

Instructions for Declining Appointment as Guardian for a Minor As Part of a Probate Case

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). Carefully read this information and any instructions to which you're referred.

If you're unsure how to proceed, or need legal advice or legal representation, consult a lawyer licensed to practice in North Dakota. If you're unsure if these forms and instructions suit your circumstances, consult a lawyer.

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.

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

As a self-represented individual, 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.

These instructions and forms aren't a complete statement of the law. They cover basic procedure for declining appointment as guardian of a minor as part of a probate case in a North Dakota state district court. 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.

You May Use this Packet of Forms If:

1. The minor child's parent is deceased and left a will;
2. The deceased parent's will is being probated in a North Dakota state district court;
3. The deceased parent's will named **you** the guardian of the minor child; **AND**
4. You **DON'T** want to accept the deceased parent's nomination as guardian of the minor child.

Overview of the Three Step Process to Decline an Appointment as Guardian for a Minor in a Probate Case

- Step One. Determine in Which North Dakota State District Court the Deceased Parent's Will is Filed for Probate.**
The nominated guardian must file the document declining their nomination as guardian in the deceased parent's probate case.
- Step Two. Within 60 Days of the Death of the Parent, the Nominated Guardian Files a Document Declining the Nomination as Guardian.**
If the person nominated as guardian in the deceased parent's will doesn't want to accept the nomination, the person must file a decline the nomination in writing and file it with the District Court in the deceased parent's probate case.
- Step Three. The District Court Immediately Transfers the Guardianship Case to Juvenile Court.**
The Juvenile Court begins proceedings to determine who should be appointed guardian of the minor child.

Laws & Rules

The requirements for declining the appointment of a guardian of a minor child named in a deceased parent's will are found in **North Dakota Century Code (N.D.C.C.) [Chapter 30.1-27](#)**. Refer to the Chapter when filling out the form.

Definitions

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

(See [Chapter 30.1-01](#) and [Chapter 27-20.1](#) of the North Dakota Century Code for more definitions.)

Appointing Parent: Also called a Nominating Parent. The deceased parent who named a guardian in the will being probated by a North Dakota state district court

Best Interests: The standard the district court judge will use to decide what guardianship arrangement is to the minor child's greatest benefit. The 13 best interest factors the judge will use to make the decision are in [Section 14-09-06.2 of the North Dakota Century Code](#).

Guardian: An individual, or individuals, appointed by a North Dakota state district court to act as the minor child's parents.

Minor Child: A child of the deceased parent, who is under 18 years of age.

Nominated Guardian: An individual, or individuals, who a parent named in their will to become the guardian of the child if the parent dies while the child is a minor.

Probate: A legal process that includes:

- Proving to the District Court judge that the deceased parent's will is valid;
- Identifying, inventorying, and appraising the deceased parent's property;
- Paying the deceased parent's debts and taxes; and
- Distributing the deceased parent's remaining property as directed by the will.

Testamentary: Provided for or appointed by a will.

Venue: The North Dakota county where the District Court judge will hear the probate case. The venue is the District Court of the North Dakota county where the deceased parent's will is, or will be, probated. Wills are probated either in the North Dakota county where the deceased parent lived, or, if the parent didn't live in North Dakota, in any North Dakota county where the parent had property.

Fees

A filing fee of \$160.00 is required to file the case to probate the deceased parent's will. If the probate case is already filed, there's no filing fee required for filing the document declining the deceased parent's nomination as guardian.

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

- Copy of Documents \$.10 per page, \$1.00 minimum

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Forms to Decline the Nomination as Guardian of a Minor Child in a Probate Case

Form Title	Purpose
Form 1b: Powers and Duties of a Guardian of a Minor Child	Reviewed by the Nominated Guardian. Lists the powers and duties of a guardian of a minor child, after the guardian is appointed by a District Court judge in the probate of the deceased parent.
Form 7: Decline Appointment as Guardian (Testamentary)	Completed by the Nominated Guardian, if the individual DOESN'T accept the appointment of guardian by the deceased parent in the parent's will.
Form 7a: Confidential Information Form (Guardianship Proceeding)	Completed by the Nominated Guardian. Lists the full name of the minor child 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.

