

STARTING A CONSERVATORSHIP CASE FOR AN ADULT OR MINOR CHILD CHECKLIST

This is a basic checklist for starting a conservatorship case in District Court. Starting a conservatorship case can be quite complicated. Depending on the circumstances, there may be additional documents and procedures not included on this checklist. If you're unsure how to proceed, consult a lawyer licensed to practice in North Dakota.

The North Dakota Legal Self Help Center can provide basic process information. The Center can't give you legal advice or act as your lawyer under any circumstances.

THE "[STARTING A DISTRICT COURT CIVIL ACTION](#)" PAGE on the [ND Legal Self Help Center](#) website has additional information and resources.

UNAUTHORIZED PRACTICE OF LAW – CAUTION!

This checklist may be used by a Petitioner who is a **natural person**. In other words, a **human being**. A natural person can perform the functions of a lawyer for themselves at their own risk. This is called legal self-representation.

This checklist **may not be used** on behalf of a Petitioner who is an **artificial person**. In other words, **an entity created by law**, such as a business, a corporation or a limited liability company. In general, an artificial person **can't** be represented in a North Dakota state district court by a non-lawyer. This is called unauthorized practice of law.

If the Petitioner is an artificial person, consult a lawyer licensed to practice in North Dakota. Contact the State Bar Association of North Dakota Lawyer Referral Service at (866) 450-9579. An online directory of all lawyers licensed to practice in North Dakota is available at www.ndcourts.gov/lawyers.

What is a Conservatorship?

A [conservatorship](#) is a court process to decide whether an adult or a minor child can't manage their property or financial affairs to the point where a conservator must be appointed to take either limited or full control.

The court process involves presenting evidence to a North Dakota state district court judge or judicial referee to show that the requirements of [North Dakota Century Code Chapter 30.1-29](#) are met and a conservator should be appointed. Other parties in the conservatorship case, including the adult or minor child, may present their own evidence.

When Can the District Court Appoint a Conservator for a Minor Child?

If the Petitioner, the person asking the District Court to appoint a conservator, **proves at least one of the following**, the judge or judicial referee will appoint a conservator for a minor child:

1. The minor child “owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by the minor's minority, or that funds are needed for the minor's support and education and that protection is necessary or desirable to obtain or provide funds.” ([N.D.C.C. § 30.1-29-01\(1\)](#))
 - The Petitioner must prove this by a preponderance of the evidence.
 - A guardian ad litem to represent the best interests of the minor child **may** be appointed by the judge or judicial referee. ([N.D.C.C. § 30.1-29-07\(1\)](#))
2. The minor child “is unable to manage [their] property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, or chronic intoxication.” ([N.D.C.C. § 30.1-29-01\(2\)\(a\)](#))
 - The Petitioner must prove this by clear and convincing evidence.
 - A guardian ad litem to represent the best interests of the minor child **may** be appointed by the judge or judicial referee. ([N.D.C.C. § 30.1-29-07\(2\)](#))
 - An expert examiner **must** be appointed by the judge or judicial referee. ([N.D.C.C. § 30.1-29-07\(3\)](#))
3. The minor child “is unable to manage [their] property and affairs effectively for reasons of confinement, detention by a foreign power, or disappearance.” ([N.D.C.C. § 30.1-29-01\(2\)\(b\)](#))
 - The Petitioner must prove this by clear and convincing evidence.
 - A guardian ad litem to represent the best interests of the minor child **may** be appointed by the judge or judicial referee. ([N.D.C.C. § 30.1-29-07\(2\)](#))
4. The minor child “has property that will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care, and welfare of the [minor] or those entitled to be supported by the [minor] and that protection is necessary or desirable to obtain or provide funds.” ([N.D.C.C. § 30.1-29-01\(2\)\(c\)](#))
 - The Petitioner must prove this by clear and convincing evidence.
 - A guardian ad litem to represent the best interests of the minor child **may** be appointed by the judge or judicial referee. ([N.D.C.C. § 30.1-29-07\(2\)](#))

When Can the District Court Appoint a Conservator for an Adult?

