

PROPERTY

CHAPTER 362

S. B. No. 136
(Schultz, Redlin)

HOMESTEAD EXEMPTIONS

AN ACT

To amend and reenact subsection 1 of section 47-18-01 of the North Dakota Century Code, relating to homestead exemptions.

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

§ 1. Amendment.) Subsection 1 of section 47-18-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. If within a town plat, of not to exceed two acres of land upon which the claimant resides, and the improvements thereon, and not exceeding in value forty thousand dollars over and above liens or encumbrances or both.

Approved February 25, 1967.

CHAPTER 363

S. B. No. 98
(Longmire, Ringsak, Meschke)

UNIFORM GIFTS TO MINORS ACT

AN ACT

To amend and reenact sections 47-24-01, 47-24-02, 47-24-03, 47-24-04, 47-24-06, and 47-24-07 of the North Dakota Century Code, relating to the North Dakota Uniform Gifts to Minors Act.

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

§ 1. Amendment.) Section 47-24-01 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-24-01. Definitions.) In this chapter, unless the context otherwise requires;

1. "Adult" is a person who has attained the age of twenty-one years;
2. "Bank" is a bank, trust company, national banking association, savings bank, industrial bank, or other organization organized under title 6 of this Code, and any federal or state savings and loan or building and loan association or other organization organized under title 7 of this Code;
3. "Broker" is a person lawfully engaged in the business of effecting transactions in securities for the account of others. The term includes a bank which effects such transactions. The term also includes a person lawfully engaged in buying and selling securities for his own account, through a broker or otherwise, as a part of a regular business;
4. "Court" means the county court;
5. "Custodial property" includes:
 - a. All securities, life insurance policies, annuity contracts, and money under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in this chapter;
 - b. The income from the custodial property; and
 - c. The proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment, surrender, or other disposition of such securities, money, life insurance policies, annuity contracts, and income;
6. "Custodian" is a person so designated in a manner prescribed in this chapter; the term includes a successor custodian;
7. A "financial institution" is a bank, a federal savings and loan association, a savings institution chartered and supervised as a savings and loan or similar institution under federal law or the laws of a state or a federal credit union or a credit union chartered and supervised under the laws of a state; a "domestic financial institution" is one chartered and supervised under the laws of this state or chartered and supervised under federal law and having its principal office in this state; an "insured financial institution" is one, deposits (including a savings, share, certificate or deposit account) in which are, in whole or in part, insured by the federal deposit insurance corporation, or by the federal savings and loan insurance corporation;

8. "Guardian" of a minor means the general guardian, guardian, tutor or curator of his property or estate appointed or qualified by a court of this state or another state;
9. "Issuer" is a person who places or authorizes the placing of his name on a security, other than as a transfer agent, to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person;
10. "Legal representative" of a person is his executor or the administrator, general guardian, guardian, committee, conservator, tutor or curator of his property or estate;
11. "Life insurance policy or annuity contract" means a life insurance policy or annuity contract issued by an insurance company authorized to do business in this state on the life of a minor to whom a gift of the policy or contract is made in the manner prescribed in this chapter or on the life of a member of the minor's family;
12. "Member" of a "minor's family" means any of the minor's parents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption;
13. "Minor" is a person who has not attained the age of twenty-one years;
14. "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer;
15. "Transfer agent" is a person who acts as authenticating trustee, transfer agent, registrar or other agent for an

issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities;

16. "Trust company" is a bank, corporation, or other legal entity authorized to exercise trust power.

§ 2. **Amendment.)** Section 47-24-02 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-24-02. Manner of Making Gift.) 1. An adult may, during his lifetime, make a gift of a security, a life insurance policy, or annuity contract, or money to a person who is a minor on the date of the gift:

- a. If the subject of the gift is a security in registered form, by registering it in the name of the donor, another adult or a trust company, followed in substance, by the words: "as custodian for.....
(name of minor).....under the North Dakota Uniform Gifts to Minors Act."
- b. If the subject of the gift is a security not in registered form, by delivering it to an adult other than the donor or a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian:

**"Gift Under the North Dakota Uniform Gifts
to Minors Act**

I,(name of donor).....
hereby deliver to.....(name of custodian)
.....as custodian for.....
(name of minor).....under the North
Dakota Uniform Gifts to Minors Act, the following
security: (insert an appropriate description of the
security or securities delivered sufficient to identify it
or them.)

