

TITLE 15
UNIFORM PROBATE CODE

CHAPTER 5
PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY

PART 1.
GENERAL PROVISIONS

15-5-101. DEFINITIONS AND USE OF TERMS. Unless otherwise apparent from the context, in this code:

(a) "Incapacitated person" means any person who is impaired, except by minority, to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, provided, that the term shall not refer to a developmentally disabled person as defined in section [66-402](#) (5), Idaho Code, and provided further that:

(1) "Incapacity" means a legal, not a medical disability and shall be measured by function limitations and it shall be construed to mean or refer to any person who has suffered, is suffering, or is likely to suffer, substantial harm due to an inability to provide for his personal needs for food, clothing, shelter, health care, or safety, or an inability to manage his or her property or financial affairs;

(2) Inability to provide for personal needs or to manage property shall be evidenced by acts or occurrences, or statements which strongly indicate imminent acts or occurrences; material evidence of inability must have occurred within twelve (12) months prior to the filing of the petition for guardianship or conservatorship;

(3) Isolated instances of simple negligence or improvidence, lack of resources, or any act, occurrence, or statement, if that act, occurrence, or statement is the product of an informed judgment, shall not constitute evidence of inability to provide for personal needs or to manage property;

(4) "Informed judgment" means a choice made by a person who has the ability to make such a choice, and who makes it voluntarily after all relevant information necessary to making the decision has been provided, and who understands that he is free to choose or refuse any alternative available and who clearly indicates or expresses the outcome of his choice;

(b) A "protective proceeding" is a proceeding under the provisions of section [15-5-401](#), Idaho Code, to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced, or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief;

(c) A "protected person" is a minor or other person for whom a conservator has been appointed or other protective order has been made;

(d) A "ward" is a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

[15-5-101, as added by 1971, ch. 111, sec. 1, p. 233; am. 1982, ch. 59, sec. 2, p. 92; am. 1989, ch. 241, sec. 1, p. 587; am. 1997, ch. 210, sec. 1, p. 628; am. 1999, ch. 293, sec. 3, p. 736; am. 2000, ch. 180, sec. 1, p. 448.]

15-5-102. JURISDICTION OF SUBJECT MATTER -- CONSOLIDATION OF PROCEEDINGS. When both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.

[I.C., sec. 15-5-102, as added by 1971, ch. 111, sec. 1, p. 233.]

15-5-103. FACILITY OF PAYMENT OR DELIVERY. Any person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding ten thousand dollars (\$10,000) per annum, by paying or delivering the money or property to, (1) the minor, if he has attained the age of eighteen (18) years or is married; (2) any person having the care and custody of the minor with whom the minor resides; (3) a guardian of the minor; or (4) a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving notice of the deposit to the minor. This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending. The persons, other than the minor or any financial institution under (4) of this section, receiving money or property for a minor, are obligated to apply the money to the support and education of the minor, but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums shall be preserved for future support of the minor and any balance not so used and any property received for the minor must be turned over to the minor when he attains majority. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application thereof.

[I.C., sec. 15-5-103, as added by 1971, ch. 111, sec. 1, p. 233; am. 1989, ch. 79, sec. 1, p. 141.]

15-5-104. DELEGATION OF POWERS BY PARENT OR GUARDIAN. A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six (6) months, or in the case of military personnel serving beyond the territorial limits of the United States for a period not exceeding twelve (12) months, any of the parent's or guardian's powers regarding care, custody, or property of the minor or ward including, but not limited to, powers for medical care and educational care of the minor or ward, except the parent's or guardian's power to consent to marriage or adoption of a minor or ward. The delegation for a minor to a grandparent of the minor, or to a sibling of the minor, or to a sibling of either parent of the minor, shall continue in effect until the time period, or date, or condition set forth in the power of attorney for automatic expiration of the power of attorney occurs. If the power of attorney does not provide a time period, or date, or condition for automatic expiration of the power, the power of attorney shall continue in effect for a period of three (3) years. The power may be revoked prior to the expiration of the three (3) year period, or prior to the time period, or date, or condition for automatic expiration, in a writing delivered to the grandparent or sibling by the delegating parent or guardian. The power of attorney does not need to be notarized or recorded to be valid. However, if the power is recorded, any revocation of the power by a writing must also be recorded before the revocation is effective.

[I.C., sec. 15-5-104, as added by 1971, ch. 111, sec. 1, p. 233; am. 1991, ch. 29, sec. 1, p. 58; am. 2003, ch. 64, sec. 1, p. 210.]

15-5-105. EVIDENCE IN PROCEEDINGS INVOLVING VETERAN'S BENEFITS. If benefits derived from the United States through the veteran's administration are involved in any proceeding under this chapter, a certificate of the administrator or his authorized representative shall be prima facie evidence of the necessity of appointment of a guardian or conservator or both if:

(a) It sets forth the age of the minor involved in the proceeding as shown by the records of the veterans administration and the fact that appointment is a condition precedent to payment of any moneys;

(b) It sets forth the fact that a purportedly incapacitated person involved in the proceeding has been rated incompetent by the veterans administration upon examination pursuant to the laws governing such administration and that appointment of a guardian is a condition precedent to payment of any moneys due such incapacitated person.

[I.C., sec. 15-5-105, as added by 1971, ch. 111, sec. 1, p. 233.]

15-5-106. COPIES OF PUBLIC RECORDS TO BE FURNISHED. When a copy of any public record is required by the veterans administration to be used in determining the eligibility of any persons to participate in benefits made available by the veterans administration, the official custodian of such public records shall without charge provide the applicant for such benefits or any person acting on his behalf or the authorized representative of the veterans administration with a certified copy of such record.

[I.C., sec. 15-5-106, as added by 1971, ch. 111, sec. 1, p. 233.]

15-5-107. WRONGFUL APPROPRIATION. Upon the petition of anyone interested in the welfare of the ward, anyone suspected of having concealed, embezzled or conveyed away any of the moneys, goods or effects belonging to the ward or his estate may be ordered by the court to appear and be examined on oath and held to account upon such matters and for such property.

[I.C., sec. 15-5-107, as added by 1971, ch. 111, sec. 1, p. 233.]

PART 2. GUARDIANS OF MINORS

15-5-201. STATUS OF GUARDIAN OF MINOR -- GENERAL. A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward.

[I.C., sec. 15-5-201, as added by 1971, ch. 111, sec. 1, p. 233.]

15-5-202. TESTAMENTARY APPOINTMENT OF GUARDIAN OF MINOR. A parent of a minor may appoint a guardian of an unmarried minor by will, subject to the right of the minor under section [15-5-203](#), Idaho Code. The termination of parental rights of a parent as to the minor shall also terminate the right of that parent to appoint a guardian for the minor. A testamentary appoint-

ment becomes effective upon the filing of the guardian's acceptance in the court in which the will is probated, if, at the decedent's death, no parent of the minor was alive who had a right to appoint a guardian for the minor. This state recognizes a testamentary appointment effected by the guardian's acceptance under a will probated in another state which is the testator's domicile. Written notice of acceptance of the appointment must be given by the guardian to the minor and to the person having his custody, or if none, his care, or if none, to his nearest adult relation immediately upon acceptance of appointment. The parent may appoint by will one (1) or more alternate guardians, in order of priority. If a guardian appointed by will fails to accept guardianship within thirty (30) days after the will is probated, or files a notice of declination to accept appointment prior to the running of the thirty (30) day period, or is deceased, or ceases to act after acceptance, then the alternate guardian next in priority becomes the appointed guardian and may file a written notice of acceptance in the court in which the will is probated.

[15-5-202, added 1971, ch. 111, sec. 1, p. 233; am. 1972, ch. 201, sec. 17, p. 510; am. 2002, ch. 233, sec. 2, p. 670; am. 2006, ch. 183, sec. 1, p. 582; am. 2014, ch. 287, sec. 1, p. 728.]

15-5-203. OBJECTION BY MINOR OF FOURTEEN YEARS OR OLDER TO TESTAMENTARY APPOINTMENT. A minor of fourteen (14) or more years may prevent an appointment of his testamentary guardian from becoming effective, or may cause a previously accepted appointment to terminate, by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within thirty (30) days after notice of its acceptance. An objection may be withdrawn. In the event of such objection, the alternate guardian next in priority named in the will may accept appointment as set forth in section [15-5-202](#), Idaho Code, and the minor shall have the same right of objection. An objection does not preclude appointment by the court in a proper proceeding of the testamentary nominee, or any other suitable person.

[15-5-203, added 1971, ch. 111, sec. 1, p. 233; am. 1972, ch. 201, sec. 18, p. 510; am. 2014, ch. 287, sec. 2, p. 728.]

15-5-204. COURT APPOINTMENT OF GUARDIAN OF MINOR -- CONDITIONS FOR APPOINTMENT. (1) The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated by prior court order or upon a finding that the child has been neglected, abused, or abandoned or whose parents are unable to provide a stable home environment. "Abandoned" means the failure of the parent to maintain a normal parental relationship with the child including, but not limited to, reasonable support or regular contact. Failure to maintain a normal parental relationship with the child without just cause for a period of six (6) months shall constitute prima facie evidence of abandonment. Except in those circumstances described in subsections (2) and (3) of this section and where a temporary guardianship has been created at the request of a parent on active duty in or deployment with the United States armed forces, the court shall consider the best interests of the child as the primary factor in the determination whether to appoint, and whom to appoint, as a guardian for such child. In determining the choice of a guardian for an unmarried minor, the advanced age or disability of a potential guardian shall not, in and of itself, be used

as a criterion of the suitability of the potential guardian as long as the potential guardian is otherwise suitable. A guardian appointed by will as provided in section [15-5-202](#), Idaho Code, whose appointment has not been prevented or nullified under section [15-5-203](#), Idaho Code, has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment nonetheless upon a finding that the testamentary guardian has failed to accept the testamentary appointment within thirty (30) days after notice of the guardianship proceeding.

(2) The extended absence of a parent due to active duty in or deployment with the United States armed forces shall not by itself constitute neglect, abuse, abandonment, or failure to provide a stable home environment.

(3) Any guardianship granted at the request of or required by the United States armed forces or at the request of a parent while on active duty in or deployment with the United States armed forces, which duty or deployment does not constitute neglect, abuse, abandonment, or failure to provide a stable home environment, shall be terminated immediately upon the conclusion of the original circumstances necessitating the creation of the temporary guardianship or the filing of a termination report by the parent indicating the parent's intent to resume all care, custody, and control of the minor.

[15-5-204, added 1971, ch. 111, sec. 1, p. 233; am. 1999, ch. 123, sec. 1, p. 360; am. 2002, ch. 233, sec. 3, p. 671; am. 2020, ch. 235, sec. 1, p. 691.]

15-5-205. COURT APPOINTMENT OF GUARDIAN OF MINOR -- VENUE. The venue for guardianship proceedings for a minor is in the place where the minor resides or is present.

[I.C., sec. 15-2-205, as added by 1971, ch. 111, sec. 1, p. 233.]

15-5-206. COURT APPOINTMENT OF GUARDIAN OF MINOR -- QUALIFICATIONS -- PRIORITY OF MINOR'S NOMINEE. The court may appoint as guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor, if the minor is fourteen (14) years of age or older, unless the court finds the appointment contrary to the best interests of the minor.

[I.C., sec. 15-5-206, as added by 1971, ch. 111, sec. 1, p. 233.]

15-5-207. COURT APPOINTMENT OF GUARDIAN OF MINOR -- PROCEDURE. (1) Proceedings for the appointment of a guardian or co-guardians may be initiated by the following persons:

- (a) Any relative of the minor;
- (b) The minor if he is fourteen (14) or more years of age;
- (c) Any person who comes within section [15-5-213](#)(1), Idaho Code; or
- (d) Any person interested in the welfare of the minor.

