

Instructions For Emergency Guardianship Of An Adult

Important! Read Before Using These Forms And Instructions!

ND Legal Self Help Center staff and court employees can't help you fill out the form(s). If you're unsure if these forms and instructions suit your circumstances, consult a lawyer.

ND Legal Self Help Center forms aren't official court forms. Judges and courts aren't required to accept them. There's no guarantee Center forms will be accepted. Use at your own risk.

If you need legal advice or legal representation, consult a lawyer licensed to practice in North Dakota. Go to ndcourts.gov/legal-self-help/finding-a-lawyer to learn more about finding a lawyer to represent you.

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 ndcourts.gov.

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

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.

*These instructions and forms aren't a complete statement of the law. They cover basic procedure for petitioning a North Dakota District Court for emergency guardianship over an adult. There's 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.***

Warning!

Appointment of an emergency guardian can have serious legal and financial consequences for both the alleged incapacitated person and the emergency guardian. It's strongly recommended that you consult a lawyer and carefully consider all of your options before you represent yourself in a petition to appoint an emergency guardian in a North Dakota District Court.

What Is An Emergency Guardianship?

Any person interested in the welfare of an allegedly incapacitated adult person may petition for the appointment of an emergency guardian.

A North Dakota state district court may appoint an emergency guardian of an adult if the court finds that using the non-emergency guardianship appointment process is likely to result in substantial harm to the adult's health, safety, or welfare, and that no other person appears to have authority and willingness to act in the circumstances.

A court hearing is required for all emergency guardianships.

Court appointment of an emergency guardian **isn't** a finding that the adult is incapacitated.

An emergency guardianship can't last more than 90 days.

If the judge appoints an emergency guardian, the petitioner may request that the judge extend the emergency guardianship for an additional 90 days. The petitioner must prove that there is good cause to extend the emergency guardianship.

(For information about the process and requirements of appointing an emergency guardian before holding the required hearing, see the instructions and forms for Ex-Parte Appointment of an Emergency Guardian. Ex-parte appointment of an emergency guardian is available only in rare circumstances.)

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 aren't limited to:

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

The North Dakota Department of Health and Human Services, Adults and Aging Services Division operates an Aging and Disability Resource Link. carechoice.nd.assistguide.net

The North Dakota Protection & Advocacy Project, a North Dakota state agency, is the protection and advocacy system for people with disabilities in North Dakota. The website gives information about services available, including supported decision making. ndpanda.org

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 available at ndcourts.gov/legal-self-help:

- Scroll to the “Guardians and Conservators” section.
- Click on the “[Guardianships of Adults](#)” link.
- The training course is in the “Guardian Responsibilities, Qualifications and Training Requests, and Payment Information” section.
- Click on the “[ND Guardianship Training Course](#)” link.
- Click on “State Course” under the Adult Guardianship Training section.

Laws And Rules

The requirements for adult guardianships are found in **North Dakota Century Code (N.D.C.C.) [Chapter 30.1-01](#), [Chapter 30.1-03](#), [Chapter 30.1-26](#) and [Chapter 30.1-28](#)**. Refer to these Chapters when filling out the forms.

- The specific requirements for emergency adult guardianships are found in **North Dakota Century Code (N.D.C.C.) [Section 30.1-28-10.1](#)**

[Rule 13](#) of the North Dakota Supreme Court Administrative Rules allows a District Court Judicial Referee, rather than a District Court Judge, to hear and decide adult guardianship cases.

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.

