

**Idaho Institute for Court Management
Tuesday Breakout Session II
Guardians and Conservators**

Definitions

I.C. §§ 15-5-101 through 15-5-603, I.C. §§ 66-401 through 66-417

Guardian: A person who is appointed by will or the Court and who has the powers and responsibilities of a parent of a minor, an incapacitated person or a person with a developmental disability. I.C. §§15-1-201(21), 15-5-209 (minors) 15-5-312 (incapacitated persons), and 66-404 (developmental disability).

Ward: The person for whom a guardian or conservator is appointed. I.C. §15-5-101(d).

Estate: Means all property of the ward, including community property and trust property. I.C. §15-1-201(16).

Conservator: A conservator is a person who is appointed by the Court to manage the estate of a minor or incapacitated person. I.C. §15-1-201(7).

Interested person: Includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent, ward or protected person which may be affected by the proceeding. I.C. §15-1-201(24).

Developmental Disability: a chronic disability of a person which appears before the age of 22 and (a) is attributable to an impairment (b) results in substantial functional limitations in three or more major life activities and (c) reflects the need for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration. I.C. §66-402(5).

Note: In many cases, the guardian and the conservator may be the same person. In others, they are different, especially in cases where potential conflict of interest exists.

Guardianship for Minors
I.C. §§15-5-201 through 15-5-213

Appointment by Will (Testamentary Appointment)

A parent of a minor may appoint a guardian of a minor in his or her will. I.C. § 15-5-202. This appointment becomes effective upon filing the Guardians Acceptance of Appointment in the Court where the will is being probated, **if both parents are dead.**

Appointment by Petition

Proceedings may be initiated by the filing of a petition by any relative, the minor if at least 14 years old, a de facto custodian of the minor, or any person interested in the welfare of the minor. I.C. §15-5-207. Notice of the time and place for the hearing on the

petition is given by the petitioner to the minor (if 14 or over), the person who has custody of the minor, any de facto custodian of the minor, and any living parent of the minor. I.C. §15-5-207(2). The Court shall appoint an attorney or guardian ad litem to represent the minor unless it finds that such appointment is not necessary. I.C. §15-5-207(5).

If after the hearing the Court finds that the welfare and best interests of the minor will be served by the appointment, and all requirements are met it shall order the appointment. I.C. §15-5-207(3). An Order of Appointment will be signed, along with Letters of Guardianship. The Court may also appoint a temporary guardian, enter a temporary order and issue temporary letters, which shall not last longer than 6 months. I.C. §15-5-207(4).

Clerical Duties:

1. Collect the filing fee, file stamp the Acceptance of Appointment when it is accompanied by a family law case information sheet pursuant to I.R.C.P. 3, open a case in ISTARs, and enter the documents in the ROA;

Note: The Family Law Case Information Sheet is exempt from disclosure pursuant to I.C.A.R. 32 and should be placed in a sealed envelope.

2. File signed order of appointment and letters of guardianship and send certified copies to the appointee as requested;
3. Enter the date of the appointment of the guardian and check the box on the Guardian tab which indicates that the guardian was appointed;
4. Enter the Care Plan Guardian Report and/or the Annual Report-Guardian. The system should calculate the due dates for these first two reports;
5. When the Guardian is released, enter civil disposition and close the case in ISTARs.

Note: A guardian's authority and responsibility terminates upon death, resignation or removal of the guardian or upon the minor's death, adoption, marriage or majority. I.C. §15-5-210. Any person interested in the welfare of a ward, or the ward if 14 or older, may petition for the removal of a guardian, which may be granted after notice and a hearing. I.C. §15-5-212.

Annual Report of Ward's Condition by Guardian

A guardian must report the condition of the ward and the ward's estate at least annually so long as they are the guardian for the ward. I.C. §15-5-209.

Clerical Duties:

1. When each annual report is submitted, collect the appropriate fee and enter the "received date" in the ISTARs report history. Send a copy of the report to the assigned judge and insert the date sent in the "review sent date" area of the report

- history. Enter the next report due date by selecting the report type; ISTARS will continue to calculate the due dates for all subsequent reports;
2. If there are any concerns with the report the presiding judge will take appropriate action;
 3. Use the “Conservator Delinquency Process” to monitor the timely submission of required reports. Send out delinquency letters for any guardians who have not submitted reports by the due date;
 4. When the guardian is released by court order, enter the date in the party screen in ISTARS and remove any future scheduled reports. If another guardian is being appointed they will be added as an other party to the case and the appointment date will be entered and the report due date would be entered on the report screen which would be one year from the date the new guardian was appointed. If no other guardian is being appointed the disposition needs to be entered on the civil disposition tab and the case closed in ISTARS.