.....(signature of donor).....
.....(name of custodian).....hereby
acknowledges receipt of the above-described security as
custodian for the above minor under the North Dakota
Uniform Gifts to Minors Act.

Dated.....(signature of custodian).....".

- c. If the subject of the gift is money, by paying or delivering it to a broker or a financial institution for credit to an account in the name of the donor, another adult or a trust company, followed, in substance, by

the words: "as custodian for.....(name of minor).....under the North Dakota Uniform Gifts to Minors Act".

- d. If the subject of the gift is a life insurance policy or annuity contract, by causing the ownership of the policy or contract to be registered with the issuing insurance company in the name of the donor, another adult, or a trust company, followed in substance, by the words: "as custodian for.....(name of minor).....under the North Dakota Uniform Gifts to Minors Act".

2. Any gift made in a manner prescribed in this section may be made to only one minor and only one person may be the custodian.

3. A donor who makes a gift to a minor in a manner prescribed in subsection 1 shall promptly do all things within his power to put the subject of the gift in the possession and control of the custodian, but neither the donor's failure to comply with this subsection, nor his designation of an ineligible person as custodian, nor renunciation by the person designated as custodian affects the consummation of the gift.

§ 3. Amendment.) Section 47-24-03 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-24-03. Effect of Gift.) 1. A gift made in a manner prescribed in this chapter is irrevocable and conveys to the minor indefeasibly vested legal title to the security, life insurance policy, annuity contract or money given, but no guardian of the minor has any right, power, duty or authority with respect to the custodial property except as provided in this chapter.

2. By making a gift in a manner prescribed in this chapter, the donor incorporates in his gift all the provisions of this chapter and grants to the custodian, and to any issuer, transfer agent, bank, financial institution, life insurance company, broker or third person dealing with a person designated as custodian, the respective powers, rights and immunities provided in this chapter.

§ 4. Amendment.) Section 47-24-04 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-24-04. Duties and Powers of Custodian.) 1. The custodian shall collect, hold, manage, invest and reinvest the custodial property.

2. The custodian shall pay over to the minor for expenditure by him, or expend for the minor's benefit, so much of or all the custodial property as the custodian deems advisable for the support, maintenance, education and benefit of the minor in the manner, at the time or times, and to the extent that the custodian in his discretion deems suitable and proper, with or without court order, with or without regard to the duty of himself or of any other person to support the minor or his ability to do so, and with or without regard to any other income or property of the minor which may be applicable or available for any such purpose.

3. The court, on the petition of a parent or guardian of the minor or of the minor, if he has attained the age of fourteen years, may order the custodian to pay over to the minor for expenditure by him or to expend so much of or all the custodial property as is necessary for the minor's support, maintenance or education.

4. To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of twenty-one years, or, if the minor dies before attaining the age of twenty-one years, he shall thereupon deliver or pay it over to the estate of the minor.

5. The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property as would a prudent man of discretion and intelligence who is seeking a reasonable income and the preservation of his capital, except that he may, in his discretion and without liability to the minor or his estate, retain a security given to the minor in a manner prescribed in this chapter or hold money so given in an account in the financial institution to which it was paid or delivered by the donor.

6. The custodian may sell, exchange, convert, surrender, or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices and upon the terms he deems advisable. He may vote in person or by general or limited proxy a security which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer, a security of which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to such an issuer, and to any other action by such an issuer. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian.

7. The custodian shall register each security which is custodial property and in registered form in the name of the

custodian, followed, in substance, by the words: "as custodian for.....(name of minor).....under the North Dakota Uniform Gifts to Minors Act". The custodian shall hold all money which is custodial property in an account with a broker or in an insured financial institution in the name of the custodian, followed, in substance, by the words: "as cutodian for.....(name of minor).....under the North Dakota Uniform Gifts to Minors Act". The custodian shall keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property.

8. The custodian shall keep records of all transactions with respect to the custodial property and make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if he has attained the age of fourteen years.

9. A custodian has and holds as powers in trust, with respect to the custodial property, in addition to the rights and powers provided in this chapter, all the rights and powers which a guardian has with respect to property not held as custodial property.

