

Instructions for Objecting to a Motion for Authorization to Sell the Ward's Real Property (Real Estate)

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 how to proceed, or need legal advice or legal representation, consult a lawyer licensed to practice in North Dakota.

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 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.

- For more information about finding a lawyer, go to ndcourts.gov/legal-self-help/finding-a-lawyer.

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

***These instructions and forms aren't a complete statement of the law.** They cover the basic process for objecting to a guardian's request to a North Dakota state district court to authorize the sale of the Ward's real property (real estate). 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.

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

Who May Use this Packet of Forms?

These forms may be used by the Ward's spouse (if any) and interested persons to object to the guardian's motion to the District Court for authorization to sell the Ward's real property, and to demand a hearing.

IMPORTANT! You have LIMITED time to object to the motion. See page 7.

If you're the Ward's Spouse, or an Interested Person, you have ONLY 10 or 13 days to Object to the Motion in Writing.

IF YOU MISS THE DEADLINE, THE DISTRICT COURT WON'T CONSIDER YOUR OBJECTION.

What if I Don't Meet the Requirements to Use this Packet of Forms?

Forms for common and uncomplicated matters that may come up throughout a guardianship of an adult are found at ndcourts.gov/legal-self-help/adult-guardianship. Forms aren't available for every situation or circumstance.

If you don't find a form that suits your circumstances at ndcourts.gov/legal-self-help/adult-guardianship, a form isn't available. You may wish to consult a lawyer to help you decide what to do next.

Who Can Help Me Fill Out this Packet of Forms?

As a self-represented individual, you must make all decisions related to the forms, including:

- Whether you should use this packet of forms;
- What words to write; and
- Whether the words you've written are sufficient or correct.

ND Legal Self Help Center staff and Court employees:

- Can't assist you in any decision-making related to the forms;
- Can't fill out any forms for you or tell you what words to write; and
- Can't tell you if the words you've written, or are planning to write, are sufficient or correct.

Answers to these questions require Center staff and Court employees to take your situation, apply the law and tell you what you should do. This is legal advice and can't be provided by the ND Legal Self Help Center or any Court System employees under any circumstances.

If you'd like assistance filling out your forms, or deciding if these forms suit your situation, consult a lawyer licensed to practice in North Dakota.

Lawyer Resources

You aren't required to hire an attorney to access the state court system. When you represent yourself, you must follow all of the rules, laws and procedures a lawyer is required to follow.

If you'd like to learn more about finding an attorney to represent you, go to ndcourts.gov/legal-self-help/finding-a-lawyer. You may also find the following options of interest.

What Laws and Rules Do I Need to Know to Use this Packet?

[Section 30.1-28-03.2](#) of the North Dakota Century Code governs motions for authorization to sell the Ward's real property (real estate).

[Rule 3.2 of the North Dakota Rules of Court](#) governs motions in North Dakota state district court cases.

[Rule 5 of the North Dakota Rules of Civil Procedure governs service of motion documents filed in a District Court guardianship case.](#)

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. 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 and rules apply to your situation.

(This space left intentionally blank.)

What Definitions Do I Need to Know to Use this Packet of Forms?

The following definitions are intended to be helpful, BUT they're NOT intended to constitute legal advice OR address every possible meaning of the terms in this section.

Guardian (or Co-Guardians) – An individual or nonprofit corporation appointed by a North Dakota state district court to make personal decisions for the Ward.

Interested Person – Includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in, or claim against, a trust estate or the estate of a Ward. Interested persons are usually listed in the findings and order appointing the Guardian(s).

Judicial Referee – A judicial officer, appointed by the presiding District Court judge, who has the authority to preside in District Court 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.

Motion – A written request to a North Dakota state district court to issue an order for a specific purpose. For example, a written request for an order authorizing the Guardian to sell the Ward's real property.

Moving Party – The Guardian making the motion.

Objecting Party – The Ward's spouse or any Interested Person who objects to the motion in writing within 10 days of being served the motion. Also referred to as the Opposing Party.

Real Property – land either with or without buildings on it. For example, a home is real property. Also generally referred to as real estate.

Ward – An adult individual for whom a North Dakota state district court appointed a guardian.

(This space left intentionally blank.)

A Judicial Referee May Hear and Decide Your Motion

[Rule 13 of the North Dakota Supreme Court Administrative Rules](#) allows adult guardianship cases in District Court to be heard and decided by a judicial referee, rather than a District Court judge.

