

TWIN FALLS COUNTY
BOARD OF COMMUNITY GUARDIANS
VOLUNTEER HANDBOOK

**A GUIDE TO IDAHO LAWS ON
GUARDIANSHIP**

As the populations of Idaho and the Nation continue to age, more and more problems will arise for elderly people who are alone, frail or disabled. The longer we live, the greater our chances are of becoming impaired, and it is a stark reality that we may find ourselves alone, afraid, and too confused or weak to care for or protect ourselves. In our mobile society there is often not enough familial or societal support to meet the needs of the older impaired adult.

Many older Idahoans will live to an elderly age, protected and cared for by loving family members and friends. It will never be necessary for some to relinquish their decision-making rights and responsibilities. Others will plan carefully and make provisions for their care far in advance of sometimes-necessary intervention, by establishing durable powers of attorney and trust instruments. Still others will find themselves incapacitated, mentally and physically, and in need of protective services. These are the elderly who may be in danger of losing their life, liberty or property without external help.

In situations where incapacitated adults have no available family, or whose family members are unable or unwilling to provide the necessary and complex care involved, the Courts may appoint others to assist these persons in providing for their basic needs. A person appointed by a Court and given the authority to make some or all decisions for another person is known as a Guardian. If the Court Orders include management of the estate of the incapacitated person, the manager is called a Conservator. The person to be cared for is called the “Ward”.

This guide is an introduction to and an explanation of the major concepts and procedures of current law. This is just a guide and only provides a general overview! *

Incapacity

The statutes presume a person is physically and mentally competent until it is shown that he/she is incapacitated. The Court decides whether a person is incapacitated. “Incapacity” means a legal, not medical, disability and is measured by function limitations and it is 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/her personal needs for food, clothing, shelter, health care, or safety, or an inability to manage his/her property or financial affairs. A simpler definition would be any person who is unable to perform the normal tasks of daily living and who requires help from others in order to cope with those demands.

Severe medical problems that interfere with their ability to manage their lives are common. Most suffer from some degree of mental confusion or dementia. Some are depressed, alone and isolated.

Goals of Guardianship

Guardianship is a powerful mechanism for protecting and restoring the rights of an incapacitated person who is unable to exercise those rights himself. It is in this light that Guardianship serves as an advocacy tool.

In 1982, the State of Idaho enacted legislation that provides for Volunteer Guardians and conservators for disabled, aged and otherwise impaired and vulnerable adults. It is expected that the great bulk of impaired people in need of such assistance will be older adults with minimal

TWIN FALLS COUNTY
BOARD OF COMMUNITY GUARDIANS
VOLUNTEER HANDBOOK

income. The law was likely a response to community concerns about impaired adults who have no one to handle their affairs or care for these citizens.

Because imposing a Guardianship on a person is such a drastic legal measure, the law provides that there must first be a necessity for such action, determined by a Court. This usually involves a finding of inability to care for self or manage property, or incapacity.

Court action is necessary in establishing Guardianship. The petition or application is submitted to the District Court, where a judge will resolve the Guardianship application. The petition is designed to provide the Court with the information necessary to determine the issues of incapacity or disability of the proposed Ward, the qualifications of the proposed Guardian, notice to other interested persons, jurisdiction of the Court, and other pertinent information.

DEFINITIONS

Incapacitated person - any person (except “developmentally disabled”) who is impaired to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning himself.

Ward - a person for whom a Guardian or conservator has been appointed.

Estate - all property belonging to a person.

Guardian - a person appointed by the Court to provide care and supervision over an incapacitated person.

Guardian Ad Litem - a person, normally an attorney, appointed by the Court, on a temporary basis to represent the legal interests of the alleged incapacitated person.

Least Restrictive Alternative - the development of maximum self-reliance and independence of the incapacitated person is always the goal of the Court.

Volunteer Guardian - appointed by the Board of Community Guardians to act as the Guardian representing the Board. The Volunteer Guardian has the same rights and protections as a Court appointed Guardian.

General Duties and Responsibilities

The individual who is appointed by the Board to serve as the Volunteer Guardian shall carry out diligently and in good faith, the general duties and responsibilities; shall at all time be subject to the control and direction of the Court; and, shall act in accordance with the provisions of any Guardianship plan.

