

Guardianship



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Aging Services Division

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Overview

- Legislative updates
- When is guardianship needed?
- Practice



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2015 Legislative Updates

- Changes to Emergency Guardianship Law:
 - Changed to a period "**not to exceed ninety days**"
 - Notice of hearing must be given to spouse as well as individual
 - If emergency guardian has financial authority, assets must be safeguarded and only spent for the necessary support and care of the individual



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2015 Legislative Updates

- Changes to Guardianship Law:
 - Proposed guardian must attend hearing unless excused by court
 - A copy of the court order appointing a guardian must be served to all parties given notice
 - Gives third parties information to better track financial misconduct
 - Guardian must provide an inventory to the court and interested parties within **90 days** of appointment
 - Any changes in residence
 - Any medical treatment
 - Income and expenditures
 - Sale or transfer of property
 - Assets
 - Any exercise of legal authority



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2015 Legislative Updates

- Changes to Guardianship Law:
 - Removed "advanced age" as part of the definition of incapacitated person
 - Guardian ad litem duties were clarified:
 - Advocate for best interests of the individual
 - May not represent the individual in a legal capacity
 - Explain rights to individual including right to an attorney
 - Submit a written report to the court



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2015 Legislative Updates

- Changes to Guardianship Law:
 - Petition must include:
 - Information on conservator
 - Information on healthcare or financial agent under a POA
 - Information on rep payee
 - Recent clinical statement on physical, mental, and emotional limitations of the individual, if available
 - Authority requested (legal, medical, financial, residential)
 - Petition must state that less restrictive alternatives have been considered



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2015 Legislative Updates

- Changes to Guardianship Law:
 - Guardianships must be reviewed every 5 years
 - At least 90 days prior to expiration
 - The court requests information as to whether guardianship should continue
 - Court may appoint a guardian ad litem or visitor
 - Court must hold hearing on continuation of guardianship for up to another 5 years



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2015 Legislative Updates

- Monitoring Program:
 - Pilot project with 1 FTE to address financial piece
 - Use court visitors for home visit portion
 - Random sampling of cases will be reviewed
 - Judges can submit a small number for review if concerns exist



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2017 Legislative Updates

- Further clean up of guardianship law N.D.C.C. § 30.1-28
- Clean up of law regarding conservatorships N.D.C.C. § 30.1-29



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When Is Guardianship Needed?

- Individual must be deemed incapacitated
 - Incapacity is defined as 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. N.D.C.C. § 30.1-26-01.



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Costs

- If the proposed ward has sufficient funds, the court can order the costs of guardianship proceedings be paid out of the ward's estate
- If proposed ward has income at or below 100% of federal poverty level or is Medicaid eligible, the petitioner can apply for the Guardianship Establishment Fund



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Guardianship Establishment Fund

- Managed through Aging Services Division
- Allocated funds of \$352,500 for guardianships
- Funds allow for spending up to \$2500 per case and cover:
 - Guardian ad Litem
 - Court Visitor
 - Attorney



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How to Apply

REQUEST FOR GUARDIANSHIP ESTABLISHMENT FUNDS
 NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES
 AGING SERVICES OVERSIGHT/GUARDIANSHIP PROGRAM
 SFN 1177 (2-2014)

CONSUMER DEMOGRAPHIC INFORMATION

Name: _____
 HCAP ID Number: _____ Date of Birth: _____ MA Number: _____
 Address: _____ City: _____ State: _____ ZIP Code: _____
 Residential Address: Check box if same as mailing address. City: _____ State: _____ ZIP Code: _____

If consumer is mailing out of state or not a resident of North Dakota, STOP: consumer is not eligible for this program.

PROGRAM ELIGIBILITY
 Is consumer eligible for Developmental Disabilities Case Management? Yes No If Yes, STOP: consumer is not eligible for this program.
 Does the consumer meet the definition of "incapacitated" adult (NDCC 30.1-26-01)? Yes No

*"Incapacitated" means: any adult person who is incapable 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, visitors, finances, or other matters, or which incompetently endangers the person's health or safety.



How to Apply

Does the consumer have income at or below one hundred percent of the federal poverty or is the consumer Medicaid-eligible?
 Yes No If No, STOP: consumer is not eligible for this program.

