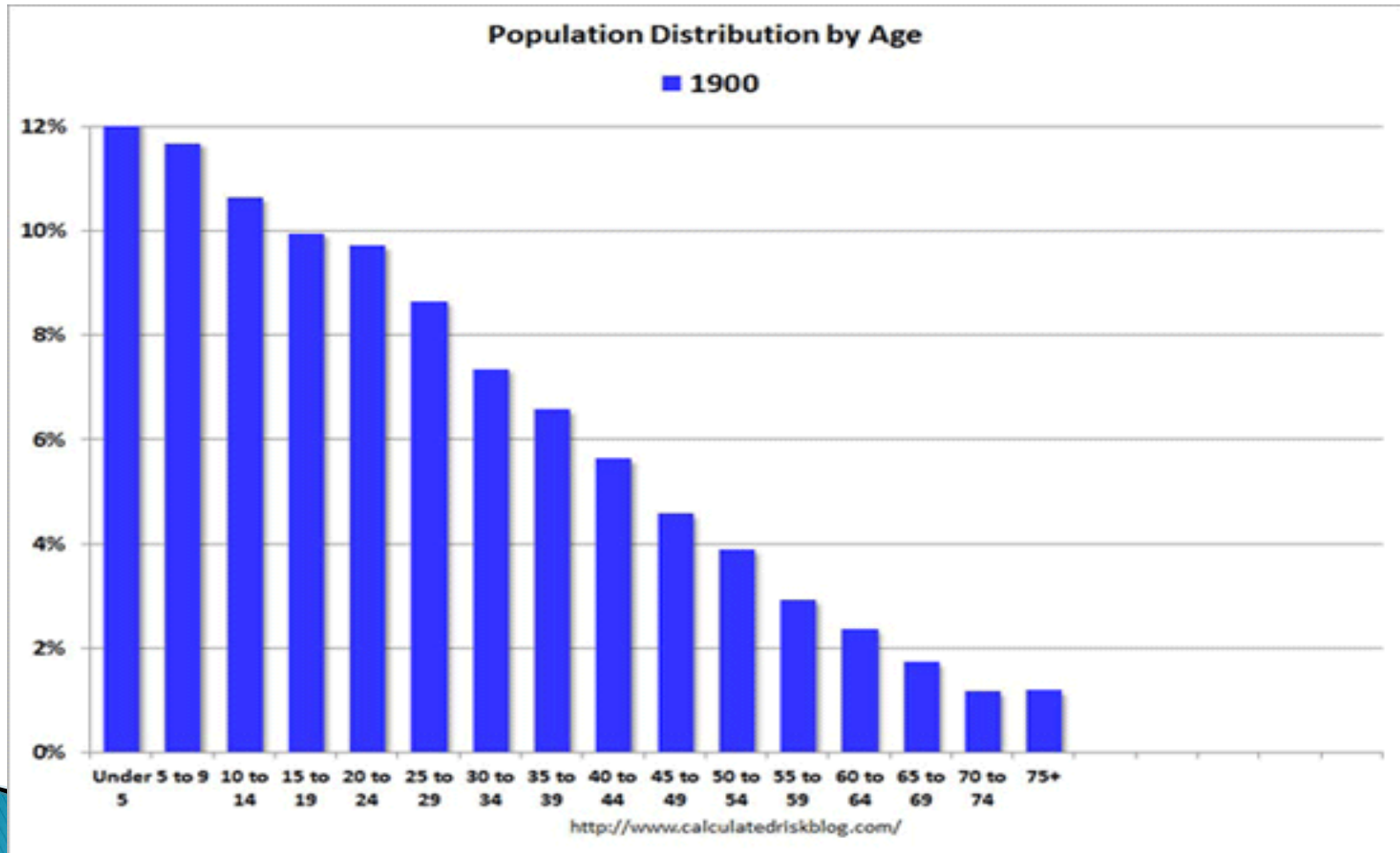


Navajo Adult Guardianship Act

Amanda H. Frazier
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Second Judicial District Court

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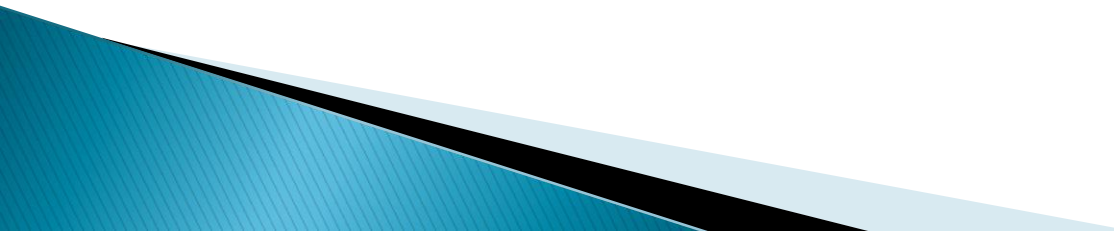
By 2030 almost 20% of the population will be over 65



Age is not synonymous with incapacity.