If the Petitioner, the person asking the District Court to appoint a conservator, **proves at least one of the following**, the judge or judicial referee will appoint a conservator for an adult:

1. The adult “is unable to manage [their] property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, or chronic intoxication.” ([N.D.C.C. § 30.1-29-01\(2\)\(a\)](#))
 - The Petitioner must prove this by clear and convincing evidence.
 - A guardian ad litem to represent the best interests of the adult **may** be appointed by the judge or judicial referee. ([N.D.C.C. § 30.1-29-07\(2\)](#))
 - An expert examiner **must** be appointed by the judge or judicial referee. ([N.D.C.C. § 30.1-29-07\(3\)](#))
2. The adult “is unable to manage [their] property and affairs effectively for reasons of confinement, detention by a foreign power, or disappearance.” ([N.D.C.C. § 30.1-29-01\(2\)\(b\)](#))
 - The Petitioner must prove this by clear and convincing evidence.
 - A guardian ad litem to represent the best interests of the adult **may** be appointed by the judge or judicial referee. ([N.D.C.C. § 30.1-29-07\(2\)](#))
3. The adult “has property that will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care, and welfare of the [adult] or those entitled to be supported by the [adult] and that protection is necessary or desirable to obtain or provide funds.” ([N.D.C.C. § 30.1-29-01\(2\)\(c\)](#))
 - The Petitioner must prove this by clear and convincing evidence.
 - A guardian ad litem to represent the best interests of the adult **may** be appointed by the judge or judicial referee. ([N.D.C.C. § 30.1-29-07\(2\)](#))

What is Preponderance of the Evidence?

Preponderance of the evidence is the burden of proof by which the Petitioner must convince the judge or judicial referee that a conservator should be appointed for a minor child when the reason is Number 1 in the “When Can the District Court Appoint a Conservator for a Minor Child” section above.

Black’s Law Dictionary (9th Edition, 2009) partially defines preponderance of the evidence as “the greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force.”

What is Clear and Convincing Evidence?

Clear and convincing evidence is the burden of proof by which the Petitioner must convince the judge or judicial referee that a conservator should be appointed for an adult or a minor child when the reason is Number 2, 3 or 4 in the “When Can the District Court Appoint a Conservator for a Minor Child” section above; or Number 1, 2 or 3 in the “When Can the District Court Appoint a Conservator for an Adult” section above.

Black’s Law Dictionary (9th Edition, 2009) partially defines clear and convincing evidence as “evidence indicating that the thing to be proved is highly probable or reasonably certain. This is a greater burden than preponderance of the evidence, . . . but less than beyond a reasonable doubt, the norm for criminal trials.”

Who Can Petition to Start a Conservatorship Case?

The Petitioner, the person asking the District Court to appoint a conservator, can be any of the following ([N.D.C.C. § 30.1-29-04\(1\)](#)):

- The adult or the minor child whose property or financial affairs would be protected. (Also called the proposed protected person, or the person to be protected.)
- The adult or minor child’s parent.
- The adult or minor child’s guardian.
- The adult or minor child’s custodian.
- Any person who is interested in the estate, affairs, or welfare of the adult or minor child.
- Any person who would be adversely affected by lack of effective management of the property or financial affairs of the adult or minor child.

Who Can Be Appointed the Conservator?

The following may be appointed the conservator and are listed in order of priority ([N.D.C.C. § 30.1-29-10](#)):

1. The person most recently nominated by the adult to be protected in a durable power of attorney.
2. The conservator, guardian of property, or other like fiduciary appointed or recognized by the appropriate court of another jurisdiction where the adult or minor child to be protected resides.
3. An individual or corporation nominated by the adult or minor child to be protected in other than a durable power of attorney, if the adult or minor child has sufficient mental capacity to make an intelligent choice.

4. The spouse of the adult or minor child to be protected.
5. An adult child of the adult to be protected.
6. A parent of the adult or minor child to be protected.
7. A person nominated by the deceased parent of an adult or minor child to be protected in the parent's will.
8. Any relative of the adult or minor child to be protected with whom the adult or minor child has resided for more than 6 months prior to filing the petition for conservatorship.
9. A person nominated by the person who is caring for or paying benefits to the adult or minor child to be protected.

If the Petitioner nominates a proposed conservator with lower priority, at minimum the Petitioner must show the court that their proposed conservator is best qualified.

Venue (Location of the Conservatorship Case within North Dakota):

The Petitioner must decide the proper county in North Dakota for a North Dakota State District Court to hear and decide the conservatorship case.

The proper county is either ([N.D.C.C. § 30.1-29-03](#)):

- ☐ The District Court in _____ County, where the adult or minor child resides.

OR

- ☐ If the adult or minor child **doesn't** reside in North Dakota, the District Court in _____ County, where the adult or minor child has property.

Create the Documents to Start a Civil Action:

- ☐ **Petition for Conservatorship** ([N.D.C.C. § 30.1-29-04\(2\)](#))
(A general-use Caption & Signature form is available on the "[Conservatorship](#)" webpage.)
- ☐ The full, legal name of the Petitioner.
 - ☐ The Petitioner's relationship to the adult or minor child, and the Petitioner's interest in asking the District Court to appoint a conservator.
 - ☐ The full legal name, age, residence, and address of the adult or minor child.
 - ☐ The name and address of the guardian of the adult or minor child. If there's no guardian, a statement to that effect.