(2) Notice of the time and place of hearing of a petition under this section is to be given by the petitioner in the manner prescribed by section [15-1-401](#), Idaho Code, to:

- (a) The minor, if he is fourteen (14) or more years of age;
- (b) The person who has had the principal care and custody of the minor during the sixty (60) days preceding the date of the petition;
- (c) Any person who comes within section [15-5-213](#)(1), Idaho Code; and

(d) Any living parent of the minor; provided however, that the court may waive notice to a living parent of the minor who is, or is alleged to be, the father of the minor if:

(i) The father was never married to the mother of the minor and has failed to register his paternity as provided in section [16-1504](#)(5), Idaho Code; or

(ii) The court has been shown to its satisfaction circumstances that would allow the entry of an order of termination of parental rights pursuant to section [16-2005](#), Idaho Code, even though termination of parental rights is not being sought as to such father.

(3) (a) As an alternative to appointing one (1) guardian for a minor, the court may appoint no more than two (2) persons as co-guardians for a minor if the court finds:

(i) The appointment of co-guardians will best serve the interests of the minor; and

(ii) The persons to be appointed as co-guardians will work together cooperatively to serve the best interests of the minor.

(b) If the court appoints co-guardians, the court shall also determine whether the guardians:

(i) May act independently;

(ii) May act independently but must act jointly in specified matters; or

(iii) Must act jointly.

This determination by the court must be stated in the order of appointment and in the letters of guardianship.

(4) If the court finds, upon hearing, that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section [15-5-204](#), Idaho Code, have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interests of the minor.

(5) Prior to the appointment of a guardian:

(a) The court may appoint a temporary guardian for the minor if it finds by a preponderance of evidence that:

(i) A petition for guardianship under this section has been filed, but a guardian has not yet been appointed;

(ii) The appointment is necessary to protect the minor's health, safety or welfare until the petition can be heard; and

(iii) No other person appears to have the ability, authority and willingness to act.

(b) A temporary guardian may be appointed without notice or hearing if the minor is in the physical custody of the petitioner or proposed temporary guardian and the court finds from a statement made under oath that the minor may be immediately and substantially harmed before notice can be given or a hearing held.

(c) Notice of the appointment of a temporary guardian must be given to those designated in subsection (2) of this section within seventy-two (72) hours after the appointment. The notice must inform interested persons of the right to request a hearing. The court must hold a hearing on the appropriateness of the appointment within fourteen (14) days after request by an interested person. In all cases, either a hearing on the temporary guardianship or on the petition for guardianship itself

must be held within ninety (90) days of the filing of any petition for guardianship of a minor.

(d) The temporary guardian's authority may not exceed six (6) months unless extended for good cause. Only one (1) such extension may be made, and the extension period must not last longer than six (6) additional months. The powers of the temporary guardian shall be limited to those necessary to protect the immediate health, safety or welfare of the minor until a hearing may be held and must include the care and custody of the minor.

(e) A temporary guardian must make reports as the court requires.

(6) When a minor is under guardianship:

(a) The court may appoint a temporary guardian if it finds:

(i) Substantial evidence that the previously appointed guardian is not performing the guardian's duties; and

(ii) The appointment of a temporary guardian is necessary to protect the minor's health, safety or welfare.

(b) A temporary guardian may be appointed without notice or hearing if the court finds from a statement made under oath that the minor may be immediately and substantially harmed before notice can be given or a hearing held.

(c) Notice of the appointment of a temporary guardian must be given to those designated in subsection (2) of this section within seventy-two (72) hours after the appointment. The notice must inform interested persons of the right to request a hearing. The court shall hold a hearing on the appropriateness of the appointment within fourteen (14) days after request by an interested person.

(d) The authority of a previously appointed guardian is suspended as long as a temporary guardian has authority. The court must hold a hearing before the expiration of the temporary guardian's authority and may enter any appropriate order. The temporary guardian's authority may not exceed six (6) months unless extended for good cause as provided in subsection (5) (d) of this section. Prior to the end of an extension period, the court must appoint a guardian other than a temporary guardian or take other appropriate action, but in no event may a temporary guardianship last longer than twelve (12) months in total.

(e) A temporary guardian must make reports as the court requires.

(7) The court shall appoint an attorney to represent the minor if the court determines that the minor possesses sufficient maturity to direct the attorney. If the court finds that the minor is not mature enough to direct an attorney, the court shall appoint a guardian ad litem for the minor. The court may decline to appoint an attorney or guardian ad litem if it finds in writing that such appointment is not necessary to serve the best interests of the minor or if the Idaho department of health and welfare has legal custody of the child.

(8) Letters of guardianship must indicate whether the guardian was appointed by will or by court order.

[15-5-207, added 1971, ch. 111, sec. 1, p. 233; am. 2004, ch. 145, sec. 1, p. 475; am. 2005, ch. 113, sec. 1, p. 364; am. 2006, ch. 180, sec. 1, p. 559; am. 2010, ch. 236, sec. 2, p. 611; am. 2017, ch. 261, sec. 1, p. 643; am. 2020, ch. 123, sec. 1, p. 379; am. 2020, ch. 330, sec. 3, p. 955; am. 2021, ch. 187, sec. 1, p. 512.]

15-5-208. CONSENT TO SERVICE BY ACCEPTANCE OF APPOINTMENT -- NOTICE. By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian, or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner.

[I.C., sec. 15-5-208, as added by 1971, ch. 111, sec. 1, p. 233.]

15-5-209. POWERS AND DUTIES OF GUARDIAN OF MINOR. A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child, except that a guardian is not legally obligated to provide from his own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:

(1) He must take reasonable care of his ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(2) He may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship. He also may receive money or property of the ward paid or delivered by virtue of section [15-5-103](#), Idaho Code. Any sums so received shall be applied to the ward's current needs for support, care and education. He must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case the excess shall be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for his services except as approved by order of the court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(3) The guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage or adoption of his ward.

(4) A guardian shall report to the court at least annually on the status of the ward and the ward's estate which has been subject to his possession or control. All reports shall be under oath or affirmation and shall comply with the Idaho supreme court rules.

[15-5-209, added 1971, ch. 111, sec. 1, p. 233; am. 2014, ch. 164, sec. 1, p. 460.]

15-5-210. TERMINATION OF APPOINTMENT OF GUARDIAN -- GENERAL. A guardian's authority and responsibility terminates upon the death, resignation or removal of the guardian, termination of the guardianship or upon the minor's death, adoption, marriage or attainment of majority, but termination does not affect his liability for prior acts, nor his obligation to account for funds and assets of his ward. Resignation of a guardian without

the appointment of a successor guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

[15-5-210, added 1971, ch. 111, sec. 1, p. 233; am. 2016, ch. 148, sec. 1, p. 416.]

15-5-211. PROCEEDINGS SUBSEQUENT TO APPOINTMENT -- VENUE. (a) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.

(b) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, if in this state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed. If the court in which acceptance of appointment is filed is in another state, the court in this state shall proceed in accordance with chapters 9, 10 and/or 11, [title 15](#), Idaho Code, as appropriate.

[15-5-211, as added by 1971, ch. 111, sec. 1, p. 233; am. 2006, ch. 182, sec. 1, p. 565.]

15-5-212. RESIGNATION, REMOVAL, MODIFICATION OR TERMINATION PROCEEDINGS. (1) Any person interested in the welfare of a ward, or the ward if fourteen (14) or more years of age, may petition for removal of a guardian, or for modification or termination of the guardianship, on the ground that such removal, modification or termination would be in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If, at any time in the proceeding, the court determines that the interests of the ward are, or may be, inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen (14) or more years of age.

[15-5-212, added 1971, ch. 111, sec. 1, p. 233; am. 2016, ch. 148, sec. 2, p. 416.]

15-5-212A. GUARDIANSHIPS ARISING IN CONNECTION WITH A PROCEEDING UNDER THE CHILD PROTECTIVE ACT. Where a minor is within the jurisdiction of a court under the child protective act, or where a guardianship proceeding arose in connection with a permanency plan for a minor who was the subject of a proceeding under the child protective act:

(1) The court having jurisdiction over the proceeding under the child protective act shall have exclusive jurisdiction and venue over any

guardianship proceeding involving such minor unless, in furtherance of the permanency plan, the court declines to exercise such jurisdiction and venue, notwithstanding sections [15-5-205](#) and [15-5-211](#), Idaho Code.

(2) In any action connected to a guardianship governed by this section, in addition to notice or service upon interested parties pursuant to section [15-1-401](#), Idaho Code, notice of the following shall be served upon the department of health and welfare in the manner prescribed in Idaho rule of civil procedure 4(d)(5):

- (a) Any petition for the appointment of a guardian of a minor;
- (b) Any pleading filed in connection with such guardianship;
- (c) Any proceeding of any nature in such guardianship; or
- (d) The time and place of any hearing in connection with such guardianship.

(3) In any action governed by this section, the department of health and welfare shall have the right to appear and be heard at any hearing, and shall have the right to intervene at any stage of the action.

(4) A guardian appointed in an action governed by this section may not consent to the adoption of the minor without providing prior notice of the action of adoption to the department of health and welfare in a manner prescribed in section [15-1-401](#), Idaho Code.

(5) Any person who moves to terminate a guardianship governed by this section has the burden of proving, by clear and convincing evidence, that:

- (a) There has been a substantial and material change in the circumstances of the parent or the minor since the establishment of the guardianship; and
- (b) Termination of the guardianship would be in the best interests of the minor.

(6) In any action governed by this section, any person who moves to remove a guardian or modify a guardianship has the burden of proving, by clear and convincing evidence, that:

- (a) There has been a substantial and material change in the circumstances of the parent or the minor since the establishment of the guardianship; and
- (b) Removal of the guardian or modification of the guardianship would be in the best interests of the minor.

[15-5-212A, added 2007, ch. 72, sec. 1, p. 195.]

15-5-213. DE FACTO CUSTODIAN. (1) "De facto custodian" means a person who has either been appointed the de facto custodian pursuant to section [32-1705](#), Idaho Code, or if not so appointed, has been the primary caregiver for, and primary financial supporter of, a child who, prior to the filing of a petition for guardianship, has resided with the person for a period of six (6) months or more if the child is under three (3) years of age and for a period of one (1) year or more if the child is three (3) years of age or older.

(2) If a court determines by clear and convincing evidence that a person meets the definition of a de facto custodian, and that recognition of the de facto custodian is in the best interests of the child, the court shall give the person the same standing that is given to each parent in proceedings for appointment of a guardian of a minor. In determining whether recognition of a de facto custodian is in the child's best interests, the court shall consider:

- (a) Whether the child is currently residing with the person seeking such standing; and

(b) If the child is not currently residing with the person seeking such standing, the length of time since the person served as the child's primary caregiver and primary financial supporter.

[15-5-213, added 2004, ch. 145, sec. 2, p. 476; am. 2005, ch. 113, sec. 2, p. 365; am. 2010, ch. 236, sec. 3, p. 612.]

PART 3. GUARDIANS OF INCAPACITATED PERSONS

15-5-301. TESTAMENTARY APPOINTMENT OF GUARDIAN FOR INCAPACITATED PERSON OR DEVELOPMENTALLY DISABLED PERSON. (a) The parent of an incapacitated person or developmentally disabled person may by will appoint a guardian of the incapacitated person or developmentally disabled person. A testamentary appointment by a parent becomes effective when, after having given seven (7) days' prior written notice of his intention to do so to the incapacitated person or developmentally disabled person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated, if prior thereto, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority unless it is terminated by the denial of probate in formal proceedings.