Guardianship for Incapacitated Persons

I.C. §§15-5-301 through 15-5-315

Appointment by Petition

The incapacitated person, or any person interested in his/her welfare, may petition the Court for a finding of incapacity and appointment of guardian. I.C. §15-5-303(a). Any competent person or a suitable institution may be appointed as a guardian. I.C. §15-5-311. Upon the filing of a petition, the Court shall set a hearing date. I.C. §15-5-303(b). Notice of the hearing on the petition shall be given to the proposed ward and a spouse, or if none, the ward’s children, or if none, the ward’s parents, or if none, the closest relative, any person currently serving as guardian or who has custody of the ward, and any person who has filed a request for notice. I.C. §15-5-309(1). This is usually done by the petitioner or his/her attorney because personal service is required unless the person is out of state. I.C. §15-5-309(2).

Appointment by Will (Testamentary Appointment)

The parent of an incapacitated person may appoint a guardian of their incapacitated child in their will. I.C. §15-5-301(a). The spouse of an incapacitated person may also appoint a guardian in his or her will. I.C. §15-5-301(b). The appointment becomes effective upon filing an Acceptance of Guardianship with the Court where the probate is filed and after 7 days’ notice of the guardian’s intention to do so is given to the incapacitated person and the person having the care of him.

Appointment of Attorney, Physician, and/or Visitor by Court

If the alleged incapacitated person does not have an attorney, the Court shall appoint an attorney to represent him or her. The Court is also required to appoint a physician to examine the proposed ward and submit a written report to the Court. The Court shall also appoint a court visitor to interview the proposed ward, the petitioner and proposed guardian and visit the place where the proposed ward is living and is proposed to reside. I.C. §15-5-303(b).

If an emergency exists such that substantial harm to the ward is likely, the Court may appoint a temporary guardian. I.C. §15-5-310. This type of guardianship cannot exceed 90 days. This can be done without a hearing only if the Court finds from an affidavit or other sworn testimony that the proposed ward will be substantially harmed. I.C. §15-5-310(c). If the Court appoints without a hearing, notice of the appointment must be given to the ward within 48 hours and if requested by an interested party a hearing must be scheduled within 5 days of the appointment.

If the Court finds that the proposed ward is incapacitated and that appointment of a guardian is necessary or desirable to provide care and supervision of the ward, it may appoint the guardian. I.C. § 15-5-304(b). An Order of Appointment will be signed, along with Letters of Guardianship.

Clerical Duties:

1. Collect the filing fee, file stamp the petition Acceptance of Appointment when it is accompanied by a family law case information sheet pursuant to I.R.C.P. 3, open a case in ISTARs, and enter the documents in the ROA;

Note: The Family Law Case Information Sheet is exempt from disclosure pursuant to I.C.A.R. 32 and should be placed in a sealed envelope.

2. Provide petitioner with Guardianship and Conservatorship Order to Complete Training and collect fee. Complete the order with name, case number, county and receipt number. When certificate of completion for the training is received, file and enter the document in the ROA.
3. File signed order of appointment and letters of guardianship and send certified copies to the appointee as requested;
4. Enter the date of the appointment of the guardian and check the box on the Guardian tab which indicates that the guardian was appointed;
5. If you receive the first 30-day care plan guardian report, collect the appropriate fee and enter the “received date” in the ISTARs Guardian report history. Send a copy of the report along with the file to the appropriate judge and insert the date sent in the “review sent date” area of the report history;

Note: The petition should include a plan for the proposed actions of the guardian regarding the affairs of the ward. If this information is not available at the time of filing, or the petitioner is not the proposed guardian, only then must the guardian file a 30 day care plan. If the information is provided in the petition, the first report due will be the guardian's annual status report 12 months from the appointment date. I.C. §15-5-303

6. When each annual report is submitted, collect the appropriate fee and enter the "received date" in the ISTARS Guardian report history. Send a copy of the report to the appropriate judge and insert the date sent in the "review sent date" area of the report history. Enter the next report due date by selecting the report type. ISTARS will continue to calculate the due dates for all subsequent reports;
7. If there are any concerns about the report, the judge will take appropriate action;
8. Use the "Conservator Delinquency Process" to monitor the timely submission of required reports. Send out delinquency letters for any guardians who have not submitted reports by the due date;
9. When the guardian is released by court order, enter the date in the party screen in ISTARS and remove any future scheduled reports. If another guardian is being appointed they will be added as an other party to the case and the appointment date will be entered and the report due date would be entered on the report screen which would be one year from the date the new person was appointed. If no other guardian is being appointed the disposition needs to be entered on the civil disposition tab and the case closed in ISTARS.

Conservatorships for Incapacitated Persons

I.C. §§15-5-401 through 15-5-15-5-435

Appointment of Conservator for either a minor or an incapacitated person

A petition for appointment of a conservator may be filed by the person to be protected, any person interested in his estate, affairs or welfare, or any person who would be adversely affected by lack of effective management of his property and affairs. I.C. §15-5-404. An individual or a corporation with general power to serve as trustee may be appointed as a conservator. I.C. §15-5-410. Upon receipt of the petition, the Court shall set a date for hearing. I.C. §15-5-407(a) and (b).

