

Instructions for Motion for Order to Allow Payment of Room & Board

Do not include these instructions when you mail or file the completed forms.

IMPORTANT! READ BEFORE USING THESE FORMS AND INSTRUCTIONS

ND Legal Self Help Center staff and court employees cannot help you fill out forms.

If you are 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 are referred.

When you represent yourself, you must abide by the following:

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

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

These instructions and forms are not a complete statement of the law. They cover the basic procedure for asking a North Dakota state district court to allow payment of room and board in an existing guardianship of an adult. There is no guarantee that all judges and courts will accept forms available through the ND Legal Self Help Center. The Center is not responsible for any consequences that may result from the forms or information provided.

Use at your own risk.

Before Using These Forms

Before deciding whether to ask a court to allow payment of room and board from the ward's estate, you may wish to discuss any potential tax implications with a tax professional.

You may also wish to discuss any implications for financial benefits, such as community services or Medicaid, with your local service providers.

Purpose

[North Dakota Century Code Section 30.1-28-12\(7\)](#) relates to the requirement that funds from the ward's estate **cannot** be used for room and board when room and board is being furnished by the Guardian, or the Guardian's spouse, parent or child. A court order is required to allow funds from the ward's estate to be used for room and board in these instances. These forms may be used to request the use of funds from the ward's estate to pay for room and board.

If a North Dakota District Court already ordered the use of funds from the ward's estate to pay for room and board, these forms may be used to request an adjustment to the amount.

If you are a Guardian representing yourself, you may complete and sign the forms. If you are unsure how to proceed or unsure if these forms are suitable for your situation, you should consult an attorney.

If a separate conservator is appointed for the ward, **do not** use these forms. North Dakota Century Code Section 30.1-28-12(7) applies when a separate conservator **has not** been appointed.

Forms

The forms in the Motion for an Order to Allow Payment of Room and Board include:

- Form 1. Notice of Motion for an Order to Allow Payment of Room & Board;
- Form 2. Motion for an Order to Allow Payment of Room & Board
- Form 3. Brief in Support of Motion for an Order to Allow Payment of Room & Board;
- Form 4. Affidavit in Support of Motion for an Order to Allow Payment of Room & Board;
- Form 5. Order Allowing/Denying Payment of Room & Board (proposed); and
- Form 6. Certificate of Mailing/Hand Delivery.

Form 1. Notice of Motion for an Order to Allow Payment of Room and Board

- **Top of Form (Caption)**
 - Enter the county and district court names.
 - Fill in legal name of the ward.
 - Enter the case number from your Letters of Guardianship.
- **Date and Signature**
 - Sign and date the form.
 - Complete the lines following the signature.

Form 2. Motion for an Order to Allow Payment of Room and Board

- **Top of Form (Caption)**
 - Enter the county and district court names.
 - Fill in legal name of the ward.
 - Enter the case number from your Letters of Guardianship.
 - Fill in the name, address and phone number of the guardian/co-guardians.
- **Complete Paragraphs 1 and 2 of the Form**
 - Select the person providing room and board. Fill in the person's name.
 - To determine the amount of room and board, see Paragraphs 5 and 6 of the Affidavit in Support of Motion for an Order to Allow Payment of Room and Board form.
- **Date and Signature**
 - Sign and date the form.
 - Complete the lines following the signature.

Form 3. Brief in Support of Motion for an Order to Allow Payment of Room and Board

- **Top of Form (Caption)**
 - Enter the county and district court names.
 - Fill in legal name of the ward.
 - Enter the case number from your Letters of Guardianship.
 - Fill in the legal name of the guardian making the motion.
- **Complete Paragraph 3 of the Form**
 - Attach additional sheets, if necessary.
 - If additional sheets are necessary, write "(Additional sheets are attached)" on the last line of Paragraph 3.
 - Write or type only on one side of any additional sheets.
- **Date and Signature**
 - Sign and date the form.
 - Complete the lines following the signature.

