

Instructions for **Part 1** of Process to Transfer a North Dakota Guardianship or Conservatorship of an Adult to Another State

Don't include these instructions when you serve or file the completed forms.

IMPORTANT! READ BEFORE USING THESE FORMS AND INSTRUCTIONS

ND Legal Self Help Center staff and court employees can't help you fill out forms.

If you're unsure how to proceed, or need legal advice or legal representation, consult a lawyer licensed to practice in North Dakota.

To protect your rights, carefully read this information and any instructions to which you're referred.

When you represent yourself, you're expected to know and follow the law, including:

- State or federal laws that apply to your case;
- Case law, also called court opinions, that applies to your case; and
- Court rules that apply to your case, which may include:
 - North Dakota Rules of Civil Procedure;
 - North Dakota Rules of Court;
 - North Dakota Rules of Evidence;
 - North Dakota Administrative Rules and Orders; and
 - Any local court rules.

Links to the state laws, case law, and court rules can be found at www.ndcourts.gov.

When you represent yourself, you're held to the same requirements and responsibilities as a lawyer, even if you don't understand the rules or procedures. If you're unsure if these forms and instructions suit your circumstances, consult a lawyer.

- If you would like to learn more about finding a lawyer to represent you, go to www.ndcourts.gov/legal-self-help/finding-a-lawyer.

A glossary with definitions of legal terms is available at www.ndcourts.gov/legal-self-help.

These instructions and forms aren't a complete statement of the law. They cover the basic procedure for **Part 1** of asking a North Dakota state district court to transfer an existing North Dakota guardianship of an adult to another state. There is no guarantee that all judges and courts will accept forms available through the ND Legal Self Help Center. The Center isn't responsible for any consequences that may result from the forms or information provided.

Use at your own risk.

You may use these forms if:

1. You are the guardian and/or conservator of an **adult** who was appointed by a North Dakota state district court. You were appointed when the ward and/or protected person was 18 years old or older.

AND

2. You want to transfer the entire guardianship and/or conservatorship case to the court of another state, so the court of the other state will have all authority over the guardianship and/or conservatorship. This is called transferring jurisdiction.

This is a 3 Part process. ALL 3 Parts MUST be completed.

Transferring jurisdiction of a guardianship and/or conservatorship case to a court of another state is a 3 Part process.

You must complete all 3 Parts to transfer jurisdiction to the court of another state.

- Part 1.** You Petition the North Dakota State District Court for a Provisional Order Transferring the Guardianship and/or Conservatorship to Another State Court.

These are the instructions for the set of forms to complete Part 1.

- Part 2.** You Work with the Other State Court to Get an Order Accepting the Transfer of the Guardianship and/or Conservatorship from North Dakota.

You must work directly with the other state to fulfill the other state court's process for obtaining an order accepting transfer of the entire guardianship and/or conservatorship case from the North Dakota state district court.

*The North Dakota state court system and the North Dakota Legal Self Help Center **can't** assist you with Part 2 of the process.*

- Part 3.** After the Other State Court Issues the Order Accepting the Transfer, You Make a Motion for a Final Order Confirming Transfer to the Other State and Terminating the North Dakota Guardianship and/or Conservatorship Case.

*Instructions and a set of forms for completing **Part 3** are available at www.ndcourts.gov/legal-self-help/conservatorship/transfer.*

Requesting a Guardian Ad Litem for the Ward and/or Protected Person

The court may appoint a guardian ad litem for the ward and/or protected person upon the request of the guardian, conservator, ward, protected person, or any interested person.

A guardian ad litem is a lawyer appointed by a North Dakota District State Court to advocate for the best interests of the ward and/or protected person.

Guardian Ad Litem request forms are available for use during this process. You can find the request forms at www.ndcourts.gov/legal-self-help/conservatorship/transfer.

ND Laws and Rules

North Dakota Century Code Chapter 28-35: Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act contain requirements for transferring guardianships of adults. Chapter 28-35 is available at www.legis.nd.gov/cencode/t28c35.html.