(b) The spouse of a married incapacitated person or developmentally disabled person may by will appoint a guardian of the incapacitated person or developmentally disabled person. The appointment becomes effective when, after having given seven (7) days' prior written notice of his intention to do so to the incapacitated person or developmentally disabled person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated. An effective appointment by a spouse has priority over an appointment by a parent unless it is terminated by the denial of probate in formal proceedings.

(c) This state shall recognize a testamentary appointment effected by filing acceptance under a will probated at the testator's domicile in another state.

(d) On the filing with the court in which the will was probated of written objection to the appointment by the person for whom a testamentary appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person upon an adjudication of incapacity in proceedings under the succeeding sections of this part.

(e) If the appointment by will is for a developmentally disabled person and there is an existing guardianship proceeding under [chapter 4, title 66](#), Idaho Code, in which the decedent was the sole guardian, the guardian appointed by will must also give seven (7) days' written notice of his intention to file an acceptance of appointment to any then serving guardian ad litem for the developmentally disabled person in such proceeding and to the department of health and welfare for the region in which the proceeding was brought.

(f) If the appointment by will is for an incapacitated person for whom there is an existing guardianship proceeding in which the decedent was the sole guardian, the guardian appointed by will must also give seven (7) days' written notice of his intention to file an acceptance of appointment to any

then serving guardian ad litem for the incapacitated person in such proceeding.

[15-5-301, added 1971, ch. 111, sec. 1, p. 233; am. 2009, ch. 86, sec. 1, p. 236.]

15-5-302. VENUE. The venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present. If the incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the county in which that court sits.

[I.C., sec. 15-5-302, as added by 1971, ch. 111, sec. 1, p. 233.]

15-5-303. PROCEDURE FOR COURT APPOINTMENT OF A GUARDIAN OF AN INCAPACITATED PERSON. (a) The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian or co-guardians, limited or general. It is desirable to make available the least restrictive form of guardianship to assist persons who are only partially incapable of caring for their own needs. Recognizing that every individual has unique needs and differing abilities, the public welfare should be promoted by establishing a guardianship that permits incapacitated persons to participate as fully as possible in all decisions affecting them; that assists such persons in meeting the essential requirements for their physical health and safety, in protecting their rights, in managing their financial resources, and in developing or regaining their abilities to the maximum extent possible; and that accomplishes these objectives through providing, in each case, the form of guardianship that least interferes with legal capacity of a person to act in his own behalf. The petition shall include a plan in reasonable detail for the proposed actions of the guardian regarding the affairs of the ward after appointment of the guardian, to the extent reasonably known to the petitioner at the time of filing of the petition. If the complete mental, physical and emotional status, and the health care needs and other needs of the ward are not reasonably known to the petitioner at the time the petition is filed, or if the petitioner is not the proposed guardian, then the guardian shall submit to the court, and to all interested persons, in writing, within thirty (30) days after appointment of the guardian, a reasonably detailed plan covering such matters. Such plan must also be given to any person who has filed a request for notice under section [15-5-406](#), Idaho Code, and to other persons as the court may direct. Such plan shall be given to all such persons in accordance with the methods set forth in section [15-1-401](#), Idaho Code. If the plan changes during any time period between the periodic reports of the guardian, the modified plan shall be filed with the next report as a part thereof.

(b) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person has counsel of his own choice, it shall appoint an attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall be examined by a physician or other qualified person appointed by the court who shall submit his report in writing to the court. The court may, in appropriate cases, appoint a mental health professional, defined as a psychiatrist, psychologist, gerontologist, licensed social worker, or licensed counselor, to examine the proposed ward and submit a written report to the court. The

person alleged to be incapacitated also shall be interviewed by a visitor sent by the court. The visitor shall also interview the person who appears to have caused the petition to be filed and any person who is nominated to serve as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made and submit his report in writing to the court. Where possible without undue delay and expenses beyond the ability to pay of the allegedly incapacitated person, the court, in formulating the judgment, may utilize the service of any public or charitable agency that offers or is willing to evaluate the condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in his affairs.

(c) Unless excused by the court for good cause, the proposed guardian shall attend the hearing. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be represented by counsel, to present evidence and subpoena witnesses and documents, to examine witnesses, including the court-appointed physician, mental health professional, or other person qualified to evaluate the alleged impairment, as well as the court-appointed visitor, and otherwise participate in the hearing. The hearing may be a closed hearing upon the request of the person alleged to be incapacitated or his counsel and a showing of good cause. After appointment, the guardian shall immediately provide written notice of any proposed change in the permanent address of the ward to the court and all interested parties.

[15-5-303, added 1971, ch. 111, sec. 1, p. 233; am. 1971, ch. 126, sec. 1, p. 487; am. 1982, ch. 285, sec. 3, p. 723; am. 1999, ch. 128, sec. 1, p. 370; am. 2005, ch. 51, sec. 1, p. 187; am. 2017, ch. 261, sec. 2, p. 645.]

15-5-304. FINDINGS -- ORDER OF APPOINTMENT. (a) The court shall exercise the authority conferred in this part so as to encourage the development of maximum self-reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's actual mental and adaptive limitations or other conditions warranting the procedure.

(b) The court may appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the incapacitated person. The court, on appropriate findings, may:

(1) Treat the petition as one for a protective order under section [15-5-401](#), Idaho Code, and proceed accordingly;

(2) Enter any other appropriate order; or

(3) Dismiss the proceedings.

(c) (1) As an alternative to appointing one (1) guardian for an incapacitated person, the court may appoint no more than two (2) persons as co-guardians for the incapacitated person if the court finds:

(i) The appointment of co-guardians will best serve the interests of the incapacitated person; and

(ii) The persons to be appointed as co-guardians will work together cooperatively to serve the best interests of the incapacitated person.

(2) The parents of an incapacitated person shall have preference over all other persons for appointment as co-guardians, unless the court finds that the parents are unwilling to serve as co-guardians, or are not capable of adequately serving the best interests of the incapacitated person.

(3) If the court appoints co-guardians, the court shall also determine whether the guardians:

- (i) May act independently;
- (ii) May act independently but must act jointly in specified matters; or
- (iii) Must act jointly.

This determination by the court must be stated in the order of appointment and in the letters of guardianship.

(d) The court may, at the time of appointment or later, on its own motion or on appropriate petition or motion of the incapacitated person or other interested person, limit the powers of a guardian otherwise conferred by this section and thereby create a limited guardianship. Any limitations on the statutory power of a guardian of an incapacitated person shall be endorsed on the guardian's letters, or in the case of a guardian by testamentary appointment, shall be reflected in letters that shall be issued at the time any limitation is imposed. Following the same procedure, a limitation may be removed and appropriate letters issued.

[15-5-304, added 1971, ch. 111, sec. 1, p. 233; am. 1982, ch. 285, sec. 4, p. 724; am. 2017, ch. 261, sec. 3, p. 646.]

15-5-305. ACCEPTANCE OF APPOINTMENT -- CONSENT TO JURISDICTION. By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner.

[I.C., sec. 15-5-305, as added by 1971, ch. 111, sec. 1, p. 233.]

15-5-306. TERMINATION OF GUARDIANSHIP FOR INCAPACITATED PERSON. (1) Subject to subsection (2) of this section, the authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in section [15-5-307](#) of this part. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward.

(2) If the conditions set forth in section [54-1142](#)(1)(j) exist, then the guardianship shall continue as set forth in that section.

[15-5-306, as added by 1971, ch. 111, sec. 1, p. 233; am. 1972, ch. 201, sec. 19, p. 510; am. 2006, ch. 181, sec. 2, p. 562.]

15-5-307. REMOVAL OR RESIGNATION OF GUARDIAN -- TERMINATION OF INCAPACITY. (a) On petition of the ward or any person interested in his welfare, the court may remove a guardian and appoint a successor if in the best in-

terests of the ward. On petition of the guardian, the court may accept his resignation and make any other order which may be appropriate.

(b) An order adjudicating incapacity may specify a minimum period, not exceeding one (1) year, during which no petition for an adjudication that the ward is no longer incapacitated may be filed without special leave. Subject to this restriction, the ward or any person interested in his welfare may petition for an order that he is no longer incapacitated, and for removal or resignation of the guardian. A request for this order may be made by informal letter to the court or judge and any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.

(c) Before removing a guardian, accepting the resignation of a guardian, or ordering that a ward's incapacity has terminated, the court, following the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian, may send a visitor to the residence of the present guardian, and to the place where the ward resides or is detained, to observe conditions and report in writing to the court.

(d) Upon request, a jury may be summoned to hear factual issues as in other civil cases.

[I.C., sec. 15-5-307, as added by 1971, ch. 111, sec. 1, p. 233.]

15-5-308. VISITOR IN GUARDIANSHIP PROCEEDING. (1) A visitor is, with respect to guardianship proceedings, an individual with no personal interest in the proceedings and who meets the qualifications identified in Idaho supreme court rule. A visitor may either be an employee of or appointed by the court. If appointed, a visitor becomes an officer of the court.

(2) A visitor must report to the court on the status of the person proposed to be under guardianship. All reports must be under oath or affirmation and must comply with Idaho supreme court rules.

(3) A visitor shall be personally immune from any liability for acts, omissions or errors in the same manner as if such visitor were a volunteer or director under the provisions of section [6-1605](#), Idaho Code.

(4) A visitor cannot serve as guardian ad litem. The visitor and the guardian ad litem for the person proposed to be under guardianship may not be members or employees of the same entity.

(5) The visitor may request to order a criminal history and background check at the proposed guardian's expense on any individual who resides in or may frequent the residence of the person proposed to be under guardianship. Any such check shall be conducted pursuant to section [56-1004A](#)(2) and (3), Idaho Code.

[15-5-308, added 1971, ch. 111, sec. 1, p. 233; am. 1972, ch. 201, sec. 20, p. 510; am. 1997, ch. 201, sec. 1, p. 576; am. 1999, ch. 128, sec. 2, p. 371; am. 2002, ch. 217, sec. 1, p. 595; am. 2008, ch. 74, sec. 1, p. 195; am. 2013, ch. 262, sec. 1, p. 640; am. 2017, ch. 261, sec. 4, p. 647.]

15-5-309. NOTICES IN GUARDIANSHIP PROCEEDINGS. (1) In a proceeding for the appointment or removal of a guardian of an incapacitated person and, if notice is required in a proceeding for appointment of a temporary guardian, notice of hearing shall be given to each of the following:

(a) The ward or the person alleged to be incapacitated and his spouse, or, if none, his adult children or if none, his parents;

(b) Any person who is serving as his guardian, conservator or who has his care and custody;

(c) In case no other person is notified under subsection (1) (a) of this section, at least one (1) of his closest adult relatives, if any can be found; and

(d) Any person who has filed a request for notice under this section.

(2) Notice shall be served personally on the alleged incapacitated person. In all other cases, required notices shall be given as provided in section [15-1-401](#), Idaho Code. Waiver of notice by the person alleged to be incapacitated is not effective unless he attends the hearing or his waiver of notice is confirmed by the visitor or the guardian ad litem. Representation of the alleged incapacitated person by a guardian ad litem is not necessary.

(3) Any person desiring notice of any order or filing in a proceeding involving an alleged incapacitated person in whom he is interested may file a request for notice with the court stating his name, the name of the incapacitated person, the nature of the requesting person's interest, and address or that of his attorney. Upon payment of any fee required by statute or court rule, the clerk shall mail a copy of the request to the guardian if one has been appointed or to the petitioner if there is no guardian. A request is effective only as to matters occurring after its filing.