If a judicial referee is assigned to the 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 guardianship case 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 (replaced) by a written order of a District Court judge.

If any party to the 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 the 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.

Forms in the Packet

2 Forms you will need to object to the motion – BOTH must be completed.

Form Title	Purpose
Objection to Authorization to Sell Real Property	This is a written objection to the Guardian's motion for authorization from the Court to sell the Ward's real property. This includes the required demand for hearing on the motion. Completed and signed by the Objecting Party.
Notice of Hearing on Motion for Authorization to Sell Real Property	This is the notice of hearing with the date, time, and location of the hearing on the motion. Completed by the Objecting Party.

Form Title	Purpose
Declaration of Service by Mail	This is the proof of service by mail of copies of the completed Objection and Notice of Hearing on the Guardian(s), Ward, the Ward's Spouse, and every interested person. Completed by the person who served copies by mail.
Declaration of Service by Hand Delivery	This is the proof of service by hand delivery of copies of the completed Objection and Notice of Hearing on the Guardian(s), Ward, the Ward's Spouse, and every interested person. Completed by the person who served copies by hand delivery.

STEPS IN THE PROCESS

You MUST complete ALL steps. Don't skip steps!

Step One: Within 10 or 13 Days of Service of the Motion for Authorization to Sell Real Property, the Objecting Party Files the Original, Completed Objection Form

Step Two: At Least 22 Days Before the Hearing, The Objecting Party Arranges for Service of Copies of the Completed and Signed Objection and Notice of Hearing Forms on the Guardian(s), Ward, Ward's Spouse, and All Interested Persons

Step Three: The Objecting Party Files the Originals of the Completed and Signed Notice of Hearing and Proof of Service Forms with the Clerk of Court

Step Four: A Hearing is Held Before the District Court Makes a Decision

Step Five: Findings of Fact and Order is Issued by the District Court

See the following pages for instructions to complete Steps 1 through 5.

STEP ONE: Within 10 or 13 Days of Service of the Motion for Authorization to Sell Real Property, File the Original, Completed Objection Form

IMPORTANT! You have LIMITED time to object to the motion.

If you're the Ward's Spouse, or an Interested Person, you have ONLY 10 or 13 days to file your written objection and demand for hearing with the Clerk of Court.

Hand Delivery 10 Day Deadline:

If you were served the motion documents by hand delivery, you have 10 calendar days from the day after you were handed the documents to file your written opposition to the motion.

Mail 13 Day Deadline:

If you were served the motion documents by mail, you have 13 calendar days from the day after the postmarked date on the envelope to file your written opposition to the motion.

Calculate your Deadline:

Count calendar days from the day after you were served.

If the last calendar day lands on a Saturday, Sunday, or legal holiday, count forward to the next day that ISN'T a Saturday, Sunday, or legal holiday.

First, Complete the Objection Form:

TIPS FOR COMPLETING FORMS

- Complete every paragraph that requires you to type or write in a space, unless the instructions specifically tell you to leave a space blank.
 - If a space doesn't apply to you or your circumstances, type or write "Not Applicable," or "N/A."
- Write in your own words why you're objecting to the motion asking the District Court to authorize the sale of the Ward's real property.
- Stick with the facts: who, what, when, where and how.
 - Avoid opinions.
- If you're unable to complete the fillable forms online, you may print the forms set and handwrite in blue or black ink. Your handwriting **MUST** be readable.

Objection to Authorization to Sell Real Property Form

The Objecting Party completes and signs this form.

- **Top of Form (Caption)**

Refer to the motion documents you were served by the guardian of the Ward.

- County – the North Dakota county where the case is currently filed.
- Judicial District – the name of the Judicial District where the case is currently filed. (The county is within the Judicial District.) County and Judicial District information and maps are available at ndcourts.gov/court-locations.
- In the Matter of the Guardianship of – the Ward's full name.
- Case Number – the case number of the current District Court guardianship.

- **To complete the Objection**

- Read the paragraphs carefully.
- Complete all paragraphs that require you to type or write information.

- **Date and Signature**

- The Opposing Party signs and dates this form.
- Complete the lines following the signature line.

Second, File the Completed the Objection Form:

IMPORTANT! Before filing with the Clerk of Court, make a copy of your completed and signed Objection form for your records, AND a copy for the Guardian(s), the Ward, and each Interested Person.

The contact information for Clerks of Court by North Dakota county is available at ndcourts.gov/court-locations.

File the following with the Clerk of Court:

- Your completed and signed Objection to Authorization to Sell Real Property Form.