The Volunteer Guardian shall:

- Become and remain personally acquainted with the Ward, the spouse of the Ward and other interested persons associated with the Ward and who are knowledgeable about the Ward, the Ward’s needs, and the Ward’s responsibilities,
- Exercise authority only as necessitated by the Ward’s limitations,
- Encourage the Ward to participate in decision-making,
- Maintain valid driver’s license and car insurance, if transporting Ward.

TWIN FALLS COUNTY
BOARD OF COMMUNITY GUARDIANS
VOLUNTEER HANDBOOK

In making decisions on behalf of the Ward, the Volunteer Guardian shall:

- Consider the expressed desires and personal values of the Ward to the extent known to the Guardian
- Strive to assure that the personal, civil, and human rights of the Ward are protected
- At all times act in the best interests of the Ward and exercise reasonable care, diligence and prudence
- File reports with the Court concerning the status of the Ward and any actions taken

Guardian Liability

A Volunteer Guardian trained by the Board of Community Guardian is not legally responsible for civil damages that may be assessed against the Ward, so long as the Guardian acts in good faith, is not negligent, and acts within the limits established for the Guardian by the Court. The Volunteer Guardian cannot transfer or delegate any legal authority or responsibility to another person.

Standards of Conduct for the Volunteer Guardian

This section will provide only a general overview of the standards of conduct you will be expected to observe.

The standards of conduct are based upon a “reasonable person” standard. That is, did the Guardian act as a reasonable person would in a similar set of circumstances? The Volunteer Guardian should always act in the best interest of the Ward. Sometimes the best interests of the Ward may conflict with the best interests or beliefs of the Volunteer Guardian. In these cases the Guardian should staff the matter with the Volunteer Coordinator. It may be decided that an order from the Court is necessary to resolve what action should be sought.

Once again, the philosophy of the “least restrictive alternative” should be utilized in making decisions. The goal of the Volunteer Guardian should always be to encourage the development of maximum self-reliance and independence of the Ward.

Termination of Guardianship

As statutes do not provide that Guardianships shall last for any specific length of time, the Court at any time may enter an order to summarily terminating a Guardianship in any of the following circumstances:

- The Ward is deceased
- No further need for the Guardianship (i.e., came into some money, family stepped in...)
- The Volunteer Guardian can no longer perform the duties of Guardian.

The Volunteer Guardian will be required to file a final report and accounting of their Guardianship activity with the Volunteer Coordinator detailing the final events of the Guardianship. The Volunteer Coordinator will then prepare an official report for the Court to dissolve the Guardianship.

Board of Community Guardian

Idaho law provides that counties can create Boards of Community Guardians to serve as Volunteer Guardians for county residents who are incapacitated, indigent, and for whom there are no other available resources for assistance with Guardianship matters. Usually, this means there are no family members willing or able to serve in this capacity.

TWIN FALLS COUNTY
BOARD OF COMMUNITY GUARDIANS
VOLUNTEER HANDBOOK

The Twin Falls County Commissioners have chosen to fund a Board of Community Guardians. That board acts as an administrative body that assists in recruiting, training and monitoring the activities of Volunteers who have agreed to serve as their proxy in the Guardianship process.

The Volunteer Coordinator is charged with the responsibility of receiving all referrals, screening and investigating possible wards. The Volunteer Coordinator is also charged with the responsibility to carry out the decisions of the Board of Community Guardians and has the duty to recruit, train, assist and monitor the activities of the Volunteer Guardians. The Coordinator then reports back to the Board.

When the Board of Community Guardians is appointed as the Guardian of a person, the Board, through the Volunteer Coordinator, will assign the case to a Volunteer Guardian who serves as an extension of the Board of Community Guardians.

The Volunteer Coordinator will give the Volunteer Guardian copies of the Court documents appointing the Board as Guardians, together with an official letter naming the Volunteer as the “Guardian” of the Ward to serve on behalf of the Board. The Volunteer Guardian should carry these documents at all times, as they will be needed to access the personal accounts and information of the Ward.

