

INSTRUCTIONS FOR POWER OF ATTORNEY FOR CARE AND CUSTODY OF MINOR CHILD(REN) FORM

IMPORTANT! READ BEFORE USING THIS PACKET OF FORMS

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, consult a lawyer.

The North Dakota Legal Self Help Center provides resources to people who represent themselves in civil matters in the North Dakota state courts. The forms and information available through the North Dakota Legal Self Help Center aren't intended for legal advice but only as a general guide. **Use at your own risk.**

Any user of the forms or information is hereby advised that all forms and information are provided "as is." The forms and information provided may be subject to errors or omissions. The ND Legal Self Help Center ISN'T responsible for any consequences that may result.

Carefully read this information and any instructions, laws, or court rules to which you are referred. As a self-represented individual, you must independently determine if the forms and information are legally sufficient for your specific circumstances and for North Dakota.

If you're unsure if this information suits your circumstances, or if you don't know how to answer the questions on these forms, consult a lawyer.

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

This information isn't a complete statement of the law. The information can't replace the advice of competent legal counsel licensed in the state.

[North Dakota Century Code Section 30.1-26-04](#) governs power of attorney for care and custody of a minor child(ren).

OVERVIEW OF POWER OF ATTORNEY FOR A MINOR CHILD

What is a Power of Attorney for a Minor Child?

A Power of Attorney appoints a person called the Attorney in Fact to step into the shoes of the parent and make decisions for the minor child. **A Power of Attorney doesn't create a guardianship.** The Power of Attorney can't last more than 6 months.

The Attorney in Fact must be a responsible adult (18 years old or older), and doesn't need to be related to the parent or the minor child.

A parent or guardian may delegate any of the parent's or guardian's powers regarding care, custody, or property of the minor child or ward, except the power to consent to marriage or adoption of a minor child.

The Power of Attorney takes effect when the parent completes the form and signs it under oath in front of a notary public or clerk of court.

A Power of Attorney doesn't require a court order. It remains in effect until the date stated on the form, but that date can't be more than 6 months into the future.

The parent that delegated their authority with a Power of Attorney may revoke the Power of Attorney at any time before the expiration date. The revocation should be in writing.

DEFINITIONS OF COMMONLY USED POWER OF ATTORNEY TERMS FOR CARE AND CUSTODY OF MINOR CHILDREN

Attorney in Fact – The person who is given the power of attorney for care and custody of minor child(ren).

Guardian – A person or nonprofit corporation that has qualified as a guardian of a minor by court appointment. This includes limited guardians as defined in [N.D.C.C. § 30.1-01-06](#), but doesn't include someone who is merely a guardian ad litem.

Minor – An individual who is under eighteen years of age.

Parent – An individual with the legal relationship of father or mother to a child or an individual who legally stands in the place of a father or mother, including a legal guardian or custodian.

Power of Attorney – An instrument authorizing a person to act as the agent of the person granting the power of attorney

Principal – The parent or guardian of the minor child who grants power of attorney to the Attorney in Fact.

STEP 1: REVIEW NORTH DAKOTA CENTURY CODE SECTION 30.1-26-04

30.1-26-04. Delegation of powers by parent or guardian. A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six months, any of the parent's or guardian's powers regarding care, custody, or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward.

STEP 2: DETERMINE IF A POWER OF ATTORNEY WILL BE SUFFICIENT

Contact the school system, medical provider, day care provider, etc. to determine if they will accept a Power of Attorney.

Some entities require a court order. A Power of Attorney isn't a court order.

If an entity requires a court order, go to ndcourts.gov/legal-self-help for information about establishing guardianship of a minor child in North Dakota state court. Scroll to the "Guardianships and Conservatorships" section and click on "Guardianship of Minor Children".

If you determine a Power of Attorney will suit your needs, continue to Step 3.

STEP 3: FILL OUT THE POWER OF ATTORNEY FORM

Power of Attorney for Care and Custody of Minor Child – Short Form:

- Paragraph 1:
 - Fill in your full name.
 - Indicate (✓) if you are the parent or legal guardian of the child(ren).
 - Fill in the full names and birthdates of the child(ren).
- Paragraph 2:
 - Fill in your address.
- Paragraph 3:
 - Fill in the full name and address of the person you appoint as your attorney-in-fact for your child(ren).
- Paragraph 4:
 - Choose (✓) only one option. If you choose the second option, you must list specifically what you want your attorney-in-fact to have the authority to do.
 - **North Dakota law doesn't allow attorneys-in-fact to consent to marriage or adoption of minor children.**

- Paragraph 5:
 - Fill in the expiration date of the Power of Attorney.
 - **North Dakota law doesn't allow a Power of Attorney to last more than 6 months.**
- Signature and Notarization:
 - You must sign and date the Power of Attorney in the presence of a Notary Public or Clerk of Court.

Power of Attorney for Care and Custody of Minor Child – Long Form:

- Paragraph 1:
 - Indicate (✓) if you are the parent or legal guardian of the child(ren).
 - Fill in the full names and birthdates of the child(ren).
- Paragraph 2:
 - Fill in your address.
- Paragraph 3:
 - Fill in the full name and address of the person you appoint as your attorney-in-fact for your child(ren).
- Paragraph 4(a-d):
 - Read this carefully! This is your parental power and authority you delegate to your attorney-in-fact when you sign this document in the presence of a Notary Public or Clerk of Court.
- Paragraph 4(e):
 - If you wish to specifically exclude something that you don't want your attorney-in-fact to be able to do, list it here.
 - **North Dakota law doesn't allow attorneys-in-fact to consent to marriage or adoption of minor children or incapacitated persons.**
- Paragraph 5:
 - Fill in the expiration date of the Power of Attorney.
 - **North Dakota law doesn't allow a Power of Attorney to last more than 6 months.**
- Signature and Notarization:
 - You must sign and date the Power of Attorney in the presence of a Notary Public or Clerk of Court.

REVOKING THE POWER OF ATTORNEY/EXPIRATION OF POWER OF ATTORNEY

A parent can revoke a Power of Attorney at any time. Written notice of the revocation should be given to the Attorney-in-Fact and to anyone who has been given a copy of the Power of Attorney form. If possible, a parent should collect and destroy the original Power of Attorney and all copies when the Power of Attorney is revoked or when it expires.