

## INSTRUCTIONS FOR ESTABLISHING AN ADULT GUARDIANSHIP

### IMPORTANT! READ BEFORE USING THESE FORMS AND INSTRUCTIONS

ND Legal Self Help Center staff and court employees cannot help you fill out the form(s). If you are unsure how to proceed, you should consult a lawyer.

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

You may go to court without a lawyer, but you will have to abide by the state and/or federal laws that apply to your case, the appropriate court rules, including 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 rules and state laws can be found at [www.ndcourts.gov](http://www.ndcourts.gov) under the Research link.

A glossary with definitions of legal terms is available at [www.ndcourts.gov/ndlshc](http://www.ndcourts.gov/ndlshc).

*This information is not a complete statement of the law. This covers basic procedure for petitioning a North Dakota District Court to establish a guardianship over an adult. If the forms do not fit your circumstances, consult a lawyer. There is no guarantee that all judges and courts will accept forms available through the ND Legal Self Help Center. Use at your own risk.*

Any person interested in the welfare of an allegedly incapacitated adult person may petition for the appointment of a guardian. An emergency guardian may petition for appointment of a long-term guardian.

The requirements for adult guardianships are found in **North Dakota Century Code (N.D.C.C.) Chapter 30.1-03, Chapter 30.1-26 and Chapter 30.1-28**. Please refer to these Chapters when filling out the forms.

Laws constantly change through legislation, administrative rulings and court decisions. To determine how a law applies to your situation, review the applicable law or laws, administrative rulings and court decisions. Notes of court decisions related to North Dakota law can be found in the print editions of the North Dakota Century Code. Print editions of the North Dakota Century Code are found in many North Dakota public and academic libraries.

Only a lawyer licensed to practice in North Dakota who has agreed to represent you can give you legal advice. Legal advice includes interpreting how the laws apply to your situation.

## **BEFORE USING THIS PACKET**

The appointment of a guardian severely limits or completely removes the right of the person to make their own decisions. Consider other, less restrictive options before petitioning for a guardianship.

Less restrictive options to guardianship include, but are not limited to:

- Power of attorney;
- Health care directive;
- Representative payee; or
- Home health care.

To learn more about how to identify when a guardianship is necessary and the process of establishing a guardianship in North Dakota, complete the online North Dakota Guardianship Training Course.

The North Dakota Guardianship Training Course is free of charge and is found at [www.ndcourts.gov/ndlshc](http://www.ndcourts.gov/ndlshc) by clicking on the “Power of Attorney, Guardianship, Conservatorship” link. Look for the link to the training in the “Guardianship Information and Training” section.

## **DEFINITIONS**

**Guardian:** A person appointed by the court to make personal decisions for an incapacitated person.

**Guardian ad Litem:** A lawyer appointed by the court to advocate for the best interests of the proposed ward.

**Incapacitated Person:** An adult person who is impaired by reason of mental illness or deficiency, physical illness or disability, or chemical dependency to the extent that the person lacks capacity to make or communicate responsible decisions concerning that person's matters of residence, education, medical treatment, legal affairs, vocation, finance, or other matters, or which incapacity endangers the person's health or safety.

**Least Restrictive Form of Intervention:** the guardianship imposed on the ward must compensate for only those limitations necessary to provide the needed care and services, and that the ward must enjoy the greatest amount of personal freedom and civil liberties consistent with the ward's mental and physical limitations.

**Letters of Guardianship:** A document signed by the court that identifies the authority and limitations of the guardian to make decisions on behalf of the ward; identifies any other powers or authority given to the guardian by the court; and identifies any limitations the court puts on the ward in matters where powers are not granted to the guardian.

**Petitioner:** A person who presents an adult guardianship petition to a North Dakota District Court.

**Proposed Ward:** An individual, who is alleged to be an incapacitated person, for whom an adult guardianship is sought.

**Venue:** The place where the guardianship petition is or will be filed. Generally, in adult guardianship proceedings, the venue is the North Dakota county where the proposed ward resides or is present and expected to remain for the duration of the proceedings.