Overview Of The Emergency Guardianship Process

- Step One. Gather the Information Needed to Complete the Forms**
- 1) Where to file the petition;
 - 2) Information about the proposed emergency guardian and the alleged incapacitated person;
 - 3) Name and contact information of Guardian Ad Litem; and
 - 4) Names and current addresses of people who are required to receive notice of the petition.
- Step Two. Prepare the Petition for Appointment of an Emergency Guardian**
Also prepare the Confidential Information Form.
- Step Three. Prepare Proposed Order for Appointment of a Guardian ad Litem**
The proposed order isn't effective until signed by the court after completing Step Four.
- Step Four. File the Petition, Confidential Information Form, and Proposed Order for Appointment of a Guardian ad Litem; Obtain a Hearing Date**
Pay the \$80.00 filing fee or file the completed petition to waive filing fees.
- Step Five. Prepare the Notice of Hearing and Statement of Rights**
Make copies to serve in Step Six.
- Step Six. Serve the Notice of Hearing and Statement of Rights with a Copy of the Petition and Signed Order to Appoint a Guardian ad Litem**
Arrange to serve the people identified to receive notice in Step One.
Reasonable notice of the time and place of the hearing must be given to the alleged incapacitated person, their spouse (if any), and any other person the court may direct.
- Step Seven. File Proof of Service of Notice of Hearing and Statement of Rights, Petition and Signed Order to Appoint the Guardian ad Litem**
Declaration(s) of Service or Certificate(s) are proof of service.
- Step Eight. Attend the Hearing**
The petitioner is required to prove the allegations in their petition. The alleged incapacitated person has the right to present evidence and cross-examine witnesses.

Definitions

The following definitions are intended to be helpful, **but** they **aren't** intended to constitute legal advice **or** address every possible meaning of the terms in this section.

(See [Chapter 30.1-01 of the North Dakota Century Code](#) for more definitions.)

Alleged Incapacitated Person (See Incapacitated Person): An adult individual, who is alleged to be an incapacitated person, for whom an emergency adult guardianship is sought.

Court appointment of an emergency guardian **isn't** a finding that the adult is incapacitated.

Emergency Guardian: A person appointed by a North Dakota District Court to make personal decisions for an alleged incapacitated person. The appointment can last no more than 90 days.

Ex-parte Appointment: An emergency appointment of a guardian that is ordered without first holding the required hearing, and without first giving notice to the alleged incapacitated person or other interested parties. The alleged incapacitated person must be given notice within 48 hours of the ex-parte appointment. A hearing must be held within 10 days of the ex-parte appointment of a guardian.

Guardian ad Litem: A lawyer appointed by a North Dakota District Court to advocate for the best interests of the alleged incapacitated person.

Incapacitated Person: An adult individual 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.

Court appointment of an emergency guardian **isn't** a finding that the adult is incapacitated.

Judicial Referee: A judicial officer, appointed by the presiding District Court Judge, who has the authority to preside in adult guardianship proceedings. The findings and order of the Judicial Referee have the effect of the findings and order of a District Court Judge until superseded by a written order of a District Court Judge.

Least Restrictive Form of Intervention: The emergency guardianship imposed on the alleged incapacitated person must compensate for only those limitations necessary to provide the needed care and services, and that the alleged incapacitated person 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 a North Dakota District Court that identifies the authority and limitations of the emergency guardian to make decisions on behalf of the alleged incapacitated person; identifies any other powers or authority given to the emergency guardian by the court; and identifies any limitations the court puts on the alleged incapacitated person in matters where powers aren't granted to the emergency guardian.

Limited Emergency Guardian: A person or nonprofit corporation, appointed by the court, to supervise certain specified aspects of the care of an alleged incapacitated person. The appointment can last no more than 90 days.

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

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

A Judicial Referee May Hear And Decide The Guardianship

[Rule 13 of The North Dakota Supreme Court Administrative Rules](#) Allows Adult Guardianship cases to be heard and decided by a Judicial Referee, rather than a District Court Judge.

If a Judicial Referee is assigned to the adult guardianship case, any party to the case may request that a District Court Judge hear and decide the case instead. **The party must file a written request with the Clerk of Court within seven days after service of the notice of hearing.**

If the adult guardianship is heard and decided by a Judicial Referee, the Judicial Referee will issue findings of fact and an order. The Judicial Referee's findings of fact and order have the same effect as the findings of fact and order of a District Court Judge until superseded by a written order of a District Court Judge.

If any party to the adult guardianship case wants a review of the Judicial Referee's findings of fact and order, **the party must file a written request for a review, stating the specific reasons for the review, with the Clerk of Court within seven days after service of notice of the right to review.**

The party requesting review must give notice of their request to all other parties. Any party who wishes to respond to the request for review must file their written response within fourteen days after service of the notice of the request for review.