It is important to understand that the Volunteer Guardian is acting as a liaison between the Board and the Ward. Therefore that Volunteer Guardian will never be alone in their decision-making and should always feel free to seek advice from the Volunteer Coordinator and/or the Board.

Qualifications for Guardians

- Must be a Twin Falls County resident in the state of Idaho and over 18 years of age
- Interviewed and screened by the Board of Community Guardians through the Volunteer Coordinator
- Perform Guardianship functions and duties as required by Idaho laws and within the guidelines of the Board of Community Guardians
- Cannot be a convicted felon or have any prior violent-crime convictions and willing to consent to a criminal background check

Being a Volunteer Guardian

The primary responsibility of a Volunteer Guardian is to ensure that the Ward’s rights are protected, and that the Ward’s basic needs of shelter, food, clothing and safety are met.

Guardianship represents a drastic loss of the Ward’s ability to control his own life. It is important that the Volunteer Guardian make decisions that reflect the values and needs of the Ward. A Volunteer Guardian is generally responsible for assisting the Ward with the decisions that affect his personal life. Try first to make the same decision that the Ward would have made absent the incapacity. If the Ward cannot understand the situation or is unable to effectively communicate, and there are no past reliable expressions of preference, then base your decision on your judgment of the Ward’s best interests. Issues that are difficult to resolve should always be staffed with the Volunteer Coordinator.

In fact, the Volunteer Guardian should not make any important life decisions alone. Instead, the matter should be staffed with the Volunteer Coordinator who will then present the matter to the

TWIN FALLS COUNTY
BOARD OF COMMUNITY GUARDIANS
VOLUNTEER HANDBOOK

Board of Community Guardians for a final decision since the Board is the legal Guardian. Important life decisions may include such things as moving the Ward from one house to another, outside the state of Idaho, allowing a family member to move into the Ward's home, or moving the Ward into a nursing home. These are only a few examples of the difficult decisions that should be left to the discretion of the full Board and should not be made by the Volunteer Guardian.

Training

The Board of Community Guardians c/o the Volunteer Coordinator will provide ongoing training and support to the Volunteers. This training is provided through written materials, individual conversations and personal meetings. Volunteer Guardians are strongly encouraged to contact the Volunteer Coordinator for information and possible resources when they have questions or need assistance.

Eligibility of Wards

Becoming a Ward means the Court has determined a person is incapacitated and lacks appropriate alternatives for meeting their own needs or managing their financial affairs.

In order for the Board of Community Guardians to be appointed as the legal Guardian the potential Ward must be over 18, have no appropriate family able or willing to take on the Guardianship, and meet the limited income guidelines. The Board of Community Guardians only accepts referrals that have absolutely no other options; we truly are the last resort.

Confidentiality

A Volunteer Guardian has a legal responsibility to maintain confidentiality regarding the affairs of the Ward. Any disclosure of information about the Ward should be limited to what is necessary and relevant to the issue being addressed.

A Volunteer Guardian must be extremely cautious about the release of personal information about their Ward. Permission or authority to share information about the Ward can come from three sources:

- The Guardianship itself - a Volunteer Guardian obtains some or all of the legal rights of the Ward, including (in most cases) the right to release information.
- Special permission of the Court or the Board - permission to deal with emergencies or special circumstances.
- The Ward - if he/she is competent in that particular area.

Conflict of Interest

A Volunteer Guardian must avoid compromising or self-serving influences and loyalties when addressing the needs of a Ward. Decisions must be made for the benefit of the Ward ONLY.

It is generally a conflict of interest for a Guardian or his/her family member to be employed by or have financial interest in the facility/provider of supports and services received by the Ward.

Public Scrutiny

A Volunteer Guardian shall act in a manner above reproach, and his/her actions will be open to

TWIN FALLS COUNTY
BOARD OF COMMUNITY GUARDIANS
VOLUNTEER HANDBOOK

scrutiny at all times. Guardianship Court records are a matter of public record, including accountings and Guardian reports and other documents. The Board will also review records turned in by Volunteer Guardians.

