

What Is A Guardianship?

◆ **Guardianship** is a court action appointing someone to make decisions for you when you become incapable of making your own decisions due to an illness or when an incapacity endangers your health or safety.

◆ Guardianship may severely limit your freedom to decide how to live your life.

What Are The Different Types Of Guardianship?

There are two types of guardianships, a **full guardianship** and a **limited guardianship**.

◆ Under a **full guardianship**, the guardian is given the authority to make all decisions for you including:

- 1) deciding where you live (i.e. nursing home, apartment);
- 2) authorizing medical treatment;
- 3) handling legal matters;
- 4) handling financial matters; and
- 5) handling educational and vocational matters.

◆ Before ordering a **full guardianship**, courts in North Dakota are required to consider a **limited guardianship**.

◆ Under a limited guardianship the guardian is given the authority to make only those decisions which you are unable to make.

◆ For instance, a limited guardian may be given the authority to arrange for medical treatment but not decide where you will live.

Who May Be Appointed Guardian?

The law states that any "competent person" or "suitable institution, agency, or non-profit group home" may be appointed guardian of an incapacitated person. However the following people are given priority to be appointed guardian. They are listed in order of priority:

- 1) a person named in a durable power of attorney;
- 2) a spouse;
- 3) an adult child;
- 4) a parent;
- 5) a relative with whom the person has been residing for the past six months;
- 6) volunteer agency;
- 7) any appropriate government agency;
- 8) someone chosen by whoever has been caring for or paying benefits for you.

How Will I Know If Someone Seeks A Guardianship Over Me?

◆ You and your closest relatives must be notified in writing. If you do not want this to happen, you can challenge the action.

◆ You have the right to a hearing. You have the right to consult an attorney, and your attorney may be present during the hearing.

◆ You have a right to bring witnesses to testify for you.

◆ You can have your own doctor testify. Your attorney can ask questions of the witnesses against you.

How Is A Guardianship Terminated?

A guardianship can be terminated if:

- 1) You or guardian dies; or
- 2) You or any interested party requests the court to redetermine the need for a guardianship.

The court will hold a new hearing and consider new evidence. If the court finds that your abilities have changed, the court can limit or terminate the guardianship.

What Are Possible Alternatives To A Guardianship?

Before a guardian is appointed for you, other options should be considered if they would suffice for dealing with your needs:

- 1) **Power of Attorney:** before you become incapacitated, you could give someone authority to make decisions for you through a Power of Attorney. This is a legal document giving a trusted friend or relative the power to handle your private, business, legal affairs or health care power of attorney, now called a Health Care Directive as explained in #5 below.
- 2) **Co-Signers on Bank Accounts:** the owner of the account is able to have a trusted individual/relative assist them with paying bills, and that trusted individual is not seen or treated as an equal owner of the asset/account.

3) **Home health care:** if your incapacity involves an inability to bathe, clothe, remember to take your medication or otherwise care for yourself properly, you might obtain an individual to come to your home and assist you. Contact your county social service agency to learn about your options.

4) **Meals on Wheels:** Meals on wheels is a non-profit organization in our community that delivers hot and well-balanced meals to individuals who find it difficult to cook for themselves. If you are not eating properly, this may be a good option for you.

5) **Health Care Directive:** this document allows a person to name someone they trust to make health care decisions for them when they are unable to.

6) **Representative Payee.** Discuss with the Social Security Administration.

7) **North Dakota Informed Healthcare Consent Law.** Check with a lawyer.

If an alternative to a guardianship is not possible, the court must use the least restrictive form of intervention. Additionally, the guardian must involve you., the ward, in all decision making if you are able to communicate your wishes.

DISCLAIMER: This information is not legal advice. If you have a legal problem, you should talk to a lawyer and ask for advice about your options.

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Who Do I Contact With Additional Questions?

Seniors 60 and over
Call: 1-866-621-9886
Others Call: 1-800-634-5263

Legal Services of North Dakota

Bismarck Law Office
418 E Broadway #25
Bismarck, ND 58501

Fargo Law Office
112 N University #220, PO Box 1327
Fargo, ND 58107-1327

Minot Law Office
20 1st St SW #201
Minot, ND 58701

New Town Law Office
345 Main St, PO Box 217
New Town, ND 58763-0217

Belcourt Law Office
BIA Road 7 Bldg 85, PO Box 1365
Belcourt, ND 58316-1365

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UND School of Law Ste 1
215 Centennial Drive Stop 9003
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