**Visitor:** A person appointed by the court to interview the proposed guardian and the proposed ward. The visitor gives a written report to the court, which includes recommendations on powers to be granted to the proposed guardian. The visitor is a person in nursing or social work with no special interest in the guardianship proceedings.

**Ward:** An adult person for whom a state court appointed a guardian.

## **FEES**

A filing fee of \$80.00 is required, unless the petition for guardianship is filed by a member of the individual treatment plan team for the proposed ward or by any state employee in the performance of official duties.

Other fees may apply. The fees include, but are not limited to:

- Service fees                      Varies
- Copy of Documents    \$.10 per page, \$1.00 minimum
- The court must appoint a guardian ad litem, a physician or clinical psychologist, and a visitor. The petitioner or the ward's estate may be required to pay the reasonable fees. The ward's estate may pay reasonable fees only if payment will not unreasonably jeopardize the ward's well-being.
- You may be required to obtain a criminal history record report for the proposed guardian. For the cost and process of obtaining a North Dakota criminal history record report, contact the Bureau of Criminal Investigation Division of the North Dakota Attorney General.

## **FORMS FOR ESTABLISHING AN ADULT GUARDIANSHIP**

### **Forms you will need:**

<b>Form Title</b>	<b>Purpose</b>
Notice of Hearing and Statement of Rights	Gives the date and time of the guardianship hearing, name and address of the Guardian ad Litem, and the name of the proposed guardian. Gives important information about the guardianship process to the proposed ward.
Petition for Appointment of a Guardian	Formal request to the court for appointment of a guardian for an alleged incapacitated person.
Order for Appointment of Guardian ad Litem	Proposed order of the court appointing a Guardian ad Litem. The proposed order is not effective until it is signed by the court.
Order Appointing a Physician/Clinical Psychologist	Proposed order of the court appointing a physician or clinical psychologist. The proposed order is not effective until it is signed by the court.
Order Appointing a Visitor	Proposed order of the court appointing a visitor. The proposed order is not effective until it is signed by the court.

### **Forms you may need:**

The court where you plan to file your petition may require you to file one or more of the following forms. Check with the clerk of court for special requirements.

<b>Form Title</b>	<b>Purpose</b>
Guardian ad Litem's Report	A form a Guardian ad Litem may use to submit the required report to the court.
Report of Physician/Clinical Psychologist	A form a physician or clinical psychologist may use to submit the required report to the court.
Report of Visitor	A form a Visitor may use to submit the required report to the court.
Findings of Fact and Order Appointing Guardian/Co-Guardians	After hearing all of the evidence, the proposed explanation of facts the judge found to be true and the legal consequences of those facts. The proposed findings of fact and order are not effective until signed by the court.

Letters of Guardianship	Proposed letters of guardianship after the full hearing is held on the petition for appointment of a guardian. This document is not effective until it is signed by the court.
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## **STEPS TO ESTABLISH AN ADULT GUARDIANSHIP**

### **Step 1 – Gather the information needed to complete the forms.**

**First**, review N.D.C.C. § 30.1-28-02 to determine where to file the petition.

**Second**, review N.D.C.C. § 30.1-28-03 and the Petition for Appointment of a Guardian form for information that must be included in the petition. At minimum, gather the following:

- Information about the proposed guardian;
- Information about the proposed ward, including the proposed ward’s real property, personal property and income;
- Information about any person or institution with care or custody of the proposed ward;
- Information about the attorney, if any, who most recently represented the proposed ward;
- Information about the conservator, if any, appointed for the proposed ward;
- Information about the person or persons, if any, designated in a power of attorney or health care directive;
- Information about the representative payee, if any, for the proposed ward;
- Names and addresses of proposed ward’s spouse, parents and adult children;
  - If none, names and addresses of proposed ward’s adult siblings and any adult with whom the proposed ward resides in a private residence;
  - If none, name and address of proposed ward’s nearest adult relative;
- Recent written statements about the physical, mental, and emotional limitations of the proposed ward, if any, from a physician, mental health services provider, or other health care provider.

**Third**, gather the names and contact information of the guardian ad litem, visitor and physician or clinical psychologist whose appointment you will propose to the court in Step 4. Contact each to obtain their consent, fees and any other information you consider necessary.

