

# JUDICIAL PROCEDURE, PROBATE

## CHAPTER 261

S. B. No. 67  
(Ringsak, Holand, Longmire)

### INVESTMENT OF TRUST FUNDS

#### AN ACT

To amend and reenact sections 30-13-22 and 30-14-19 of the North Dakota Century Code, relating to the investment of funds by executors, administrators, and guardians.

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

**§ 1. Amendment.)** Section 30-13-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**30-13-22. Investment of Trust Funds Only on Order of Court.)** No executor or administrator shall invest trust funds of the estate unless authorized to do so by an order made and entered in the county court of the county in which such executor or administrator was appointed, except that he may invest without liability in bonds of the state of North Dakota, bonds of the United States of America, commercial banks to the extent that certificates of deposit or savings accounts may be used which are fully insured and guaranteed by the United States or an instrumentality or agency thereof and in investments classified as legal investments under section 21-10-07 of the North Dakota Century Code.

**§ 2. Amendment.)** Section 30-14-19 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**30-14-19. Investment of Funds.)** No guardian shall invest funds of the guardianship estate unless authorized to do so by an order made and entered in the county court of the county in which such guardian was appointed, except that such guardian may invest without liability in bonds of the state of North Dakota, bonds of the United States of America, commercial banks to the extent that certificates of deposit or savings accounts may be used which are fully insured and guaranteed by the United States or an instrumentality or agency thereof and in investments classified as legal investments under section 21-10-07 of the North Dakota Century

Code, and except that a bank or trust company organized under the laws of the state of North Dakota or of the United States of America when serving as a guardian may invest the funds of the guardianship in accordance with the provisions of section 6-05-15 and 6-05-15.1 of the North Dakota Century Code without first obtaining an order from the county court.

Approved March 6, 1967.

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## CHAPTER 262

S. B. No. 86

(Holand, Freed, Nething, Ringsak, Longmire, Chesrown,)  
(Goldberg, Meschke)

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### PETITION FOR LEGACY

#### AN ACT

To amend and reenact sections 30-21-01 and 30-21-03 of the 1965 Supplement to the North Dakota Century Code, relating to a petition for a legacy or share by an heir, devisee, or legatee of an estate and the requirement of a bond and payment of costs.

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

**§ 1. Amendment.)** Section 30-21-01 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**30-21-01. Petition for Legacy or Share—Hearing.)** At any time after the hearing on claims presented against an estate, the executor or administrator, or any heir, devisee, or legatee may present his petition to the court for distribution of a legacy, devise or share of the estate or any portion or portions thereof. In such case, a hearing must be held upon the petition after the citation of all parties interested.

If the executor or administrator is not the applicant, the costs must be paid by the applicant, or if there is more than one applicant, must be apportioned among them.

If the application is made by the executor or administrator, the cost of the proceeding must be paid by the estate, excepting that when a partition is necessary the cost of the partition must be apportioned among the parties interested in the partition.

**§ 2. Amendment.)** Section 30-21-03 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**30-21-03. Petition May Be Allowed—Bond Required—Partition—Costs.)** If at a hearing upon a petition for the payment of a legacy, devise or share of an estate or any portion or portions thereof, it appears that the share may be allowed without loss to the creditors of the estate, the court must make an order in conformity with the prayer of the applicant, requiring:

1. Each heir, legatee, or devisee obtaining such order, before receiving his share or any portion thereof, to execute and deliver to the executor or administrator a bond in such sum as shall be designated by the county judge, with sureties to be approved by the judge, payable to the executor or administrator, and conditioned for the payment, whenever required, of his proportion of the debts due from the estate, not exceeding the value or amount of the legacy or portion of the estate to which he is entitled;
2. The executor or administrator to deliver to the heir, legatee, or devisee the whole portion of the estate to which he may be entitled, or only a part thereof, designating it.

The requirement of a bond imposed by subsection 1 of this section may be dispensed with at the discretion of the court, whenever there are no debts or taxes due from the estate. If in the execution of the order a partition between two or more of the parties interested is necessary, it must be made in the manner prescribed in this chapter. The costs of such proceeding shall be paid by the applicant, or if there is more than one, they shall be apportioned equally among all of the applicants.

Approved February 4, 1967.

## CHAPTER 263

S. B. No. 357  
(Holand)

## JUDICIAL DISTRIBUTION OF ESTATE

## AN ACT

To amend and reenact section 30-21-05 of the North Dakota Century Code, relating to the judicial distribution of an estate.

