

NEW GUARDIANS GUIDELINES

An Informational Packet for New Guardians of Incapacitated Adults

Congratulations on your appointment as a guardian or conservator!

*Your role is vital in providing care and assistance to
North Dakota's vulnerable adults!*

The North Dakota Office of the State Court Administrator created this New Guardians Guidelines packet to provide guidance and direction to you in your new role.

The New Guardians Guidelines packet also serves as a reference to resources and service organizations available to you.

The New Guardians Guidelines packet is made up of four different documents:

- 1) Managing the Ward's Health and Wellbeing;
- 2) Managing the Ward's Financial Welfare;
- 3) Model Code of Ethics for Guardians; and
- 4) Protecting Vulnerable Adults from Abuse and Financial Exploitation.

If you have questions about your role as a guardian:

- 1) Review the court order appointing you as guardian and your Letters of Guardianship;
- 2) Review the New Guardian Guidelines packet for guidance, resources and service organizations; and/or
- 3) Consult a licensed attorney for legal advice.

**Find additional forms and information related to guardians and guardianships of
incapacitated adults at the North Dakota Legal Self Help Center website:**

ndcourts.gov/legal-self-help. Scroll to "Guardianships and Conservatorships."

Managing the Ward's Health and Wellbeing

Congratulations on your appointment as a guardian or conservator!

*Your role is vital in providing care and assistance to North Dakota's most vulnerable adults!
This packet will provide guidance and direction to you in your new role, and serves as a
reference to resources and service organizations available to you.*

What are my immediate responsibilities as a new guardian?

You should purchase several certified copies of the Letters of Guardianship from the district court. Review the Letters to determine the degree of authority that the court has appointed to you. If you have not yet viewed the online training on the North Dakota Supreme Court's website, you should do that as soon as possible.

The Findings of Fact and Order Appointing Guardian requires you to involve the ward as much as possible in all decision-making and lifestyle choices. Your first important task is to explain to the ward to the best of your ability, what it means for them to have you as a guardian.

Within 90 days, a Beginning Inventory report will need to be submitted to the Court. (Fillable forms and instructions are available under "Legal Self Help & Forms" at ndcourts.gov.) If another party has been appointed financial authority, they may complete the inventory report and submit it to the court. As a named guardian, you will want to ensure that the ward has sufficient funds to maintain care now and into the future. You will also want to help protect the ward from financial exploitation. More information on the Beginning Inventory is presented in "Managing the Ward's Financial Welfare."

Interested persons may need to be notified of your new appointment as guardian. This may include the ward's employer, health care providers, Power of Attorney agents, family members, service providers, the post office, the IRS, the Social Security Administration, and home care providers. Some of these agencies may require a certified copy of your Letters of Guardianship.

Your ward may have vital documents that you will need to keep safe. Look for a will, healthcare directive, power of attorney, and other legal documents. Determine if the ward has specified funeral and burial choices and if any insurance or other arrangements have already been made. Plan appropriately for funeral and burial costs.

Whenever you are doing business for your ward, bring a certified copy of the Letters of Guardianship to show that you are authorized by the court to act on the ward's behalf.

What are my ongoing responsibilities as a guardian?

Choosing the least restrictive environment:

Your primary obligation is to ensure that the ward has adequate food, shelter, clothing, and healthcare. The ward has a right to a safe and humane living environment which is the least restrictive environment available. The ward may need assistance with residential services, transportation, employment or daytime activities, meal delivery or other services. Assess the ward's needs and request input from care staff and family as to the ward's wellbeing.

Be a part of the ward's daily life:

Make regular personal visits to monitor the ward's progress and adequacy of services being provided. These visits will also help you determine if the ward continues to reside in the least restrictive living environment. Monthly visits are recommended. If you have authority to make medical decisions, you are encouraged to attend regular appointments with your ward. You will need to have a clear understanding of the ward's medical needs, concerns, and options available.

Managing the estate:

Please review "Managing the Ward's Financial Welfare" for information and guidance. You, or the conservator, will be responsible for filing an annual accounting to the court. A final accounting is required upon the death of the ward.