- Guardian ad litem:
  - Duties of the guardian ad litem are found in N.D.C.C. § 30.1-28-03(4).
  - A Legal Guardian Ad Litem roster published by the North Dakota State Court Administrators Office is found at [www.ndcourts.gov](http://www.ndcourts.gov) by clicking on the “Parenting Inv/GAL Roster” link on the right-hand side of the webpage.
- Visitor:
  - Duties of the visitor are found in N.D.C.C. § 30.1-28-03(6).
  - The North Dakota court system does not publish a roster of visitors.
  - The North Dakota Department of Human Services, Adults and Aging Services Division operates an Aging and Disability Recourse Link. This may be of assistance to you in finding a visitor.
  - The names of visitors appointed in other North Dakota guardianship cases can be found by searching publically accessible North Dakota court records.
    - Go to the ND Supreme Court website ([www.ndcourts.gov](http://www.ndcourts.gov)) and click on the “District Court Case/Calendar Search” link located on the upper right-hand side of the webpage.
    - Read the information, click "Click Here to Proceed."
    - Select a location from the pull down menu. Select a county or the State of North Dakota.
    - Click "Civil, Family & Probate Case Records."
    - Under "Search by:" click the button next to "Date Filed."
    - Enter a date range in the "Date Filed:" boxes. For example, 01/01/2015 and 07/01/2016.
    - Select "Guardianship of Incapacitated Person" in the "Case Types:" box.
    - Click the "Search" box.
    - The screen will list publically accessible court cases based on your search.
    - To view an individual case for the name of a Visitor, click on the case number. Please note that the name of the Visitor may not be listed in every case.
- Physician or Clinical Psychologist:
  - Duties of the physician or clinical psychologist are found in N.D.C.C. § 30.1-28-03(5).

**Fourth**, review N.D.C.C. § 30.1-28-09 to compile a list of people to whom you must provide notice of the guardianship proceedings. Gather the names and current addresses of the following:

- The proposed ward;
- The proposed ward’s spouse;

- The proposed ward’s parents;
- The proposed ward’s adult children;
- Any person, corporation, or institution who is serving as the proposed ward's guardian, attorney in fact, representative payee for public benefits, or conservator, or who has the proposed ward's care and custody;
- If the proposed ward does not have a spouse, parents or adult children, the adult siblings and any adult with whom the proposed ward resides in a private residence, or if none can be found, any known adult relative;
- The guardian ad litem;
- The visitor; and
- The physician or clinical psychologist.

## **Step 2 – Prepare the Petition for Appointment of a Guardian form.**

Caption (top of form):

- Fill in the name of the county in North Dakota where you will file the petition.
- Fill in the name of the Judicial District where you will file the petition. (The county is within the Judicial District.) County and Judicial District information and maps are available at [www.ndcourts.gov](http://www.ndcourts.gov).
- Fill in the full, legal name of the proposed ward.
- The case number will be assigned by the clerk of court when the petition is filed in Step 4.

Complete all applicable sections of the form.

- If you need additional space, do not write on the back of the form. Write on one side of a new sheet (or sheets) of paper and attach to the completed petition.

Date and Signature:

- Date and sign this form in the presence of a Notary Public or Clerk of Court. You will need to show a driver’s license or photo identification card so the Notary Public or Clerk of Court can verify your identity.

Attorney Signature:

- If you are representing yourself, cross out the attorney signature line.

Make copies of the completed petition and any recent written statements or other exhibits you are filing with the petition. You will need a copy for each of the people to whom you will provide notice from Step 1. You will need an additional copy for your records.

**Step 3 – Prepare the Order for Appointment of Guardian ad Litem form, the Order Appointing a Physician/Clinical Psychologist form, and the Order Appointing a Visitor form.**

These are your proposed orders of the court appointing a guardian ad litem, a visitor and a physician or clinical psychologist. The proposed orders are not effective until signed by the court.

Caption (top of form):

- Fill out the top of each proposed order exactly as you filled out the caption of the Petition for Appointment of a Guardian form.

Complete all applicable sections of the form.

- Do not fill in the date the petition is filed, the name of the judge or the date and time of the hearing.