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

**§ 1. Amendment.)** Section 30-21-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**30-21-05. Court Distributes Estate.)** If a petition for distribution has been made at the time of filing the final account, the court, upon expiration of the time for appeal from the decree allowing and confirming the final account or upon all persons interested in said estate filing a waiver of their right to appeal from the order allowing the final account, shall enter a final decree of distribution without further notice. In the event that a petition for distribution was not filed with the final account, such petition may be made by the executor or administrator, or any heir, legatee or devisee, at any subsequent time, and the court thereupon, after notice, and upon the expiration of the time for appeal from the decree allowing the final account or upon all persons interested in said estate filing a waiver of their right to appeal from the order allowing the final account, must proceed to distribute the residue of the estate. The waiver provided for in this section must be signed by the person executing the same in the presence of two witnesses who must sign the same as witnesses thereto or he must acknowledge the execution of the same before some officer qualified to take acknowledgments. The several judges of the county courts of the state of North Dakota shall, prior to entering a final decree of distribution of an estate, certify to their respective county treasurers the amount of the estate tax to be distributed to each of the appropriate political subdivisions entitled to a portion of the estate tax under the provisions of section 57-37-24 of the North Dakota Century Code. For the purposes of determining the appropriate amount to be distributed to each of the political subdivisions entitled to a share of the estate tax under the provisions of section 57-37-24 of the North Dakota Century

Code, county judges shall calculate the amounts in accordance with the procedures established in section 57-37-24 of the North Dakota Century Code.

Approved March 6, 1967.

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## CHAPTER 264

S. B. No. 192

(Chesrown, Longmire, Holand, Meschke)

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### UNIFORM ESTATE TAX APPORTIONMENT ACT

#### AN ACT

To provide a uniform method of apportioning federal and state estate taxes among persons sharing in the distribution of the estate of a decedent, to amend and reenact section 57-37-14 of the North Dakota Century Code, to amend and reenact subsections 3 and 4 of section 57-37-23 of the 1965 Supplement to the North Dakota Century Code and to amend and reenact subsection 1 of section 57-37-27 of the 1965 Supplement to the North Dakota Century Code, relating to the determination and apportionment of estate taxes among beneficiaries of a decedent's estate.

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

**§ 1. Definitions.)** In this Act:

1. "Estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this state.

2. "Person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency.

3. "Person interested in the estate" means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent's estate. It includes a personal representative, guardian, and trustee.

4. "State" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

5. "Tax" means the federal estate tax and the estate tax payable to this state and interest and penalties imposed in addition to the tax.

6. "Fiduciary" means executor, administrator of any description, and trustee.

**§ 2. Apportionment.)** Unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment shall be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax shall be used for that purpose.

**§ 3. Procedure for Determining Apportionment.)** 1. The county court having jurisdiction over the administration of the estate of a decedent shall determine the apportionment of the tax. If there are no probate proceedings, the county court of the county wherein the decedent was domiciled at death upon the application of the person required to pay the tax shall determine the apportionment of the tax.

2. If the county court finds that it is inequitable to apportion interest and penalties in the manner provided in section 2, because of special circumstances, it may direct apportionment thereof in the manner it finds equitable.

3. If the county court finds that the assessment of penalties and interest assessed in relation to the tax is due and delay caused by the negligence of the fiduciary, the court may charge the fiduciary with the amount of the assessed penalties and interest.

4. In any suit or judicial proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this Act, the determination of the county court in respect thereto shall be prima facie correct.

**§ 4. Method of Proration.)** 1. The fiduciary or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest. If the property in possession of the fiduciary or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the fiduciary or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the fiduciary or other person required to pay the tax, the fiduciary or other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this Act.

2. If property held by the fiduciary is distributed prior to final apportionment of the tax, the distributee shall provide

a bond or other security for the apportionment liability in the form and amount prescribed by the fiduciary, with the approval of the county court having jurisdiction of the administration of the estate.

**§ 5. Allowance for Exemptions, Deductions and Credits.)**

1. In making an apportionment, allowances shall be made for any exemptions granted and for any deductions and credits allowed by the law imposing the tax.

2. Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift shall inure to the benefit of the person bearing such relationship or receiving the gift; except that when an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

3. Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate shall inure to the proportionate benefit of all persons liable to apportionment.