Steps to Decline the Nomination as Guardian of a Minor in a Probate Case

Step 1 – Determine in Which North Dakota State District Court the Deceased Parent's Will is Filed for Probate.

The nominated guardian must file the document declining their nomination as guardian in the deceased parent's probate case.

To see if the deceased parent's will has been filed for probate and given a case number, go to ndcourts.gov/public-access:

- To search for the probate case by the deceased parent's name:
 - Select "Name"
 - Enter at least the first three letters of the deceased parent's last name, followed by an asterisk (*). For example, if the last name is Smith, enter at least smi*.
 - Enter at least the first letter of deceased parent's first name, followed by an asterisk (*). For example, if the first name is Jane, enter at least j*.
 - In the "Case Types" box, select "Probate of Will (Formal)" and "Probate of Will (Informal)."

- Click the "Search" box.
- The screen will list publically accessible court cases based on your search.
- To review a case click on the case number on the left-hand side of the screen.

If a probate case hasn't been filed to probate the deceased parent's will, consult a lawyer licensed to practice in North Dakota for advice.

Step 2 – Within 60 Days of the Death of the Parent, the Nominated Guardian Files a Document Declining the Nomination as Guardian.

First, the Nominated Guardian reviews:

- Form 1b: Powers and Duties of a Guardian of a Minor Child.
 - This lists the powers and duties of a guardian of a minor child, after the guardian is appointed by a District Court judge in the probate of the deceased parent.

Second, the Nominated Guardian completes:

- Form 7: Decline Appointment as Guardian (Testamentary).

To complete Form 7: Decline Appointment as Guardian (Testamentary):

- The caption (top) of the form:
 - County – the North Dakota county where the deceased parent's probate case is filed.
 - Judicial District – the name of the Judicial District where the deceased parent's probate case is filed. (The county is within the Judicial District.) County and Judicial District information and maps are available at www.ndcourts.gov/court-locations.
 - "In the Matter of the Estate of" – the deceased parent's full name.
 - Case Number – the probate case number.
- Read each paragraph completely.
 - When you date and sign this form, you're swearing that all of the information on the form is accurate and true.
- Complete Paragraph 1.
 - DON'T INCLUDE the minor child's full name.
 - Write or type only the minor child's initials.

- Read Paragraph 3 carefully!
 - Make sure everything you type or write is true and correct. Make any corrections before you date and sign this form.
- Write or type the county, state, and country where you sign this form.
- Date and sign the form. Complete all lines below your signature.

To complete Form 7a: Confidential Information Form (Guardianship Proceeding):

- Review [Rule 3.4 of the North Dakota Rules of Court](#).
- Certain information is considered confidential and can't be included in Form 7: Decline Appointment as Guardian (Testamentary).
- Full confidential information that can't be included:
 - Full names of minor children
- Include only the following in Form 7: Decline Appointment as Guardian (Testamentary):
 - Minor child's initials
- Fill out only the parts of the form that apply. If you don't have information for a part of the form write or type "Not applicable."
- Date and sign this form.
- This form won't be available as a public court record.

Make a copy of the completed Form 7: Decline Appointment as Guardian (Testamentary) and Form 7a: Confidential Information Form (Guardianship Proceeding) for your records.

Third, the Nominated Guardian files the following ORIGINAL completed forms with the Clerk of District Court where the deceased parent's probate case is filed:

- Form 7: Decline Appointment as Guardian (Testamentary); and
- Form 7a: Confidential Information Form (Guardianship Proceeding).

Step 3 – The District Court Immediately Transfers the Guardianship Case to Juvenile Court.

After the Nominated Guardian declines appointment as guardian, the guardianship case is transferred to Juvenile Court. The guardianship case is assigned a Juvenile Court case number.

The Juvenile Court begins proceedings to determine who should be appointed guardian of the minor child.

Information about Juvenile Court guardianship proceedings is available at ndcourts.gov/legal-self-help/minor-guardianship/juvenile-court.