[15-5-309, as added by 1971, ch. 111, sec. 1, p. 233; am. 1982, ch. 285, sec. 5, p. 724; am. 2007, ch. 70, sec. 1, p. 187; am. 2007, ch. 71, sec. 2, p. 193.]

15-5-310. TEMPORARY GUARDIANS OF INCAPACITATED PERSONS. (a) The court may appoint a temporary guardian if it finds:

(1) A petition for guardianship under section [15-5-303](#), Idaho Code, has been filed, but a guardian has not yet been appointed;

(2) Substantial evidence of incapacity;

(3) By a preponderance of the evidence an emergency exists that will likely result in immediate and substantial harm to the person's health, safety or welfare; and

(4) No other person appears to have the ability, authority and willingness to act.

(b) When a person is under guardianship, the court may appoint a temporary guardian if it finds:

(1) Substantial evidence that the guardian is not performing the guardian's duties; and

(2) By a preponderance of the evidence, an emergency exists that will likely result in immediate and substantial harm to the person's health, safety or welfare.

The authority of a guardian previously appointed by the court is suspended as long as a temporary guardian has authority. The court must hold a hearing before the expiration of the temporary guardian's authority and may enter any appropriate order.

(c) (1) A temporary guardian may be appointed without notice or hearing if the court finds from a statement under oath that the person will be immediately and substantially harmed before notice can be given or a hearing held.

(2) If the court appoints a temporary guardian without notice, notice of the appointment must be given to those designated in section [15-5-309](#), Idaho Code, within seventy-two (72) hours after the appointment. The notice must inform the interested persons of the right to request a

hearing. The court must hold a hearing on the appropriateness of the appointment within fourteen (14) days after the request by an interested person.

(3) The temporary guardian's authority may not exceed ninety (90) days, unless extended for good cause. The powers of the temporary guardian must be limited to those necessary to protect the immediate health, safety or welfare of the person until such time as a hearing may be held in the matter.

(4) A temporary guardian must make reports as the court requires.

[15-5-310, added 1971, ch. 111, sec. 1, p. 233; am. 1982, ch. 285, sec. 6, p. 725; am. 1999, ch. 128, sec. 3, p. 372; am. 2005, ch. 52, sec. 1, p. 189; am. 2017, ch. 261, sec. 5, p. 648; am. 2020, ch. 123, sec. 2, p. 381.]

15-5-311. WHO MAY BE GUARDIAN -- PRIORITIES. (1) Any competent person, except as set forth hereafter, or a suitable institution may be appointed guardian of an incapacitated person.

(2) The person preferred by the incapacitated person shall be appointed guardian unless good cause be shown why appointment of such person is contrary to the best interests of the incapacitated person. If the incapacitated person is unable to express a preference, any previous expression, including a durable power of attorney for health care, may be considered by the court.

(3) Persons who are not disqualified have priority for appointment as guardian in the following order:

(a) The person preferred by the incapacitated person. The court shall always consider the wishes expressed by an incapacitated person as to who shall be appointed guardian;

(b) The person(s) nominated as health care agent in a durable power of attorney for health care by the incapacitated person, in the order of priority set forth in such power;

(c) The spouse of the incapacitated person;

(d) An adult child of the incapacitated person;

(e) A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;

(f) Any relative of the incapacitated person with whom he has resided for more than six (6) months prior to the filing of the petition;

(g) A person nominated by the person who is caring for him or paying benefits to him.

(4) No convicted felon, or person whose residence is the incapacitated person's proposed residence or will be frequented by the incapacitated person and is frequented by a convicted felon, shall be appointed as a guardian of an incapacitated person unless the court finds by clear and convincing evidence that such appointment is in the best interests of the incapacitated person.

(5) No individual shall be appointed as guardian of an incapacitated person unless all of the following first occurs:

(a) The proposed guardian has submitted to and paid for a criminal history and background check conducted pursuant to section [56-1004A](#)(2) and (3), Idaho Code;

(b) Pursuant to an order of the court so requiring, any individual who resides in the incapacitated person's proposed residence has submitted, at the proposed guardian's expense, to a criminal history and back-

ground check conducted pursuant to section [56-1004A](#)(2) and (3), Idaho Code;

(c) The findings of such criminal history and background checks have been made available to the visitor and guardian ad litem by the department of health and welfare; and

(d) The proposed guardian provided a report of his or her civil judgments and bankruptcies to the visitor, the guardian ad litem and all others entitled to notice of the guardianship proceeding pursuant to section [15-5-309](#), Idaho Code.

(6) The provisions of paragraphs (a) and (d) of subsection (5) of this section shall not apply to an institution nor to a legal or commercial entity.

(7) Each proposed guardian and each appointed guardian shall immediately report any change in his or her criminal history and any material change in the information required by subsection (5) of this section to the visitor, guardian ad litem, all others entitled to notice of the guardianship proceeding pursuant to section [15-5-309](#), Idaho Code, and to the court.

[15-5-311, as added by 1971, ch. 111, sec. 1, p. 233; am. 1999, ch. 128, sec. 4, p. 373; am. 2000, ch. 179, sec. 1, p. 448; am. 2004, ch. 52, sec. 1, p. 242; am. 2008, ch. 74, sec. 2, p. 196; am. 2013, ch. 262, sec. 2, p. 641.]

15-5-312. GENERAL POWERS AND DUTIES OF GUARDIAN. (1) A guardian of an incapacitated person has the powers and responsibilities of a parent who has not been deprived of custody of his unemancipated minor child except that a guardian is not legally obligated to provide from his own funds for the ward and is not liable to third persons for acts of the ward, and except as hereinafter limited. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court when the guardianship is limited:

(a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, he is entitled to custody of the person of his ward and may establish the ward's place of abode within or without this state. The guardian shall take reasonable measures to ensure that a convicted felon does not reside with, care for or visit the ward without court approval.

(b) If entitled to custody of his ward he shall make provision for the care, comfort and maintenance of his ward, and, whenever appropriate, arrange for his training and education. Without regard to custodial rights of the ward's person, he shall take reasonable care of his ward's clothing, furniture, vehicles and other personal effects and commence protective proceedings if other property of his ward is in need of protection.

(c) A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment or service. A guardian shall be automatically entitled to any information governed by the health insurance portability and accountability act of 1996 (HIPAA), 42 U.S.C. 1320d and 45 CFR 160 through 164, and the appointment of such guardian shall be deemed to grant such release authority.

(d) If no conservator for the estate of the ward has been appointed, the guardian may institute proceedings to appoint a conservator. In no cir-

cumstances shall the guardian exercise any of the powers of a conservator.

(e) A guardian shall be required to report to the court at least annually on the status of the ward. All reports shall be under oath or affirmation and shall comply with Idaho supreme court rules.

(f) If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided pursuant to this chapter, and the guardian must account to the conservator for funds expended.

(2) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

(3) A guardian may delegate certain of his responsibilities for decisions affecting the ward's well-being to the ward when reasonable under all of the circumstances.

[15-5-312, added 1971, ch. 111, sec. 1, p. 233; am. 1982, ch. 285, sec. 7, p. 726; am. 1989, ch. 241, sec. 2, p. 587; am. 2004, ch. 53, sec. 2, p. 245; am. 2008, ch. 74, sec. 3, p. 196; am. 2014, ch. 164, sec. 2, p. 460.]

15-5-313. PROCEEDINGS SUBSEQUENT TO APPOINTMENT -- VENUE. (a) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship, including proceedings to limit the authority previously conferred on a guardian, or to remove limitations previously imposed.

(b) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, if in this state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interest of the ward. A copy of any order accepting a resignation, altering his authority or removing a guardian shall be sent to the court in which acceptance of appointment is filed. If the court in which acceptance of appointment is filed is in another state, the court in this state shall proceed in accordance with chapters 9, 10 and/or 11, [title 15](#), Idaho Code, as appropriate.

[15-5-313, as added by 1971, ch. 111, sec. 1, p. 233; am. 1982, ch. 285, sec. 8, p. 727; am. 2006, ch. 182, sec. 2, p. 565.]

15-5-314. COMPENSATION AND EXPENSES. (1) If not otherwise compensated for services rendered or expenses incurred, any visitor, guardian ad litem, physician, guardian, or temporary guardian appointed in a protective proceeding is entitled to reasonable compensation from the estate for services rendered and expenses incurred in such status, including for services rendered and expenses incurred prior to the actual appointment of said guardian

or temporary guardian which were reasonably related to the proceedings. If any person brings or defends any guardianship proceeding in good faith, whether successful or not, he or she is entitled to receive from the estate his or her necessary expenses and disbursements including reasonable attorney's fees incurred in such proceeding. If the estate is inadequate to bear any of the reasonable compensation, fees, and/or costs referenced in this section, the court may apportion the reasonable compensation, fees, and/or costs to any party, or among the parties, as the court deems reasonable.

(2) If court visitor services are provided by court personnel, any monies recovered shall be collected through the clerk of the district court of the county in which the appointment was made and the clerk shall pay the monies to the state treasurer for deposit in the guardianship and conservatorship project fund established by section [31-3201G](#), Idaho Code.

[15-5-314, added 2002, ch. 215, sec. 1, p. 594; am. 2014, ch. 164, sec. 3, p. 461.]

15-5-315. GUARDIAN AD LITEM -- DUTIES. Subject to the direction of the court, the guardian ad litem shall have the following duties, which shall continue until the resignation of the guardian ad litem or until the court removes the guardian ad litem or no longer has jurisdiction, whichever occurs first:

(1) To conduct an independent factual investigation of the circumstances of the ward including, without limitation, the circumstances described in the petition;

(2) To file with the court a written report stating the results of the investigation, the guardian ad litem's recommendations, and such other information as the court may require. The guardian ad litem's written report shall be delivered to the court, with copies to all parties to the case, at least five (5) days before the date set for the adjudicatory hearing;

(3) To act as an advocate for the ward for whom appointed at each stage of the proceedings under this chapter and to be charged with the general representation of the ward. To that end, the guardian ad litem shall participate fully in the proceedings to the degree necessary to adequately represent the ward, and shall be entitled to confer with the ward and the ward's immediate family including, but not limited to, spouse, parents, siblings, children and next of kin;

(4) To facilitate and negotiate to ensure that the court, the department of health and welfare, if applicable, and the ward's attorney, if any, each fulfill their obligations to the ward in a timely fashion;

(5) To monitor the circumstances of a ward, if the ward is found to be within the purview of this chapter, to assure compliance with the law, and to assure that the terms of the court's orders are being fulfilled and remain in the best interest of the ward;

(6) To meet any parent or other person having legal or physical custody of the ward, record the concerns of the parent, and report them to the court or, if no such meeting occurs, file an affidavit stating why no meeting occurred;

(7) To maintain all information regarding the case confidential and to not disclose such information except to the court or to other parties to the case;

(8) To determine whether existing powers, trusts, and other measures may adequately give the ward the legal protection otherwise provided by a guardian, or whether such powers, trusts or other measures could be reason-

ably created and, if so, to recommend that either no guardianship be granted or that only a suitably limited guardianship be granted; and

(9) To exercise such other and further duties as may be expressly imposed by court order.

[15-5-315, added 2005, ch. 49, sec. 1, p. 181.]

15-5-316. GUARDIAN AD LITEM -- RIGHTS AND POWERS. The guardian ad litem has the following rights and powers to fulfill the duties set forth in section [15-5-315](#), Idaho Code, which shall continue until the resignation of the guardian ad litem or until the court removes the guardian ad litem or no longer has jurisdiction, whichever occurs first.

