

**Fifty-sixth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Tuesday, the fifth day of January,
one thousand nine hundred and ninety-nine**

SENATE BILL NO. 2174

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

AN ACT to amend and reenact sections 30.1-03-03, 30.1-09-08, subsection 3 of section 30.1-10-03, subsection 2 of section 30.1-10-04, subsection 2 of section 30.1-18-03, and subsection 1 of section 30.1-19-03 of the North Dakota Century Code, relating to the Uniform Probate Code.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-03-03 of the North Dakota Century Code is amended and reenacted as follows:

30.1-03-03. (1-403) Pleadings - When parties bound by others - Notice. In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the following apply:

1. Interests to be affected ~~shall~~ must be described in pleadings ~~which~~ that give reasonable information to owners by name or class, by reference to the instrument creating the interests; or in ~~either~~ another appropriate manner.
2. ~~Persons are~~ A person is bound by ~~orders~~ an order binding ~~others~~ another in the following cases:
 - a. ~~Orders~~ An order binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, ~~bind other persons~~ binds another person to the extent ~~their~~ that person's interests, as objects, takers in default, or otherwise, are subject to the power.
 - b. To the extent there is no conflict of interest between them or among persons represented, ~~orders~~ an order binding a conservator ~~bind~~ binds the person whose estate the conservator controls; ~~orders~~ an order binding a guardian ~~bind~~ binds the ward if no conservator of the ward's estate has been appointed; ~~orders~~ an order binding a trustee ~~bind beneficiaries~~ binds a beneficiary of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a ~~prior~~ former fiduciary and in proceedings involving creditors or other third parties; ~~and~~ orders an order binding a personal representative ~~bind persons~~ binds a person interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate. ~~If there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent that parent's minor child; and~~ an order binding a sole holder or all coholders of a general testamentary power of appointment binds other persons to the extent their interests as objects, takers in default, or otherwise are subject to the power.
 - c. ~~An~~ Unless otherwise represented, a minor or an incapacitated, unborn, or unascertained person ~~who is not otherwise represented~~ is bound by an order to the extent the person's interest is adequately represented by another party having a substantially identical interest in the proceeding.
3. If no conservator or guardian has been appointed, a parent may represent a minor child.
4. Notice is required as follows:

- a. ~~Notice as~~ The notice prescribed by section 30.1-03-01 ~~shall~~ must be given to every interested person or to one who can bind an interested person as described in subdivision a or b of subsection 2. Notice may be given both to a person and to another who may bind that person.
 - b. Notice is given to unborn or unascertained persons who are not represented under subdivision a or b of subsection 2 by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.
4. 5. At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall ~~set out~~ state its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

SECTION 2. AMENDMENT. Section 30.1-09-08 of the North Dakota Century Code is amended and reenacted as follows:

30.1-09-08. (2-606) Nonademption of specific devises - Unpaid proceeds of sale, condemnation, or insurance - Sale by conservator.

1. A specific devisee has the right to the specifically devised property in the testator's estate at the testator's death and to:
 - a. Any balance of the purchase price, together with any security interest, ~~owing from~~ owed by a purchaser to ~~at the testator at~~ testator's death by reason of sale of the property by the testator.
 - b. Any amount of a condemnation award for the taking of the property unpaid at death.
 - c. Any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property.
 - d. ~~Property~~ Any property owned by the testator at death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security interest for a specifically devised obligation.
2. If specifically devised property is sold ~~or~~, mortgaged, or otherwise encumbered by a conservator or by an agent acting within the authority of a durable power of attorney for an incapacitated ~~principal person~~, or if a condemnation award, insurance proceeds, or recovery for injury to the property ~~are~~ is paid to a conservator or to an agent acting within the authority of a durable power of attorney for an incapacitated ~~principal person~~, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery. This subsection does not apply if, after the sale, ~~mortgage encumbrance~~, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by at least one year. The right of a specific devisee under this subsection is reduced by any right the devisee has under subsection 1.

SECTION 3. AMENDMENT. Subsection 3 of section 30.1-10-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The intentional and felonious killing of the decedent:
 - a. Revokes any revocable disposition or appointment of property made by the decedent to the killer in a governing instrument, provision in a governing instrument conferring a general or nongeneral power of appointment on the killer, and nomination of the killer

in a governing instrument, nominating or appointing the killer to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, or agent.

- b. Severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship, transforming the interests of the decedent and killer into equal tenancies in common.

SECTION 4. AMENDMENT. Subsection 2 of section 30.1-10-04 of the North Dakota Century Code is amended and reenacted as follows:

2. Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:
 - a. Revokes any revocable disposition or appointment of property made by a divorced individual to the individual's former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse, provision in a governing instrument conferring a general or special power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse, and nomination in a governing instrument, nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian.
 - b. Severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship, transforming the interests of former spouses into equal tenancies in common.

SECTION 5. AMENDMENT. Subsection 2 of section 30.1-18-03 of the North Dakota Century Code is amended and reenacted as follows:

2. A personal representative ~~shall~~ may not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will ~~is authority~~ authorizes a personal representative to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, ~~is authority to~~ authorizes the personal representative to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his appointment or fitness to continue, or a supervised administration proceeding. ~~Nothing in this~~ This section affects does not affect the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants whose claims have been allowed, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent as described ~~elsewhere~~ in this title.

SECTION 6. AMENDMENT. Subsection 1 of section 30.1-19-03 of the North Dakota Century Code is amended and reenacted as follows:

1. All claims against a decedent's estate which arose before the death of the decedent, including claims of the state ~~and or~~ any political subdivision ~~thereof~~, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, ~~and~~ the heirs and devisees of the decedent, and nonprobate transferees unless presented as follows:

- a. Within three months after the date of the first publication and mailing of notice to creditors if notice is given in compliance with section 30.1-19-01; provided, claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state.
- b. Within three years after the decedent's death, if notice to creditors has not been published and mailed.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2174.

Senate Vote: Yeas 48 Nays 0 Absent 1

House Vote: Yeas 96 Nays 0 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,

at _____ o'clock _____ M.

Secretary of State