Form 4. Affidavit in Support of Motion for an Order to Allow Payment of Room and Board

- **Top of Form (Caption)**
 - Enter the county and district court names.
 - Fill in legal name of the ward.
 - Enter the case number from your Letters of Guardianship.
- **Complete Paragraphs 1 through 9 of the Form**
 - Attach additional sheets, if necessary.
 - If additional sheets are necessary, write “(Additional sheets are attached)” on the last line of the Paragraph for which you attach additional sheets.
 - Write or type only on one side of any additional sheets.
- **Date, Signature and Notarization**
 - The Guardian must sign and date the statement below the Signature line in the presence of a Notary Public or a clerk of court. A notary public may be available at your local bank, credit union or district court.

Form 5. Order Allowing/Denying Payment of Room and Board (proposed)

- **Top of Form (Caption)**
 - Enter the county and district court names.
 - Fill in legal name of the ward.
 - Enter the case number from your Letters of Guardianship.
- **Leave the Rest of the Form Blank**
 - If the judicial officer assigned to the motion decides to use this proposed order, the judicial officer will complete and sign the rest of the form.

Form 6. Certificate of Mailing/Hand-Delivery

All interested persons designated in the order appointing you as Guardian must receive a copy of each of the following completed Motion for an Order to Allow Payment of Room and Board forms:

- Form 1. Notice of Motion for an Order to Allow Payment of Room & Board
- Form 2. Motion for an Order to Allow Payment of Room & Board
- Form 3. Brief in Support of Motion for an Order to Allow Payment of Room & Board
- Form 4. Affidavit in Support of Motion for an Order to Allow Payment of Room & Board
- Form 5. Order Allowing/Denying Payment of Room & Board (proposed)

Additionally, North Dakota Century Code Section 30.1-28-12(7) requires that at least one of the next of kin of the ward receive a copy of each completed Motion for an Order to Allow Payment of Room and Board forms, if notice is possible.

Copies may be mailed by first class, postage prepaid, **or** hand-delivered.

Before the court will act on your motion to allow payment of room and board, you must provide proof that copies of the completed documents were mailed or hand-delivered to all interested persons. The Certificate of Mailing/Hand Delivery gives the court proof that copies were provided.

This form must be signed in the presence of a Notary Public or a clerk of court.

File the Original, Completed Forms with the Clerk of Court

File the following original, completed motion for an order to allow payment of room and board forms with the clerk of court of the North Dakota District Court that currently has jurisdiction of the guardianship:

- Form 1. Notice of Motion for an Order to Allow Payment of Room & Board
- Form 2. Motion for an Order to Allow Payment of Room & Board
- Form 3. Brief in Support of Motion for an Order to Allow Payment of Room & Board
- Form 4. Affidavit in Support of Motion for an Order to Allow Payment of Room & Board
- Form 5. Order Allowing/Denying Payment of Room & Board (proposed)
- Form 6. Certificate of Mailing/Hand Delivery

You may be required to pay a filing fee of \$50.00. Contact the clerk of court for the amount of the filing fee, if any.

If you are required to pay a filing fee, you may ask the court to waive the filing fee. Forms and instructions are available online at www.ndcourts.gov/legal-self-help by clicking on the “Filing Fee Waiver Request – District Court/Small Claims Court” link under “Miscellaneous”. File the completed forms to request a filing fee waiver when you file the motion.

After the Original, Completed Forms are Filed

The people who received copies of the completed forms have 14 days to serve and file a response or objection to your request to use funds from the ward’s estate for room and board.

You will be notified if a hearing on your request is scheduled, or if the court requires you to do something before the court will make a decision.

Do not include these instructions when you mail or file the completed forms.

STATE OF NORTH DAKOTA
COUNTY OF _____

IN DISTRICT COURT
JUDICIAL DISTRICT

IN THE MATTER OF THE GUARDIANSHIP OF

_____,
AN INCAPACITATED INDIVIDUAL

Case No. _____

NOTICE OF MOTION FOR ORDER TO ALLOW PAYMENT OF ROOM AND BOARD

The following Motion for Order to Allow Payment of Room and Board is brought in accordance with Rule 3.2, North Dakota Rules of Court. The motion will be decided on the documents filed with the court unless oral argument or the taking of testimony is timely requested by a party or required by the Court.