(1) The guardian ad litem shall have the right and power to file pleadings, motions, memoranda and briefs on behalf of the ward, and to have all of the rights of the ward, whether conferred by statute, rule of court, or otherwise.

(2) All parties to any proceeding under this chapter shall promptly notify the guardian ad litem, and the guardian's attorney, if any, of all hearings, staff hearings or meetings, investigations, depositions, and significant changes of circumstances of the ward.

(3) Except to the extent prohibited or regulated by federal law, upon presentation of a copy of the order appointing the guardian ad litem, any person or agency including, without limitation, any hospital, school organization, department of health and welfare, doctor, nurse or other health care provider, psychologist, psychiatrist, police department, or mental health clinic, shall permit the guardian ad litem to inspect and copy pertinent records relating to the ward necessary for the proceeding for which the guardian ad litem has been appointed.

(4) The guardian ad litem may request, and the court may order whether in response to such request or otherwise, a criminal history and background check to be conducted at the proposed guardian's expense on any individual who resides in the ward's proposed residence. Any such check shall be conducted pursuant to section [56-1004A](#) (2) and (3), Idaho Code.

[15-5-316, added 2005, ch. 49, sec. 2, p. 182; am. 2008, ch. 74, sec. 4, p. 197; am. 2013, ch. 262, sec. 3, p. 642; am. 2015, ch. 246, sec. 1, p. 1042.]

15-5-318. TERMINATION OR MODIFICATION OF GUARDIANSHIP. (1) A guardianship terminates upon the death of the ward or upon order of the court.

(2) On petition of a ward, a guardian, or another person interested in the ward's welfare, the court may terminate a guardianship if the ward no longer needs the assistance or protection of a guardian. The court may modify the type of appointment or powers granted to the guardian if the extent of protection or assistance previously granted is currently excessive or insufficient or the ward's capacity to provide for support, care, education, health, and welfare has so changed as to warrant that action.

(3) Except as otherwise ordered by the court for good cause, the court, before terminating a guardianship, shall follow the same procedures to safeguard the rights of the ward as apply to a petition for guardianship. Upon presentation by the petitioner of evidence establishing a prima facie case for termination, the court shall order the termination unless it is proven that continuation of the guardianship is in the best interest of the ward.

[15-5-318, added 2014, ch. 135, sec. 1, p. 371.]

PART 4.

PROTECTION OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS

15-5-401. PROTECTIVE PROCEEDINGS. Upon petition and after notice and hearing in accordance with the provisions of this part, the court may appoint a conservator or make other protective order for cause as follows:

(a) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by his minority, or that funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds.

(b) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that (1) the person is unable to manage his property and affairs effectively for reasons such as mental illness, mental disability, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and (2) the person has property which will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care and welfare of the person or those entitled to be supported by him and that protection is necessary or desirable to obtain or provide funds.

[15-5-401, added 1971, ch. 111, sec. 1, p. 233; am. 1989, ch. 241, sec. 3, p. 589; am. 2010, ch. 235, sec. 5, p. 547.]

15-5-402. PROTECTIVE PROCEEDINGS -- JURISDICTION OF AFFAIRS OF PROTECTED PERSONS. After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has:

(a) Exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;

(b) Exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this state shall be managed, expended or distributed to or for the use of the protected person or any of his dependents;

(c) Concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and his title to any property or claim.

[I.C., sec. 15-5-402, as added by 1971, ch. 111, sec. 1, p. 233.]

15-5-403. VENUE. Venue for proceedings under this chapter is:

(a) In the place in this state where the person to be protected resides whether or not a guardian has been appointed in another place; or

(b) If the person to be protected does not reside in this state, in any place where he has property.

[I.C., sec. 15-5-403, as added by 1971, ch. 111, sec. 1, p. 233.]

15-5-404. ORIGINAL PETITION FOR APPOINTMENT OR PROTECTIVE ORDER. (a) The person to be protected, any person who is interested in his estate, affairs or welfare including his parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of his property and affairs may petition for the appointment of a conservator or for other appropriate protective order.

(b) The petition shall set forth to the extent known, the interest of the petitioner; the name, age, residence and address of the person to be protected; the name and address of his guardian, if any; the name and address of his nearest relative known to the petitioner; a general statement of his property with an estimate of the value thereof, including any compensation, insurance, pension or allowance to which he is entitled; and the reason why appointment of a conservator or other protective order is necessary. If the appointment of a conservator is requested, the petition also shall set forth the name and address of the person whose appointment is sought and the basis of his priority for appointment.

(c) The petition shall include a financial plan for the proposed actions of the conservator regarding the financial affairs of the protected person after appointment of the conservator, to the extent reasonably known to the petitioner at the time of filing of the petition. If the complete assets, income, expenses, debts and other financial concerns of the protected person are not reasonably known to the petitioner at the time the petition is filed, or if the petitioner is not the proposed conservator, then the conservator shall submit to the court, and to all interested persons, in writing, within the ninety (90) day inventory, as a part thereof, a financial plan covering all of the assets, income, expenses, debts and other financial concerns of the protected person. Such financial plan must also be given to any person who has filed a request for notice under section [15-5-406](#), Idaho Code, and to other persons as the court may direct. Such financial plan shall be given to all such persons in accordance with the methods set forth in section [15-1-401](#), Idaho Code. If the financial plan changes during any time period between the periodic reports of the conservator, the modified financial plan shall be filed with the next report as a part thereof. The financial plan and any modified financial plan filed pursuant to this subsection (c) shall be subject to examination and review by the court, or persons designated by the court to make such examination and review, as provided by rules adopted by the Idaho supreme court.

[15-5-404, added 1971, ch. 111, sec. 1, p. 233; am. 2005, ch. 51, sec. 2, p. 188; am. 2009, ch. 78, sec. 2, p. 214.]

15-5-405. NOTICE. On a petition for appointment of a conservator or other protective order, notice shall be given in accordance with section [15-5-309](#), Idaho Code.

[15-5-405, as added by 1971, ch. 111, sec. 1, p. 233; am. 2007, ch. 70, sec. 2, p. 188; am. 2007, ch. 71, sec. 3, p. 194; am. 2008, ch. 27, sec. 4, p. 45.]

15-5-406. PROTECTIVE PROCEEDINGS -- REQUEST FOR NOTICE -- INTERESTED PERSON. Any person desiring notice of any order or filing in a protective proceeding described in this part involving a person in whom he is interested may file a request for notice with the court stating his name, the name of the alleged disabled person, the nature of the requesting person's interest,

and his address or that of his attorney. Upon payment of any fee required by statute or court rule, the clerk shall mail a copy of the request to the conservator if one has been appointed, or to the petitioner if there is no conservator. A request is effective only as to matters occurring after its filing.

[15-5-406, as added by 1971, ch. 111, sec. 1, p. 233; am. 1982, ch. 285, sec. 9, p. 727; am. 2007, ch. 71, sec. 4, p. 194.]

15-5-407. PROCEDURE CONCERNING HEARING AND ORDER ON ORIGINAL PETITION. (a) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it must appoint an attorney to represent the minor, giving consideration to the choice of the minor if fourteen (14) years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

(b) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing.

Unless the person to be protected has counsel of his own choice, the court may appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the alleged disability is mental illness, mental disability, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(c) After hearing, upon finding that a basis of the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate order.

[15-5-407, added 1971, ch. 111, sec. 1, p. 233; am. 1973, ch. 167, sec. 14, p. 319; am. 2010, ch. 235, sec. 6, p. 547.]

15-5-407A. TEMPORARY AND EMERGENCY APPOINTMENTS. (a) The court may appoint upon an ex parte petition, without hearing, a person to act as temporary conservator, pending the final hearing, upon a finding supported by statement made under oath that an emergency situation exists. The emergency appointment shall remain in effect no longer than ninety (90) days, unless extended for good cause upon application of the temporary conservator.

(b) Any one (1) of the following shall be considered an emergency situation:

(1) A finding that the person to be protected is unable to reasonably manage said person's finances and as a result the person's assets will be wasted or dissipated unless proper management is provided without delay; or

(2) A finding that the person to be protected has been taken advantage of and that the situation is likely to continue unless a temporary appointment is made without delay; or

(3) A finding that funds are needed for support, care and welfare of the person to be protected and a temporary appointment is necessary to secure such funding; or

(4) A finding that other conditions exist that in the court's determination necessitate the appointment of a temporary conservator.

(c) The duty of a temporary conservator shall be to preserve and protect the assets of the estate and to provide the funding necessary for the support, care and welfare of the person to be protected. The conservator shall have all the powers enumerated in section [15-5-424](#), Idaho Code, to be exercised, however, only within said limited context. The court may expand the duties of the temporary conservator upon application and a finding that a proposed action is necessary prior to the hearing.

(d) A temporary conservator shall not remove any of the assets of the estate from the jurisdiction of the court without a specific order to that effect.

(e) The petition for appointment of a temporary conservator must be accompanied by a petition for appointment of a conservator pursuant to section [15-5-404](#), Idaho Code.

(f) If the person to be protected is a minor, the court shall appoint a guardian ad litem for said minor at the same time the temporary appointment of a conservator is made.

(g) Upon application by an interested party and a hearing, the court may limit the powers and duties of the temporary conservator.

(h) Notice of the appointment of a temporary conservator shall be given to all interested persons by the petitioner within seventy-two (72) hours after the date of such appointment.

(i) The court shall hold a hearing on the appropriateness of the temporary appointment within fourteen (14) days if requested by an interested party. In such event, if a visitor and physician have not already been appointed, the court shall appoint a visitor to meet with the alleged incapacitated person and to make a written report to the court, and shall appoint a physician to examine the proposed ward and submit a written report to the court giving preference to the appointment of the proposed ward's treating physician if the proposed ward has a current treating physician.

[15-5-407A, added 2004, ch. 53, sec. 1, p. 244; am. 2005, ch. 52, sec. 2, p. 190; am. 2020, ch. 123, sec. 3, p. 382.]

15-5-408. PERMISSIBLE COURT ORDERS. (a) The court shall exercise the authority conferred in the part so as to encourage the development of maximum self-reliance and independence of the protected person and make protective orders only to the extent necessitated by the protected person's actual mental and adaptive limitations and other conditions warranting the procedure.

(b) The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons:

(1) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for his benefit or the benefit of his dependents.

(2) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs

of the minor which are or might be necessary for the best interests of the minor, his family and members of his household.

(3) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of his household, all the powers over his estate and affairs which he could exercise if present and not under disability, except the power to make a will. These powers include, but are not limited to power to make gifts, to convey or release his contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to exercise or release his powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment, to enter into contracts, to create revocable or irrevocable trusts of property of the estate which may extend beyond his disability or life, to exercise options of the disabled person to purchase securities or other property, to exercise his right to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value, to exercise his right to an elective share in the estate of his deceased spouse and to renounce any interest by testate or intestate succession or by inter vivos transfer.

(4) The court may exercise or direct the exercise of, its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding twenty per cent (20%) of any year's income of the estate or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person, and that he either is incapable of consenting or has consented to the proposed exercise of power.

(5) An order made pursuant to this section determining that a basis for appointment of a conservator or other protective order exists, has no effect on the capacity of the protected person.

[I.C., sec. 15-5-408, as added by 1971, ch. 111, sec. 1, p. 233; am. 1982, ch. 285, sec. 10, p. 728.]