Guardian as advocate:

Guardians, co-guardians, and conservators are responsible for ensuring that the ward is receiving all of the benefits and care that they need or are qualified to receive. It is essential that you gain knowledge of the services offered in the ward's community that will assist the ward in maintaining independence and living in the least restrictive environment. As the coordinator of the ward's care, you will be monitoring the services provided and advocating for the ward's:

- quality of personal care
- education and physical fitness
- access to the community
- access to services
- confidentiality and privacy
- freedom from abuse and neglect
- civil and property rights
- entertainment and leisure time activities

Decision making:

As a guardian, you will need to maintain a relationship with the ward and make decisions on behalf of the ward. These decisions will be made after considering the ward's preferences and opinions, and religious and cultural values. You may have heard of the principle of "substituted judgment"; this refers to the requirement that the guardian make decisions that reflect what the ward would have decided if he or she were capable of making the decision.

If you are unable to determine what the ward would have decided, you are required to make decisions based on the best interest of the ward. You are always encouraged to discuss situations with the ward's caregivers, family, and friends unless doing so would violate the ward's privacy. When making decisions based on the best interest of the ward, you must select the least intrusive, least restrictive course of action.

What are some limitations of my guardianship?

Your ward always retains the rights to privacy and confidentiality, communication with others, equal treatment under the law, explanations for medical treatment and options, notice of all guardianship proceedings, review of their personal records, and continuous review of a prospect for restoration of their rights.

- Review the Letters for any limits on authority that the court has noted. Additionally, North Dakota law restricts guardians from acting in these instances without obtaining specific court approval: psychosurgery, sterilization or abortion, experimental treatments, or to force admittance into a medical institution. Review the North Dakota Century Code statutes: ndlegis.gov/cencode/t30-1.html chapters [30.1-28](#) and [30.1-29](#).
- Guardians may charge the ward's estate for reasonable guardianship service fees, if approved by the court. You may not use ward's funds for room and board that you or your family provide to the ward without prior approval from the court.
- You must file an annual report on the wellbeing of the ward and report all relevant information for the court's review. See more information below.
- The guardianship may not be modified or rescinded without a court order; however, it will expire within five years. At that time, the court will review the case to determine if the guardianship should continue or be modified. The court will provide you with instructions on your role in this review when it is scheduled.
- A ward's will or contracts made before a guardian was appointed may only be altered by a court.
- A ward's durable power of attorney made before a guardian was appointed may require revocation or alteration by a court. Consult an attorney.

How do I prepare for the annual report?

Keep track of your visits to the ward and note changes in medical treatment, residence, or other changes in the ward's life. Preview the annual report form available at the "Legal Self Help & Forms" link at ndcourts.gov so you know what to expect for your first report to the court. Even if you do not have financial authority, review "Managing the Ward's Financial Welfare" so you are aware of how the ward's estate should be managed. Notify the court and provide a final financial report if your ward passes away.

Time frame reminder: the Beginning Inventory Report is due in 90 days, and the Annual Report will be due in 365 days.

Helpful definitions: as defined by the National Guardianship Association.

Best Interest: to be used in decision-making when the guardian cannot determine the preference of the ward, or when the ward's preference will cause substantial harm. Choices should reflect the least intrusive, least restrictive options that promote the ward's wellbeing.

Fiduciary: a party responsible for some or all of the ward's finances.

Least Restrictive Environment: guardians need to be informed on the living arrangements, community options, and health services available to the ward, and select the options that:

- meet the preference of the ward, if possible
- are in the best interest of the ward
- least inhibit the ward’s freedom
- allows the ward to participate in the community
- provide protection for the ward while maximizing the ward’s independence

Substituted Judgment: this decision-making tool promotes the self-determination of the ward in instances where the ward’s preference is known or can be determined. This option is ethically preferred and, when possible, the guardian shall make choices in conformity with the preference of the ward.

How do I plan for the termination of the guardianship?