Not Just the Elderly

- ▶ Advancements in medicine but also understanding has increased the life span for individuals with developmental and mental health issues.
 - Individuals with Down's Syndrome now have a life span of approximately 60 years.
 - Diagnosis of autism, schizophrenia, bipolar, no longer present barriers to living well into senior years.
 - ▶ Results in changing residences, health care providers, etc.
 - ▶ Assets need to be conserved for longer periods of time.
- 

Guardianship Act Project

► Need for Guardianship Act

- The Act provides a process for providing for a guardianship when necessary while also protecting the rights of adults with disabilities.
- Past Problems
 - Guardianships have been ordered without the subject of the guardianship knowing about the proceeding – resulted in delaying an adult being discharged from an residential treatment center.
 - Families are trying to obtain a guardianship to help their daughter/son/sibling, but are unable to do so because of a lack of process.

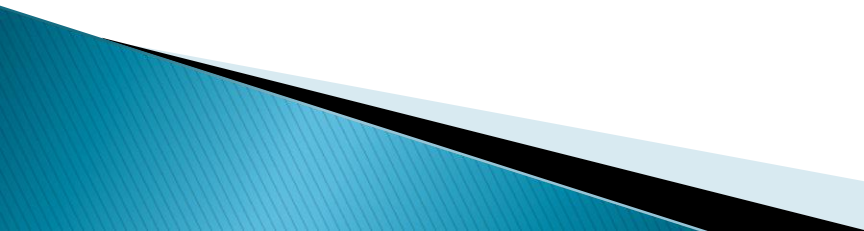
Guardianship Act Project

- ▶ Proposed statute was drafted based on:
 - Existing similar Navajo statutes
 - Relevant Navajo Court decisions
 - Navajo tradition & customs
 - Other Existing Tribal Codes
 - Uniform Guardianship Act

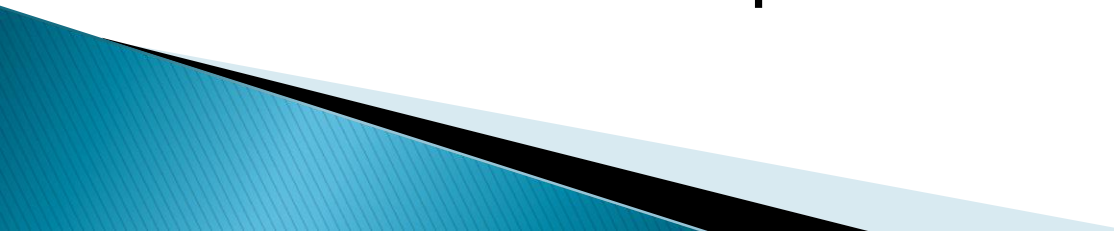
What is a Guardianship?

- ▶ Guardianship authorizes one person to make decisions for another.
 - An aunt, uncle or adult sibling can become a guardian over a child who is not in his/her parent's care.
 - One adult can become a guardian over another adult if s/he is found to be incompetent.
 - Incompetent means that the person is unable to make decisions for herself or himself.