15-5-409. PROTECTIVE ARRANGEMENTS AND SINGLE TRANSACTIONS AUTHORIZED. (a) If it is established in a proper proceeding that a basis exists as described in section [15-5-401](#) of this Part for affecting the property and affairs of a person the court, without appointing a conservator, may authorize, direct or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include, but are not limited to, payment, delivery, deposit or retention of funds or property, sale, mortgage, lease or other transfer of property, entry into an annuity contract, a contract for life care, a deposit contract, a contract for training and education, or addition to or establishment of a suitable trust.

(b) When it has been established in a proper proceeding that a basis exists as described in section [15-5-401](#) of this Part for affecting the property and affairs of a person the court, without appointing a conservator, may authorize, direct or ratify any contract, trust or other transaction relating to the protected person's financial affairs or involving his estate if the court determines that the transaction is in the best interests of the protected person.

(c) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of his disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment.

(d) If it is established in a proper proceeding that a basis exists as described in section [15-5-401](#) of this Part for affecting property and affairs of a person, the court may in its discretion, without appointing a conservator, order the establishment or continuation of a special needs trust as provided in [chapter 14, title 68](#), Idaho Code.

[I.C., sec. 15-5-409, as added by 1971, ch. 111, sec. 1, p. 233; am. 1995, ch. 214, sec. 2, p. 745.]

15-5-409a. COMPROMISE OF CLAIM OF MINOR -- PROCEDURE. (1) When a minor has a claim for money against a third person, the persons or entities listed below have the right to petition for a compromise of the claim in the following order of priority:

- (a) An appointed conservator of the minor;
- (b) A guardian of the minor, if appointed;
- (c) Either or both parents, provided that:
 - (i) If the parents are living separate and apart, then the parent who has been awarded primary physical custody; or
 - (ii) If no custody award has been made, the parent with whom the minor is living;
- (d) A de facto custodian; and
- (e) Any other legal representative.

(2) The court for good cause may pass over a person having priority under subsection (1) of this section and appoint a person having less priority or no priority; provided that the court shall not pass over a parent or parents unless the court concludes that the parent or parents are incapable or unwilling to act reasonably and in the best interest of the minor. Such proposed compromise is not effective until it is approved by the district court of the county where the minor resides or, if the minor is not a resident of the state of Idaho, by the district court of the county where the claim arose, upon verified petition, filed with the court.

(3) A verified petition made pursuant to this section shall include the following:

- (a) The name, age and residence of the minor;
- (b) The facts that bring the minor within the purview of this section, including the circumstances that make it a claim for money, the name of the third person against whom the claim is made and, if the claim is the result of an accident, the date, place and facts of the accident;
- (c) The names and residence of the parents or guardian of the minor;
- (d) The name and residence of the person or persons having physical custody or control of the minor;
- (e) The name and residence of the petitioner, the relationship of the petitioner to the minor and the basis of the petitioner's right to compromise the claim;

(f) The total amount of proceeds of the proposed compromise, the apportionment of those proceeds and whether the fees and expenses are to be deducted before or after the calculation of any contingency fee, including the amount to be used for:

- (i) Attorney's fees and whether the attorney's fees are fixed or contingent fees;
- (ii) Medical expenses; or
- (iii) Other expenses;

(g) Whether the petitioner believes the acceptance of this compromise is in the best interest of the minor;

(h) That the petitioner has been advised and understands that acceptance of the compromise will bar the minor from seeking further relief from the third person offering the compromise;

(i) If the claim involves a personal injury suffered by the minor, a summary of:

- (i) The injury, prognosis, treatment and progress of recovery of the minor; and
- (ii) The amount of medical expenses incurred to date, the nature and amount of medical expenses that have been paid and by whom, any amount owing for medical expenses and an estimate of the amount of medical expenses that may be incurred in the future; and

(j) The policy limits of the insurance contract, if applicable.

(4) (a) If the minor's claim is less than ten thousand dollars (\$10,000) and the court is satisfied after review of the verified petition that the compromise is reasonable and in the best interest of the minor, the court may approve the compromise or set a hearing;

(b) If the minor's claim is ten thousand dollars (\$10,000) or more, the court shall set a hearing for approval of the compromise.

(5) If the court finds the compromise is reasonable and in the best interest of the minor, the court may approve such compromise and may direct the money be paid:

- (a) To the parents, guardian, trustee, conservator, legal representative or the designated payee thereof in accordance with this chapter;
- (b) Subject to the provisions of an appropriate protective order; or
- (c) In accordance with the provisions of [chapter 14, title 68](#), Idaho Code.

(6) No filing fee shall be charged for the filing of any petition under the provisions of this section.

[15-5-409a, added 1973, ch. 26, sec. 2, p. 50; am. 1974, ch. 199, sec. 1, p. 1516; am. 1989, ch. 214, sec. 1, p. 523; am. 1995, ch. 214, sec. 3, p. 746; am. 2016, ch. 238, sec. 1, p. 633.]

15-5-410. WHO MAY BE APPOINTED CONSERVATOR -- PRIORITIES. (1) The court may appoint an individual, except as set forth hereafter, or a corporation with general power to serve as trustee, as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:

- (a) An individual or corporation nominated by the protected person if he is fourteen (14) or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;
- (b) The individual or corporation nominated as conservator of the protected person in the financial power of attorney of the protected per-

son, or if no such nomination is made therein, the individual or corporation nominated as agent therein, provided that:

- (i) If the nomination is of coconservators, or coagents, as appropriate, the court may consider whether appointment of coconservators is in the best interests of the protected person or whether a sole conservator should be appointed;
- (ii) If several individuals or corporations are nominated in order of priority, the court shall consider such nominations in that order of priority; and
- (iii) If more than one (1) financial power of attorney made by the protected person exists, the court shall determine which financial power of attorney is appropriate to be the basis for nomination of a conservator;
- (c) The spouse of the protected person;
- (d) An adult child of the protected person;
- (e) A conservator, guardian of property or other like fiduciary, but not a fiduciary serving only as a trustee, appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;
- (f) A parent of the protected person, or a person nominated by the will of a deceased parent;
- (g) Any relative of the protected person with whom he has resided for more than six (6) months prior to the filing of the petition;
- (h) A person nominated by the person who is caring for him or paying benefits to him.

(2) A person in priorities (c), (d), (e), (f) or (g) of subsection (1) of this section may nominate in writing a person to serve in his stead. With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court for good cause, may pass over a person having priority and appoint a person having less priority or no priority.

(3) No convicted felon shall be appointed as a conservator of the estate of a protected person unless the court finds by clear and convincing evidence that such appointment is in the best interests of the protected person.

[15-5-410, as added by 1971, ch. 111, sec. 1, p. 233; am. 1971, ch. 126, sec. 1, p. 487; am. 2004, ch. 52, sec. 2, p. 243; am. 2008, ch. 145, sec. 1, p. 429.]

15-5-411. BOND. The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it shall specify. Unless otherwise directed, the bond shall be in the amount of the aggregate capital value of the property of the estate in his control plus one (1) year's estimated income minus the value of securities deposited under arrangements requiring an order by the court for their removal and the value of any land which the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization. The court in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land.

[I.C., sec. 15-5-411, as added by 1971, ch. 111, sec. 1, p. 233.]

15-5-412. TERMS AND REQUIREMENTS OF BONDS. (a) The following requirements and provisions apply to any bond required under section [15-5-411](#) of this Part:

(1) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other;

(2) By executing an approved bond of a conservator, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner;

(3) On petition of a successor conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator;

(4) The bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(b) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

[I.C., sec. 15-5-412, as added by 1971, ch. 111, sec. 1, p. 233.]

15-5-413. ACCEPTANCE OF APPOINTMENT -- CONSENT TO JURISDICTION. By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the conservator, or mailed to him by registered or certified mail at his address as listed in the petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

[I.C., sec. 15-5-413, as added by 1971, ch. 111, sec. 1, p. 233.]

15-5-414. COMPENSATION AND EXPENSES. If not otherwise compensated for services rendered or expenses incurred, any visitor, guardian ad litem, physician, conservator or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate for services rendered and expenses incurred in such status, including for services rendered and expenses incurred prior to the actual appointment of said conservator or special conservator which were reasonably related to the proceedings. If any person brings or defends any conservatorship proceeding in good faith, whether successful or not, he or she is entitled to receive from the estate his or her necessary expenses and disbursements including reasonable attorney's fees incurred in such proceeding. If the estate is inadequate to bear any of the reasonable compensation, fees, and/or costs referenced in this section, the court may apportion the reasonable compensation, fees, and/or costs to any party, or among the parties, as the court deems reasonable.

[I.C., sec. 15-5-414, as added by 1971, ch. 111, sec. 1, p. 233; am. 2002, ch. 215, sec. 2, p. 594.]

15-5-415. DEATH, RESIGNATION OR REMOVAL OF CONSERVATOR. The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After his death, resignation or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of his predecessor.

[I.C., sec. 15-5-415, as added by 1971, ch. 111, sec. 1, p. 233.]

15-5-416. PETITIONS FOR ORDERS SUBSEQUENT TO APPOINTMENT. (a) Any person interested in the welfare of a person for whom a conservator has been appointed may file a petition in the appointing court for an order (1) requiring bond or security or additional bond or security, or reducing bond, (2) requiring an accounting for the administration of the trust, (3) directing distribution, (4) removing the conservator and appointing a temporary or successor conservator, or (5) granting other appropriate relief.

(b) A conservator may petition the appointing court for instructions concerning his fiduciary responsibility.

(c) Upon notice and hearing, the court may give appropriate instructions or make any appropriate order.

[I.C., sec. 15-5-416, as added by 1971, ch. 111, sec. 1, p. 233.]

15-5-417. GENERAL DUTY OF CONSERVATOR. In the exercise of his powers, a conservator is to act as a fiduciary and shall observe the standards of care applicable to trustees as described by section [15-7-302](#) of this code.

[I.C., sec. 15-5-417, as added by 1971, ch. 111, sec. 1, p. 233.]

15-5-419. REPORTING REQUIREMENTS FOR CONSERVATORS. (1) Every conservator shall file with the court an inventory within ninety (90) days of appointment, an accounting at least annually, and a final accounting at the termination of the appointment of the conservator. All inventories and accountings shall be under oath or affirmation and shall comply with the Idaho supreme court rules. The court may require a conservator to submit to a physical check of the estate in his control, to be made in any manner the court may specify.

(2) If a conservator:

(a) Makes a substantial misstatement on filings of any required inventories or reports; or

(b) Is guilty of gross impropriety in handling the property of the protected person; or

(c) Willfully fails to file the report required by this section after receiving written notice of the failure to file and after a grace period of two (2) months have elapsed;

then the court may impose a fine in an amount not to exceed five thousand dollars (\$5,000) on the conservator. The court may appoint a guardian ad litem for the protected person on its own motion or on the motion of any interested party to represent the protected person in any proceedings hereunder and may also appoint appropriate persons or entities to make investigation of the actions of the conservator. The court may also order restitution of funds misappropriated from the estate of a protected person and may impose a surcharge upon the conservator responsible for such misappropriation for all damages, costs and other appropriate sums determined by the court, in addition to any fine imposed including, but not limited to, any fees and costs of

the guardian ad litem. The court may take any other actions which are in the best interests of the protected person and the protection of the assets of the protected person. Any sums awarded hereunder shall be paid by the conservator and may not be paid by the estate of the protected person. The court may enter judgment against a conservator for any or all of the foregoing and may impose judgment against any bond of such conservator.

[15-5-419, added 1971, ch. 111, sec. 1, p. 233; am. 1989, ch. 241, sec. 4, p. 589; am. 1990, ch. 290, sec. 1, p. 810; am. 1999, ch. 108, sec. 1, p. 336; am. 2005, ch. 50, sec. 1, p. 184; am. 2009, ch. 78, sec. 4, p. 215; am. 2014, ch. 164, sec. 5, p. 462.]

