

Frequently Asked Questions Regarding Guardianship

How do I go about establishing a guardianship? There is a legal procedure that must be followed in order to establish a guardianship. Once it has been determined that guardianship is the most appropriate solution, the first step is to contact an attorney. Your attorney will help you file a petition for guardianship and a court hearing will be set. Notices of the petition for guardianship and 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.

What happens before the court hearing? The attorney representing the person seeking the guardianship (the petitioner) will continue to gather information and evidence that supports the need for establishing guardianship. The court will appoint a **guardian ad litem**, a **visitor**, and a **physician or psychologist** to evaluate the need for and appropriateness of establishing a guardianship for the proposed ward.

- **The guardian ad litem** is an attorney who represents the proposed ward. He or she visits with the proposed ward and evaluates all of the available information on the case. He or she then files a report and recommendations with the court. The guardian ad litem makes recommendations based on what he or she feels is in the best interests of the proposed ward.
- The **visitor** is usually a social service professional who visits with the proposed ward, his or her current (future, if applicable) residence and the proposed guardian. The visitor may meet with others who are involved in the case and examine information pertinent to the case. The visitor then files a report and recommendations with the court.
- The **physician or psychiatrist** examines or evaluates the proposed ward. His or her recommendations and report are then filed with the court.

What happens at the hearing? All interested parties could and should attend the hearing. The proposed ward must attend unless very good and clear reasons for his or her absence are provided to the court. (The court may hold the hearing at an alternative location such as a nursing home or hospital to ensure the proposed ward's attendance.)

- The attorney representing the petitioner presents evidence to establish that the proposed ward is not capable of taking care of him or herself in all or certain areas of his or her life.
- The court accepts and carefully considers the reports and recommendations filed by the **visitor, guardian ad litem, and physician or psychiatrist.**
- Anyone involved in the case may testify to prove or disprove the need to establish guardianship.

- Once the evidence has been presented and testimony has been given, the court must decide if there is clear and convincing evidence that the proposed ward is incapacitated. If so, the court appoints a guardian who will be able to fulfill the assigned duties properly.

How do I know what authority I'll have as a guardian? The court will issue orders and letters that specify the areas where the guardian does and does not have authority and responsibility. After the guardianship orders and letters have been signed and filed with the court, the **guardianship becomes official.**

Does it cost anything to set up a guardianship? In order to protect the freedoms and rights of a proposed ward, the procedure to establish a guardianship is detailed, specific and requires the services of a number of professionals. The cost of setting up a guardianship includes attorney's fees, court costs, and fees for the guardian ad litem, visitor and the physician or psychiatrist.

- The cost to establish a guardianship can range from \$500 to \$1,000 or more. In most cases, these costs are paid by the person who is petitioning for the court to establish a guardianship or if the court orders, the proposed ward may be required to pay. In some cases, certain fees can be paid by an outside agency or may even be waived.

As a guardian, will I be financially responsible for my ward? You may have the authority to oversee and handle your ward's funds. You **must** make sure that your ward's money is spent to cover his or her needs such as rent, clothing, and other bills. Unless you agree to take on more financial responsibility for your ward or are clearly negligent in handling your ward's funds, you have no personal financial responsibility.

Will my ward have to live with me? You need to make arrangements for the care of your ward; you are not required to have your ward move into your home. You are responsible for seeing to the well-being and best interest of your ward.

As a guardian, do I have to make reports to the court? Guardians are required to file an annual report with the court. The report forms are available from the probate office of the district court. The report consists of information about the physical and emotional condition of your ward, the services that the ward receives, any problems that have occurred since the last report, and what the guardian has done for the ward.

Once I am appointed guardian, am I all alone? As a guardian your primary responsibility is to ensure that your ward is receiving necessary and quality services. There are agencies and organizations that can provide assistance in obtaining these services. Some of these agencies and organizations are: Protection & Advocacy Project, Legal Services of North Dakota, your district court, North Dakota Department of Human Services/Disability Services Division, North Dakota Department of Human Services/Aging Services Division, Mental Health Association of North Dakota, area social services, the Guardianship Association of North Dakota and the Guardianship Division of Catholic Charities North Dakota.

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