- For requirements for petitioning to transfer guardianship jurisdiction from North Dakota to another state, see Section 28-35-15: Transfer of Guardianship or Conservatorship to Another State. (www.legis.nd.gov/cencode/t28c35.pdf#nameddest=28-35-15)

North Dakota Century Code Chapter 28-35 may reference the **North Dakota Rules of Civil Procedure, the North Dakota Rules of Court, or the North Dakota Rules of Evidence**. The rules are available at www.ndcourts.gov/legal-resources/rules.

The North Dakota Century Code and North Dakota rules of court can also be found in print in many North Dakota public and academic libraries.

Part 1 Forms in the Packet

You may use these forms to complete Part 1 of the process. If you're unsure how to proceed or unsure if these forms are suitable for your situation, consult an attorney.

- Form 1.** Rule 3.2 Notice of Petition;
- Form 2.** Petition to Transfer Guardianship/Conservatorship from North Dakota to Another State;
- Form 3.** Confidential Information Form;
- Form 4.** Provisional Order Granting/Denying Petition to Transfer Guardianship/Conservatorship to Another State;
- Form 5.** Affidavit of Service by Hand Delivery; and
- Form 6.** Affidavit of Service by Mail.

Steps for Completing Part 1 of the 3 Part Process

These forms allow one guardian or one conservator to petition the North Dakota state district court on their own.

These forms also allow a co-guardian or co-conservator to join the petition with the guardian or conservator, as long as they were appointed in the same case by the North Dakota state district court.

Step One: Review the Forms and Instructions; Research the Law; Gather Information.

Review ALL Forms and Instructions for the 3 Part Process:

Read the instructions for ALL 3 Parts carefully. Review ALL of the individual forms. Determine if the forms apply to your situation.

If you don't know if you should use this packet of forms, consult a lawyer who is licensed to practice in North Dakota. ND Legal Self Help Center staff and court employees can't help you make any decisions about these forms.

Research North Dakota Century Code Section 28-35-15:

The requirements for petitioning to transfer guardianship jurisdiction from North Dakota to another state are in [North Dakota Century Code Section 28-35-15](#): Transfer of Guardianship or Conservatorship to Another State.

Review Section 28-35-15 carefully. You're responsible for knowing and following the requirements.

Gather Information:

- The address in the other state where the ward and/or protected person currently resides, or will reside.
- Information about the plans for services and care for the ward in the other state, and arrangements for management of the protected person's property in the other state.
- Copies of any supporting documentation you plan to include with your petition.

- Names and addresses of all persons who must receive notice of your petition:
 - For Guardianships:
 - The ward;
 - The ward’s living spouse, if any;
 - The ward’s living adult children, if any;
 - Any person, corporation, or institution who is serving as the ward’s guardian (*if not a co-petitioner in this process*), attorney in fact, representative payee for public benefits, and conservator (*if not a co-petitioner in this process*);
 - The ward’s attorney; and
 - All interested person’s named in the guardianship order.
 - For Conservatorships:
 - The protected person;
 - The protected person’s living spouse, if any;
 - If no living spouse, the protected person’s living parents, if any;
 - Any other guardian or conservator (*if not a co-petitioner in this process*);
 - Any government agency paying benefits to the protected person; and
 - All interested person’s named in the guardianship order.
 - For Guardianships and Conservatorships (Combined in one case):
 - People listed above for both Guardianships and Conservatorships.

Step Two: Complete the Rule 3.2 Notice of Petition, Petition, Confidential Information Form, and (*Proposed*) Provisional Order Forms.

Complete the following forms. You MUST complete ALL of the forms in Step Two. You may type or handwrite. If you handwrite, print neatly using blue or black ink.

Caption (*Top*) of Each Form:

- Complete the County, Judicial District, Name of incapacitated person/protected person, and Case Number (*No.*) EXACTLY the same as your most recent guardianship and/or conservatorship order of the North Dakota state district court.
- Checkmark (✓) the appropriate box in the title of the form:
 - If the case is for a guardianship ONLY, checkmark Guardianship ONLY.
 - If the case is for a conservatorship ONLY, checkmark Conservatorship ONLY.
 - If the case is BOTH a guardianship AND a conservatorship, checkmark BOTH Guardianship and Conservatorship

Checkboxes for Guardianship and/or Conservatorship; Guardian and/or Conservator:

There are checkboxes throughout the forms for selecting guardianship and/or conservatorship, and guardian and/or conservator.

