

2014 North Dakota Guardianship

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Guardianship/Conservatorship Legalities

- Guardianships and conservatorships remove an individual's civil rights and liberties, so there are stringent laws that must be followed to protect the incapacitated individual.
- Guardianships allow for the protection of individuals and conservatorships allow for the protection of their property, when individuals are unable to responsibly manage their own affairs.
- Courts prefer the least restrictive alternative.

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Guardianship/Conservatorship

- Guardian of person.
- Conservator of estate.
- Appointment of guardian is done by a Court Order after a hearing which finds an individual lacks capacity to make responsible personal decisions concerning their residence, medical treatment, legal affairs, finance, or when incapacity endangers health or safety.

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Guardianship

- Of a minor (ward):
 - Appointment by parents' will.
- Of an incapacitated person (ward):
 - Court Order states legal authority (full or limited) in areas of: residential, educational, medical, legal, vocational and financial.

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Guardianship

- When does someone need a guardian instead of a Power of Attorney or Health Care Power of Attorney?

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Guardianship/Conservatorship Legalities

- "Incapacitated person" is defined as follows under North Dakota law:
 - ...means any adult person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, or chemical dependency to the extent that the person lacks capacity to make or communicate responsible decisions concerning that person's matters of residence, education, medical treatment, legal affairs, vocation, finance, or other matters, or which incapacity endangers the person's health or safety.

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Guardianship/Conservatorship Legalities

- Guardianship:
 - Is used when there is incapacity in aspects of the "person."
 - Court always wants least restrictive alternative.
 - Can be limited or unlimited (full).

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Guardianship/Conservatorship Legalities

- "Catch all" of guardian power:
 - Duty and power to exercise supervisory authority over the ward in a manner in which limits civil rights and restricts personal freedom only to extent necessary to provide needed care and services.

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Guardianship/Conservatorship Legalities

- Conservatorship:
 - Is used when there is incapacity in aspects of the “estate.”
 - Individual is unable to manage affairs because of impairment in ability to receive and evaluate information or make decisions.
 - Can be limited or unlimited (full).
 - Court wants least restrictive alternative.

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Guardianship/Conservatorship First Phase

- Interested person begins legal process (can be voluntary).
- File Petition with Court.
- North Dakota Court appoints guardian ad litem (neutral).

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Guardianship/Conservatorship First Phase

- Visitor (trusted independent person appointed by Court) serves Notice of Hearing on Petition, explains Petition and prepares report for the Court.
- Physician’s statement of need for guardianship and whether proposed ward/conservatee is unable to attend hearing.

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**Guardianship/Conservatorship
First Phase**

- Formal Court hearing:
 - Uncontested – short hearing.
 - Contested – longer hearing, likely with witnesses.
- If Court grants Petition, then guardian/conservator appointed.

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**Guardianship/Conservatorship
Second Phase**

- Powers and duties of guardian that may be granted by Court:
 - Custody/choose place to live/may limit visitors for ward/conservatee (limitations on admission to regional treatment center).
- Provide for care, comfort and maintenance needs (guardian/conservator has no duty to use personal funds), including application for government benefits, if no conservator.

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**Guardianship/Conservatorship
Second Phase**

- Powers and duties of guardian that may be granted by Court (continued...):
 - Duty to care for clothing, furniture, vehicles and other personal effects (must give notice if dispose of these):
 - If minimal estate, don't need conservator.
 - Must seek conservator if other property needs protection. Court may order bond.
- Medical consent (limits on sterilization, experimental treatment, etc.)
- To approve or withhold contracts, if no conservator.
- To exercise supervision over ward/conservatee.

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**Guardianship/Conservatorship
Second Phase**

- Powers and duties of conservator that may be granted by Court:
 - Pay reasonable charges (living expenses).
 - Pay all debts for support of those the ward/conservatee is obligated to support (i.e., child support).
 - Possess and manage estate/asset management; must invest wisely.
 - Apply for government benefits.
 - To approve and withhold contracts.

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**Guardianship/Conservatorship
Second Phase**

- Other considerations for powers and duties:
 - Court may authorize guardian to exercise power for the ward to get married.
 - Must seek Court authority to gift assets.

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**Guardianship/Conservatorship
Second Phase**

- Guardian/conservator cannot sign a Will on behalf of ward/conservatee, but a conservatee may be able to sign own Will if has testamentary capacity.
- Decision of conservator takes precedence over power of attorney.

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**Guardianship/Conservatorship
Second Phase**

- Conservator must file an Inventory of the assets within 90 days of appointment in North Dakota (i.e., real estate, household goods, wearing apparel, investments, etc.).
- Conservator must prepare, file and serve Accounts (at least annually and when terminates) which detail all receipts (income) and disbursements (expenses):
 - May be Court hearing to allow Account.

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**Guardianship/Conservatorship
Second Phase**

- Personal Well-Being Report:
 - Changes in medical condition.
 - Changes in mental condition.
 - Changes in living conditions.
 - Listing of hospitalizations.
 - Recommendations as to need for continued guardianship.

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**Guardianship/Conservatorship
Third Phase**

- Termination of guardianship/conservatorship:
 - If guardian/conservator dies or resigns, Court may appoint a successor (a ward/conservatee with capacity may nominate a successor).
 - Will terminate upon restoration to capacity.
 - Will terminate upon death of ward/conservatee.
 - Must do Final Account in conservatorship, unless waived.

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Guardianship/Conservatorship Emergency vs. General

- Emergency (temporary) guardianship/conservatorship is for emergencies only, when the regular procedure will cause substantial harm to the person or estate:
 - Usually without notice to proposed ward/conservatee prior to hearing.
 - Limited duration of time (up to 60 – 90 days).
- General guardianship/conservatorship is the most common.

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Guardianship/Conservatorship General Tips

- Billings for ward/conservatee should be:
 - Issued in the name of ward/conservatee.
 - Mailed in care of guardian/conservator, to the address of the guardian/conservator.
- Sign all documents as guardian on behalf of ward or as conservator on behalf of conservatee, to prevent personal liability.
- Guardian/conservator should never sign their name only.

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I have enjoyed my time with you today. If you have any further questions, please call me at 364-9595 or 855-299-9595.

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