

JUDICIAL PROCEDURE, PROBATE

CHAPTER 208

S. B. No. 211

(Day, Duffy, Knudson and Shure)

CITATION OR NOTICE IN COUNTY COURT; FORM AND CONTENTS

AN ACT

To amend and reenact section 30-0208 of the North Dakota Revised Code of 1943, relating to contents and form of citations in probate proceedings.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.) Section 30-0208 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

30-0208. CONTENTS AND FORM OF CITATION OR NOTICE.) A citation or notice in county court shall be issued substantially in the following form:

STATE OF NORTH DAKOTA)
)ss IN COUNTY COURT
County of)

IN THE MATTER OF THE ESTATE OF.....
..... Deceased; (or in the matter of the guardianship of
..... a minor,
or an incompetent person, as the case may be.)

..... Petitioner

VS NOTICE OF HEARING PETITION

FOR.....
..... Respondents

THE STATE OF NORTH DAKOTA TO THE ABOVE
NAMED RESPONDENTS:

You and each of you are hereby notified that a petition has been filed in this court for (here give nature of petition and other matter necessary to inform parties interested of the nature of the proceedings); that said petition will be heard at the office of the county judge at the courthouse in the..... of

..... in the county of
 and state of North Dakota, on the
 day of A. D. 19..... at the hour of
 o'clock M. of that day, or at such subsequent
 time or other place to which said hearing may be adjourned or
 transferred, at which time and place you may be heard if you wish.
 Let service of this notice be made as required by law.
 Dated this day of
 A. D. 19.....

By the court

.....
 Judge of the county court

SEAL OF COURT

Approved March 8, 1951.

CHAPTER 209

H. B. No. 582
 (Legislative Research Committee)

COMPENSATION OF EXECUTORS AND ADMINISTRATORS

AN ACT

To amend and reenact section 30-2004 of the North Dakota Revised Code of 1943, relating to the compensation of administrators and executors in the probate of estates.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.) Section 30-2004 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

30-2004. COMPENSATION PROVIDED IN WILL; NOT PROVIDED IN WILL; COMMISSIONS ALLOWED.) An executor or administrator shall receive compensation for the services performed by him in caring for, managing, and settling the estate as follows:

1. If provision for compensation of the executor is made in a will by the testator, the amount provided shall be full compensation for his services unless by a written instrument filed in the county court the executor renounces all claim to such compensation as is provided by the will.
2. If no compensation is provided by the will, or if the executor renounces all claim thereto, an executor shall receive the same commissions on the whole estate as are allowed to an administrator.

3. An administrator shall receive for his services as such the following commissions on the whole estate accounted for by him, excluding all property not ranked as assets:
 - a. Five percent of the first one thousand dollars;
 - b. Three percent of the next five thousand dollars;
 - c. Two percent of the estate in excess of six thousand dollars up to fifty thousand dollars;
 - d. On all of the estate in excess of fifty thousand dollars, the administrator shall be allowed such compensation as the court shall deem just and reasonable, but in no event shall it be in excess of two percent.
4. The court, for any extraordinary services, may make such extra allowances as may be deemed just and reasonable, but the total amount of such extra allowance shall not exceed the amount of commissions prescribed by this section.

Approved February 8, 1951.

CHAPTER 210

H. B. No. 738
(Holand)

DISTRIBUTION AND CARE OF INTERESTS IN ESTATES OF NON-RESIDENT HEIR WITHOUT AGENT IN STATE, A DECEASED PERSON HAVING NO PERSONAL REPRESENTATIVE, A MISSING PERSON OR ONE REFUSING TO ACCEPT DISTRIBUTION

AN ACT

To amend and reenact section 30-2137 of the North Dakota Revised Code of 1943 relating to the distribution and care of an interest in estate ready for distribution where the person entitled thereto resides out of state and has no agent in state, is deceased and has no personal representative or other person to whom distribution could be made, cannot be found, or refuses to accept the same.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.) Section 30-2137 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