Signature:

- DO NOT sign the proposed orders.

**Step 4 – File the original, completed Petition for Appointment of a Guardian form, Order for Appointment of Guardian ad Litem form, the Order Appointing a Physician/Clinical Psychologist form, and the Order Appointing a Visitor form. Obtain a hearing date and time.**

Take your completed petition, completed proposed orders and any recent written statements or other exhibits to the Clerk of District Court's office in the county where you plan to file the petition.

If the clerk of court accepts your petition for filing, you will be required to pay a filing fee, unless an exception applies. (See the Fees Section above.)

A case number will be assigned. Ensure the case number is written on your original, completed petition and all copies.

Upon filing the petition, the court will set a date for hearing on the petition, appoint an attorney to act as guardian ad litem, appoint a physician or clinical psychologist to examine the proposed ward, and appoint a visitor to interview the proposed guardian and the proposed ward.

## **Step 5 – Prepare the Notice of Hearing and Statement of Rights.**

Caption (top of form):

- Fill in the top of the form exactly as it appears in the Petition for Appointment of a Guardian form.
- Write in the case number assigned in Step 4.

Complete all applicable sections of the form.

Date and Signature:

- Date the form.
- Sign on the signature line.
  - If you are representing yourself, cross out “Attorney for Petitioner(s)” beneath the signature line. Write “N/A” in the line next to “(ND Bar ID#).”
  - In the space beneath the signature line, clearly type or print your name, street address, city, state, zip code and telephone number.

Make copies of the completed notice. You will need a copy for each of the people to whom you will provide notice from Step 1. You will need an additional copy for your records.

## **Step 6 – Serve the completed Notice of Hearing and Statement of Rights with a copy of everything filed with the court in Step 4.**

All persons listed in N.D.C.C. § 30.1-28-09 must be given notice of the hearing and a copy of everything you filed with the court in Step 4.

You, the petitioner, are responsible for ensuring notice is given as required by N.D.C.C. § 30.1-28-09 and N.D.C.C. § 30.1-03-01.

(Additional information about service and Affidavit of Service forms are available at [www.ndcourts.gov/ndlshc](http://www.ndcourts.gov/ndlshc) by clicking on the “Service” link.)

### Notice to the Proposed Ward, Spouse and Parents by Personal Service:

The proposed ward, the proposed ward’s spouse and the proposed ward’s parents must be personally served at least 14 days before the hearing:

- The person who personally serves a copy of the Notice of Hearing and Statement of Rights and a copy of everything filed with the court must be at least 18 years old and not a party to the petition or an interested party.

- The person who serves the notice and accompanying documents must complete an Affidavit of Service by Personal Delivery and sign the affidavit in the presence of a notary public or clerk of court. This is your proof of service of the notice.
  - If the Sheriff personally serves the documents, the Sheriff will provide a completed affidavit of service.
- Make a copy of each affidavit for your records.
- NOTE: If the proposed ward's spouse or the proposed ward's parents cannot be found within North Dakota, notice of the hearing may be given as provided below for all other persons.

Notice by Mail:

All other persons listed in N.D.C.C. § 30.1-28-09 may be given notice of the hearing and a copy of everything you filed with the court by mail. See N.D.C.C. § 30.1-03-01.

Notice by mail must occur at least 14 days before the hearing:

- The person who mails a copy of the Notice of Hearing and Statement of Rights and a copy of everything filed with the court must be at least 18 years old.
- The copy of the Notice of Hearing and Statement of Rights and a copy of everything filed with the court must be sent by certified or ordinary first-class mail addressed to the person's office or place of residence.
- The person who mails the notice and accompanying documents must complete an affidavit of service by mail and sign the affidavit in the presence of a notary public or clerk of court. This is your proof of service of the notice.
- Make a copy of each affidavit of service by mail for your records.
- NOTE: If the proposed ward's spouse or the proposed ward's parents cannot be found within North Dakota, you may give notice of the hearing by mail.

Notice by Publication:

If, after a diligent search, you are unable to determine the address or identity of any of the other persons listed in N.D.C.C. § 30.1-28-09, except the proposed ward, you may give notice of the hearing by publication. See N.D.C.C. § 30.1-03-01 and [Rule 4\(e\) of the North Dakota Rules of Civil Procedure](#).

