

HOUSE BILL 1364
AMENDMENT TO 30.1-18-09 AND 59-18-05, N.D.C.C.
DUTIES OF PERSONAL REPRESENTATIVE AND ACTIONS AGAINST A TRUSTEE

Chairperson Larson and members of the Senate Judiciary Committee, I, Rick Clayburgh, President and CEO of the North Dakota Bankers Association, submit the following testimony in opposition to HB 1364.

The current North Dakota law governing probating of an estate says that real property or tangible personal property can be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by the personal representative is necessary for the purpose of administering the estate.

HB1364 would completely change current law by requiring real property to be left or surrendered to the person presumptively entitled thereto *unless* the personal representative secures a court order determining it is necessary that the personal representative retain possession of the real property for purposes of administration.

This change, while small, has an enormous negative impact on the trust and estate laws in North Dakota as follows:

1. Creates an unnecessary and troublesome deviation in state law from the Uniform Probate Code;
2. Contradicts the testator's intentions to have the personal representative administer his or her estate in accordance with the testator's will;
3. Neutral third parties appointed personal representative (such as banks and trust companies) would be forced to immediately file a petition with the court to get control of any real estate that is part of the estate and requires a court order for the personal representative to sell real property in order to pay estate expenses;
4. Creates unnecessary issues and tax consequences concerning rental income real property;
5. Creates issues with North Dakota real property law which requires a personal representative deed to document chain of title from decedent to heirs;
6. Will deter professional trust companies from accepting appointments to act as personal representatives because of lack of control of the property of the estate.

For these reasons, NDBA respectfully ask you give this bill a Do Not Pass recommendation.

Thank you - I would be happy to try to answer any questions.