STEP TWO: At Least 22 Days Before the Hearing, Arrange for Service of Copies of the Completed and Signed Objection and Notice of Hearing Forms on the Guardian(s), the Ward, and each Interested Person

First, Get a Hearing Date and Complete the Notice of Hearing Form:

If your Objection is approved for filing by the Clerk of Court, ask the Clerk of Court how to schedule an evidentiary hearing on the motion.

Follow the Clerk of Court's instructions for scheduling an evidentiary hearing on the motion.

You need to get the following information to fill out your Notice of Hearing Form:

- The name of the judge or judicial referee who will hear and decide the motion.
- The date, time, and location of the hearing.
 - If the hearing is in person at the courthouse, get the name and address of the courthouse.
 - If the hearing is remote by Zoom, get the Zoom information and instructions from the Clerk of Court.

Notice of Hearing on Motion for Authorization to Sell Real Property Form

The Opposing Party completes and signs this form.

- **Top of Form (Caption)**
 - Fill out exactly as you filled out the Caption of the Objection.
 - TO: List the names of the Guardian(s), the Ward, the Ward's spouse (if any), and all interested persons.
- **Complete Paragraph 2 of your Notice of Hearing Form:**
 - Read the paragraph carefully.
 - Fill in the name of the judge or judicial referee and checkmark the appropriate box.
 - Fill in the date and time of the scheduled hearing.
 - Checkmark the appropriate box for the type of hearing and fill in the details.
- **Date and Signature**
 - The Opposing Party signs and dates this form.
 - Complete the lines next to and below your signature.

IMPORTANT! Make a copy of your completed and signed Notice of Hearing form for your records, AND a copy for the Guardian(s), the Ward, and each Interested Person.

Second, AT LEAST 22 DAYS Before the Hearing Date Arrange for Service:

The Guardian(s), the Ward, the Ward's spouse (if any), and ALL interested persons must receive a copy of each of the following completed and signed forms:

- Objection to Authorization to Sell Real Property Form; and
- Notice of Hearing on Motion for Authorization to Sell Real Property Form.

Gather the names and current addresses of the following:

- The Guardian(s);
- The Ward;
- The Ward's spouse (if any); and
- All interested persons.

You DON'T serve yourself.

Arrange to serve copies of the completed forms

You may arrange for service by first class mail, or by hand delivery.

The District Court will require proof that the persons listed above received a copy of the completed and signed forms. A Declaration of Service is your proof of service.

Declaration of Service by Mail

The person serving copies of the documents must be at least 18 years of age.

Postage must be first class and pre-paid. The person who takes copies of the documents to the post office and pays the postage must complete the Declaration of Service by Mail. Service is complete upon mailing.

- **Top of Form (Caption)**
 - The person who took copies of the documents to the post office and paid the postage fills in the Caption exactly as the Caption of the Objection is filled in.

- **Complete Paragraphs 1 through 6 of the Form**

- The person who took copies of the documents to the post office and paid the postage completes paragraphs 1 through 6.

- **Date and Signature**

- The person who took copies of the documents to the post office and paid the postage dates and signs the form and completes the lines following their signature.

Declaration of Service by Hand Delivery

The person who hand delivers copies of the documents must be at least 18 years of age, and not a party or interested in the guardianship case.

The person who hand delivers copies of the documents must complete the Declaration of Service by Hand Delivery.

- **Top of Form (Caption)**

- The person who hand delivered copies of the documents fills in the Caption exactly as the Caption of the Objection is filled in.

- **Complete Paragraphs 1 through 5 of the Form**

- The person who hand delivered copies of the documents completes paragraphs 1 through 5.

- **Date and Signature**

- The person who hand delivered copies of the documents dates and signs the form and completes the lines following their signature.

IMPORTANT! Make a copy of each completed and signed Declaration of Service form for your records.

STEP THREE: File the Originals of the Completed and Signed Notice of Hearing and Proof of Service Forms with the Clerk of Court

File the following with the Clerk of Court:

- Notice of Hearing on Motion for Authorization to Sell Real Property Form
- Declaration of Service by Mail Form (for all persons served by mail); and
- Declaration of Service by Hand Delivery Form (for all persons served by hand delivery).

If you don't file proof of service of copies of your Objection and Notice of Hearing for every person required to be served, the judge or judicial referee may decide to take any of the following actions:

- Postpone the hearing until you provide appropriate proof of service;
- Cancel the hearing and make a decision only on the documents provided; or
- Dismiss your objection.