15-5-420. CONSERVATORS -- TITLE BY APPOINTMENT. (a) The appointment of a conservator vests in him title as trustee to all property of the protected person, presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys in fact, or to the part thereof specified in the order. An order specifying that only a part of the property of the protected person vests in the conservator creates a limited conservatorship.

(b) The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will or trust instrument, imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator.

(c) Until termination of his appointment, a conservator has the same power over the title to property of the protected person's estate that an absolute owner would have, provided however, that such power is held in trust for the benefit of the protected person. This power may be exercised without notice, hearing, or order of the court.

[15-5-420, added 1971, ch. 111, sec. 1, p. 233; am. 1982, ch. 285, sec. 11, p. 729; am. 2005, ch. 48, sec. 1, p. 180.]

15-5-421. RECORDING OF CONSERVATOR'S LETTERS. Letters of conservatorship are evidence of transfer of all assets, or the part thereof specified in the letters, of a protected person to the conservator. An order terminating a conservatorship is evidence of transfer of all assets of the estate subjected to the conservatorship from the conservator to the protected person, or his successors. Letters of conservatorship and orders terminating conservatorship may be recorded in the office of the county recorder in any county in which property affected by such letters or orders is located and, from the time of filing the same for record, notice is imparted to all persons of the contents of such letters or orders.

[I.C., sec. 15-5-421, as added by 1971, ch. 111, sec. 1, p. 233; am. 1982, ch. 285, sec. 12, p. 729.]

15-5-422. SALE, ENCUMBRANCE OR TRANSACTION INVOLVING CONFLICT OF INTEREST -- VOIDABLE -- EXCEPTIONS. Any sale or encumbrance to a conservator, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest is voidable unless the transaction is ap-

proved by the court after notice to interested persons and others as directed by the court.

[I.C., sec. 15-5-422, as added by 1971, ch. 111, sec. 1, p. 233.]

15-5-423. PERSONS DEALING WITH CONSERVATORS -- PROTECTION. A person who in good faith either assists a conservator or deals with him for value in any transaction other than those requiring a court order as provided in section [15-5-408](#) of this Part, is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in section [15-5-426](#) of this Part are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

[I.C., sec. 15-5-423, as added by 1971, ch. 111, sec. 1, p. 233.]

15-5-424. POWERS OF CONSERVATOR IN ADMINISTRATION. (1) A conservator has all of the powers conferred herein and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor under the age of eighteen (18) years, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in section [15-5-209](#) of this code until the minor attains the age of eighteen (18) years or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by part 2 of this chapter.

(2) A conservator has power without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee.

(3) A conservator, acting reasonably in efforts to accomplish the purpose for which he was appointed, may act without court authorization or confirmation to:

- (a) Collect, hold and retain assets of the estate including land in another state, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested;
- (b) Receive additions to the estate;
- (c) Continue or participate in the operation of any business or other enterprise;
- (d) Acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest;
- (e) Invest and reinvest estate assets in accordance with subsection (2) of this section;
- (f) Deposit estate funds in a bank including a bank operated by the conservator;
- (g) Acquire or dispose of an estate asset including land in another state for cash or on credit, at public or private sale; and to manage,

develop, improve, exchange, partition, change the character of or abandon an estate asset;

(h) Make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;

(i) Subdivide, develop or dedicate land to public use; to make or obtain the vacation of plats and adjust boundaries; to adjust differences in valuation on exchange or to partition by giving or receiving considerations; and to dedicate easements to public use without consideration;

(j) Enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship;

(k) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(l) Grant an option involving disposition of an estate asset, to take an option for the acquisition of any asset;

(m) Vote a security, in person or by general or limited proxy;

(n) Pay calls, assessments and any other sums chargeable or accruing against or on account of securities;

(o) Sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise;

(p) Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;

(q) Insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons;

(r) Borrow money to be repaid from estate assets or otherwise; to advance money for the protection of the estate or the protected person, and for all expenses, losses and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets and the conservator has a lien on the estate as against the protected person for advances so made;

(s) Pay or contest any claim; to settle a claim by or against the estate or the protected person by compromise, arbitration or otherwise; and to release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;

(t) Pay taxes, assessments, compensation of the conservator and other expenses incurred in the collection, care, administration and protection of the estate;

(u) Allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence or amortization, or for depletion in mineral or timber properties;

(v) Pay any sum distributable to a protected person or his dependent without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian or, if none, to a relative or other person with custody of his person;

(w) Employ persons, including attorneys, auditors, investment advisors or agents, even though they are associated with the conservator to advise or assist him in the performance of his administrative duties; to act upon their recommendation without independent investigation; and instead of acting personally, to employ one (1) or more agents to perform any act of administration, whether or not discretionary;

(x) Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties;

(y) Execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator; and

(z) Take control of, conduct, continue or terminate any accounts of the protected person on any social networking website, any microblogging or short message service website or any e-mail service website.

[15-5-424, added 1971, ch. 111, sec. 1, p. 233; am. 1973, ch. 167, sec. 15, p. 319; am. 2011, ch. 69, sec. 2, p. 146.]

15-5-425. DISTRIBUTIVE DUTIES AND POWERS OF CONSERVATOR. (a) A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care or benefit of the protected person and his dependents in accordance with the following principles:

(1) The conservator is to consider recommendations relating to the appropriate standard of support, education and benefit for the protected person made by a parent or guardian, if any. He may not be surcharged for sums paid to persons or organizations actually furnishing support, education or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person, unless he knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.

(2) The conservator is to expend or distribute sums reasonably necessary for the support, education, care or benefit of the protected person with due regard to (A) the size of the estate, the probable duration of the conservatorship and the likelihood that the protected person, at some future time, may be fully able to manage his affairs and the estate which has been conserved for him; (B) the accustomed standard of living of the protected person and members of his household; (C) other funds or sources used for the support of the protected person.

(3) The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves, and who are in need of support.

(4) Funds expended under this subsection may be paid by the conservator to any person, including the protected person to reimburse for expenditures which the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.

(5) A conservator, in discharging the responsibilities conferred by court order and this part, shall implement the principles described in section [15-5-408](#) (a) of this code.

(b) If the estate is ample to provide for the purposes implicit in the distributions authorized by the preceding subsections, a conservator for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make, in amounts which do not exceed in total for any year twenty percent (20%) of the income from the estate.

(c) When a minor who has not been adjudged disabled under subsection (b) of section [15-5-401](#) of this part attains his majority, his conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(d) When the conservator is satisfied that a protected person's disability (other than minority) has ceased, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(e) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into his possession, inform the executor or a beneficiary named therein that he has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If after forty (40) days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that he may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon application for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under section [15-3-204](#) of this code and to any person nominated executor in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection, and indorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section shall have the effect of an order of appointment of a personal representative as provided in section [15-3-308](#) and parts 6 through 10 of chapter 3 except that the estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior re-transfer to the conservator as personal representative.

(f) During the period between the death of a protected person and the appointment of a personal representative for the protected person's estate, or the conferral of the powers of a personal representative upon the conservator as provided in this section, the person acting as conservator at the time of the deceased protected person's death shall have the duties and powers of a temporary conservator as set forth in section [15-5-407A](#), Idaho Code, and the powers set forth in section [54-1142](#) (1) (j), Idaho Code.

[15-5-425, as added by 1971, ch. 111, sec. 1, p. 233; am. 1982, ch. 285, sec. 13, p. 730; am. 2006, ch. 181, sec. 3, p. 562.]

15-5-426. ENLARGEMENT OR LIMITATION OF POWERS OF CONSERVATOR. Subject to the restrictions in subsection (d) [(b) (4)] of section [15-5-408](#) of this Part, the court may confer on a conservator at the time of appointment or later, in addition to the powers conferred on him by sections [15-5-424](#) and [15-5-425](#) of this Part, any power which the court itself could exercise un-

der subsection[s] (b) and (c) [(b) (2) and (3)] of section [15-5-408](#) this Part. The court may, at the time of appointment or later, limit the powers of a conservator otherwise conferred by sections [15-5-424](#) and [15-5-425](#) of this Part, or previously conferred by the court, and may at any time relieve him of any limitation. If the court limits any power conferred on the conservator by section [15-5-424](#) or section [15-5-425](#) of this Part, the limitation shall be indorsed upon his letters of appointment.

[I.C., sec. 15-5-426, as added by 1971, ch. 111, sec. 1, p. 233.]

15-5-427. PRESERVATION OF ESTATE PLAN. In investing the estate, and in selecting assets of the estate for distribution under subsections (a) and (b) of section [15-5-425](#) of this Part, in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the conservator or the court, the conservator and the court should take into account and preserve insofar as possible any known estate plan of the protected person, including his will, any revocable trust of which he is settlor, and any contract, transfer or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated. The conservator may examine the will of the protected person.

[I.C., sec. 15-5-427, as added by 1971, ch. 111, sec. 1, p. 233; am. 1972, ch. 201, sec. 21, p. 510.]

15-5-428. CLAIMS AGAINST PROTECTED PERSON -- ENFORCEMENT. (a) A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods: (1) the claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant and the amount claimed; (2) the claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court and deliver or mail a copy of the statement to the conservator. A claim is deemed presented on the first to occur of receipt by the conservator of a written statement of claim or the filing with the court of the written statement of claim. A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within sixty (60) days after its presentation. The presentation of a claim tolls any statute of limitations relating to the claim until thirty (30) days after its disallowance.

(b) A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitation, and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.

(c) If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference is to be given to prior claims for the care, maintenance and education of the protected person or his dependents and existing claims for expenses of administration.

[I.C., sec. 15-5-428, as added by 1971, ch. 111, sec. 1, p. 233; am. 1972, ch. 201, sec. 22, p. 510.]

15-5-429. INDIVIDUAL LIABILITY OF CONSERVATOR. (a) Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(b) The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(c) Claims based on contracts entered into by a conservator in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in his fiduciary capacity, whether or not the conservator is individually liable therefor.

(d) Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding or action.

[I.C., sec. 15-5-429, as added by 1971, ch. 111, sec. 1, p. 233.]

15-5-430. TERMINATION OF PROCEEDING. The protected person, his personal representative, the conservator, or any other interested person may petition the court to terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedure as in an original proceeding for a protective order. The court, upon determining after notice and hearing that the minority or disability of the protected person has ceased or that it would be in the best interests of the protected person to establish the conservatorship in another jurisdiction may terminate the conservatorship and, where appropriate, order initiation of proceedings in another jurisdiction or delivery of the assets to a foreign conservator as set forth in chapters 9, 10 and/or 11, [title 15](#), Idaho Code. Upon termination, title to assets of the estate passes to the former protected person or to his successor subject to provision in the order for expenses of administration or to conveyances from the conservator to the former protected person or his successors, to evidence the transfer.

[15-5-430, as added by 1971, ch. 111, sec. 1, p. 233; am. 2006, ch. 182, sec. 3, p. 566.]

15-5-431. PAYMENT OF DEBT AND DELIVERY OF PROPERTY TO FOREIGN CONSERVATOR WITHOUT LOCAL PROCEEDINGS. Any person indebted to a protected person, or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a protected person may pay or deliver to a conservator, guardian of the estate or other like fiduciary appointed by a court of the state of residence of the protected person, upon being presented with proof of his appointment and an affidavit made by him or on his behalf stating:

(a) That no protective proceeding relating to the protected person is pending in this state, including any proceeding under chapters 9, 10 and/or 11, [title 15](#), Idaho Code; and

(b) That the foreign conservator is entitled to payment or to receive delivery.