Household Size	100%	Household Size	100%
1	\$ 11,670	6	\$ 31,870
2	\$ 15,720	7	\$ 36,030
3	\$ 19,760	8	\$ 40,190
4	\$ 23,800		For each additional person, add
5	\$ 27,850		\$ 4,080

If funds exceeding 100% of federal poverty level are found during the establishment of the guardianship and the individual is no longer Medicaid-eligible, the applicant must still no longer be eligible for this program. At the time the funds for guardianship establishment should come from the source's estate.

REFERRAL SOURCE/CASE MANAGER

Name: _____ Telephone Number: _____
 Agency: _____
 Address: _____ City: _____ State: _____ ZIP Code: _____
 E-Mail Address: _____ Fax Number: _____

REQUIRED DOCUMENTATION (for consumers with an active ROAP case, forward only information not found in ROAP)
 Check all that are attached:
 Evaluation (neuropsychological, psychiatric, psychological, chemical dependency) Progress notes for the last six weeks
 Physician's recommendations recommending guardianship Diagnoses (all 5 axes)
 Current treatment plan Other (specify): _____



How to Apply

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RECOMMENDED TYPE OF GUARDIANSHIP
 Full Guardianship Limited Guardianship Emergency Guardianship

Number of Emergency Guardianships, list when this need continues to: _____

SIGNATURES

Case Manager: _____ Date: _____ Telephone Number: _____
 Supervisor: _____ Date: _____ Telephone Number: _____

REASON FOR GUARDIANSHIP
 Describe the recommendation for guardianship including the nature and type of disability and how that disability impacts the individual's personal affairs. This reason should accurately reflect the ability and abilities of the person as well as the interests and problems. Attach additional assets, if necessary. Attach any supporting documentation.



How to Apply

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LESS RESTRICTIVE ALTERNATIVES TO GUARDIANSHIP TRIED OR CONSIDERED

Identify all alternatives to guardianship that have been tried.	Describe why the alternatives not adequate or appropriate
<input type="checkbox"/> Durable Power of Attorney	
<input type="checkbox"/> Trusts	
<input type="checkbox"/> Home Health	
<input type="checkbox"/> Representative Payee	
<input type="checkbox"/> Case Aide	
<input type="checkbox"/> Other (specify): _____	
<input type="checkbox"/> Other (specify): _____	



How to Apply

CONSUMER'S NET INCOME, BENEFITS, AND ASSETS

Income	Monthly Amount
Wages	
Supplemental Security Income	
Social Security Disability Insurance	
Retirement Services Disability Insurance	
Pfizer Retirement	
Dividends	
Other (specify): _____	
Other (specify): _____	
Other Benefits	Monthly Amount
SNAP Benefits	
Medicaid Assistance	
LIFEAD	
Other (specify): _____	
Other (specify): _____	
Assets	Amount
Checking Account	
Savings Account	
Individual Retirement Account/KnoxLife Account	
Market Funds	
Savings Bonds	
Stocks and Bonds	
Vehicle	
Personal Property	
Real Property	
Other (specify): _____	
Other (specify): _____	



How to Apply

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PROPOSED GUARDIAN

Name: _____ Telephone Number: _____
 Agency: _____
 Address: _____ City: _____ State: _____ ZIP Code: _____
 E-Mail Address: _____ Fax Number: _____

Agree to become guardian of this individual: Yes No
 Signature: _____ Date: _____

For State Office Use Only

Case Received: _____ Date Received: _____
 Reviewed By (must be reviewed by all three areas): _____
 Name of Case Manager: _____
 Name of Aging Services Division Reviewer: _____
 Name of Mental Health and Substance Abuse Services Reviewer: _____
 Status of Application: Approved Denied Pending Additional Information Date: _____
 Reason for Denial: _____
 Date Case Manager Notified of Application Status: _____



What to Include in Application

- Evaluations
 - Neuropsych
 - Psychiatric
 - Psychological
 - Cognitive testing (BIMS, SLUMS, MoCA)
- Physicians notes/evaluations indicating a need for guardianship
- Any relevant medical documentation showing need for guardianship
- Financial information