Upon the death of the ward, notify the court and interested persons and provide them with a copy of the will. You may find the relevant forms at the “Legal Self Help & Forms” link at ndcourts.gov. It is important to plan now for the ward’s funeral and burial arrangements including financial provisions. You should also consider options for a possible successor guardian in case of a guardian’s death or inability to provide services. If you have financial authority, please review “Managing the Ward’s Financial Welfare” for more information.

Where can I find more information on my new role as guardian?

National Guardianship Association: guardianship.org

North Dakota Century Codes: ndlegis.gov/cencode/t30-1.html. Chapters [30.1-28](#) and [30.1-29](#).

North Dakota Supreme Court; the Legal Self Help Center has forms necessary for initiating and maintaining guardianships: ndcourts.gov/legal-self-help.

What programs might be available to assist my ward?

FirstLink: dial 211, or call 701-235-7335. This service provides support and identifies programs available to assist with individual needs - 24 hours a day.

ND Department of Human Services: nd.gov/dhs/services 800-472-2622.

Information on assisted living, independent living, caregiver support, home care services, long-term care ombudsman, individuals with disabilities, adult protective services, aging services, etc, and a list of other resources: carechoice.nd.assistguide.net.

Community Options: communityoptionsnd.com 701-223-2417. Helps individuals live and be active in their community.

Money Follows the Person: ndcpd.org/mfp 701-858-3405. Assists people in transitioning from care facilities into a community setting.

ND Protection & Advocacy: ndpanda.org 701-328-2950. Advocating for rights of all disabled people in the state.

Dementia Care Consultation: 800-272-3900. The Alzheimer’s Association offers education and assistance for people with dementia: alz.org/mnnd.

ND Legal Services: legalassist.org 866-621-9886. Legal assistance to low income and elderly North Dakota residents.

Medicaid: nd.gov/dhs/services/medicalserv/medicaid.

Managing the Ward's Financial Welfare

Information for conservators and guardians with financial authority.

How do I “marshal the assets”?

If you have been awarded financial authority for a ward, it is important to locate and secure assets quickly to protect them from loss or damage. Identify all of the assets that a ward owns or has an interest in, so you can adequately manage them in the best interest of the ward. Marshal means to identify, locate, list, and claim these assets.

Step 1 Purchase several certified copies of the Letters of Guardianship.

The district court will certify the Letters of Guardianship that will vouch for your new authority. You will need to present these Letters upon request while managing the estate. Most banks and other institutions will likely require an original document, and you may get a discount for purchasing several at a time from the court.

Step 2 Identify assets and complete a list.

- You might begin with larger assets such as real estate and vehicles. Find the deeds, mortgages, tax, and insurance documents to determine if the ward owned them in whole or in part. Remember to look for mineral rights, rental agreements, etc.
- Identify all checking, savings, and money market accounts owned by your ward.
- Identify all income sources and investment accounts: make a list that includes the monthly benefits and current balances.
- Make a list of general personal property items and estimate a value for the entire group. General items will include clothing, furniture, household goods, etc.
- Higher-priced personal property such as antiques, art or jewelry should be listed and valued separately.
- Search for all insurance policies: life, health, home, auto, burial, etc. If a high-value item is not insured, you should consult with the ward's insurance agent.
- Take photos of personal and physical assets.
- Also see information below in “Tips for Hard to Find Assets.”

Step 3 Establish guardianship checking and savings accounts.

- You will need to open new checking and savings accounts with your ward's social security number, but with your name on the account as the guardian or conservator. Banks generally refer to these as “fiduciary” or “convenience” accounts.
- Choose a bank account that is FDIC insured, and that minimizes fees.
- Divide any joint accounts and remove your ward's share from the account.
- Any significant amounts of cash should be deposited at a bank; cash transactions made by the guardian should be minimal.
- You may need to update direct deposit information on income sources before you close or remove your ward's name from the old accounts.
- Remember that your ward's income and assets must always be kept separate from other accounts, and never commingled with the guardian's or other's funds.