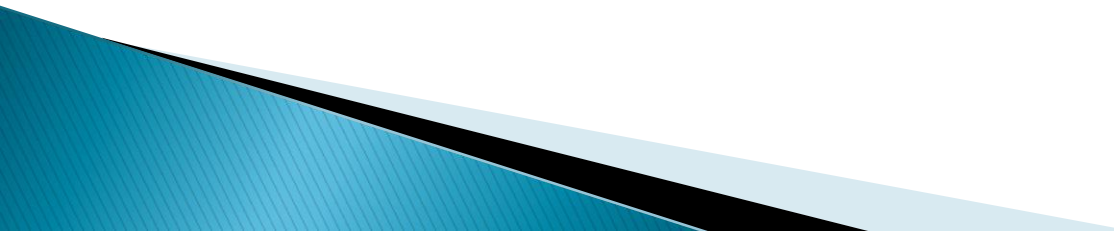
Adult Guardianships

- ▶ When a person reaches 18 years old, s/he is legally an adult & legally assumed to be competent.
 - ▶ When that person has a mental or physical condition that compromises his or her ability to make safe decisions, then s/he may be incompetent.
 - A person is not incompetent because his or her family disagree with their decisions.
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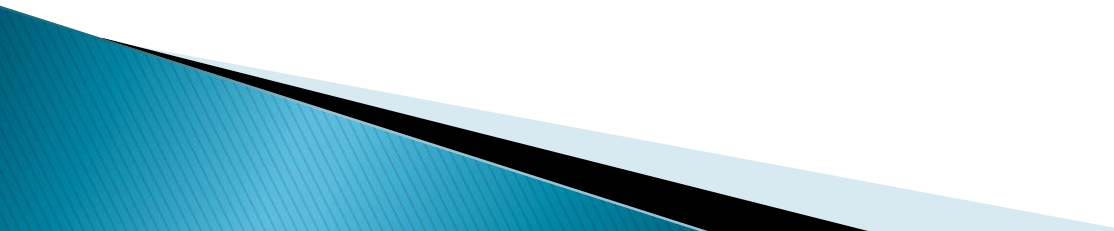
Adult Guardianships

- ▶ When an adult has a full guardianship imposed upon them, then they cannot make the most basic decisions about their life:
 - Where they live;
 - If they go to school or get a job;
 - Where they go for medical care or what procedures they obtain or refuse.
 - ▶ Before a guardianship is imposed, the party must have due process.
- 

Navajo Law & Guardianships

- ▶ A guardianship limits an adult's liberty.
 - ▶ The Navajo Nation Bill of Rights recognizes liberty as a fundamental human right.
 - ▶ Due Process under Navajo Law requires “fundamental fairness in a Navajo cultural context” and “strict standards of fairness & equity” that are inherent in Navajo tradition.
- 

Navajo Law & Guardianships

- ▶ Liberty cannot be taken away without a fair process that is evenly applied.
 - ▶ Navajo process requires notice & an opportunity to be heard for all parties.
 - ▶ A person should NOT have a guardianship without knowing about it.
- 


Navajo Court Decisions

The high regard for individual liberty is also reflected in the Navajo expression, “*t’aabi boholnjjh*” roughly translated as “It is up to the person.” While Navajos place a great emphasis on the responsibilities that people have to one another under *k’e* and the importance of meeting those responsibilities, Navajos also allow persons to go their own way and make their own choices without control or forceful guidance from others. . . Such a high regard for individual choice and the freedom to make one’s own choices indicate that proper procedures must insure that limitations placed on individual freedoms should not be permitted by government without proper due process.

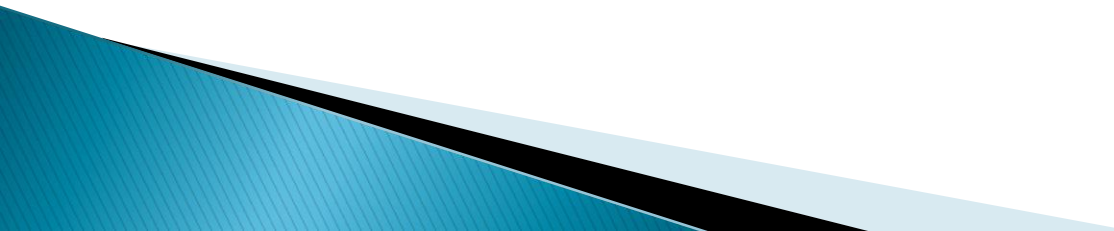
In the Matter of: D.Big Ben, No. AN-FC-09-000121 (CV)



Guardianship Legal Requirements

- ▶ Legal Representation.
 - ▶ Incompetency or incapacity to manage one's own affairs must be shown by clear and convincing evidence.
 - ▶ Once incompetency or incapacity has been established, guardianships will be limited to those areas necessary for an individual's health, well being and protection of person and/or property.
- 