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2015-2017 Biennium

- **111 Total Referrals**
 - 104 approved
 - 7 passed during process
 - 7 denied
 - 5 withdrawn
 - 2 pending/waiting for more information



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Guardianship in a Nutshell

- Court can grant full, limited, or no authority in any of the following areas:
 - Financial
 - Residential
 - Medical
 - Legal
 - Education and training
 - Vocation
- Based on this authority, guardians are tasked to make decisions in the best interests of the ward, while also considering the ward's wishes



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Guardianship in a Nutshell

- Guardians **cannot** force medications
 - Only court can force medications as part of a mental health commitment process
 - This is a separate legal process outside of the guardianship
 - Requires court hearings



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Upcoming Qualifications for Guardians

- Qualifications to serve as a non-professional guardian include:
 - Complete online training
 - Provide criminal history report
 - Provide a statement whether proposed guardian has been investigated for or convicted of abuse or neglect of an adult or child and sign a release allowing access to records



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Upcoming Qualifications for Guardians

- Qualifications to serve as a professional guardian include:
 - Possess certification through National Guardianship Association or employed by an agency accredited through National Council on Accreditations
 - Provide statement as to whether or not individual employed by agency has been the subject of any disciplinary proceeding by a licensing entity or by accredited agency
 - Provide a criminal history report and results of child abuse and neglect background inquiry



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Guardianship Practice



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Maria

Our daughter, Maria, will be 18 years old in 2 weeks. Diagnosed with a mild intellectual disability, Maria has attended special education programs since age 3. Although part of her school day has been spent in regular classes, Maria spends at least half of her school day in special education classes.

Maria's dad and I would like her to stay in high school until she turns 21 but she flat out refuses to go to school after she turns 18. Once she is 18, Maria tells us that she doesn't need to listen to us. We understand that Maria has rights but we are her parents and we believe we know what is best for her. As a family, we were so close. Until she turned 15, Maria always did what we asked.

After turning 15, Maria started to speak her mind, would do fewer and fewer activities with us and wanted to spend more time with her friends and her boyfriend. We think Maria's boyfriend and friends are a bad influence on her. Now, Maria has decided that she wants to quit school when she turns 18, get a driver's license, and live with her boyfriend. We want to stop her from quitting school and moving out of our home.



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Maria

What type of guardianship, if any, is appropriate?

Emergency
Guardianship

Guardianship

Neither



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Maria Part 2

Living on her own for the first time, Maria has made some impulsive decisions and people have taken advantage of her vulnerability. Maria had lived with her boyfriend for a few months but moved out to live with a man who has a history of sexual offenses. Maria gives this new man her entire social security check and he does not allow her to see her parents and friends. Although Maria's parents had arranged supports and services, Maria refuses to participate.



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Maria

What type of guardianship, if any, is appropriate?

Emergency
Guardianship

Guardianship

Neither



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Frank

My uncle Frank is 75 years old and has never been married. Always eccentric and very independent, Frank has lived alone on the family homestead his entire life. For as long as I have known him, Frank has been a little paranoid and not of all trusting of family, doctors, social workers, the sheriff's department or the church.

Three or four times a year, I stop in at the farm to visit. On my last visit, I noticed that Frank seemed even more paranoid than usual, was dirty, had lost weight, and seemed quite forgetful. I tried to talk Frank into seeing a doctor but Frank got mad and kicked me out of the house.

Last night, I received a call from the hospital. Frank was admitted to the hospital for severe burns from sitting too close to a space heater. Apparently, Frank had fallen asleep and his clothes caught on fire. Frank was using the space heater because he had forgotten to order fuel oil and had no other heat in the middle of January.



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Frank Continued

The neighbor who clears the snow in his driveway called the ambulance when Frank didn't answer the door. The admitting physician quickly determined that in addition to the burns, Frank was suffering from mild malnutrition. Frank was very confused and combative at the hospital.

There are no healthcare directives in place. Frank's medical condition requires that he stay in the hospital and Frank is trying to check himself out of the hospital against medical advice. Once he is medically ready for discharge, Frank will continue to need skilled nursing care but he will not consent. Even if Frank's mental status improves, it will take a significant period of time before Frank could take care of his own immediate needs.

The doctor indicated that many medical decisions will need to be made in the coming days and weeks and that Frank appears to have onset of dementia making him unable to give informed consent at this time.