Securing the assets is the first step in managing the ward's estate.

What about debt and creditors?

Determine all of the ward's debts including loans and credit cards as well as local supplier's credit accounts.

- Review bank statements to determine automatic payments.
- Consider amounts due to household staff, outstanding medical bills, etc.
- The ward may have new debt related to the guardianship proceeding.
- Notify creditors of the address change for billing purposes – in general, business mail should be addressed to you with an extra line stating “As guardian for (ward's name).”
- Request a free credit report: www.AnnualCreditReport.com.
- Create a list of all loans and debt: this represents the ward's known liabilities.
- Close credit accounts if the ward will not have authority to use them.

*You are now ready to complete the **Beginning Inventory report for the district court!**
Find the form at www.ndcourts.gov at the **Self Help link**.*

Assets and income that require special attention.

- If the ward is entitled to Social Security benefits, you may need to contact the Social Security Administration and apply to become a Representative Payee.
- If the ward is entitled to veteran's benefits, you may need to contact the Veteran's Administration to apply to become a VA Fiduciary.
- If the ward owns real estate, the deeds will remain in the ward's name; however, the mailing addresses for statements, taxes, and leases will need to be updated to the guardian's mailing address.
- Investment companies may have varying policies on how they would like the accounts named. Notify each of them by sending them a certified copy of the Letters; at a minimum they will require an address update.
- Again, business mail will generally be addressed to you with an extra line stating “As guardian for (ward's name).”

Other important documents to search for.

Your ward may have vital documents that you will need to keep safe. Look for a will, healthcare directive, power of attorney, or other legal documents. Determine if the ward has specified funeral and burial choices and if any insurance or other arrangements have already been made.

Tips for hard-to-find assets.

- The Internal Revenue Service may be able to help you determine a ward's assets and sources of income. Complete IRS Form 4506-T Request for Transcript of Tax Return, check item #8, and include a certified copy of your Letters. The IRS will mail you a list of financial institutions that have reported information about your ward to the IRS.
- Check the Unclaimed Property site for North Dakota property: <http://www.land.nd.gov/UnclaimedProperty/>.
- Ask the officers at the ward's bank to check for other accounts or safe deposit boxes.

How do I manage the estate?

After you have identified all of the ward's assets, income, and debt, you will need to complete the Beginning Inventory report: www.ndcourts.gov at the "Self Help" link. Next, you should start planning the management and protection of your ward's estate. This is the time to develop a budget with monthly income and estimated monthly expenses.

- Expenses should be paid from the new fiduciary checking account. Bills should rarely be paid with cash as it is difficult to account for cash on the annual reports to the court.
- Loans or other debt may need to be renegotiated to ensure that there is enough income to adequately cover the ward's needs.
- Maintain payments on insurance policies as appropriate.
- Contact the IRS to update the ward's mailing address and determine if the ward is required to make quarterly federal income tax payments.
- Reasonable amounts of cash may be given to the ward as personal spending money. Handling small amounts of cash will allow the ward to retain some independence.
- Reasonable guardianship fees may be charged to the ward. However, you may not use ward's funds for room and board that you or your family provide to the ward without prior approval from the court.
- Develop a maintenance plan for the ward's physical property.
- Always include the ward as much as possible in financial decision making.
- You must apply for any public benefits that the ward may be eligible to receive.
- Plan appropriately for funeral and burial costs. If possible, clarify who will manage the ward's estate after the death of the ward.

Best practices for financial management.

- Your primary obligation is to ensure that the ward has adequate food, shelter, clothing, and healthcare, and lives in a safe environment. If the ward has unpayable debts, seek advice from a consumer credit counseling agency.
- If your ward has funds remaining after providing for their daily needs, the money may be saved or spent on items that improve their quality of life. Expenditures for furniture, home improvements, or recreational items would all be appropriate.
- Make sensible, low-risk investments with your ward's money; wise investing will help ensure future financial stability.
- Depending on the ward's income, you will be responsible for filing income tax returns on behalf of your ward. If the ward has missed filings in previous years, contact the IRS; they may waive penalties because of the ward's incapacity.
- If funds are available, purchase funeral insurance or maintain a separate burial savings account for the ward.
- Become familiar with the regulations on benefits the ward is receiving, such as amounts allowed for savings or burial accounts.
- Never combine your own funds with your ward's money, even if you had joint accounts prior to the guardianship.
- Guardians must never enter into transactions that benefit themselves.

