he/she is uncertain, and the Court may grant such authority, after such notice and hearing, if any, as the Court may direct if such appears to be consistent with the best interests of the Conservatee.

5.1 Security for Faithful Performance of Duties.

The Court shall require a Conservator of the Estate to provide security in the form of a bond or otherwise to assure the faithful performance of the Conservator's duties.

5.2 Certification; Letters of Conservatorship.

- (a) The appointed Conservator shall be required to take a conservatorship certification class oath, the class of which to be prescribed by the Court, to the effect that he or she will faithfully perform his or her duties as Conservator. The Court may waive such class for a licensed fiduciary or a conservator who has already completed such class.
- (b) Upon completing the class as may have been required, the Court shall be issue Letters of Conservatorship ("Letters") as evidence of his or her appointment. Any limitation in the authority of the Conservator shall be set for the on the Letters so issued.

5.3 Inventory and Appraisal.

- (a) Within thirty (30) days after the inventory and appraisal of a General Conservatorship or Conservator of Estate of a Vulnerable/Incompetent Adult, the Conservator shall prepare and submit to the Court an inventory and appraisal of the estate.
- (b) The appraisal shall be made by one (1) disinterested person regularly employed in the field of making such appraisals and who shall certify under oath to their appraisal and may receive reasonable compensation for their services.
- (c) An appraisal shall not be required for household items believed by the appraiser to be less than \$1000.00. If no appraisal is required, the Conservator shall certify under oath to the obvious or estimated value of the assets not appraised.

5.4 Compensation.

- (a) The Court shall order monthly compensation and any reimbursement payments to the Conservator. Said disbursements must be used by the Conservator with custody of the Conservatee for the sole purpose of covering expenses incurred in the care and custody of the Conservatee and shall not be used for any other purpose. The use of said funds for any purpose other than monthly compensation and disbursement and reimbursement payments shall subject the Conservator to civil penalties or remedies provided by law.

- (b) The Conservator shall provide a monthly accounting of the expenses and compensation above.
- (c) Any Conservator may refuse, in writing, any compensation.
- (d) A Conservator's compensation shall be reasonable based upon the region's compensation for conservator compensation.

6.0 Termination or Modification of Conservatorship.

- (a) A temporary conservatorship may be terminated or modified upon a determination that it is in the best interests of the Conservatee to change custody from the Conservator to a new Conservator or in accordance with subdivision below.
- (b) Upon motion of a Family Member, the Pala Band, or any other Interested Party, the Court may provide notice and a hearing on whether to terminate a conservatorship.
- (c) Grounds for termination or modification, in addition to those contained in subdivisions (a) and (b), include the Conservator's personal use of the Conservatee's assets, failure to provide a reasonable level of care for the Conservatee, or a breach of a fiduciary duty.
- (d) The termination of the conservatorship of a Vulnerable/Incompetent Adult shall not divest the person, in any way, to any right to or distribution of that person's per capita payment in any way other than as otherwise permitted pursuant to the Pala Tribal Code. Further, the Court must consider whether it is in the best interests of the Conservatee to terminate the conservatorship before doing so.
- (e) A Conservatorship shall terminate automatically upon an Incompetent Adult being adjudged by the Court to have regained legal capacity, or in the case of a Vulnerable Adult, being determined to no longer be at risk of fraud or undue influence. A Conservator of the Estate must submit a Final Account and Report to the Court within thirty (30) days of the termination.

7.0 Review of Conservatorship.

The status of all Conservatorships shall be reviewed by the Court at least once a year or as otherwise directed. Whenever a Conservator of the Estate has been appointed, the Conservator shall submit a yearly accounting and Report regarding the Conservator's use of the Conservatee's property to the Court for review and approval.

8.0 Conservatorship Records.

The Court and Tribal Social Services Department shall keep a separate, permanent file for each Conservatorship proceeding and shall file all papers relevant thereto, including petitions, notices, orders for hearings, et. Any Conservator duly appointed shall be entitled to receive, without charge, three certified copies of the Letters of Conservatorship. Certified copies of filed papers shall be otherwise available at a fee per copy to be established by the Clerk of Courts in accordance with the Pala Judicial Code, including Rules of Court.

9.0 Registration of Foreign Conservatorship Orders.

The Court may recognize a Conservatorship order from a foreign Court that complies with the Uniform Adult Conservatorship and Protective Proceedings Jurisdiction Act of 2007, provided the foreign Conservator registers his or her order by filing it with the Court, submits to the jurisdiction of the Court, and obtains an order from the Court approving such registration.

10.0 Severability.

In the event any provision of this Code is found to be invalid or unenforceable for any reason, such determination shall not affect the remaining terms.

11.0 Amendment.

This Ordinance may be amended in the manner provided for the adoption of Tribal Ordinances. Amendments and additions to this Ordinance shall be approved by the Pala Executive Committee and will become a part of the Ordinance for all purposes and shall be codified and incorporated herein in a manner consistent with its numbering and organizations.

12.0 Prior Appointments Ratified.

All Conservatorship appointments enacted before the effective date of this Code shall be valid and binding. Prior appointments shall be subject to provisions of this Ordinance beginning one (1) year after the Chapter's effective date.

13.0 Sovereign Immunity Preserved.

Nothing herein shall be deemed to constitute a waiver of the Pala Band's sovereign immunity from unconsented suit, which is hereby expressly reserved.

14.0 Effective Date.

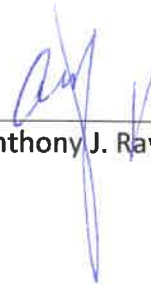
Amended by the Executive Committee on March 16, 2022.

CERTIFICATION

We, the undersigned members of the Executive Committee, do hereby certify that this foregoing Ordinance was adopted by a majority of the General Council by a vote of 21 in favor and 2 in opposition and 10 abstaining, at a duly called meeting of the General Council at which a quorum was present on this **12th day of January, 2022**. We, the undersigned members of the Executive Committee, certify that this foregoing Ordinance was amended by a vote of the **Executive Committee**, with 5 in favor and 0 in opposition and 0 abstaining, at a duly called meeting of the Executive Committee, at which a quorum was present, on this **16th day of March, 2022**.




Robert H. Smith, Chairman



Anthony J. Ravago, Sr., Vice-Chairman



Theresa J. Nieto, Treasurer



Theresa Villa, Secretary



Bradly Guachino, Committee



Shelia L. Smith-Lopez, Committee