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Frank

What type of guardianship, if any, is appropriate?

Emergency
Guardianship

Guardianship

Both



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Lilian

Although my mother, Lilian, has severe Parkinson's disease, she has been able to stay in her home because of wonderful care from my father. Recently, Mother has been falling more frequently, is getting more confused and is sometimes very agitated. Several days ago, my mother fell and broke her hip which needs to be surgically repaired.

Mother's doctors and the hospital social worker have recommended that she move to a skilled nursing facility because she needs more care than my father can provide. My father disagrees and refuses to let anyone come into the home to help. In all honesty, I agree that my mother should be moved to a skilled nursing facility because my father, through no fault of his own, can no longer provide the level of care that she needs.

My parents do not have a healthcare directive or Power of Attorney and the skilled nursing facility refuses to admit my mother until a guardian has been appointed to sign admission forms and consents. Mother is ready for discharge from the hospital.



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Lilian

What type of guardianship, if any, is appropriate?

Emergency
Guardianship

Guardianship

Neither



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Jason

Jason was diagnosed on the autism spectrum with reactive detachment disorder, ADHD, and disruptive behavior disorder for which he takes a number of psychiatric medications. As a child, Jason was severely neglected, removed from his home and placed in foster care. Neither of Jason's biological parents has been involved in his life. Fortunately, Jason's foster parents continue to play an active role.

Although he lives in a structured setting, Jason continues to have significant difficulties. Jason is unable to make responsible decisions, struggles with appropriate boundaries and exhibits delayed social skills causing him to have difficulties in relationships.

Described as impulsive, Jason is unable to manage his own money or find his own apartment and cannot make many other decisions adults need to make on a daily basis.

While decisions could be made for him as a minor, Jason has now turned 18. Due to his mental capacity, Jason does not have the ability to assign decision making authority under a Power of Attorney.



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Jason

Under a guardianship, what type of authority should be sought?

Legal

Residential

Financial

Medical



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Betty

My mom, Betty, will be 88 years old in June and is starting to show signs of dementia. You can tell her something in the morning and later that day Mom will have forgotten the conversation. Mom will not make any decisions. In looking at her bank statement, Mom receives her social security check electronically and has automatic payments set up for her monthly living expenses. After her monthly living expenses are paid, Mom has \$200 left to live on for the rest of the month which is not enough to cover her medications and food.

Although she owns a rental property which is always rented, Mom's bank statement does not show any deposits for rent. Several years ago when she was competent, Mom gave my brother, Al, authority to manage her rental property under a Durable Power of Attorney.

Al does not provide any financial or other help to Mom. I take care of Mom's daily needs and make sure that she eats and takes her medications. Frequently, I use my own money to buy her groceries and some of her medications. Regrettably, I suspect Al is collecting the rent from Mom's rental property and is not providing any of the profits to Mom for her use.



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Betty

- **Caution:**
 - **Before proceeding with a guardianship, Betty's daughter should file a Vulnerable Adult Protective Services report of suspected financial exploitation.**



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Betty

Under a guardianship, what type of authority should be sought?

- Legal
- Residential
- Financial
- Medical



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Mabel

My friend, Mabel, is 86 and relies on her son Mark for daily care. Mark was recently hospitalized and Mabel is now home alone. Having been diagnosed with Alzheimer's, Mabel struggles to remember to take her medications and has difficulties bathing and making meals. Mark will not be released from the hospital for some time and there are no other family members or friends able to help care for Mabel.

Mabel relies on Mark and doesn't understand that he will not be coming home soon. As a friend, I'm concerned Mabel will not be safe in her home now that she is alone and will not eat or take her medications properly. Besides Mark, Mabel has no one else to support her and I am unable to provide her with the care Mark was giving.

Mark has been having medical issues himself which prevent him from giving Mabel the level of care she needs. Unfortunately, Mark doesn't seem to grasp that he cannot care for his mother any longer and it seems as if he isn't making the best decisions for Mabel at this time.

There is no Power of Attorney document in place and no formal arrangements have been made to provide care or assistance to Mabel.



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Mabel

Under a guardianship, what type of authority should be sought?

- Legal
- Residential
- Financial
- Medical



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Questions?

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