30-2137. DISTRIBUTION AND CARE OF INTERESTS IN ESTATES IN CASES WHERE PERSON ENTITLED THERETO IS NONRESIDENT

HAVING NO AGENT IN STATE, A DECEASED PERSON HAVING NO PERSONAL REPRESENTATIVE, A MISSING PERSON OR A PERSON REFUSING DISTRIBUTION.) When any estate is ready for distribution and it appears that:

1. A person residing out of and having no agent in this state has an interest therein; or
2. One having an interest in such estate has died and there is no personal representative nor other person to whom lawful distribution of such interest can be made; or
3. Any interest cannot be distributed because the person entitled thereto cannot be found or refuses to accept the same; and
4. It is necessary that possession and charge of such interest be taken for the benefit of such person or such estate, and that distribution be made,

the county court may direct the personal representative to distribute such interest to the public administrator, who shall give the personal representative a receipt for said interest which shall be filed with the court and who shall take possession and charge of such interest for the benefit of such person in the distribution of said estate, or the county court may take possession and charge of such interest for the benefit of such person in the distribution of said estate.

Approved March 6, 1951.

CHAPTER 211

H. B. No. 739
(Holand)

DISTRIBUTION OF INTERESTS AND ESTATES TO MINORS OR INCOMPETENTS

AN ACT

To amend and reenact section 30-2138 of the North Dakota Revised Code of 1943, relating to the distribution of interests and estates to minors or incompetent persons in probate proceedings.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.) Section 30-2138 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

30-2138. DISTRIBUTION TO A MINOR OR INCOMPETENT PERSON.) Where the estate is ready for distribution and it appears that a minor or incompetent person who has no general guardian has an interest therein and the value of such interest does not exceed five hundred dollars and no part thereof consists of real property, the county court may authorize the distribution of such interest to the public administrator or to some other suitable person for the benefit of such minor or incompetent person upon such terms and conditions as said court may prescribe and may deposit the funds which are the whole or a part of such interest in a bank or building and loan association for the benefit of such minor or incompetent person, without the appointment of a guardian for such minor or incompetent person, subject to withdrawal only upon order of the county court.

Approved March 6, 1951.

CHAPTER 212

H. B. No. 616

(Fristad and Wahl)

GUARDIANSHIP OF INCOMPETENT VETERANS, ETC.; UNIFORM ACT

AN ACT

To amend and reenact sections 30-2301, 30-2302, 30-2303, 30-2305, 30-2306, 30-2309, 30-2310, 30-2311, 30-2312, 30-2314, 30-2315 and 30-2317 of the North Dakota Revised Code of 1943, relating to the guardianship of incompetent veterans and other incompetent and minor beneficiaries of the veterans administration, and to make uniform the law with reference thereto, and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.) Section 30-2301 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

30-2301. DEFINITIONS.) As used in this chapter

1. "Administration" means the veterans' administration, its predecessors or successors; heirs of the United States or his successor;
2. "Administrator" means the administrator of veterans' affairs;
3. "Income" means moneys received from the veterans administration.

ministration and revenue or profit from any property wholly or partially acquired therewith;

4. "Estate" means income on hand and assets acquired partially or wholly with income;
5. "Benefits" means all moneys paid or payable by the United States through the veterans administration;
6. "Guardian" means any fiduciary for the person or estate of a ward;
7. "Ward" means a beneficiary of the veterans administration; and
8. "Person" means an individual, a partnership, a corporation, or an association.

§ 2. ADMINISTRATOR AS PARTY IN INTEREST; NOTICE OF HEARING TO BE GIVEN CHIEF ATTORNEY.) The administrator shall be a party in interest in any proceeding for the appointment or removal of a guardian or for the removal of the disability of minority or mental incapacity of a ward, and in any suit or other proceeding affecting in any manner the administration by the guardian of the estate of any present or former ward whose estate includes assets derived in whole or in part from benefits heretofore or hereafter paid by the veterans administration. Not less than fifteen days prior to hearing in such matter notice in writing of the time and place thereof shall be given by mail, unless waived in writing, to the office of the chief attorney, veterans administration center, Fargo, North Dakota.