Appointment of Attorney and Notice

The Court may appoint an attorney to represent the minor or incapacitated person. Notice of the hearing on the petition must be served personally upon the proposed protected person and his spouse, or if none, his parents and any person who has filed a request for notice. I.C. §15-5-405. If a person desires notice of these proceedings, they may file a request with the Court and the clerk shall, upon payment of the appropriate

filing fee, mail a copy of the request to the petitioner (or Conservator if already appointed). I.C. §15-5-406.

The Court may appoint a temporary conservator without a hearing if there is sworn testimony that an emergency exists. I.C. §15-5-407A. This type of appointment shall be for no more than 90 days. A petition for appointment of temporary conservator must be accompanied by a petition for appointment of permanent conservator. I.C. §15-5-407A(e).

Clerical Duties:

1. Collect the filing fee, file stamp the petition Acceptance of Appointment when it is accompanied by a family law case information sheet pursuant to I.R.C.P. 3, open a case in ISTARs, and enter the documents in the ROA;

Note: The Family Law Case Information Sheet is exempt from disclosure pursuant to I.C.A.R. 32 and should be placed in a sealed envelope.

2. Provide petitioner with Guardianship and Conservatorship Order to Complete Training and collect fee. Complete the order with name, case number, county and receipt number. When certificate of completion for the training is received, file and enter the document in the ROA.
3. File signed order of appointment and letters of conservatorship and send certified copies to the appointee as requested;
5. Enter the date of the appointment of the conservator and check the box on the conservator tab which indicates that the conservator was appointed;
6. Enter the Inventory and Annual Accounting in the reports section. The system should calculate the due dates for these first two reports;

Note: The petition should include a financial plan for the proposed actions of the conservator regarding the financial affairs of the ward. If this information is not available at the time of filing, or the petitioner is not the proposed conservator, only then must the conservator file a 90 day financial plan. I.C. §15-5-404. A conservator is required to submit an inventory within 90 days after his appointment using the statewide standardized form. I.C. §15-5-418. He must also submit an accounting annually using the statewide standardized form. I.C. §15-5-419.

7. When you receive the inventory, collect the appropriate fee and enter the “received date” in the ISTARs report history. Send a copy of the appointment and inventory to the independent reviewer at the Idaho Supreme Court and insert the date sent in the “review sent date” area of the report history;

8. When each annual accounting is submitted, collect the appropriate fee and enter the “received date” in the ISTARS report history. Send a copy of the accounting to the independent reviewer at the Idaho Supreme Court and insert the date sent in the “review sent date” area of the report history. Enter the next report due date by selecting the report type. ISTARS will continue to calculate the due dates for all subsequent reports;
9. The reviewer will submit a report to the Court. If there are immediate areas of concern, those will be identified and the clerk will document that in the report history. The clerk will then send that information along with the file to the judge. If there are no immediate areas of concern, the clerk will document that in the report history;
10. Use the “Conservator Delinquency Process” to monitor the timely submission of required reports. Send out delinquency letters for any conservator who has not submitted reports by the due date. If there is no response to the notice(s) send the file to the assigned judge for appropriate action;
11. When the conservator is released by court order, enter the date in the party screen in ISTARS and remove any future scheduled reports. If another conservator is being appointed they will be added as an other party to the case and the appointment date will be entered and the report due date would be entered on the report screen which would be one year from the date the new person was appointed. If no other conservator or guardian is being appointed the disposition needs to be entered on the civil disposition tab and the case closed in ISTARS.

Note: A conservator has a duty to file an accounting upon his resignation or removal and the case should not be closed until the final accounting has been submitted. I.C. §15-5-419.

Bond

The Court may require a conservator to furnish bond conditioned upon faithful discharge of all duties of the trust according to law. I.C. §15-5-411.

Clerical Duties:

1. Accept bond, enter in ISTARS, and give receipt.

Proceedings after appointment of Conservator

Any person interested in the welfare of a person for whom a conservator has been appointed may file a petition requesting: 1) bond, or more or less bond; 2) an accounting; 3) directions for distribution; 4) removal of conservator and appointing a new conservator; or 5) other relief. I.C. §15-5-416. After notice and a hearing, the Court may make any appropriate order.

