

GUARDIANSHIP

Sometimes, upon reaching the age of majority (18 in North Dakota) a person with a disability is vulnerable and in need of a decision-maker appointed by the court to deal with legal, medical, and/or financial issues. Guardianship is a legal process and involves court action removing rights and responsibilities from an individual and assigning them to a guardian. Guardianship is a court-appointed relationship between a competent adult or entity (guardian) and an individual considered unable to handle his or her affairs (ward). When a guardian is appointed, the court gives the guardian authority to handle certain legal rights of the ward and removes those rights from the ward. **The guardian must ensure the ward's protection and well-being, and act in the ward's best interests.**

North Dakota Century Code chapter 30.1-28 recognizes that a ward may need the protection of a guardian – either “limited” or “full authority.” Each guardianship is tailored to meet the needs of the ward.

TYPES OF GUARDIANS

A **general guardian** is responsible for decisions in ALL aspects of the ward's life. The guardian assures that the ward has a place to live, food to eat, proper clothing, and other necessities, as well as medical treatment, schooling, vocational opportunities, and other needed services. The guardian may oversee social security and medical benefits, but is not required to have the ward live with him or her, or assume personal financial responsibility.

A **limited guardian** has the authority to make decisions ONLY in specific areas of the ward's life, such as financial or residential. The court's *Findings of Fact and Orders* and/or *Letters of Appointment* will identify these areas.

An **emergency or temporary guardian** may be appointed in situations where immediate action is required to prevent harm to the ward. *An emergency guardianship CANNOT be in effect longer than 90 days and has ONLY the authority identified by the court at the time of the appointment.* The court may grant an extension beyond the 90-day limit if necessary.

A **testamentary guardian** is established when a guardian spouse or guardian parent of a person determined to be incapacitated appoints, by will, a successor guardian for that person.

A **conservator** may be appointed to manage the estate and finances of a ward. This is usually done when a ward has significant assets to manage. The appointment is a separate legal process and does not involve making decisions regarding the ward's personal life. A guardian may not be needed if a conservator has been appointed, and the court may request a conservator or guardian be bonded.

Alternatives to Guardianships

* **Representative Payee** – This is a person or agency that is given the responsibility of managing Supplemental Security Income, Social Security Disability Income, veteran's benefits, or other entitlements for an individual who is not able to adequately handle these funds. The *payee* takes charge of the funds and is responsible to see that they are spent on the care, treatment, and needs of the ward. A *payee* must keep records of transactions and expenditures, and file regular reports to the Social Security Administration. The appointment process involves some specific steps that are outlined by the respective funding source.

***Power of Attorney** - This gives designated party(ies) the authority to act on behalf of an individual if the need arises. This is not a court process, and a power of attorney can be established easily and inexpensively. It can be revoked by the individual at any time. The assignment of the *power of*

attorney assumes the person to be competent, but has few safeguards and lacks accountability because there are no reporting requirements or no court oversight.

* **Co-Signers on Bank Accounts** – This is an alternative to power of attorney or representative and protective payees. There are no safeguards or protection for the vulnerable person.

* **Alternative Resource Plan** – This means a plan that provides an alternative to guardianship, using available support services and arrangements, which are acceptable to the alleged incapacitated person. The plan may include the use of service providers such as visiting nurses, homemakers, home health aides, personal care attendants, adult day care, and multi-purpose senior citizen centers; home and community based care, county social services, and developmental disability services; powers of attorney, representative and protective payees; and licensed congregate care facilities. Questions of informed consent and vulnerability must be considered and addressed, which may involve capacity issues.

PROCEDURES FOR BECOMING A GUARDIAN:

If it has been determined that guardianship is the most appropriate solution, the next step is to contact an attorney. The attorney will help you file a petition for guardianship and a hearing will be set. Notices of the petition for guardianship and the date of the hearing will be given to all interested parties, including the proposed ward. At the hearing, the court decides if the proposed ward needs a guardian, the level of guardianship (limited or general), and who will be the guardian.

FOR MORE INFORMATION:
North Dakota

Protection & Advocacy

Legal Services of

www.legalassist.org

www.ndpanda.org

1-800-472-2670

1-866-621-

9886

North Dakota Dept. of Human Services
Aging Services Division

www.nd.gov/dhs/services/adultsaging/index.html

1-800-472-2622

The **North Dakota Aging and Disability Resource LINK** can assist you in locating information and resources for your ward.

www.carechoice.nd.gov

1-800-451-8693