§ 3. AMENDMENT.) Section 30-2302 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

30-2302. GUARDIAN TO BE APPOINTED FOR WARD, WHEN.) Whenever, pursuant to any law of the United States or regulation of the veterans administration it is necessary, prior to payment of benefits, that a guardian be appointed, the appointment may be made as is provided in this chapter.

§ 4. AMENDMENT.) Section 30-2303 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

30-2303. GUARDIANS APPOINTED UNDER CHAPTER; LIMITATIONS ON NUMBER OF WARDS.) No person other than a bank or trust company shall be guardian of more than five wards at one time unless all the wards are members of one family.

§ 5. AMENDMENT.) Section 30-2305 of the North Dakota

Revised Code of 1943 is hereby amended and reenacted to read as follows:

30-2305. PETITION FOR APPOINTMENT OF GUARDIAN; FILED BY WHOM.) A petition for the appointment of a guardian may be filed by any relative or friend of the ward or by any person who is authorized by law to file such a petition. If there is no person so authorized or if the person so authorized refuses or fails to file such a petition within thirty days after the mailing of notice by the veterans administration to the last known address of the person, if any, indicating the necessity for a guardian, a petition for appointment may be filed by any resident of this state.

§ 6. AMENDMENT.) Section 30-2306 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

30-2306. CONTENTS OF PETITION FOR GUARDIANSHIP.) The petition for appointment of a guardian under the provisions of this chapter shall set forth:

1. The name, age, and place of residence of the ward;
2. The name and place of residence of his nearest relative, if known;
3. The fact that such ward is entitled to receive benefits payable by or through the veterans administration;
4. The amount of moneys then due and the amount of probable future payments;
5. The name and address of the person or institution, if any, having actual custody of the ward;
6. The name, age, relationship, if any, occupation and address of the proposed guardian and if the nominee is a natural person, the number of wards for whom the nominee is presently acting as guardian; and
7. In the case of a mentally incompetent ward, that such ward has been rated incompetent by the veterans administration on examination in accordance with the laws and regulations governing the veterans administration.

Notwithstanding any law as to priority of persons entitled to appointment or the nomination in the petition, the court may appoint some other individual or a bank or trust company as guardian, if the court determines it is for the best interest of the ward.

§ 7. AMENDMENT.) Section 30-2309 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

30-2309. COURT TO GIVE NOTICE UPON RECEIPT OF PETITION FOR APPOINTMENT OF GUARDIAN.) Upon the filing of a petition for the appointment of a guardian under the provisions of this chapter, notice shall be given to the ward, to such other persons, and in such manner as is provided by the general law of this state, and also to the veterans administration as provided by this chapter.

§ 8. AMENDMENT.) Section 30-2310 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

30-2310. BOND REQUIRED; AMOUNT OF BOND; BOND WITH PERSONAL SURETIES.) Upon the appointment of a guardian, he shall execute and file a bond to be approved by the court in an amount not less than the estimated value of the personal estate and anticipated income of the ward during the ensuing year. The bond shall be in the form and be conditioned as required of guardians appointed under the general guardianship laws of this state. The court, from time to time, may require the guardian to file an additional bond. Where a bond is tendered by a guardian with personal sureties, there shall be at least two such sureties and they shall file with the court a certificate under oath which shall describe the property owned, both real and personal, and shall state that each is worth the sum named in the bond as the penalty thereof over and above all his debts and liabilities and the aggregate of other bonds on which he is principal or surety and exclusive of property except from execution. The court may require additional security or may require a corporate surety bond, the premium thereon to be paid from the ward's estate. No bond shall be required of any guardian which qualifies as a trust company in North Dakota, under chapter 6-05 of the North Dakota Revised Code of 1943.