Guardianship Legal Requirements

- ▶ Guardianships will be limited to reasonable and least restrictive means to accomplish necessary oversight.
 - ▶ Additional safeguards may be imposed to insure a guardianship is carried out in the best interests of the person over whom the guardianship is established.
 - ▶ Strict timelines will not be established so that the Court can review any placement that is contrary to the adult's choice.
- 

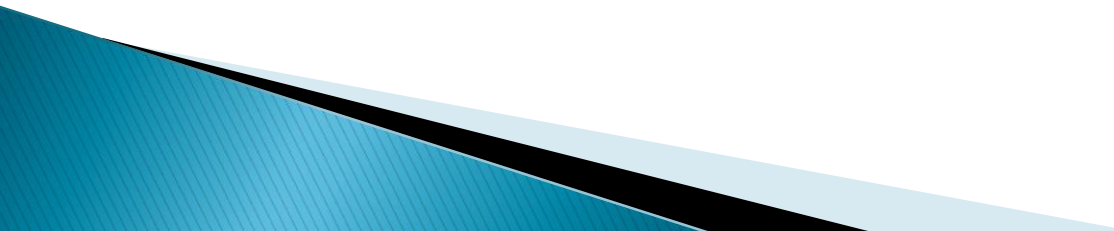
Navajo Adult Guardianship Act

Key Provisions

- ▶ 9 N.N.C. §§801 *et seq.*
- ▶ Evaluations
 - A professional assessment of the individual's ability to receive & evaluate information, communicate decisions, including using necessary accommodations & supports.
 - The impact of any impairment of these skills on the capacity of the adult to meet the essential requirements for his/her physical health & safety or to manage his/her financial resources.
- ▶ Guardianship based on abilities & needs, not diagnosis.

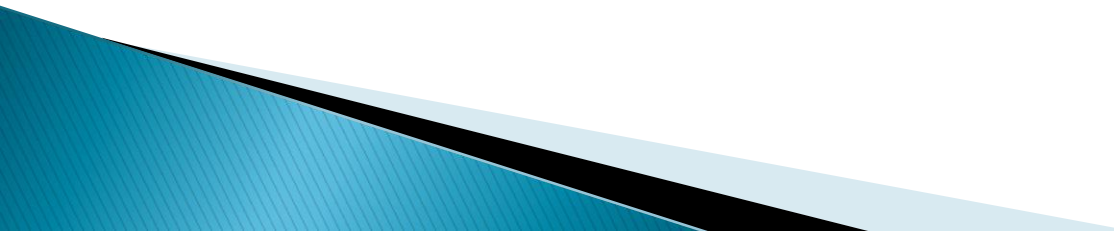
Navajo Adult Guardianship Act

Key Provisions

- ▶ Incapacity
 - An inability to sufficiently understand, make & communicate informed decisions as a result of mental illness, mental deficiency, physical illness, disability or chronic use of drugs or alcohol resulting in the inability to meet essential requirements for physical health, safety, or self-care, even with appropriate supports & accommodations.
 - ▶ Allows for Partial Incapacity to provide targeted assistance.
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Navajo Adult Guardianship Act

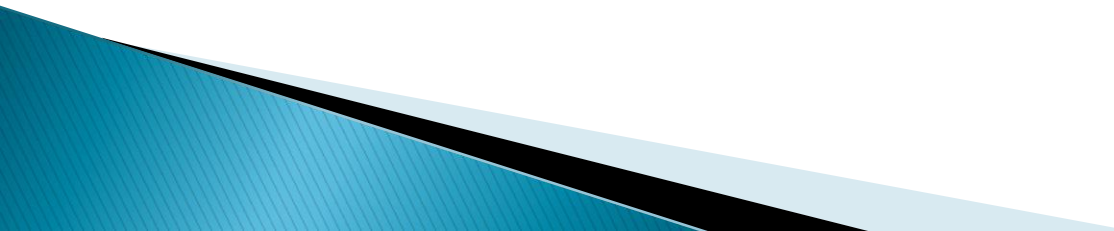
Key Provisions

- ▶ Court Appointed Representative
 - Covers individuals perceived as being incapacitated or individuals who realize they need assistance.
 - Process and scope is directed by the individual with the disability or other impairment.
- 

Navajo Adult Guardianship Act

Key Provisions

▶ Adult Guardianship

- If an unlimited guardianship is requested, then the petition must explain why a limited guardianship is inappropriate.
 - Requires a list of family members, including spouse, adult children, and siblings.
- 

