

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).

If you're unsure how to proceed, or need legal advice or legal representation, consult a lawyer licensed to practice in North Dakota.

To protect your rights, 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 www.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.

- If you would like to learn more about finding an attorney to represent you, go to www.ndcourts.gov/legal-self-help/finding-a-lawyer.

A glossary with definitions of legal terms is available at www.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 is 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 PROCESS TO APPOINT A 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 will begin proceedings to determine who should be appointed guardian of the minor child.

LAWS & RULES

The requirements for District Court 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 AREN’T intended to constitute legal advice OR address every possible meaning of the terms in this section.****

(See [Chapter 30.1-01](#) and [Chapter 27-20](#) 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

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

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 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 location (county) where the District Court 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 \$80.00 is required to file the case to probate the deceased parent’s will. If the probate case has already been filed, there is no filing fee required for filing the guardianship related documents.

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 FOR DECLINING 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 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. |

STEPS TO DECLINE THE NOMINATION AS GUARDIAN FOR 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.

Probate cases filed in North Dakota state district courts are public. To see if the deceased parent's will has been filed for probate and given a case number, go to www.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 has not yet 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 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.
- 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.

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

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

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

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

After the completed Form 7: Decline Appointment as Guardian (Testamentary) is accepted by the Clerk of District Court for filing, the guardianship case is transferred to Juvenile Court.

The guardianship case will be assigned a Juvenile Court case number.

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

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