

# **POWERS AND DUTIES OF A GUARDIAN OF A MINOR CHILD**

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Chapter 30.1-27 of the North Dakota Century Code (N.D.C.C.)

**The Guardianship Standards Workgroup of the North Dakota Court System created this informational form for people who are nominated in a parent’s will to be the guardian of their minor child in the event of their death.**

**Before you accept or decline your appointment in a deceased parent’s will as guardian of a minor, carefully review the powers, duties, and limitations you will have as a guardian, if you accept.**

A parent may appoint, or nominate, a person, or persons, in their will to act as guardian of their minor children should the parent die before their children reach 18 years of age.

This is called a “testamentary appointment of a guardian.” A court must approve the testamentary appointment. The court approval process begins as part of the same probate case in North Dakota state district court that distributes the deceased parent’s property and debt.

[Chapter 30.1-27 of the North Dakota Century Code \(N.D.C.C.\)](#) lists the process and requirements for district court approval of a testamentary appointment of a guardian as part of the probate case to handle the deceased parent’s estate.

**The first step of the district court approval process is to accept or decline the testamentary appointment in writing.** The person appointed in the deceased parent’s will files their written acceptance or written declination with the district court within 60 days of the death of the minor’s parent.

**The following pages list the powers, duties, and limitations of a guardian.**

**A guardian of a minor appointed pursuant to Chapter 30.1-27 of the North Dakota Century Code (N.D.C.C.) has the following powers, duties, and limitations. (See N.D.C.C. Section 27-20.1-15.)**

1. When neither parent is alive, OR every living parent's parental rights have been terminated by court order, the guardian has the following rights:
  - a. The right to the physical custody of the minor and the right to determine the nature of the care, placement, and treatment of the child, including ordinary medical care as well as medical or surgical treatment for a serious physical condition or illness which in the opinion of a licensed physician requires prompt treatment, except for any limits the court may impose.
  - b. The right and duty to provide for the care, protection, training, and education and the physical, mental, and moral welfare of the child, subject to the conditions and limitations of the order and to the remaining rights and duties of the child's parents.
  - c. The authority to consent to the minor's adoption, marriage, and enlistment in the armed forces of the United States.
2. A guardian is not liable to third persons by reason of the parental relationship for acts of the minor.
3. The guardian must take reasonable care of the minor's personal effects and commence protective proceedings if necessary to protect other property of the minor.
4. The guardian may receive money payable for the support of the minor to the minor's parent, guardian, or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship, or custodianship.

- a. The guardian may receive money or property of the minor paid or delivered by virtue of [Section 30.1-26-03 of the North Dakota Century Code \(N.D.C.C.\)](#). Any sums received must be applied to the minor's current needs for support, care, and education.
  - b. The guardian must exercise due care to conserve any excess sum for the minor's future needs unless a conservator has been appointed for the estate of the minor, in which case the excess sum must be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for the guardian's services except as approved by order of the court or as determined by a duly appointed conservator other than the guardian.
  - c. The guardian may not use funds from the minor's estate for room and board that the guardian or the guardian's spouse have furnished to the minor unless a charge for the service is approved by order of the court made upon notice to at least one of the minor's next of kin, if notice is possible.
  - d. A guardian may institute proceedings to compel the performance by any person of a duty to support the minor or to pay sums for the welfare of the minor.
5. The guardian has the authority to facilitate the minor's education, social, or other activities.
  6. The guardian has the authority to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the minor resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented.

7. A guardian shall file an annual report with the court regarding the exercise of the guardian's powers and duties.
  - a. The report must describe the status or condition of the minor, including any change of residence and reasons for the change, any medical treatment received by or withheld from the minor, the minor's educational progress, any expenditure and income affecting the minor, and any exercise of legal authority by the guardian affecting the minor.
  - b. The report must include changes that have occurred since the previous reporting period and an accounting of the minor's estate.
  - c. The guardian shall report whether the minor continues to require a guardianship.
  - d. The report must be filed with the court.
  - e. Copies of the guardian's annual report and of any other reports required by the court must be mailed to the minor, if the minor is age fourteen or older, the minor's parents, unless the parents' rights have been terminated or the parents are deceased, and any interested persons designated by the court in its order.
  - f. If a guardian fails to file a complete annual report, fails to file a report at other times as the court may direct, or fails to provide an accounting of an estate, the court, upon its own motion or upon petition of any interested person, may issue an order compelling the guardian to show cause why the guardian should not immediately make and file the report or account, or be found in contempt for failure to comply. A copy of the order to show cause must be provided to the minor, if the minor is age fourteen or older, the minor's parents, unless the parents' rights have been terminated or the parents are

deceased, any interested persons designated by the court in its order, and the juvenile court director.

8. The guardian shall inform the court of any change in the minor's residence within thirty days of the change, but must seek prior authorization of the court to establish or move the minor's residence outside of the state.
9. In determining what is in the minor's best interest, the guardian shall take into account the minor's preferences to the extent actually known or reasonably ascertainable by the guardian.
10. To the extent reasonable, the guardian shall delegate to the minor responsibilities for decisions affecting the child's well-being.
11. The guardian may not delegate authority as a guardian under a power of attorney without prior approval from the court.

**Find additional forms and information related to guardians and guardianships of minor children at the North Dakota Legal Self Help Center website:**

[www.ndcourts.gov/legal-self-help](http://www.ndcourts.gov/legal-self-help).