Consents and Authorizations

Copies of “Letters of Guardianship” should be provided to the facility or provider of supports and services verifying the authority of the Guardian to act on behalf of the Ward. Various consents may need to be signed by the Guardian on behalf of the Ward including:

- Medical consents
- Treatment and/or hospitalization
- Administration of psychotropic medication
- Changing service providers (like doctors)
- Using information about the Ward for publicity

NEVER SIGN A BLANK CONSENT FORM!!!! Read all contracts and documents carefully to become knowledgeable of what you are being asked to sign. Check with the Volunteer Coordinator if there are any questions regarding signing anything.

ADVOCACY

Role of Volunteer Guardian as Advocate

The role of Volunteer Guardian differs from that of a service provider. It is a legal appointment with specific accountability to the Ward, Court and the Board of Community Guardians.

The Volunteer Guardian needs to be free of any compromising influences and loyalties and able to exercise judgment solely for the benefit of the Ward. The Volunteer Guardian needs to learn what is important to the Ward, and develop a rapport and working relationship with the Ward for whom they are advocating.

It is very important the Ward be involved, to whatever degree possible, in deciding upon any advocacy taken on his/her behalf.

Inclusion of the Ward in Decision Making

A Volunteer Guardian should encourage and expect respectful treatment for the person they serve. When discussing a situation with a Ward, the Volunteer Guardian should always:

- Talk with, not at the individual
- Listen carefully to what the individual is saying and trying to communicate
- Consult the individual even on what may seem unimportant or minor decisions
- Include the individual in any meetings affecting their future and services

In essence the Volunteer Guardian must protect the Ward without overprotecting the Ward.

INCOME AND BENEFITS

Misuse or Management of Funds

If the Court finds that the Guardian has innocently misused any funds or assets of the Ward’s estate, the Court will order the Guardian to repay or return funds or assets to the Wards estate.

If the Guardian has embezzled or converted a Ward’s funds or assets for the Guardian’s personal use, the Guardian will be prosecuted and dismissed as a Volunteer.

TWIN FALLS COUNTY
BOARD OF COMMUNITY GUARDIANS
VOLUNTEER HANDBOOK

If there is ever a question about the propriety of the expenditure of a Ward's funds, discuss the matter first with the Volunteer Coordinator.

Banking

- The Volunteer is **NOT** allowed to set up a joint account with the Ward or commingle the Ward's funds with the Volunteer's funds.
- Direct deposit of the monthly Social Security or other benefit checks is highly encouraged (you will need to contact the bank to initiate this process).
- The Volunteer is **NOT** allowed to hire a conservator to handle a Ward's fund.

Making Financial Decisions

- Avoid any possible conflict of interest.
- Never benefit or profit from the Ward.
- A Volunteer Guardian cannot tithe to a church or make other gifts on behalf of the Ward.
- **Do not ever write a check from the Ward's account to yourself for anything.** Avoid all situations where you may need to be reimbursed for any expenses on behalf of the Ward.
- Maintain accurate bank accounts/records.
- Prepare and file all paperwork in a timely manner.
- Pay all bills promptly.
- Fulfill responsibilities to the Court.
- The Volunteer Guardian, spouse of the Guardian, or any other relative/friend/acquaintance of the Guardian may not be named as the beneficiary on an insurance policy, pension plan or benefit plan for the Ward.

*The following is information on some of the types of income for which a Ward may be eligible.
The person may be eligible for benefits from several sources.*

Social Security Administration

A person may be appointed by the Social Security Administration (SSA) to take control and responsibility of another person's social security funds. This person is called a "payee". A person or agency interested in becoming a payee must apply through the SSA.

Social Security benefits

- The recipient must meet at least one of the following requirements: has reached age 65 or older OR is eligible from a family member who is deceased, retired, or disabled.
- These benefits are received regardless of other income.