If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this state, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.

[15-5-431, as added by 1971, ch. 111, sec. 1, p. 233; am. 1973, ch. 167, sec. 16, p. 319; am. 2006, ch. 182, sec. 4, p. 566.]

15-5-433. PROVISIONS FOR CONSERVATOR OF MINOR FROM AGE EIGHTEEN TO AGE TWENTY-ONE. If so stated in the order appointing such conservator, or in any supplemental order entered prior to the time the minor reaches the age of eighteen (18) years, the conservator for a minor (said minor being hereinafter referred to as the "protected person") shall act until the protected person reaches the age of twenty-one (21) years, subject to the following provisions:

(a) The court may state in such order special terms and conditions for such conservator when acting while the protected person is of the age of eighteen (18) years or more, but less than the age of twenty-one (21) years;

(b) Upon reaching the age of eighteen (18) years, the protected person may, at any time thereafter, petition the court to terminate or modify the conservatorship prior to the protected person attaining the age of twenty-one (21) years. Said petition must be based on the ability of the minor to adequately manage his or her own financial affairs, demonstrated by appropriate evidence, including:

- (1) Demonstrated ability to manage his or her financial affairs;
- (2) Submission of budgets and other appropriate similar documents;
- (3) Employment history;
- (4) Educational history;
- (5) Criminal history; and
- (6) Other relevant evidence;

(c) The burden of showing such financial management ability shall be upon the protected person and must be demonstrated by clear and convincing evidence thereof; and

(d) The court may, in its discretion, order reports to be filed by the conservator, and/or a court visitor, and/or may appoint a guardian ad litem for the protected person.

The original determination of whether to extend the conservatorship to age twenty-one (21) years shall be within the discretion of the court and may be based on such factors as the court deems to be relevant to such determination.

[15-5-433, added 1996, ch. 423, sec. 1, p. 1447.]

15-5-434. GUARDIAN AD LITEM -- DUTIES. Subject to the direction of the court, the guardian ad litem shall have the following duties, which shall continue until the resignation of the guardian ad litem or until the court removes the guardian ad litem or no longer has jurisdiction, whichever occurs first:

(1) To conduct an independent factual investigation of the circumstances of the protected person including, without limitation, the circumstances described in the petition;

(2) To file with the court a written report stating the results of the investigation, the guardian ad litem's recommendations, and such other in-

formation as the court may require. The guardian ad litem's written report shall be delivered to the court, with copies to all parties to the case, at least five (5) days before the date set for the adjudicatory hearing;

(3) To act as an advocate for the protected person for whom appointed at each stage of the proceedings under this chapter and to be charged with the general representation of the protected person. To that end, the guardian ad litem shall participate fully in the proceedings to the degree necessary to adequately represent the protected person, and shall be entitled to confer with the protected person and the protected person's immediate family including, but not limited to, spouse, parents, siblings, children and next of kin;

(4) To facilitate and negotiate to ensure that the court, the department of health and welfare, if applicable, and the protected person's attorney, if any, each fulfill their obligations to the protected person in a timely fashion;

(5) To monitor the circumstances of a protected person, if the protected person is found to be within the purview of this chapter, to assure compliance with the law, and to assure that the terms of the court's orders are being fulfilled and remain in the best interest of the protected person;

(6) To meet any parent or other person having legal or physical custody of the protected person, record the concerns of the parent, and report them to the court or, if no such meeting occurs, file an affidavit stating why no meeting occurred;

(7) To maintain all information regarding the case confidential and to not disclose such information except to the court or to other parties to the case;

(8) To determine whether existing powers, trusts, and other measures may adequately give the protected person the legal protection otherwise provided by a conservator, or whether such powers, trusts or other measures could be reasonably created and, if so, to recommend that either no conservatorship be granted or that only a suitably limited conservatorship be granted; and

(9) To exercise such other and further duties as may be expressly imposed by court order.

[15-5-434, added 2005, ch. 49, sec. 3, p. 183.]

15-5-435. GUARDIAN AD LITEM -- RIGHTS AND POWERS. The guardian ad litem has the following rights and powers to fulfill the duties set forth in section [15-5-434](#), Idaho Code, which shall continue until the resignation of the guardian ad litem or until the court removes the guardian ad litem or no longer has jurisdiction, whichever occurs first.

(1) The guardian ad litem shall have the right and power to file pleadings, motions, memoranda and briefs on behalf of the protected person, and to have all of the rights of the protected person, whether conferred by statute, rule of court, or otherwise.

(2) All parties to any proceeding under this chapter shall promptly notify the guardian ad litem, and the conservator's attorney, if any, of all hearings, staff hearings or meetings, investigations, depositions, and significant changes of circumstances of the protected person.

(3) Except to the extent prohibited or regulated by federal law, upon presentation of a copy of the order appointing the guardian ad litem, any person or agency including, without limitation, any hospital, school organization, department of health and welfare, doctor, nurse or other

health care provider, psychologist, psychiatrist, police department, or mental health clinic, shall permit the guardian ad litem to inspect and copy pertinent records relating to the protected person necessary for the proceeding for which the guardian ad litem has been appointed.

[15-5-435, added 2005, ch. 49, sec. 4, p. 184; am. 2015, ch. 246, sec. 2, p. 1042.]

PART 6. BOARDS OF COMMUNITY GUARDIAN

15-5-601. DESIGNATION OF BOARDS OF COMMUNITY GUARDIAN. (a) After making a determination that there exists a need within a county for a guardian for those persons in need of guardianship and for whom there is no person or corporation qualified and willing to act in such capacity, the board of county commissioners may create and budget for, within the county, a board of community guardian. The board of county commissioners of one or more counties within a judicial district may jointly create and budget for a board of community guardian within that district.

[15-5-601, added 1982, ch. 285, sec. 14, p. 731; am. 1987, ch. 320, sec. 1, p. 673; am. 1992, ch. 22, sec. 1, p. 71.]

15-5-602. BOARD STRUCTURE -- POWERS AND DUTIES. (a) Any board of community guardian which is created within a county or counties in a judicial district shall operate under the laws of the state of Idaho, including the Idaho guardianship, conservatorship and trust laws.

(b) A board of community guardian shall consist of not fewer than seven (7) or more than eleven (11) members who are representatives of community interests involving persons needing guardians or conservators as defined by [chapter 5, title 15](#), Idaho Code. Members shall be appointed by the board of county commissioners that created the board of community guardian under section [15-5-601](#), Idaho Code.

(1) The terms of the members of the board shall be for four (4) years and shall be staggered. A number of members equaling or most closely exceeding one-half (1/2) shall initially be appointed for three (3) years. Any vacancy created by resignation or expiration of term shall be filled in the same manner as the original appointment;

(2) A member will continue to serve on the board until that person's successor is appointed;

(3) The board shall meet not less than once each quarter;

(4) No person shall be a member of a board who is also an employee of the district court or the clerk of the district court;

(5) A board member having previously provided or currently providing services to a ward shall disclose such to the board and abstain from any decision or action taken concerning that particular ward;

(6) Board members and officers shall serve without pay;

(7) Each board shall elect its own chairman and other officers.

(c) A board, in those instances when a guardian and/or conservator is required and no qualified family member or other qualified person has volunteered to serve, may:

(1) Locate a qualified person to serve as guardian and/or conservator;
or

(2) Petition the court to be appointed guardian and/or conservator.

(d) The board shall have all the powers and duties where applicable by court order, as provided under section [15-5-312](#), Idaho Code, and/or sections [15-5-408](#) and [15-5-424](#), Idaho Code, and in addition thereto shall:

- (1) Locate and recommend to the court, where necessary, that a visitor be appointed as provided in section 15-5-503 [[15-5-303](#)], Idaho Code;
- (2) Have access to all confidential records, including abuse registry reports that may be maintained by state or private agencies or institutions, which records concern a person for whom the board acts as guardian and/or conservator. The name of the person reporting the alleged abuse shall be subject to disclosure according to [chapter 1, title 74](#), Idaho Code;
- (3) Review and monitor the services provided by public and private agencies to any incapacitated person for whom the board acts as guardian and/or conservator and determine the continued need for those services;
- (4) Assess a fee for services developed pursuant to this part;
- (5) Have the power, subject to the approval of the board of county commissioners, to adopt such rules as are necessary to carry out the duties and responsibilities of the board.

(e) When a board serves as guardian or conservator, it shall be compensated as other guardians or conservators pursuant to Idaho law. If, at the time the board is appointed as guardian and/or conservator, the incapacitated person for whom the board is to act has no funds, the court may waive the payment of fees.

(f) When a board serves as guardian and/or conservator there is created, at the time of filing of the order of appointment, a lien in favor of the board against any real property owned by the ward or protected person, enforceable only upon the termination of the guardianship and/or conservatorship, for all fees which were incurred throughout the duration of the services and which were not paid prior to termination. All fees incurred throughout the duration of the services and which were not paid prior to the termination of services shall relate back to the effective date of the lien. The board must record a notice of said lien within thirty (30) days of filing of the order of appointment. Such liens shall be recorded in every county where property subject to the lien is located. The notice shall contain at least the following information: full court heading of the action in which the appointment was made; the effective date of the lien; the name and address of the board; and any limitations or terms regarding the fees covered by the lien contained in the order of appointment. The court may postpone or arrange for gradual repayment of the fees if the court finds that the immediate repayment would create a hardship on the person.

(g) No member of a board of community guardian, any employees, or any visitor appointed at the request of such board pursuant to section [15-5-303](#), Idaho Code, shall be liable for civil damages by reason of authorizing medical treatment or surgery for the person for whom the board is appointed, if the board member, employee or visitor, after medical consultation with the person's physician, acts in good faith, is not negligent, and acts within the limits established for the guardian and/or conservator by the court. No such person shall be liable, by reason of his authorization, for injury to the person for whom the guardian and/or conservator has been appointed which injury results from the negligence or other acts of a third person, if the court has authorized the giving of medical consent by the board or the individual members of the board. No such person shall be liable in the performance of acts done in good faith within the scope of his authority as long as

the act is not of a wanton or grossly negligent nature. The board of community guardian shall be deemed to be a governmental entity for the purposes of application of the Idaho tort claims act.

[15-5-602, added 1982, ch. 285, sec. 14, p. 732; am. 1987, ch. 320, sec. 2, p. 673; am. 1990, ch. 213, sec. 8, p. 492; am. 1993, ch. 24, sec. 1, p. 83; am. 2001, ch. 97, sec. 1, p. 245; am. 2012, ch. 54, sec. 1, p. 152; am. 2015, ch. 141, sec. 11, p. 382.]

15-5-603. ANNUAL REPORT. (a) Each board shall report annually in writing to the board of county commissioners and, in the case of a multi-county board, to each participating county, its activities for the preceding year, which report shall contain:

- (1) A fiscal report which adequately reflects the financial operation of the board;
- (2) The number of volunteer guardians obtained by the board;
- (3) The number of incapacitated persons for whom the board is acting as guardian;
- (4) Recommendations for improving guardianship services in the circuit;
- (5) Such other matters as may be determined advisable by the board or the board of county commissioners.

The report shall be filed no later than April 1 of each year and shall cover the preceding calendar year.

(b) The board of county commissioners shall review each report and shall determine whether to dissolve or continue the board of community guardian in the county. Where there is a multi-county board of community guardian, the boards of county commissioners of all concerned counties must concur in a decision to dissolve the board of community guardian.

[15-5-603, added 1982, ch. 285, sec. 14, p. 733; am. 1987, ch. 320, sec. 3, p. 675.]