STEP FOUR: A Hearing is Held Before the District Court Makes a Decision

Prepare your case for the evidentiary hearing.

Be prepared to prove everything you typed or wrote in your Objection.

Organize the information, documents, etc. that you think you'll need for the hearing. At minimum, prepare an outline of your remarks and arguments.

Subpoenas: Review [Rule 45 of the North Dakota Rules of Civil Procedure](#) carefully! If you require a witness to appear at the hearing or require production of documents, electronically stored information or other tangible things, you may need the Clerk of District Court to issue a subpoena. Only a Clerk of District Court or a lawyer for a party may issue a subpoena.

More information about subpoenas is available at ndcourts.gov/legal-self-help/subpoenas.

Evidence: You're required to follow the North Dakota Rules of Evidence when presenting your own evidence and when objecting to the evidence presented by other parties.

An [Evidence Research Guide](#) is available at ndcourts.gov/legal-self-help.

You may also wish to review the guides for self-represented individuals for gathering and presenting evidence at rcdvpc.org/resources/self-represented-litigants-series.html.

Review pre-trial and trial guidebooks for self-represented litigants and lawyers. Your local public or academic library may have resources available.

ODIN is a shared library database of many North Dakota academic, public, state agency, and special libraries. Search ODIN for resources that may be available in a North Dakota library near you. (polaris.odinlibrary.org)

If the book is available for interlibrary loan through ODIN, ask library staff of your local North Dakota library how to request the book.

If the Hearing will be Held in Person, Attend the Hearing in Person:

If you need to request to appear at the hearing some other way, a set of forms is available at ndcourts.gov/legal-self-help.

Arrive Early to the Courthouse on the Date of the Hearing:

If your hearing is in-person at the courthouse, arrive early so you don't miss your hearing date and time. If you have a serious, unavoidable reason you can't get to court on the date and time scheduled for trial, call the District Court as soon as you can.

If the Hearing will be Held by Zoom, Make Sure You Can Connect to the Zoom Hearing:

If your hearing is held electronically by Zoom, well before the hearing begins, make sure you can connect and understand how to function in Zoom.

Don't be late to the Zoom hearing. If you have a serious, unavoidable reason you can't attend the hearing on the date and time scheduled for trial, call the District Court as soon as you can.

Conduct of the Hearing:

The judge, or judicial referee, hears both sides and then issues the findings of fact and order. Sometimes, the findings of fact and order is issued at the end of the hearing. Often, the findings of fact and order is issued at a later date.

In general, a hearing proceeds in the following order:

- Opening Statements
 - Each party gives an opening statement. Usually, the Moving Party (Guardian) goes first.
- Moving Party Presents Witnesses and Evidence
 - The Moving Party presents their case first. The Objecting Party may cross-examine witnesses and object to the Moving Party's evidence.

- Objecting Party Presents Witnesses and Evidence
 - The Objecting Party presents their case after the Moving Party. The Moving Party may cross-examine witnesses and object to the Objecting Party's evidence.
- Closing Arguments
 - Each party gives a closing statement. Usually the Objecting Party goes first.

Before You Leave the Hearing:

Make sure you understand what happens next. Ask if you aren't sure what, if anything, you need to do next.

STEP SEVEN: Findings of Fact and Order is Issued by the District Court

Until the judge or judicial referee signs an order authorizing the sale of the Ward's real property, the property can't be sold.

The judge or judicial referee will make a decision after the hearing and after reviewing the documents filed with the court. The judge or judicial referee will then issue findings of fact and an order.

You'll receive a copy of the Findings of Fact and Order signed and dated by the judge or judicial referee by mail or email.

The judge or judicial referee may order any of the following:

- Authorize the sale with the terms and conditions requested by the Guardian;
- Authorize the sale and add additional terms and conditions the Guardian must meet; **OR**
- Dismiss the motion entirely and not authorize the sale.

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

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE MATTER OF THE GUARDIANSHIP OF

_____.

Case No. _____

**OBJECTION TO AUTHORIZATION TO SELL REAL PROPERTY
AND DEMAND FOR HEARING**

1. I am _____, ☐the ward ☐the ward's parent
☐the ward's spouse ☐an interested person designated by the Court in the guardianship order.

2. My objection is made within ten days of the service of the Motion for Authorization to Sell Real Property of the Ward.