Supplemental Social Security (SSI)

The SSI program is intended to provide a minimum level of income to persons with demonstrated economic need and who meet **one** of the following requirements:

- Aged (65 or older)
- Blind
- Disabled - based on Federal definition
- AND liquid resources or assets value cannot exceed \$2,000

Social Security Disability Income (SSDI)

The SSDI program is intended to serve disabled workers and disabled widows or adults disabled since childhood. Others who are eligible must meet one of the following requirements:

- Disabled based on a Federal definition AND has worked the required number of

TWIN FALLS COUNTY
BOARD OF COMMUNITY GUARDIANS
VOLUNTEER HANDBOOK

“quarters” before the disability occurred

- Parent must have worked the number of “quarters” for a disabled adult child

For more information on any of these programs contact the Volunteer Coordinator or call the Social Security Administration at 1-800-808-0772, or at www.socialsecurity.gov

Veteran’s Administration- (VA)

The VA offers a wide range of benefits to veterans, service members, and their families. A person may be eligible for benefits if:

- A veteran
- A veteran’s dependent
- A surviving spouse or child of a deceased veteran
- A member of the military Reserves or National Guard
- An active duty military service member

The VA administers two disability programs:

- Disability Compensation- can pay compensation if the person is least 10% disabled as a result of military service.
- Disability Pension- can pay a pension if the person is a wartime veteran with limited income, and is no longer able to work or over 65 years of age.

The VA also offers burial benefits and other help for veterans. For more information, please contact the Boise VA at 500 W. Fort St. Boise, ID 83702 or toll-free 1-800-827-1000. Benefits can also be applied for on-line: www.vabenefits.vba.va.gov

There are also various other benefits available such as Railroad Retirement or pensions. Please contact the Volunteer Coordinator for more information on those.

Filing income taxes on behalf of the Ward

In most situations, Wards receive some form of public assistance benefits from SSA, VA or other entities. Generally, this income is nontaxable and filing an income tax return may not be necessary. Whether or not a tax return should be filed will vary with the amount and source of income the Ward receives. For clarification whether or not to file an income tax return on behalf of the Ward, contact the local IRS office.

Food Stamps

The food stamp program is a nutrition assistance program that provides a card to eligible persons for use in purchasing food from local grocery stores. The Ward may be eligible if residing in his home or in a group home or apartment. Information and application for benefits can be made through SRS economic assistance.

Low Income Energy Assistance Program (LIEAP)

The LIEAP is a federally funded program that helps eligible households pay a portion of their heating or cooling costs for persons living in their own home. Information access and application for benefits can be made through SRS economic assistance.

Medicare:

Medicare is a health insurance program for:

- People 65 years of age and older
- Some people with disabilities under age 65

TWIN FALLS COUNTY
BOARD OF COMMUNITY GUARDIANS
VOLUNTEER HANDBOOK

- People with End-Stage Renal Disease

Medicare has two parts:

- Part A (hospital insurance) - most people do not pay for this.
- Part B (medical insurance) –most people pay monthly for this.
- Part C (prescription insurance) - not available in Idaho
- Part D (prescription plan) - must use preferred physician

Medicaid:

Individuals receiving SSI are automatically eligible to receive Medicaid. This is a health insurance program for the poor who are under the age of 65. In some cases they may continue to be eligible for Medicaid benefits even if they have lost entitlement to SSI benefits. Medicaid is a joint federal-state program and is administered through the Idaho Department of Health & Welfare.

Medicaid will provide for these services:

- Inpatient and outpatient hospital services
- Skilled nursing facility services
- X-ray and lab services
- Early and periodic screening, diagnosis and treatment, family planning services & supplies for persons of child bearing age
- Physician and some dental services

MONITORING SUPPORTS AND SERVICES

There may be times when other agencies are providing services to your Ward. It is the Volunteer Guardian's duty to monitor the delivery of these services.

Establishing a relationship with the Ward

To effectively monitor supports and services as well as to advocate on behalf of the Ward, the Volunteer Guardian should learn about the Ward's:

- Expressed wishes and preferences
- Assessed needs
- Medical information
- Family history
- Social-friends and support network

If the Ward is in any type of institution (hospital or nursing home) the Volunteer Guardian should regularly (minimum of monthly face to face contact) visit with the Ward to:

- Monitor physical and emotional condition
- Monitor the care and supports being provided
- Consult with the staff providing the supports and services
- Review charts and notes
- Be an outlet for questions regarding such things as medical issues
- Provide friendship and conversation
- Consent to appropriate treatment on the Ward's behalf