You must be consistent throughout all of the forms.

- If you checkmarked Guardianship ONLY in the caption, checkmark ONLY guardianship and guardian throughout all of the forms.
- If you checkmarked Conservatorship ONLY in the caption, checkmark ONLY conservatorship and conservator throughout all of the forms.
- If you checkmarked BOTH Guardianship and Conservatorship in the caption, checkmark BOTH guardianship and conservatorship, and guardian and conservator throughout all of the forms.

Including Protected Information on the Forms:

The case records in guardianships and conservatorships of adults are generally available to the public, and anyone can request to look in almost any court file. However, certain information is protected and required to remain confidential, even if the protected information is part of a public court case record.

Protected Information is:

- Social Security Number or Taxpayer Identification Number.
- Birthdates.
- Minor child's name.
- Financial account number.

You may need to refer to Protected Information when you fill out the forms. When you fill out the forms, write or type ONLY:

- The last four (4) digits of the social security number and taxpayer identification number.
- The year of birth.
- The minor child's initials.
- The last four (4) digits of the financial-account number.

The district court still needs to have access to the full Protected Information. Complete Form 3: Confidential Information Form with the full Protected Information you reference in the forms.

Form 1: Rule 3.2 Notice of Petition:

Caption (*top of form*):

- Complete the Caption as instructed on the bottom of Page 5 of these instructions.

Paragraph 1:

- Checkmark the appropriate box or boxes. See the top of Page 6 of these instructions for more information.

Paragraph 2:

- The North Dakota state district court may decide this petition based only on the documents filed. This form doesn't allow you to request a hearing.

Date and Signature:

- Sign and date this form.
 - Completely fill out the lines under the signature line.
 - If a co-guardian or co-conservator appointed in the same case is joining the petition with you, they date, sign, and complete the co-guardian/co-signature lines.
-

Form 2: Petition to Transfer Guardianship/Conservatorship from North Dakota to Another State:

Caption (*top of form*):

- Complete the Caption as instructed on the bottom of Page 5 of these instructions.
- Completely fill out the information following the Title of the form.

Paragraphs 1 through 14:

- Checkmark the appropriate box or boxes. See the top of Page 6 of these instructions for more information.
- Completely fill out all of the form.

Date and Signature:

- Sign and date this form.
 - Completely fill out the lines under the signature line.
 - If a co-guardian or co-conservator appointed in the same case is joining the petition with you, they date, sign, and complete the co-guardian/co-signature lines.
-

Form 3: Confidential Information Form:

Caption (*top of form*):

- Complete the Caption as instructed on the bottom of Page 5 of these instructions.

Complete the form:

- Include the full protected information. See Page 6 of these instructions for more information.
- This form is not a public court record and only you and the court will have access.

Date and Signature:

- Sign and date this form.
 - Completely fill out the lines under the signature line.
 - If a co-guardian or co-conservator appointed in the same case is joining the petition with you, they date, sign, and complete the co-guardian/co-signature lines.
-

Form 4: (*Proposed*) Provisional Order Granting/Denying Petition to Transfer Guardianship/Conservatorship to Another State:

Caption (*top of form*):

- Complete the Caption as instructed on the bottom of Page 5 of these instructions.

DON'T complete the form:

- If the Court grants your petition AND uses your proposed provisional order, the judge will complete the form.

DON'T sign and date this form.

- If the Court grants your petition AND uses your proposed provisional order, the judge will sign and date the form.
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Optional Step Two(a): Complete the Guardian Ad Litem (GAL) Request and (Proposed) Order For Appointment of Guardian Ad Litem Forms.

A Guardian Ad Litem (GAL) is a lawyer appointed by the North Dakota state district court to advocate for the best interests of the ward or the protected person. The GAL is paid by the ward's or protected person's estate.

Appointing a GAL is optional when the Court is deciding whether to transfer jurisdiction of a guardianship and/or conservatorship to another state.