Navajo Adult Guardianship Act

Key Provisions

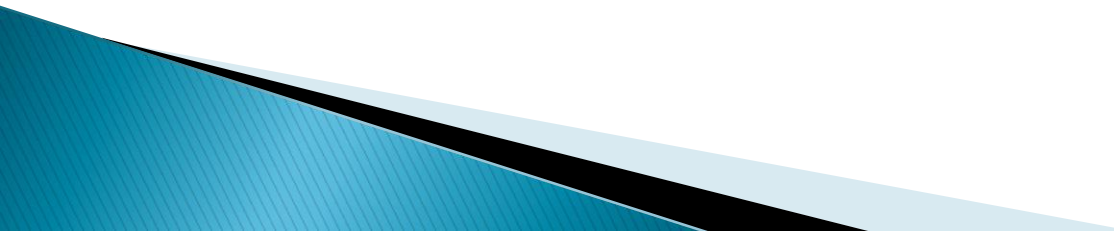
▶ Adult Guardianship

- Requires legal representation.
- Prioritizes those who can be appointed a Guardian
 - Person selected by the adult
 - Court Appointed Representative
 - Caregiver or family member

Navajo Adult Guardianship Act

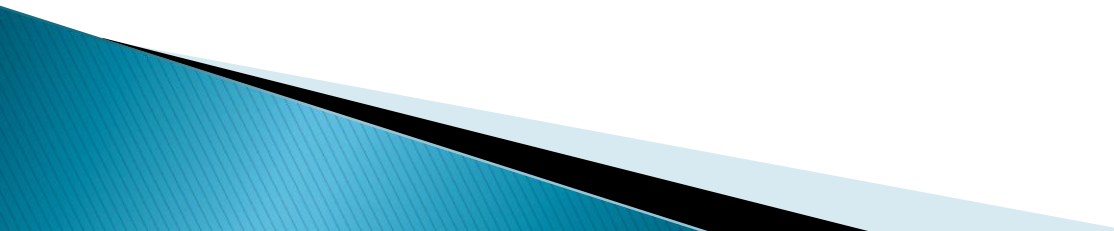
Key Provisions

▶ Adult Guardianship

- Prohibits appointing anyone who is a convicted felon.
 - Prohibits appointing an owner or employee of an institution or service provider.
- 

Navajo Adult Guardianship Act

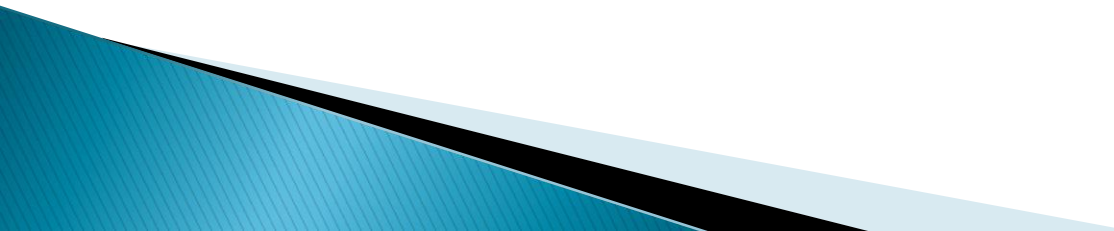
Key Provisions

- ▶ Adult Guardianship
 - Allows a Guardianship proceeding to be converted to a Court Appointed Representative proceeding.
 - Includes process for the appointment of an Emergency or Temporary Guardian.
 - A guardian can only place a ward in an institution in accordance with the Navajo Nation Health Commitment Code.
- 

Navajo Adult Guardianship Act

Key Provisions

► Protection of Property

- Allows appointment of a person to care for another's property & business affairs. Person is called a Conservator.
 - Can cover an individual who is unable to make business decisions & an individual who is unavailable.
- 


Navajo Adult Guardianship Act

Key Provisions

► Protection of Property

- Requires legal representation if the petition is based on an individual's incapacity.
- Prioritizes who may be appointed an individual's Conservator, giving priority to a person selected by the one needing the Conservator.

Alternatives to Adult Guardianships

- ▶ Representative Payee
 - ▶ Designated Representative in Vocational Rehabilitation
 - ▶ Designated Representative in Mental Health Care
 - ▶ Delegation of Rights to Make Educational Decisions
 - ▶ Advanced Directives and Living Wills
 - ▶ Power of Attorney
- 

Quis custodiet Ipsos custodes?



Questions / Comments