§ 9. AMENDMENT.) Section 30-2311 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

30-2311. GUARDIAN TO FILE ANNUAL ACCOUNTS AND CERTIFICATES WITH COURT; CONTENTS; GUARDIAN TO FURNISH VETERANS ADMINISTRATION WITH COPIES OF ACCOUNTS, CERTIFICATES, PETITIONS AND OTHER PLEADINGS; HEARING ON ACCOUNTS, PETITIONS; NOTICE OF HEARING; ACCOUNTING FOR PROPERTY DERIVED FROM PRIVATE SOURCES.) Every guardian who has received or shall receive on account of his ward any moneys or other thing of value from the veterans administration shall file with the county court annually, on the anniversary date of his appointment, in addition

to such other accounts as may be required by the court, a full, true, and accurate account under oath of all moneys or other things of value so received by him, all earnings, interest or profits derived therefrom and all property acquired therewith and of all disbursements therefrom, and showing the balance thereof in his hands at the date of the account and how invested. The guardian, at the time of filing any account, shall exhibit all securities or investments held by him to an officer of the bank or other depository wherein said securities or investments are held for safekeeping or to an authorized representative of the corporation which is surety on his bond, or to the judge or clerk of a court of record in this state, or, upon request of the guardian or other interested party, to any other reputable person designated by the county court, who shall certify in writing that he has examined the securities or investments and identified them with those described in the account, and shall note any omissions or discrepancies. If the depository is the guardian, the certifying officer shall not be the officer verifying the account. The guardian may exhibit the securities or investments to the judge of the county court, who shall endorse on the account and copy thereof a certificate that the securities or investments shown therein as held by the guardian were each in fact exhibited to him and that those exhibited to him were the same as those shown in the account, and noting any omission or discrepancy. That certificate and the certificate of an official of the bank in which are deposited any funds for which the guardian is accountable, showing the amount on deposit, shall be prepared and signed in duplicate and one of each shall be filed by the guardian with his account.

At the time of filing in the court any account, a certified copy thereof and a signed duplicate of each certificate filed with the court shall be sent by the guardian to the office of the chief attorney, veterans administration center, Fargo, North Dakota. A signed duplicate or a certified copy of any petition, motion or other pleading pertaining to an account or to any matter other than an account and which is filed in the guardianship proceedings or in any proceeding for the purpose of removing the disability of minority or mental incapacity, shall be furnished by the person filing the same to the said office of the veterans administration. Unless hearing be waived in writing by the attorney of the veterans administration and by all other persons, if any, entitled to notice, the court shall fix a time and place for the hearing on the account, petition, motion or other pleading not less than fifteen days nor more than thirty days from the date same is filed, unless a different available date be stipulated in writing. Unless waived in writing, written notice of the time and place of hearing shall be given to the said veterans administration office and the guardian and any others entitled to notice

not less than fifteen days prior to the date fixed for the hearing. The notice may be given by mail in which event it shall be deposited in the mails not less than fifteen days prior to said date. The court, or clerk thereof, shall mail to said veterans administration office a copy of each order entered in any guardianship proceeding wherein the administrator is an interested party. If the guardian is accountable for property derived from sources other than the veterans administration, he shall be accountable as is or may be required under the applicable laws of this state pertaining to the property of minors or persons of unsound mind who are not beneficiaries of the veterans administration, and as to such other property shall be entitled to the compensation provided by such law. The account for other property may be combined with the account filed in accordance with this section.

§ 10. AMENDMENT.) Section 30-2312 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

30-2312. FAILURE OF GUARDIAN TO FILE ACCOUNTS MAY BE GROUND FOR REMOVAL.) If any guardian shall fail to file with the court any account as required by this chapter or by an order of the county court, when any account is due or within thirty days after citation issues as provided by law, or shall fail to furnish the veterans administration a true copy of any account, certificate, petition or pleading as required by this chapter, such failure may in the discretion of the court be ground for his removal.