Fees

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

Forms and instructions are available to petition the court to waive the filing fee. Go to ndcourts.gov/legal-self-help. Scroll to the “Miscellaneous” section.

Other fees may apply. The fees include, but aren’t limited to:

- Service fees: Varies
- Copy of Documents: \$.10 per page, \$1.00 minimum
- The court must appoint a guardian ad litem. The petitioner or the alleged incapacitated person’s estate may be required to pay the guardian ad litem’s reasonable fees. The estate may pay reasonable fees only if payment will not unreasonably jeopardize the alleged incapacitated person’s well-being.

Forms For Emergency Adult Guardian Appointment

Forms you need:

Form Title	Purpose
Petition for Appointment of an Emergency Guardian	Formal request to the court for appointment of a guardian for an alleged incapacitated person.
Confidential Information Form	Lists the full confidential information that isn’t allowed to appear in other documents filed with the court. This form is a part of the court record that isn’t seen by the public.
Order for Appointment of Guardian ad Litem	Proposed order of the court appointing a Guardian ad Litem for the alleged incapacitated person. The proposed order isn’t effective until it is signed by the court.
Notice of Hearing and Statement of Rights	Gives the date and time of the emergency guardianship hearing, name and address of the Guardian ad Litem, and the name of the proposed emergency guardian. Gives important information about the guardianship process to the alleged incapacitated person.

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.

Form Title	Purpose
Declaration of Service by Personal Delivery	Proves copies of the Petition for Appointment of an Emergency Guardian, Notice of Hearing and Statement of Rights, and signed Order for Appointment of Guardian ad Litem were served in person.
Declaration of Service by Mail	Proves copies of the Petition for Appointment of an Emergency Guardian, Notice of Hearing and Statement of Rights, and signed Order for Appointment of Guardian ad Litem were served by mail.
Order – Emergency Guardian <i>(After hearing held)</i>	Proposed order appointing an emergency guardian after the full hearing is held on the petition for appointment of an emergency guardian. This document isn't effective until it is signed by the judge or judicial referee. The Order expires within 90 days.
Letters of Emergency Guardianship <i>(After hearing held)</i>	Proposed letters of guardianship after the full hearing is held on the petition for appointment of an emergency guardian. This document isn't effective until it is signed by the judge or judicial referee. The Letters of Emergency Guardianship expire within 90 days.

Form the Guardian ad Litem may use:

The Guardian ad Litem appointed by the court may use the following form to submit their report.

Form Title	Purpose
Guardian ad Litem's Report	A form a Guardian ad Litem may use to submit the required report to the court.

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Steps To Petition For Emergency Guardianship

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

First, review [N.D.C.C. § 30.1-28-10.1](#) for the requirements of petitioning for emergency guardianship of an alleged incapacitated person.

Second, review [N.D.C.C. § 30.1-28-02](#) to determine where to file the petition.

Third, at minimum, gather the following:

- Information about the proposed emergency guardian, including occupation and qualifications;
- Information about the alleged incapacitated person;
- Information about any person or institution with care or custody of the alleged incapacitated person;
- Information about the attorney, if any, who most recently represented the alleged incapacitated person;
- Name and address of alleged incapacitated person's spouse, if any;
- Recent written statements about the physical, mental, and emotional limitations of the alleged incapacitated person, if any, from a physician, mental health services provider, or other health care provider.

Fourth, gather the name and contact information of the guardian ad litem whose appointment you'll propose to the court in Step 4. Contact the guardian ad litem to obtain their consent, fees and any other information you consider necessary.

- Duties of the guardian ad litem are found in [N.D.C.C. § 30.1-28-03\(4\)](#).
- The court system **doesn't publish** a guardian ad litem roster for adult guardianship proceedings.
- However, a Legal Guardian ad Litem roster specifically for use in child custody proceedings is published by the North Dakota State Court Administrator's officer at ndcourts.gov/district-court/parenting-investigator-legal-guardian-ad-litem-roster.
 - This roster may be useful as a starting point for locating a guardian ad litem for adult guardianship proceedings.