If you decide to ask the Court to appoint a GAL for the ward or protected person, you'll first need to find a GAL.

No list of GAL's specifically for guardianships or conservatorships of adults exists through the North Dakota Court System. However, a GAL roster for use in child custody proceedings may be useful as a starting point.

- www.ndcourts.gov/district-court/parenting-investigator-legal-guardian-ad-litem-roster

Request for Appointment of Guardian Ad Litem by Other Interested Person:

Caption (*top of form*):

- Complete the Caption as instructed on the bottom of Page 5 of these instructions.

Paragraphs 1 through 5:

- Checkmark the appropriate box or boxes. See the top of Page 6 of these instructions for more information.
- Completely fill out all of the form.

Date and Signature:

- Sign and date this form.
 - Completely fill out the lines under the signature line.
 - If a co-guardian or co-conservator appointed in the same case is joining the petition with you, they date, sign, and complete the co-guardian/co-signature lines.
-

(Proposed) Order for Appointment of Guardian Ad Litem:

Caption (*top of form*):

- Complete the Caption as instructed on the bottom of Page 5 of these instructions.
- Fill out the information following the Title of the form as completely as you can.

DON'T sign and date this form.

- If the Court appoints a GAL AND uses your proposed order, the judge will sign and date the form.
-

Step Three: Make Copies of Completed Forms; Serve Copies on ALL Persons Who Must Receive Notice of the Petition.

Count the number of persons required to receive notice:

- For Guardianships:
 - The ward;
 - The ward's living spouse, if any;
 - The ward's living adult children, if any;
 - Any person, corporation, or institution who is serving as the ward's guardian (*if not a co-petitioner in this process*), attorney in fact, representative payee for public benefits, and conservator (*if not a co-petitioner in this process*);
 - The ward's attorney; and
 - All interested person's named in the guardianship order.
- For Conservatorships:
 - The protected person;
 - The protected person's living spouse, if any;
 - If no living spouse, the protected person's living parents, if any;
 - Any other guardian or conservator (*if not a co-petitioner in this process*);
 - Any government agency paying benefits to the protected person; and
 - All interested person's named in the guardianship order.
- For Guardianships and Conservatorships (Combined in one case):
 - People listed above for both Guardianships and Conservatorships.

Make a copy of the following for each person:

- Form 1: Rule 3.2 Notice of Petition;
- Form 2: Petition to Transfer Guardianship/Conservatorship from North Dakota to Another State;
- Form 4: (*Proposed*) Provisional Order Granting/Denying Petition to Transfer Guardianship/ Conservatorship to Another State; and
- All supporting documents you plan to file with your petition.

If you're requesting appointment of a Guardian Ad Litem (GAL), make a copy of the following for each person:

- Request for Appointment of Guardian Ad Litem by Other Interested Person; and
- (*Proposed*) Order for Appointment of Guardian Ad Litem.

Serve one copy on each person required to receive notice:

You may serve by hand delivery or by mail.

Before the court will act on your petition, you must provide proof that copies of the completed documents were mailed or hand-delivered to all persons required to receive notice. Form 5 and Form 6 in this Part 1 packet of forms gives the Court proof that copies were served.

Service by Hand Delivery:

You may arrange for a person who is at least 18 years or older AND not a party or interested in the guardianship and/or conservatorship to hand the copies of documents to the person to be served.

The person who handed copies of documents to the person to be served completes, signs and dates **Form 5: Affidavit of Service by Hand Delivery**.

Service by hand delivery is complete when the copies of documents are handed to the person to be served.

Service by Mail:

You may arrange for a person who is at least 18 years or older to mail copies of documents to the person to be served.

Put the copies in an envelope. Address the envelope with the last known address of the person to be served. List your address as the return address on the envelope. The person who is at

least 18 years old takes the envelope to a United States Post Office and mails the envelope. First Class postage must be prepaid.

The person who took the copies of documents to the Post Office and paid the First Class postage completes, signs and dates **Form 6: Affidavit of Service by Mail**.

Service by mail is complete upon mailing.

Step Four: File the Original, Completed Forms with the Clerk of District Court.