Clerical Duties:

1. Collect any required filing fee, accept petition and file stamp it, and enter in ROA;
2. Schedule hearing in ISTARs.

**Guardianships and Conservatorships for
Individuals with Developmental Disabilities**
I.C. §§66-401 through 66-417

Appointment by Petition

A developmentally disabled person or any person interested in his welfare may petition for a finding of legal disability or partial legal disability and appointment of a guardian and/or conservator. I.C. §66-404. Upon filing of a petition, the court shall set a hearing, appoint an attorney for the respondent, and authorize an evaluation committee to examine the respondent, interview the proposed guardian or conservator and report to the court in writing. I.C. §66-404(3)

If it is determined that the respondent is developmentally disabled and is unable to manage financial resources or meet essential requirements for physical health or safety the court may appoint a partial or full guardian and/or conservator. I.C. §66-405.

Clerical Duties:

1. Collect the filing fee, file stamp the petition Acceptance of Appointment when it is accompanied by a family law case information sheet pursuant to I.R.C.P. 3, open a case in ISTARs, and enter the documents in the ROA;

Note: The Family Law Case Information Sheet is exempt from disclosure pursuant to I.C.A.R. 32 and should be placed in a sealed envelope.

2. Provide petitioner with Guardianship and Conservatorship Order to Complete Training and collect fee. Complete the Order with name, case number, county and receipt number. When certificate of completion for the training is received, file and enter the document in the ROA.
3. When you receive the first report, collect the appropriate fee and enter the “received date” in the ISTARs report history. Enter the next report due date by selecting the report type. ISTARs will continue to calculate the due dates for all subsequent reports;
 - a. If it is a conservator’s report, send a copy of the report along with a copy of the order appointing conservator to the designated independent reviewer and insert the date sent in the “review sent date” area of the report history.
 - b. If a guardian is appointed send a copy of the report to the appropriate judge. If there are any concerns about the guardianship report, the judge will take appropriate action.

4. Use the “Conservator Delinquency Process” to monitor the timely submission of required reports. Send out delinquency letters for any guardians or conservators who have not submitted reports by the due date;
5. When the guardian or conservator is released by court order, enter the date in the party screen in ISTARS and remove any future scheduled reports. If another guardian or conservator is being appointed they will be added as an other party to the case and the appointment date will be entered and the report due date would be entered on the report screen which would be one year from the date the new person was appointed. If no other conservator or guardian is being appointed the disposition needs to be entered on the civil disposition tab and the case closed in ISTARS.

Foreign Guardianships and Conservatorships

I.C. §§15-13-101 through 15-13-504

Accepting Guardianship or Conservatorship Transferred from another State

A guardian or conservator who is appointed by a foreign court of competent jurisdiction for a ward residing or domiciled in this state may petition to have the guardianship or conservatorship transferred and accepted in this state. I.C. §15-13-302.

Clerical Duties:

1. File stamp and enter in the ROA the petition for the receipt and acceptance of a foreign guardianship or conservatorship or the Order Transferring the Guardianship/Conservatorship. Follow the clerical duties in the relevant section noted above.

Transfer of a Guardianship or Conservatorship to another State

A guardian or conservator may petition the court to transfer a guardianship to another state, and after hearing if requested, the court shall issue an order provisionally granting a petition to transfer a guardianship or conservatorship and shall direct the guardian or conservator to petition for guardianship or conservatorship in the other state if the court is satisfied that the guardianship or conservatorship will be accepted in the other state and (1) the ward is physically present in or is expected to move to the other state (2) no objection to the transfer has been made and (3) plans and services for the ward are reasonable or adequate arrangements will be made for management of the ward’s property. I.C. §15-13-301.

A final order shall issue upon receipt of a provisional order accepting the proceeding from the receiving state and documents are filed to terminate a guardianship or conservatorship in this state. I.C. §15-13-301(6).

Clerical Duties:

1. File stamp and enter in the ROA the petition to transfer a guardianship or conservatorship to a foreign jurisdiction. (Make sure the petition includes the name and address of the foreign court);
2. Schedule a hearing on the petition if requested;
3. Follow the clerical duties noted in the section related to change of venue in civil cases.

Note: When the order is signed, we would deal clerically with it like a change of venue.

PETITION TO COMPROMISE A MINOR'S CLAIM

I.C. §15-5-409a

A Petition to Compromise a Minor's Claim may be filed when a minor has a disputed monetary claim against another person. The parents with whom a minor resides and who have the care and custody of the minor may compromise or settle his claim. However, before it is valid, the compromise must be approved by the court. I.C. §15-5-409a. The Court may enter an order approving the compromise or enter other appropriate orders. No hearing is required by the Code, but most Courts hold a hearing.

Clerical Duties:

1. Accept petition, file stamp, and enter in ROA;
2. Schedule a hearing in ISTARS;
3. After hearing, file stamp and enter in ROA any orders signed by judge and send copies to all parties;
4. Enter civil disposition and close the case in ISTARS. If the petition is filed in another pending civil action, the case will not be closed until that civil case has been resolved.

Note: No filing fee is charged for minor's claim; however, if the person is also petitioning for appointment of conservator, a filing fee is assessed.