You have 14 days after service of this Motion upon you within which to serve and file a response or objection to the Court granting the attached motion. Upon the filing of an answer, or upon expiration of the time for filing, the Motion is deemed submitted to the Court, unless a party timely requests oral argument or the taking of testimony.

Dated this _____ day of _____, 20_____.

Signature of Guardian/Movant

Printed Name

Address

City, State, Zip Code

Telephone Number

STATE OF NORTH DAKOTA
COUNTY OF _____

IN DISTRICT COURT
JUDICIAL DISTRICT

IN THE MATTER OF THE GUARDIANSHIP OF

_____,
AN INCAPACITATED INDIVIDUAL

Case No. _____

MOTION FOR ORDER TO ALLOW PAYMENT OF ROOM AND BOARD

Name of guardian/co-guardians:

Address:

City:

State:

Zip:

Phone:

The guardian of the above-named incapacitated individual, hereby moves the court for an Order in accordance with North Dakota Century Code Section 30.1-28-12(7)(b) and Rule 3.2 of the North Dakota Rules of Court providing as follows:

1. Granting the guardian/co-guardians approval to use funds from the incapacitated individual's estate for payment of room and board provided by:

- The guardian/co-guardians: _____
- The guardian's/co-guardians' spouse: _____
- The guardian's/co-guardians' parent: _____
- The guardian's/co-guardians' child: _____

2. Granting payment for the charge for room and board in an amount not to exceed \$_____ per month.

3. A brief and an affidavit in support of this motion are attached.

Dated this _____ day of _____, 20_____.

Signature of Guardian/Movant

Printed Name

Address

City, State, Zip Code

Telephone Number

STATE OF NORTH DAKOTA
COUNTY OF _____

IN DISTRICT COURT
JUDICIAL DISTRICT

IN THE MATTER OF THE GUARDIANSHIP OF

AN INCAPACITATED INDIVIDUAL

Case No. _____

**BRIEF IN SUPPORT OF MOTION FOR ORDER TO ALLOW PAYMENT OF
ROOM AND BOARD**

Pursuant to Rule 3.2 of the North Dakota Rules of Court, the guardian of the above-named incapacitated individual, _____, submits this Brief in Support of the Motion for an Order to Allow Payment of Room and Board.

FACTS

1. The facts are stated in the Affidavit in Support of the Motion for an Order to Allow Payment of Room and Board, which is filed with the Motion for an Order to Allow Payment of Room and Board and incorporated by reference.

LAW AND ARGUMENT

2. North Dakota Century Code Section 30.1-28-12(7)(b) provides that “the guardian may not use funds from the ward’s estate for room and board which the guardian or the guardian’s spouse, parent or child have furnished the ward unless a charge for the service is approved by order of the court”

3. The court should allow payment of room and board from the ward's estate in an amount not to exceed \$_____ per month because:

CONCLUSION

4. The guardian respectfully requests that the court enter an Order consistent with the guardian's motion.

Dated this _____ day of _____, 20_____.

Signature of Guardian/Movant

Printed Name

Address

City, State, Zip Code

Telephone Number

STATE OF NORTH DAKOTA
COUNTY OF _____

IN DISTRICT COURT
JUDICIAL DISTRICT

IN THE MATTER OF THE GUARDIANSHIP OF

_____,
AN INCAPACITATED INDIVIDUAL

Case No. _____

**AFFIDAVIT IN SUPPORT OF MOTION FOR ORDER TO ALLOW PAYMENT
OF ROOM AND BOARD**

The undersigned, being first sworn, on their oath states the following:

1. I am the guardian of the above-named incapacitated individual.
2. The name(s), address and telephone number(s) of the guardian or co-guardians appointed for the incapacitated individual are as follows:

Name(s):

Address:

City:

State:

Zip:

Phone:

3. The incapacitated individual lives at _____
_____ with

The guardian/co-guardians: _____

The guardian's/co-guardians' spouse: _____

The guardian's/co-guardians' parent: _____

The guardian's/co-guardians' child: _____

who furnishes room and board to the incapacitated individual.