File the following original, completed forms with the Clerk of the District Court that currently has authority over the guardianship and/or conservatorship:

- Form 1: Rule 3.2 Notice of Petition;
- Form 2: Petition to Transfer Guardianship/Conservatorship from North Dakota to Another State;
- Form 3: Confidential Information Form;
- Form 4: (*Proposed*) Provisional Order Granting/Denying Petition to Transfer Guardianship/ Conservatorship to Another State;
- Copies of all supporting documents you plan to file with your petition; and
- An affidavit of service for every person required to receive notice of your petition.

If you're requesting appointment of a Guardian Ad Litem (GAL), file the following original, completed forms with the Clerk of the District Court:

- Request for Appointment of Guardian Ad Litem by Other Interested Person; and
- (*Proposed*) Order for Appointment of Guardian Ad Litem.

Step Five: Each Person Required to Receive Notice has 14 to 17 Days to Answer and/or Request a Hearing.

After each person required to receive notice is served your petition documents, they have either 14 days or 17 days to answer the petition in writing or request a hearing, or both. They have 14 or 17 days depending on how you arranged for service.

- If you arranged for service of your petition documents by hand delivery, they have 14 days to answer your petition in writing, request a hearing, or both.
 - The date of service is the date the petition documents were hand delivered to the person required to receive notice.

- If you arranged for service of your petition documents by mail, they have 17 days to answer your petition in writing, request a hearing, or both.
 - The date of service is the date the petition documents were mailed to the person required to receive notice.

When calculating days:

- Do not include the day the person was served;
- Count by calendar days, including Saturdays, Sundays, and legal holidays; and
- Include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

If the persons required to receive notice don't serve and file a written answer to your petition or request a hearing, the judge may consider your petition unopposed.

Step Six(a): If the Petition will be Decided on ONLY the Documents Filed with the Court, the Judge Reviews the Documents Without Holding an In-Person Hearing.

After the deadline passes for answer to petition documents and request for hearing documents to be served and filed, if no one requested a hearing, the judge assigned to your case will review the documents filed by you and persons required to receive notice of your petition.

Your petition will be decided only on the documents filed with the court. No in-person hearing will be held.

If no person required to receive notice served and filed an answer to your petition, your petition documents are still required to prove you meet the requirements to transfer jurisdiction of the guardianship and/or conservatorship to another state.

Step Six(b): If Anyone Requested an In-Person Hearing, Attend the Hearing.

You must go to court on the date set for the hearing. If you do not go to court, the judge won't grant your petition. Be sure to be on time. Bring to the hearing:

- Your copies of the completed forms you filed with the Clerk of Court's Office;
- Any evidence you want the Judge to know about; and

- Any witnesses you want to talk to the Judge.

The Judge won't allow you to use as evidence (*and will not look at*) any documents (*such as letters, notes, or statements*) written by someone other than yourself unless the person who wrote the document is in Court at the hearing.

If you want the judge to hear what someone else has to say about your case, that person **MUST** be in court – YOU can't tell the judge what that person said or has to say. You may force someone to attend the hearing by serving a subpoena on that person prior to the date of the hearing.

- An Evidence Research Guide and a Subpoena Informational Guide are available at www.ndcourts.gov/legal-self-help. Scroll to the "District Court Civil" Section.

Step Seven: The Judge Decides Whether to Grant a Provisional Order to Transfer Jurisdiction to Another State.

If the Judge DOESN'T Grant Your Petition to Transfer:

If the Judge doesn't grant your petition to transfer jurisdiction of the guardianship and/or conservatorship to another state, the North Dakota state district court keeps their authority over the guardianship and or conservatorship.

If the Judge GRANTS Your Petition to Transfer:

If the Judge grants your petition to transfer jurisdiction of the guardianship and/or conservatorship to another state, the Judge will sign a provisional order transferring jurisdiction to the other state.

- The judge or judicial referee may decide to sign your proposed provisional order, or may decide to sign a different proposed provisional order.

The provisional order isn't a final order. You must complete Part 2 and Part 3 of the transfer process before jurisdiction of the guardianship and/or conservatorship is transferred to the other state.

Don't include these instructions when you serve or file the completed forms.