

Chapter 04

GUARDIANSHIPS

Sections:

- 40.0401 Power to appoint guardians**
- 40.0402 Jurisdiction**
- 40.403 Qualifications of guardians**
- 40.404**
- 40.0404 Oath and bond**
- 40.0405 Forms of letters**
- 40.0406 Annual inventory and account**
- 40.0407 Sale of personal property**
- 40.0408 Sale of real property**
- 40.0409 Fees**
- 40.0410 Chapter not applicable to communal property**

40.0401 Power to appoint guardians.

The age of majority of males and females in American Samoa is 18 years. The Trial Division of the High Court, when it appears necessary or convenient, may appoint a guardian of the person and estate, or either, of a minor or of a person who is for any cause mentally or physically incompetent to manage his own property.

History: 1962, PL 1-21; 1968, PL 10-71; and 1979, PL 16-53 § 22.

Amendments: 1979 Substituted ‘Trial Division’ for ‘probate division’.

40.0402 Jurisdiction.

(a) Guardianship proceedings shall be administered in the Trial Division of the High Court, which shall have exclusive jurisdiction over guardianships.

(b) The Trial Division of the High Court shall have jurisdiction over guardianships when the ward is domiciled in or owns property in American Samoa.

History: 1962, PL7-21; and 1979, PL 16-53 § 23.

Amendments: 1979 Substituted ‘Trial Division’ for ‘probate division’.

40.0403 Qualifications of guardians.

No letters of guardianship may be issued to any person who has not reached the age of 21 years, any person who is not a resident of American Samoa, or any person who is mentally incompetent to execute the duties of such trust.

History: 1962, PL 7-21.

40.0404 Oath and bond.

Before any person shall assume the duties of guardian, he shall take an oath before the Trial Division of the High Court that he will faithfully and honestly discharge the duties of his trust, and shall give a bond in such amount as shall be required by the Trial Division of the High Court, which shall in no case exceed 2 times the estimated value of the property which shall come into his hands during administration. The Development Bank of American Samoa when acting as legal representative of an estate shall not be required to give bond.

History: 1962, PL 7-21; and 1979, PL 16-53 § 24.

Amendments: 1979 Substituted “Trial Division” for “probate division”.

40.0405 Forms of letters.

All letters shall be issued in the name of the government, shall be attested to in the name of the Trial Division of the High Court, shall be signed by the Chief Justice, or the Associate Justice, and sealed with the seal of the High Court.

History: 1962, PL 7-21; and 1979, PL 16-53 § 25.

Amendments: 1979 Substituted “Trial Division” for “probate division,” and provided that the Associate Justice may sign letters.

40.0406 Annual inventory and account.

Every guardian shall file an annual inventory and account, under oath, of the amount of property received by him and his receipts and disbursements for the past year.

History: 1962, PL 7-21.

40.0407 Sale of personal property.

Every guardian shall have power to sell the personal estate which has come into his hands, under such terms and conditions as may be imposed by the Trial Division of the High Court.

History: 1962, PL7-21; and 1979, PL 16-53 § 26.

Amendments: 1979 Substituted “Trial Division” for “probate division”.

40.0408 Sale of real property.

Real estate may be sold only upon an order signed by the Trial Division of the High Court. The Court may not grant an application to sell real estate until all the personal property has been exhausted and the proceeds thereof found insufficient to pay the estate debts. Sales of real property shall be conducted in accordance with the order of the Court, and subject to 37.0201 through 37.0230 regarding the alienation of land.

History: 1962, PL 7-21, 1979, PL 16-53 § 27; readopted 1980, PL 16-88 § 1; 1982 PL 17-31 § 1.

Amendments: 1979 Substituted “Trial Division” for “probate division”.

Reviser’s Comment: The law dealing with alienation of land contained in the A.S.C.A. as recodified by the legislative reference bureau had been questioned as to whether the requirements of Art. I, § 3 and Art. II, § 9, American Samoa Constitution, had been fulfilled. Since the records were not available to answer the question, the Legislature passed PL 16-88 and PL 17-31 to ensure that the law dealing with alienation of land complies with the Constitution.

40.0409 Fees.

The Trial Division of the High Court shall allow every guardian a commission upon all receipts and disbursements which shall appear to be fairly made in the courts of administration and in the proper discharge of the duties of the trust. Such commission shall not exceed 2½ percent upon receipts and 2½ percent upon disbursements, with a minimum fee of \$40.

History: 1962, PL 7-21; and 1979, PL 16-53 § 28.

Amendments: 1979 Substituted “Trial Division” for “probate division”.

40.0410 Chapter not applicable to communal property.

The provisions of this title do not apply to communal property held under the Samoan custom.

History: 1962, PL 7-21, readopted 1980, PL 16-88 § 1; 1982, PL 17-31 § 1.

Reviser's Comment: **The law dealing with alienation of land contained in the ASCA as recodified by the legislative reference bureau had been questioned as to whether the requirements of Art. I, § 3 and Art. II, § 9, American Samoa Constitution, had been fulfilled. Since the records were not available to answer the question, the Legislature passed PL 16-88 and PL 17-31 to ensure that the law dealing with alienation of land complies with the Constitution.**