Fifth, Compile a list of people to whom you must provide notice of the emergency guardianship hearing ([N.D.C.C. § 30.1-28-10.1](#)). Gather the names and current addresses of the following:

- The alleged incapacitated person;
- The alleged incapacitated person’s spouse, if any;
- Any person, corporation, or institution who has the alleged incapacitated person's care and custody; and
- The guardian ad litem.

Step 2 – Prepare the Petition for Appointment of an Emergency Guardian form, and the Confidential Information form.

Petition for Appointment of an Emergency Guardian form:

Caption (top of form):

- Fill in the name of the county in North Dakota where you’ll file the petition.
- Fill in the name of the Judicial District where you’ll file the petition. (The county is within the Judicial District.) County and Judicial District information and maps are available at [ndcourts.gov](#).
- Fill in the full, legal name of the alleged incapacitated person.
- Leave the case number blank.
 - 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, don’t 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.
- **Don’t Include** the following information in the Petition:
 - Social Security Number
 - Taxpayer-Identification Number
 - Name of an individual known to be a minor (less than 18 years of age)
 - Financial Account Number
- Use only the following if you need to refer to a social security number, taxpayer-identification number, name of a minor child, or financial account number:
 - Last 4 digits of Social Security Number
 - Last 4 digits of Taxpayer-Identification Number
 - Minor’s Initials (Jane Doe = J.D.)
 - Last 4 digits of Financial Account Number

Date and Signature:

(For the Petitioner and Co-Petitioner)

- Date and sign the form. Complete all lines below your signature.
- If there is no Co-Petitioner, write “None” on each line.

Make one copy of the completed petition and any recent written statements or other exhibits you’re filing with the petition for each person you’ll be required to serve if your petition is approved.

Make one additional copy for your records.

You file the original petition with the Clerk of Court in Step Four.

Confidential Information Form:

Caption (top of form):

- Fill out the information exactly as you filled out the Caption of the Petition for Appointment of an Emergency Guardian form.

Complete all applicable sections of the form.

- Review [Rule 3.4 of the North Dakota Rules of Court](#). Certain information is considered confidential and can’t be included in the Petition.
 - Full confidential information that can’t be included in the Petition:
 - Social Security Number
 - Taxpayer-Identification Number
 - Name of an individual known to be a minor (less than 18 years of age)
 - Financial Account Number
 - Include only the following in the Petition:
 - Last 4 digits of Social Security Number
 - Last 4 digits of Taxpayer-Identification Number
 - Minor’s Initials (Jane Doe = J.D.)
 - Last 4 digits of Financial Account Number

Date and Signature:

- Date and sign this form.

Make a copy of the Confidential Information Form for your records. The original is filed with the Clerk of District Court in Step 4.

This form will be filed as a confidential document. This form will not be included in the court documents that are available to the public.

The Confidential Information Form is **only** provided to the Clerk of Court.

Step 3 – Prepare the proposed Order for Appointment of Guardian ad Litem form.

This is your proposed order of the court appointing a guardian ad litem.

The proposed order isn't effective until signed by the court.

Caption (top of form):

- Fill out the top of the proposed orders exactly as you filled out the caption of the Petition for Appointment of an Emergency Guardian form.

Complete all applicable sections of the form.

- **Don't** fill in the date the petition is filed, the name of the judge/judicial referee or the date and time of the hearing.
- **Don't** fill in the blank in number 5. The Court will fill this in.

Signature:

- **Don't** sign the proposed orders or the proposed letters.

Step 4 – File the original, completed Petition for Appointment of an Emergency Guardian form, Confidential Information Form, and proposed Order for Appointment Guardian ad Litem form. Obtain a hearing date and time.

Take the following to the Clerk of Court's office in the county where you plan to file the petition:

- Original, completed Petition for Appointment of an Emergency Guardian form;
- Original, completed Confidential Information Form; and
- Original, completed proposed Order for Appointment Guardian ad Litem form; **and**
- Any recent written statements or other exhibits.

If the clerk of court accepts your petition for filing, you'll be required to pay an \$80.00 filing fee, unless the court grants you a fee waiver. (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 of the petition you made in Step 2.

Upon filing the petition, the court will set a date and for a hearing on the petition, and appoints an attorney to act as guardian ad litem for the alleged incapacitated person.