Always manage the estate in the best interest of the ward.

How do I prepare for the annual report?

Keep your receipts and invoices, and statements from investments, banks, and creditors for all transactions you make on behalf of the ward. (Maintaining documentation for 5 years is recommended.) You will need to report to the court all of the income you receive for the ward, all of the money you spend, and the balance of the ward's estate each year. Keep a record of the purpose of the transactions you've made, and have this information available for a review. Keep track of your visits to the ward, and the decisions you have made on behalf of the ward and the estate. Preview the annual report form so you know what to expect for your first report to the court, available at the "Self Help" link at www.ndcourts.gov.

When does my financial responsibility end?

Authority terminates when you or the ward passes away, or when ordered by a court. Upon the death of the ward, financial authority passes to the ward's Personal Representative (PR). You will need to provide the court and interested persons with a copy of the will and a final accounting. You will turn assets over to the PR or as directed by the court. Petitions to end the guardianship and final report forms are available at the "Self Help" link at www.ndcourts.gov.

What are some limitations of guardians of the estate?

- A guardian cannot take away powers or rights from the ward that the judge did not approve beforehand.
- A ward's will, durable power of attorney, or contracts made before a guardian was appointed may only be altered by a court.
- A guardian may not make risky investments with a ward's funds.
- As guardian, you may not borrow money or assets from the ward, and you may not spend the ward's funds to benefit your own purposes.
- The court is required to review annual reports to protect the well-being of the ward.
- A guardian may rescind their appointment as a guardian only with a court order.
- Unless approved by the court, a guardian may not use the ward's funds for room and board if the guardian or the guardian's spouse, parent, or child provides these to the ward.
- The guardian must follow ND Century Code statutes as they pertain to care of wards: <http://www.legis.nd.gov/cencode/t30-1.html> §30.1-28 and -29.
- Remember that excess funds must be safely invested for future needs of the ward.
- Guardians are never personally liable for a ward's existing debt.

Where can I find more information on my new role as guardian of the estate?

North Dakota Century Codes: <http://www.legis.nd.gov/cencode/t30-1.html>. §30.1-28 and -29.

North Dakota Supreme Court; the Legal Self Help Center has forms and information necessary for maintaining guardianships: <https://www.ndcourts.gov/legal-self-help>.

National Guardianship Association: <http://guardianship.org/>.

Consumer Financial Protection Bureau: <http://www.consumerfinance.gov/older-americans/>.

*Time frame reminder: the Beginning Inventory Report is due in 90 days,
and the Annual Report will be due in 365 days.*

Model Code of Ethics for Guardians

Adapted from the National Guardianship Association

Rule 1 - Decision-Making The guardian shall exercise extreme care when making decisions on behalf of a ward. All decisions shall be made in a manner which protects the rights of the ward, and maximizes independence and self-reliance.

The guardian shall make all reasonable efforts to ascertain the preferences of the ward, both past and current, when making decisions. The guardian shall conform to those preferences except when they are reasonably certain that substantial harm will result from such a decision. When the preferences of the ward cannot be ascertained, a guardian is responsible for making decisions which are in the best interests of the ward.

Rule 2 – Relationship The guardian shall exhibit the highest degree of trust, loyalty, and fidelity in relation to the ward. The guardian shall protect the personal and financial interests of the ward and foster the ward’s growth, independence and self-reliance to the maximum degree.

Rule 3 – Custody of the Person The guardian shall assume legal custody of the ward and ensure the ward resides in the least restrictive environment available. The guardian shall be aware of the options and alternatives available for the ward’s residence. The ward should live in a non-institutional environment whenever possible.