§ 11. AMENDMENT.) Section 30-2314 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

30-2314. INVESTMENT OF FUNDS OF ESTATE BY GUARDIAN: REGULATIONS GOVERNING.) Every guardian shall invest the surplus funds of his ward's estate in such securities or property as authorized under the laws of this state but only upon prior order of the court, except that the funds may be invested, without prior court authorization, in direct unconditional interest bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States. A signed duplicate or certified copy of the petition for authority to invest shall be furnished the veterans administration and notice of hearing thereon shall be given said office as provided in section 30-2311.

§ 12. AMENDMENT.) Section 30-2315 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

30-2315. GUARDIAN NOT TO APPLY WARD'S ESTATE TO MAINTENANCE AND SUPPORT OF ANOTHER; EXCEPTION; NOTICE.) A

guardian shall not apply any portion of the income or the estate for the support or maintenance of any person other than the ward, the spouse and the minor children of the ward, except upon petition to and prior order of the county court after a hearing. A signed duplicate or certified copy of the petition shall be furnished the veterans administration and notice of hearing thereon shall be given said office in the manner provided in section 30-2311.

§ 13. PURCHASE OF HOME FOR WARD; REGULATIONS GOVERNING.) The county court may authorize the purchase of the entire fee simple title to real estate in this state in which the guardian has no interest, but only as a home for the ward or to protect his interest or, if he is not a minor, as a home for his dependent family. Such purchase of real estate shall not be made except upon the entry of an order of the court after hearing upon verified petition. A signed duplicate or certified copy of the petition shall be furnished the veterans administration and notice of hearing thereon shall be given said office as provided in section 30-2311. Before authorizing such investment the court shall require written evidence of value and of title and of the advisability of acquiring such real estate. Title shall be taken in ward's name. This section does not limit the right of the guardian on behalf of his ward to bid and to become the purchaser of real estate at a sale thereof pursuant to decree of foreclosure of lien held by or for the ward, or at a trustee's sale, to protect the ward's right in the property so foreclosed or sold, nor does it limit the right of the guardian, if such be necessary to protect the ward's interest and upon prior order of the court in which the guardianship is pending, to agree with cotenants of the ward for a partition in kind, or to purchase from cotenants the entire undivided interests held by them, or to bid and purchase the same at a sale under a partition decree, or to compromise adverse claims of title to the ward's realty.

§ 14. AMENDMENT.) Section 30-2317 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

30-2317. GUARDIAN MAY BE DISCHARGED, WHEN; RELEASE OF SURETIES.) In addition to any other provisions of law relating to judicial restoration and discharge of guardian, a certificate by the veterans administration showing that a minor ward has attained majority, or that an incompetent ward has been rated competent by the veterans administration upon examination in accordance with law shall be prima facie evidence that the ward has attained majority, or has recovered his competency. Upon hearing after notice as provided by this chapter and the determination by the court that the ward has attained majority or has re-

covered his competency, an order shall be entered to that effect and the guardian shall file a final account. Upon hearing after notice to the former ward and to the veterans administration as in the case of other accounts, upon approval of the final account and upon delivery to the ward of the assets due him from the guardian, the guardian shall be discharged and his sureties released.

§ 15. LIBERAL CONSTRUCTION.) This Act shall be so construed to make uniform the law of those states which enact it.

§ 16. SHORT TITLE.) This Act may be cited as the "uniform veterans' guardianship act".

§ 17. SEVERABILITY.) If any provision of this Act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

§ 18. MODIFICATION OF PRIOR LAWS.) All acts or parts of acts relating to beneficiaries of the veterans administration inconsistent with this Act are hereby repealed. Except where inconsistent with this Act, the laws of this state relating to guardian and ward and the judicial practice relating thereto, including the right to trial by jury and the right of appeal, shall be applicable to such beneficiaries and their estates.

§ 19. APPLICATION OF ACT.) The provisions of this Act relating to surety bonds and the administration of estates of wards shall apply to all "income" and "estate" as defined in section 1 of this Act whether the guardian shall have been appointed under this Act or under any other law of this state, special or general, prior or subsequent to the enactment hereof.

§ 20. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 3, 1951.