4. The following other people also live in this household (*name, age, relationship to me*):

5. The total average MONTHLY expenses for the HOUSEHOLD are as follows:

- a. Rent Mortgage: \$ _____
- b. Insurance & Property Taxes: \$ _____
- c. Utilities (water, sewer, electricity, gas, trash) \$ _____
- d. Food for HOUSEHOLD: \$ _____
- e. Other _____ \$ _____
- f. Total Average HOUSEHOLD Expenses: \$ _____

6. The total average MONTHLY expenses for the INCAPACITATED INDIVIDUAL are as follows:

- a. Rent Mortgage: \$ _____
- b. Insurance & Property Taxes: \$ _____
- c. Utilities (water, sewer, electricity, gas, trash) \$ _____
- d. Food for INCAPACITATED INDIVIDUAL: \$ _____
- e. Other _____ \$ _____
- f. Total Average INCAPACITATED INDIVIDUAL Expenses: \$ _____

7. The monthly room and board payment that I am requesting for housing the incapacitated individual in an amount not to exceed \$_____. I am requesting to charge the incapacitated individual's estate on a monthly basis for as long as the incapacitated individual is living at the address in Paragraph 3.

8. The following additional documents that support my Motion for an Order to Allow Payment of Room and Board are attached (*list name and brief description of each document*):

9. I would like the court to consider the following additional information in making a decision:

Dated this _____ day of _____, 20_____.

Signature of Guardian/Movant

STATE OF NORTH DAKOTA)
) ss.
_____ COUNTY)

being first duly sworn, states as follows:

That he/she is the Guardian/Movant in the above document and that he/she has read the Motion and the facts stated are true to the best of his/her knowledge.

Subscribed and sworn before me this _____ day of _____, 20_____.

Notary Public
State of North Dakota
My Commission Expires: _____

STATE OF NORTH DAKOTA IN DISTRICT COURT
COUNTY OF _____ _____ JUDICIAL DISTRICT

IN THE MATTER OF THE GUARDIANSHIP OF

_____,
AN INCAPACITATED INDIVIDUAL

Case No. _____

ORDER ALLOWING / DENYING PAYMENT OF ROOM AND BOARD

This matter came before the Court on a Motion for an Order to Allow Payment of Room and Board from the estate of the above-named incapacitated individual.

The Court having reviewed the Motion and accompanying Brief, Affidavit and other documentation, and being fully advised, **HEREBY ORDERS:**

The motion is granted. _____, may be reimbursed for room and board provided to the incapacitated individual out of the incapacitated individual's estate in an amount not to exceed \$_____ per month. Reimbursement may continue for as long as the incapacitated individual lives with this household at the following address: _____.

The motion is denied.

Dated _____, 20_____.

BY THE COURT:

Judge of the District Court

STATE OF NORTH DAKOTA
COUNTY OF _____

IN DISTRICT COURT
_____ JUDICIAL DISTRICT

IN THE MATTER OF THE GUARDIANSHIP OF

AN INCAPACITATED INDIVIDUAL

Case No. _____

CERTIFICATE OF MAILING/HAND-DELIVERY

The undersigned certifies that a true and correct copy of the Notice of Motion, Motion for an Order Allowing Payment of Room and Board, Brief in Support of Motion, Affidavit in Support of Motion, and proposed Order for Payment of Room and Board were, on the following date mailed, by first class mail, postage prepaid, or hand delivered to:

___ ward or ward's attorney (if any): on date _____

___ parent of ward (if any): on date _____

___ the following interested person(s) designated by the court order and other persons interested in this guardianship:

_____ : on date _____

_____ : on date _____

_____ : on date _____

_____ : on date _____

Guardian/Movant: _____

Signature: _____ Date: _____

For notary public:

State of _____

County of _____

Signed [or attested] before me on _____ (Date) by

_____.

(Individual(s) making statement)

Signature of notarial officer _____

[Stamp]