3. I object to the Motion for Authorization to Sell Real Property because (*provide specific facts demonstrating reasons for objection*):

4. The sale of the real property is not in the best interests of the Ward because:

5. I request that the court immediately set a date for hearing and I understand that if I do not appear at the hearing, my Objection will be overruled. **I understand that I will receive a Notice of Hearing when I file my Objection with the Court. After I receive the Notice of Hearing from the Clerk of Court, it is my responsibility to mail a copy of this Objection, and the Notice of Hearing to all persons entitled to notice.**

Dated _____.

Signature

Printed Name

Address

City, State, Zip Code

Telephone Number

Email Address

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF _____ JUDICIAL DISTRICT

IN THE MATTER OF THE GUARDIANSHIP OF

_____.

Case No. _____

NOTICE OF HEARING ON MOTION FOR AUTHORIZATION TO SELL REAL PROPERTY

TO: _____
(List names of parties to receive notice of hearing)

1. **YOU ARE HEREBY GIVEN NOTICE** that a hearing to present evidence will be held on the Motion for Authorization to Sell Real Property of the Ward before the Court pursuant to Rule 3.2, North Dakota Rules of Court and Section 30.1-28-03.2.

2. The hearing will be held before the Honorable _____,
District Court ☐ Judge/ ☐ Judicial Referee at Date: _____ Time: _____

☐ The hearing will be held by **Zoom Video Conference**, not at the courthouse. To attend the hearing: _____

☐ The hearing will be held in-person **at the** _____ **County Courthouse**
at _____

Dated _____.

(Signature)

(Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number)

(Email Address)

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE MATTER OF THE GUARDIANSHIP OF

_____.

Case No. _____

DECLARATION OF SERVICE BY MAIL

(May serve multiple persons ONLY IF envelopes are mailed same day from same Post Office.)

The person serving court documents by mail states:

1. My name is _____ *(person who mailed documents)*. I am at least 18 years of age.

2. List of Court Documents Served:

- Notice of Hearing on Motion for Authorization to Sell Real Property; and
- Objection to Authorization to Sell Real Property and Demand for Hearing.

3. Service by Mail:

I served a true and correct copy of each of the court documents listed in Paragraph 2 by mailing them, enclosed in an envelope, by First-Class mail, postage prepaid, and by depositing them in the United States Mail, directed to each person listed in Paragraph 5.

4. Date and Post Office Location of Service by Mail:

Date Court Documents Were Served by Mail: _____

United States Post Office Location:

(city)

(county)

(state)

5. **Person or Persons Served by Mail:**

1. Name of Person Served: _____

Mailing Address: _____

City, State, Zip Code: _____

2. Name of Person Served: _____

Mailing Address: _____

City, State, Zip Code: _____

3. Name of Person Served: _____

Mailing Address: _____

City, State, Zip Code: _____

6. I declare, under penalty of perjury under the law of North Dakota, that everything I stated in this Declaration of Service by Mail is true and correct.

Signed on _____ (date) in _____ (County),
_____ (State), _____ (Country).

Signature

Printed Name

Address

City, State, Zip Code

Telephone Number

Email Address

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE MATTER OF THE GUARDIANSHIP OF

Case No. _____

DECLARATION OF SERVICE BY HAND DELIVERY

(A separate declaration is required for each person served.)

The person serving court documents by hand delivery states:

1. My name is _____ *(person who served documents by hand delivery)*. I am at least 18 years of age. **I am not a party or interested in the above named matter.**

2. **Service by Hand Delivery:**

I served a true and correct copy of each of the court documents listed in Paragraph 4 to

_____ *(name of person served)* by *(choose one)*:

☐ Giving the court documents directly to him/her.

☐ Leaving the court documents with: _____
(name), a person of suitable age and discretion who lives at the same address.

I know the person I served is the person intended to be served because: *(explain how you identified the person)* _____

3. **Date, Time, and Address of Service by Hand Delivery:**

Date: _____ Time: _____ ☐ a.m. (or) ☐ p.m.

Address:

(street address)

(city)

(zip code)

4. **List of Court Documents Served:**

- Notice of Hearing on Motion for Authorization to Sell Real Property; and
- Objection to Authorization to Sell Real Property and Demand for Hearing.

5. I declare, under penalty of perjury under the law of North Dakota, that everything I stated in this Declaration of Service by Hand Delivery is true and correct.

Signed on _____ (date) in _____ (County),
_____ (State), _____ (Country).

Signature

Printed Name

Address

City, State, Zip Code

Telephone Number

Email Address