Rule 4 – Consent to Care and Services The guardian shall assume legal responsibility to provide informed consent on behalf of the ward for care, treatment, and services and shall ensure that such treatment represents the least restrictive form of intervention available.

Rule 5 – Management of the Estate The guardian of the estate shall provide competent management of the property and income of the estate. The guardian shall exercise intelligence, prudence, and diligence and avoid any self-interest.

Rule 6 - Termination and Limitation The guardian has an obligation to seek termination or limitation of the guardianship whenever indicated. The guardian shall seek evidence of improvements in the capabilities of the ward, and shall assist the ward in arranging independent representation.

Conclusion

The need to balance the protection of the ward with the goal of maximizing the ward’s independence presents a complex mix of decisional factors. To the extent the ward is able to participate, the guardian has a duty to share relevant information with the ward and aim toward the goal of joint decision making. *Refer to Rule 1 for guidance in situations not specifically addressed in the model.*

Protecting Vulnerable Adults from Abuse and Financial Exploitation

As a care provider, or one guiding the decision-making of a vulnerable adult, you are in a unique position to help expose abusers. You can prevent abuse or intervene early when the threat is from trusted persons, stranger scams, property theft, etc.

Family, friends, neighbors, caregivers, fiduciaries, business people, and others may try to take advantage of a vulnerable adult. They may take money without permission, fail to repay money they owe, charge too much for services, or just not do what they were paid to do. Someone with a legal obligation to handle the vulnerable person's finances may fail to use the funds for necessities like food, clothing, shelter and health care, putting the vulnerable adult at risk of harm. Abuse, neglect, and financial exploitation take many different forms.

Signs that *may* indicate neglect or abuse:

Conditions:

- Missing credit cards, check blanks, or other important papers.
- Unusual volume of banking activity or unpaid bills.
- Ward is lacking basics like clean clothes, or has other signs of physical neglect.
- Missing medications or possessions.
- Bruises, weight loss, poor hygiene.

Behavior:

- Ward is agitated after a family member or friend visits.
- Family member or agent declines recommended medical treatment.
- A ward seems pressured by family to make a decision or sign a document.
- Formerly outgoing adult has become withdrawn or seems afraid.
- Conflicts concerning finances between ward's children.
- Frequent moves to new long-term care facilities.
- Caregiver is isolating the vulnerable adult.

Reporting requirements.

Effective August 1, 2013 professionals that work with vulnerable adults in North Dakota are mandatory reporters of abuse, neglect, and exploitation. In addition to state mandatory reporting laws, any person with suspicions should report the situation.

The abuse hotline in North Dakota is: 855-462-5465.

When should I call?

If you feel neglect or financial exploitation may be occurring, call the abuse hotline to report your concerns. If you suspect the adult is in imminent danger of sexual or other physical abuse, please call 911 for immediate intervention. You may then follow up with a call to the hotline.

Pillars of Successful Intervention

Prevent – through awareness and training

Recognize – spot the warning signs and take action

Report – tell the authorities to trigger responses

Anything else I can do?

Depending on your role, these tips may help you be proactive in caregiving:

- Remind the ward not to give out personal information or credit card numbers over the phone.
- Examine bank accounts and credit card statements.
- Review spending from personal accounts at residential facilities.
- Monitor that appropriate payments are made to the long-term care facility.
- Check the background on a person selling investments: 888-295-7422.
- Report scams to Consumer Protection at 800-472-2600. Call the ND Securities Department to report investment fraud at 800-297-5124.
- Add the ward's land and cell phone numbers to the Do Not Call Registry at: <https://www.donotcall.gov/> or call 888-382-1222.
- Opt out of receiving both junk mail and email at: <http://www.dmachoice.org/>.
- Visit www.carechoice.nd.gov for a listing of resources available to your ward.
- Stop companies from collecting online cookies: www.networkadvertising.org.
- The Consumer Financial Protection Bureau provided much of this material: <http://www.consumerfinance.gov/managing-someone-elses-money/>.