

# Navigating Guardianship and Alternative Options in North Dakota

Understanding Legal Support for Adults with Disabilities

## Full Guardianship

### Who it's for:

Adults who are unable to make personal decisions safely or responsibly.

### Process:

- **Petition Filing:** An interested party files a petition in the North Dakota District Court.
- **Evaluation:** The court appoints a guardian ad litem, a visitor, and an expert examiner to assess the adult's capacity.
- **Hearing:** Evidence is presented during a court hearing.
- **Authority Granted:** If approved, the court gives someone legal authority to make all decisions for an individual under guardianship in the areas of **medical, legal, residential, educational, vocational and financial.**
- **Ward Status:** The adult becomes a "ward" of the guardian.
- **Annual Reporting:** The guardian submits annual reports to the court.

### Key Considerations:

- This is the most restrictive option available; Courts must determine that less restrictive alternatives have been considered first.
- Costs money for lawyers and court fees.
- Guardianship lasts up to five years, with a hearing to determine continuation.

## Limited Guardianship

### Who it's for:

Adults who can make some decisions independently but require help in specific areas, such as medical or financial decisions.

### Process:

- **Petition Filing:** Similar to full guardianship; involves petition filing, evaluations, and a court hearing.
- **Evaluation:** The court appoints a guardian ad litem, a visitor, and an expert examiner to assess the adult's capacity.
- **Hearing:** Evidence is presented during a court hearing.
- **Authority Granted:** The court specifies and defines the areas to what degree the guardian has authority.
- **Ward Status:** The ward retains certain decision-making rights.
- **Annual Reporting:** The guardian must report to the court annually.

### Key Considerations:

- Less restrictive than full guardianship.
- Tailored to meet the individual's actual needs.
- Guardianship lasts up to five years, with a hearing to determine continuation.

## **Power of Attorney (POA)**

### **Who it's for:**

An adult who is capable of making decisions but wants to voluntarily give someone else authority to act on their behalf in specific areas (e.g., finances, healthcare). Best for people who want to plan ahead and maintain control by choosing who will help them if assistance becomes necessary.

### **Process:**

- The individual completes a POA form (available through legal aid, attorneys, or online).
- The form must be signed and notarized in North Dakota.
- No court involvement is required.
- The POA can be revoked at any time by the principal, as long as they are deemed “competent.”

### **Key Considerations:**

- Voluntary: The individual (called the *principal*) chooses someone they trust (the *agent* or *attorney-in-fact*).
- Types:
  - General POA: Broad authority over financial, legal, and medical or healthcare matters.
  - Durable POA: Remains in effect if the person is medically deemed “incapacitated.”

## **Representative Payee**

### **Who it's for:**

Adults who receive Social Security or SSI benefits but are unable to manage their own funds.

### **Process:**

- **Application:** Apply through the Social Security Administration (SSA) using Form SSA-11.
- **Interview:** A face-to-face interview is generally required.
- **Evaluation:** SSA evaluates the need and appoints a payee, typically a family member or organization.

### **Responsibilities of a Payee:**

- Use benefits to fulfill the beneficiary’s current and foreseeable needs.
- Save any unused funds in a dedicated account.
- Maintain detailed records of spending.
- Submit annual reports to SSA, unless exempt.
- Cannot charge a fee unless approved as a fee-for-service organization.

### **Key Considerations:**

- **Financial-only role.**
- No court involvement.
- Must use funds for the person’s needs and report to SSA.
- Can be a family member, friend, or organization.

# **Supported Decision-Making (SDM)**

## **Who it's for:**

A person with a disability who asks trusted supporters to help them make decisions without giving up legal rights

## **Process:**

- The individual identifies trusted supporters (family, friends, mentors, etc.).
- They may complete a Supported Decision-Making Agreement (template available on ND P&A's website).
- The agreement outlines:
  - Who the supporters are
  - What decisions they'll help with
  - How support will be provided
- No court involvement is needed.

## **Key Considerations:**

- No loss of rights: The individual retains full decision-making authority.
- The individual must understand what they are signing and the authority they are giving.
- Supporters help the person:
  - Understand options
  - Weigh pros and cons
  - Communicate decisions to others
- Voluntary and person-centered: The individual chooses their supporters.