- Publish the Notice of Hearing and Statement of Rights in a newspaper having general circulation in the county where the hearing is to be held.
- The notice must be published at least once a week for three consecutive weeks.

The last publication of the notice must occur at least 10 days before the hearing:

- You, the petitioner, must request a publisher’s affidavit from the newspaper after publishing is complete. This is your proof of publication of the notice.
- You, the petitioner, must prepare an affidavit for publication. The purpose of an affidavit for publication is to describe to the court the diligent efforts to locate the person(s).
- The affidavit for service must be signed in the presence of a notary public or clerk of court.
- Make a copy of the affidavit of publication you received from the newspaper and the affidavit for publication for your records.

Additional Notice Requirements for Appointed Guardian ad Litem, Visitor and Physician or Clinical Psychologist:

A copy of the order of appointment must accompany the copy of the Notice of Hearing and Statement of Rights and a copy of everything filed with the court.

**Step 7 – File the Notice of Hearing and Statement of Rights and affidavit(s) of service with the court.**

File the Notice of Hearing and Statement of Rights with the clerk of court in the county where the hearing is to be held.

Proof of service of a copy of the notice and a copy of everything filed with the court must be filed with the clerk of court on or before the hearing date.

- File all affidavits of service with the clerk of court in the county where the hearing is to be held. If applicable, file the affidavit of publication and the affidavit for publication.

**Step 8 – Attend the hearing.**

You, the petitioner, should be prepared to present evidence showing why the guardianship is necessary, and evidence that notice of the hearing was given to all persons required to receive notice.

The proposed ward must attend the hearing in person.

If you plan to ask the court to find that there is good cause to excuse the proposed ward’s attendance at the hearing, you, the petitioner, must provide evidence of good cause. (Good cause does not consist only of the physical difficulty of the proposed ward to attend the hearing.)

The proposed ward has the right to present evidence, and to cross-examine witnesses, including the court-appointed physician and the visitor.

The judicial officer presiding over the hearing will issue a written order granting or denying the appointment of a guardian.

## **REQUIREMENTS AFTER THE COURT APPOINTMENT OF A GUARDIAN**

### **Letters of Guardianship:**

If the court appoints a guardian, the court will issue an order and letters of guardianship. To accept the duties of guardian, the guardian appointed by the court must sign the letters of guardianship.

You, the petitioner, must serve a copy of the order to all persons given notice under N.D.C.C. § 30.1-28-09.

You, the petitioner, must mail copies of the signed letters of guardianship to the ward and the ward's attorney.

See Step 6 for service and proof of service.

### **Beginning Inventory Report:**

Within 90 days of the court's order appointing a guardian, the guardian must provide a beginning inventory report of all assets owned by the ward or in which the ward has an interest.

The guardian must provide a copy of the beginning inventory report to the ward and any interested persons designated by the court in the order appointing the guardian.

See Step 6 for service and proof of service.

A form for the beginning inventory report is available at [www.ndcourts.gov/ndlshc](http://www.ndcourts.gov/ndlshc) by clicking on the "Power of Attorney, Guardianship, Conservatorship" link. Look for the report and instructions for the report in the "After Adult Guardianships are Established" section.

### **Guardian's Annual Report:**

The guardian must file an annual report with the court. The requirements of the report are found in N.D.C.C. § 30.1-28-12.

The guardian must provide a copy of the report to the ward and any interested persons designated by the court in the order appointing the guardian. The copy of the report provided to the ward must include a statement of the ward's right to seek alteration, limitation, or termination of the guardianship at any time.

See Step 6 for service and proof of service.

A form for the annual report is available at [www.ndcourts.gov/ndlshc](http://www.ndcourts.gov/ndlshc) by clicking on the “Power of Attorney, Guardianship, Conservatorship” link. Look for the report and instructions for the report in the “After Adult Guardianships are Established” section.

**The responsibilities of the Guardian terminate upon the death of the Ward or upon order of the court. The court may terminate the Guardianship if the Ward no longer meets the standard for establishing the Guardianship.**