4. Any credit for inheritance, succession or estate taxes or taxes in the nature thereof in respect to property or interests includible in the estate shall inure to the benefit of the persons or interests chargeable with the payment thereof to the extent that, or in proportion as the credit reduces the tax.

5. To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar gift or bequest does not constitute an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property shall not be included in the computation provided for in section 2 hereof, and to that extent no apportionment shall be made against the property. The sentence immediately preceding shall not apply to any case where the result will be to deprive the estate of a deduction otherwise allowable under section 2053(d) of the Internal Revenue Code of 1954 of the United States, relating to deduction for state death taxes on transfers for public, charitable or religious uses.

**§ 6. No Apportionment Between Temporary and Remainder Interests.)**

No interest in income and no estate for years or for life or other temporary interest in any property or fund shall be subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder shall be chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

**§ 7. Exoneration of Fiduciary.)** Neither the fiduciary nor other person required to pay the tax shall be under any duty to institute any suit or proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the three months next following final determination of the tax. A fiduciary or other person required to pay the tax who institutes the suit or proceeding within a reasonable time after the three months' period shall not be subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the fiduciary or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate, who are subject to apportionment.

**§ 8. Action by Nonresident, Reciprocity.)** 1. Subject to the conditions in subsection 2 of this section a fiduciary acting in another state or a person required to pay the tax residing in another state may institute an action in the courts of this state and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either residing in this state or who owns property in this state subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state shall be prima facie correct.

2. The provisions of subsection 1 of this section shall apply only:

- a. If such other state affords a remedy substantially similar to that afforded in subsection 1 hereof;
- b. With respect to federal estate tax, if apportionment thereof is authorized by Congress.

**§ 9. Uniformity of Interpretation.)** This Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**§ 10. Short Title.)** This Act may be cited as the Uniform Estate Tax Apportionment Act.

**§ 11. Severability.)** If any provisions of this Act or the application thereof to any person or circumstance is held invalid, the 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 severable.

**§ 12. Amendment.)** Section 57-37-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**57-37-14. County Court to Assess Tax and Apportion Federal and State Estate Taxes.)** 1. The county court having jurisdiction over any estate shall assess the estate tax payable thereon before the final decree of distribution of the estate has been made.

2. The county court having jurisdiction over any estate shall apportion the federal and state estate taxes among all persons interested in the estate in the manner provided by the Uniform Estate Tax Apportionment Act unless the decedent's will provides otherwise.

**§ 13. Amendment.)** Subsections 3 and 4 of section 57-37-23 of the 1965 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

3. The beneficiary shall be personally liable for the tax on such real estate, as well as the executor, administrator, or trustee, and if the executor, administrator, or trustee pays such tax, he shall have the right to recover the tax from the beneficiary in accordance with the provisions of the Uniform Estate Tax Apportionment Act.

4. Any unpaid taxes imposed by this chapter shall be and remain a lien upon the property transferred, and upon all property acquired by the executor, administrator, or trustee in substitution therefor, for a period of ten years from the date of death of the decedent.

**§ 14. Amendment.)** Subsection 1 of section 57-37-27 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. In the absence of administration in this state upon the estate of a nonresident, the tax commissioner, at the request of an executor or administrator duly appointed and qualified in the state of the decedent's domicile, or of a grantee under a conveyance made during the grantor's lifetime, and upon satisfactory evidence furnished by such executor, administrator, or grantee, or otherwise, may determine whether or not any property of said decedent within this state is subject to taxation under the provisions of this chapter, and if so, may determine the amount of the tax payable and may adjust the same with such executor, administrator, or grantee. For that purpose the tax commissioner may appoint an appraiser to

appraise said property and the expenses of such appraisal shall be charged against such property in addition to the taxes. The tax commissioner's certificate as to the amount of such tax and his receipt for the amount therein certified may be filed in the probate office in the county where the property is located, and when so filed shall be conclusive evidence of the payment of the tax upon the said property. Whenever in such case the tax is not adjusted within four months after the death of the decedent, the proper county court, upon application of the tax commissioner, shall appoint an administrator in this state. Where the tax commissioner determines the estate tax, as provided in this subsection, the tax commissioner shall apportion the federal and state estate taxes among all persons interested in the estate in the manner provided by the Uniform Estate Tax Apportionment Act unless the decedent's will provided otherwise.

**§ 15. Time of Application of Act.)** This Act shall apply to taxes due on account of the death of decedents dying after June 30, 1967.

Approved March 14, 1967.