10. If the subject of the gift is a life insurance policy or annuity contract, the custodian:

- a. In his capacity as custodian, has all the incidents of ownership in the policy or contract to the same extent as if he were the owner, except that the designated beneficiary of any policy or contract on the life of the minor shall be the minor's estate and the designated beneficiary of any policy or contract on the life of a person other than the minor shall be the custodian as custodian for the minor for whom he is acting; and
- b. May pay premiums on the policy or contract out of the custodial property.

§ 5. Amendment.) Section 47-24-06 of the 1965 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-24-06. Exemption of Third Persons from Liability.) No issuer, transfer agent, bank, life insurance company, broker or other person or financial institution, acting on the instructions of or otherwise dealing with any person purporting to act as a donor or in the capacity of a custodian is responsible for determining whether the person designated as custodian by the purported donor or by the custodian or purporting to act as a custodian has been duly designated or whether any purchase,

sale or transfer to or by or any other act of any person purporting to act in the capacity of custodian is in accordance with or authorized by this chapter, or is obliged to inquire into the validity or propriety under this chapter of any instrument or instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian, or is bound to see to the application by any person purporting to act in the capacity of a custodian of any money or other property paid or delivered to him. No issuer, transfer agent, bank, life insurance company, broker or other person or financial institution acting on any instrument of designation of a successor custodian, executed as provided in subsection 1 of section 47-24-07 of this chapter by a minor to whom a gift has been made in a manner prescribed in this chapter and who has attained the age of fourteen years, is responsible for determining whether the person designated by the minor as successor custodian has been duly designated, or is obliged to inquire into the validity or propriety under this chapter of the instrument of designation.

§ 6. **Amendment.)** Section 47-24-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-24-07. Resignation, Death or Removal of Custodian—Bond—Designation of Successor Custodian.) 1. Only an adult member of the minor's family, a guardian of the minor or a trust company is eligible to become successor custodian. A custodian may designate his successor by executing and dating an instrument of designation before a subscribing witness other than the successor; the instrument of designation may but need not contain the resignation of the custodian. If the custodian does not so designate his successor before he dies or becomes legally incapacitated, and the minor has attained the age of fourteen years, the minor may designate a successor custodian by executing an instrument of designation before a subscribing witness other than the successor. A successor custodian has all the rights, powers, duties and immunities of a custodian designated in a manner prescribed by this chapter;

2. The designation of a successor custodian as provided in subsection 1 takes effect as to each item of the custodial property when the custodian resigns, dies, or becomes legally incapacitated, and the custodian or his legal representative:

- a. Causes the item, if it is a security in registered form or a life insurance policy or annuity contract, to be registered, with the issuing insurance company in the case of a life insurance policy or annuity contract, in the name of the successor custodian followed, in substance, by the words:

"as custodian for.....(name of minor).....
under the North Dakota Uniform Gifts to Minors Act";
and

- b. Delivers or causes to be delivered to the successor custodian any other item of the custodial property, together with the instrument of designation of the successor custodian or a true copy thereof and any additional instruments required for the transfer thereof to the successor custodian;

3. A custodian who executes an instrument of designation of his successor containing the custodian's resignation as provided in subsection 1 shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in the instrument. The legal representative of a custodian who dies or becomes legally incapacitated shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in an instrument of designation executed as provided in subsection 1 by the custodian or, if none, by the minor if he has no guardian and has attained the age of fourteen years, or in the possession and control of the guardian of the minor if he has a guardian. If the custodian has executed as provided in subsection 1 more than one instrument of designation, his legal representative shall treat the instrument dated on an earlier date as having been revoked by the instrument dated on a later date.

4. If a person designated as custodian or as successor custodian by the custodian as provided in subsection 1 is not eligible, dies, or becomes legally incapacitated before the minor attains the age of twenty-one years and if the minor has a guardian, the guardian of the minor shall be successor custodian. If the minor has no guardian and if no successor custodian who is eligible and has not died or become legally incapacitated has been designated as provided in subsection 1, a donor, his legal representative, the legal representative of the custodian or an adult member of the minor's family may petition the court for the designation of a successor custodian;

5. A donor, the legal representative of a donor, a successor custodian, an adult member of the minor's family, a guardian of the minor or the minor, if he has attained the age of fourteen years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of his duties;

6. Upon the filing of a petition as provided in this section, the court shall grant an order, directed to the persons and re-

turnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the court finds to be in the best interests of the minor.

Approved March 14, 1967.