- ☐ The name and address of the nearest relative of the adult or minor child. If the Petitioner doesn't know, a statement to that effect.
- ☐ A general statement of the property of the adult or minor child with an estimate of the value of the property, including any compensation, insurance, pension, or allowance to which the adult or minor child is entitled.
- ☐ The extent of the conservatorship authority the Petitioner is seeking for the proposed conservator(s) ([N.D.C.C. § 30.1-29-08](#)).
- ☐ The name and address of any person designated as an attorney in fact or agent in a power of attorney.
- ☐ The name and address of any representative payee for the person to be protected.
- ☐ Statements showing that less intrusive alternatives to conservatorship have been considered.
- ☐ If the appointment of a conservator is requested under Number 2 in the "When Can the District Court Appoint a Conservator for a Minor Child" section above; or Number 1 in the "When Can the District Court Appoint a Conservator for an Adult" section above, an attached recent statement from an expert examiner which describes the physical, mental, and emotional limitations of the adult or minor child.
- ☐ The reason why appointment of a conservator or other protective order is necessary (see the "When Can the District Court Appoint a Conservator for a Minor Child" and the "When Can the District Court Appoint a Conservator for an Adult" sections above).
- ☐ The name and address of the person whose appointment as conservator is sought and the basis of the person's priority for appointment.
- ☐ Signed and dated by the Petitioner.
- ☐ **Confidential Information Form**
(A general-use Confidential Information Form is available on the "[Conservatorship](#)" webpage.)

☐ Notice of Hearing on Petition Form

(A general-use Notice of Hearing on Petition Form is available on the "[Conservatorship](#)" webpage.)

Filing the Petition with the North Dakota District Court & Scheduling a Hearing:

Conservatorship cases are started when a written petition to appoint a conservator for an adult or a minor child is accepted for filing by the Clerk of District Court and a hearing date is scheduled.

The Petitioner takes their completed Petition for Conservatorship and Confidential Information Form to the Clerk of District Court's office to file.

If the Clerk of District Court's office accepts your conservatorship petition for filing, a hearing date, time, and location will be scheduled.

Contact information for Clerks of District Court is available at ndcourts.gov/court-locations.

Service of the Petition for Conservatorship and Notice of Hearing on Petition:

The Petitioner is required to notify the following that a petition for conservatorship has been filed and a hearing scheduled:

- The adult or minor child to be protected; and
- Their spouse (*if any*); or
- Their parents (*if no spouse*)

If the Petitioner is required by the Clerk of Court's office to serve written notice of the hearing, the Petitioner **MUST** arrange to have a copy of the signed and dated Petition for Conservatorship and a copy of the signed and dated Notice of Hearing on Petition served on the adult or minor child to be protected, their spouse (*if any*), and their parents (*if no spouse*).

For information about service and proof of service required to start a conservatorship case, go to the "[Conservatorship of Adults & Minor Children](#)" page of the ND Legal Self Help Center website and click on the "[Service Instructions and Forms for Establishing Conservatorship](#)" link.

- ☐ Review service requirements on the "[Service Instructions and Forms for Establishing Conservatorship](#)" link.

- ☐ Obtain the address for service for:
 - ☐ The adult or minor child to be protected; AND
 - ☐ Their spouse (*if any*); OR
 - ☐ Their parents (*if no spouse*).
- ☐ Arrange for service of a copy of the signed and dated Petition for Conservatorship and a copy of the signed and dated Notice of Hearing on Petition on each.

Proof of service MUST be filed with the Clerk of District Court. If proof of service ISN'T filed, the Judge or Judicial Referee may decide to cancel the hearing.

An affidavit of service, a declaration of service, or a certificate of service completed by the individual who served the copies of documents is proof that service occurred.

- ☐ Get the completed and signed proof of service from the person who served a copy of the signed and dated Petition for Conservatorship and a copy of the signed and dated Notice of Hearing on Petition on:
 - ☐ The adult or minor child to be protected; AND
 - ☐ Their spouse (*if any*); OR
 - ☐ Their parents (*if no spouse*).
- ☐ File all proof of service documents with the Clerk of District Court.

****The North Dakota Legal Self Help Center provides resources to people who represent themselves in civil matters in the North Dakota state courts. The information provided by the Center isn't intended for legal advice but only a general guide to the civil court process. The Center isn't responsible for any consequences that may result from the information provided. The information can't replace the advice of competent legal counsel licensed in the state.*

Use at your own risk. ***