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 an Emergency 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.
 - 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'll need a copy for each of the people to whom you'll provide notice from Step 1.
- You'll need an additional copy for your records.

Step 6 – Serve the completed Notice of Hearing and Statement of Rights, a copy of the Petition, and the signed Order for Appointing Guardian ad Litem.

The following persons:

- The alleged incapacitated person;
- The alleged incapacitated person's spouse, if any;
- Any person, corporation, or institution who has the alleged incapacitated person's care and custody;
- The guardian ad litem; and
- Any other interested person the court tells you to serve.

Must be served a copy of the following:

- Notice of Hearing and Statement of Rights;
- Petition for Appointment of an Emergency Guardian; and
- Signed Order for Appointment of Guardian ad Litem.

You, the Petitioner, are responsible for ensuring reasonable notice of the time and place of the hearing is given as required by [N.D.C.C. § 30.1-03-01](#) and [N.D.C.C. § 30.1-28-10.1](#).

Notice to the Alleged Incapacitated Person and Spouse (if any) by Personal Service:

The alleged incapacitated person must be personally served. If the alleged incapacitated person's spouse is found within North Dakota, they must also be personally served.

You, the Petitioner, **can't personally serve the document yourself**. You arrange for personal service as follows:

- 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 a Declaration of Service by Personal Delivery. This is your proof of service of the notice.
 - If the Sheriff personally serves the documents, the Sheriff will provide a completed certificate of service.
- Make a copy of each declaration, or certificate for your records.
- You'll file the original Declaration(s) of Service or Certificate(s) of Service with the court in Step 8.

Notice by Mail:

If the alleged incapacitated person's spouse can't be found within North Dakota they may be served by mail.

Any person, corporation, or institution who has the alleged incapacitated person's care and custody, the guardian ad litem, and any other person the court tells you to serve may be served by mail.

Notice by mail must occur within 48 hours of the ex-parte appointment.

You, the Petitioner, arrange for service by mail as follows:

- 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. This is your proof of service of the notice.
- Make a copy of each Declaration of Service by Mail for your records.
- You'll file the original Declaration(s) of Service with the court in Step 8.

Additional Notice Requirements for Appointed Guardian ad Litem:

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, Declaration(s) of Service, and/or Certificate(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 declarations of service and/or certificates of service with the clerk of court in the county where the hearing is to be held.

Step 8 – Attend the hearing.

Be prepared to present evidence showing why the emergency guardianship is necessary, and evidence that notice of the hearing was given to all persons required to receive notice.

The alleged incapacitated person must attend the hearing in person.

If you plan to ask the court to excuse the alleged incapacitated person's attendance at the hearing, you, the Petitioner, must provide evidence of good cause. (Good cause doesn't consist only of the physical difficulty of the alleged incapacitated person to attend the hearing.)

The alleged incapacitated person has the right to present evidence, and to cross-examine witnesses.

The judge or judicial referee presiding over the hearing issues a written order granting or denying the appointment of an emergency guardian.

Requirements After The Court Appointment Of An Emergency Guardian

Letters of Guardianship:

If the court appoints an emergency guardian after the hearing, the court issues an order and letters of emergency guardianship. To accept the duties of emergency guardian, the emergency guardian appointed by the court must sign the letters of emergency guardianship.

You, the Petitioner, must serve a copy of the order to all persons given notice of the emergency guardianship proceedings, and any other persons the court may direct.

You must mail copies of the signed letters of emergency guardianship to the alleged incapacitated person and the alleged incapacitated person's attorney. See Step 6 for service and proof of service.

Emergency Guardianships can last No More than 90 days.

If the judge appoints an emergency guardian, the petitioner may request that the judge extend the emergency guardianship for an additional 90 days. The petitioner must prove that there is good cause to extend the emergency guardianship.

The Petitioner must make the request in writing and serve copies of their written request on the following:

- The alleged incapacitated person;
- The alleged incapacitated person's spouse, if any;
- Any other person the court told you to serve, or tells you to serve.

The ND Legal Self Help Center **doesn't have forms or instructions to make this type of request.** Consult a lawyer for help.

Reporting Requirements:

Emergency guardians may be required by the court to file reports. Review the order appointing the emergency guardian and follow any reporting requirements.