Monitoring Life Issues

A Volunteer Guardian should monitor the person's life issues by identifying and evaluating the following:

TWIN FALLS COUNTY
BOARD OF COMMUNITY GUARDIANS
VOLUNTEER HANDBOOK

- Current supports and services provided to the Ward
- Barriers to the Ward's ability to function within the current situation
- Satisfactions, modifications or changes needed in the current situation
- Potential benefits and risks of Ward's choices
- Least restrictive situation reasonably available

Living Environment

Some things the Volunteer Guardian should be aware of when in the Ward's home:

- Safety issues (fire extinguishers, hot water temps)
- Security issues (proper door locks, capability to call 911)
- Cleanliness (problem with rodents, is house sanitary)

Health Care

The Volunteer Guardian should always ensure that medical needs are being met. Some questions to ask yourself when looking into this:

- Does the Ward have appropriate medical providers?
- Is transportation to appointments available?
- Is follow-up care and monitoring provided?
- What medications is the Ward taking?

Personal Needs

It is also important for the Volunteer Guardian to help ensure that clothing items are in good condition and personal hygiene and belongings are accessible and safe.

Maintaining a Paper Trail

There are many ways to keep records. And as a Volunteer Guardian, there are many records to keep. Your record keeping does not have to be complex but it must be accurate and thorough. The Volunteer Coordinator will rely on the adequacy of your records when preparing required reports. Inadequate record keeping or failure to keep records makes accurate reporting difficult at best and often impossible. You will also use these records to produce your quarterly reports for the Volunteer Coordinator.

Courts often require receipts for all expenditures made for the Ward's benefit. It is necessary to keep such records so that the annual accounting to the Court will be accurate.

You will need to keep an activity log that tracks activities, telephone calls, conversations, and any other type of communication. As a Guardian you will be asked to report on various activities such as when bills were paid or when doctor's appointments were set, number of visits you make to the Ward, and a description of the Ward's condition and living conditions. You may be questioned in Court about all your activities as a Volunteer Guardian. A log is very reassuring when you need to remember dates, details about communications or complete reports.

DOCUMENT AND REPORT TO THE VOLUNTEER COORDINATOR IMMEDIATELY ANY OF THE FOLLOWING:

- Any significant changes in the overall health or financial situation of the Ward.
- Any address changes.
- Any and all types of conflict.

TWIN FALLS COUNTY
BOARD OF COMMUNITY GUARDIANS
VOLUNTEER HANDBOOK

ABUSE, NEGLECT AND EXPLOITATION

Volunteer Guardians should be on watch for any signs of abuse. Some of the indications of abuse could be:

- Injuries that have not been treated properly
- Cuts, lacerations, puncture wounds, burns
- Bruises
- Recent weight loss
- Poor hygiene
- Withdrawal
- Fear
- Depression

Reporting Abuse, Neglect and Exploitation

If you suspect there is abuse, neglect or exploitation you must contact your local Adult Protection Office at (208)736-2122 and the Volunteer Coordinator immediately so further investigation can be done.

FUNERAL PLANNING

Frequently a Ward may have no immediate family to pre-plan or make funeral arrangements. A Volunteer Guardian will need to determine what, if any, arrangements have been made by the Ward or family members. If no arrangements have been made, the Volunteer Guardian may consider initiating the planning process.

The Volunteer Guardian should visit with the Ward to determine any preferences or wishes the person may have with regard to funeral arrangements and burial. The Volunteer Guardian should be sensitive to how this discussion might affect the Ward.

There are many options available to the Ward and the Volunteer Coordinator is available to discuss various programs that may be appropriate for the Ward.

MESSAGE FROM THE BOARD

The Twin Falls County Board of Community Guardian would like to thank you for your consideration of being a Volunteer Guardian. This process has the potential to be an incredibly rewarding experience and we could not do it without our Volunteers. There will always be people in Twin Falls County who need our help and being a Volunteer Guardian is a wonderful way to give back to your community.

We welcome you to visit with us about our program if you have any questions or would like to get involved. This is a group effort and those in need cannot do it by themselves.

Please feel free to contact us through our Volunteer Coordinator, Mary Crawford at 736-5048 ext. 2246.