

UNIFORM PROBATE CODE

CHAPTER 401

HOUSE BILL NO. 1101
(Committee on Judiciary)

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

UNIFORM PROBATE CODE REVISIONS

AN ACT to amend and reenact sections 30.1-01-04, 30.1-09-07, subsection 2 of section 30.1-09-08, sections 30.1-12-08, 30.1-14-04, 30.1-18-05, 30.1-19-06, subdivision d of subsection 1 of section 30.1-20-06, and sections 30.1-20-15, 30.1-29-19, 30.1-30-01, and 30.1-30-02 of the North Dakota Century Code, relating to probate, conservators, and durable powers of attorney.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-01-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-01-04. (1-107) Evidence as to death or status. In proceedings under this title, the rules of evidence in courts of general jurisdiction, including any relating to simultaneous deaths, are applicable unless specifically displaced by this title. In addition, the following rules relating to determination of death and status are applicable:

1. A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death, and the identity of the decedent.
2. A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.
3. In the absence of prima facie evidence of death under subsection 1 or 2, the fact of death may be established by clear and convincing evidence, including circumstantial evidence.
4. A person whose death is not otherwise established under this section, who is absent for a continuous period of seven years, during which time he the person has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. His The death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

SECTION 2. AMENDMENT. Section 30.1-09-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-09-07. (2-607) Change in securities - Accessions - Nonademption.

1. If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:
 - a. As much of the devised securities as is a part of the estate at the time of the testator's death.
 - b. Any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity excluding any acquired by exercise of purchase options.
 - c. Securities of another entity owned by the testator as a result of a merger, consolidation, reorganization, or other similar action initiated by the entity.
 - d. Any additional securities of the entity owned by the testator as a result of a plan of reinvestment **if it is a regulated investment company**.
2. Distributions **prior to before** death with respect to a specifically devised security not provided for in subsection 1 are not part of the specific devise.

SECTION 3. AMENDMENT. Subsection 2 of section 30.1-09-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. If specifically devised property is sold by a conservator or by an agent acting within the authority of a durable power of attorney for a principal who is under a disability, or if a condemnation award or insurance proceeds are paid to a conservator or to an agent acting within the authority of a durable power of attorney for a principal who is under a disability as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if, after the sale, condemnation, fire, or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one year. The right of the specific devisee under this subsection is reduced by any right ~~he~~ the devisee has under subsection 1.

SECTION 4. AMENDMENT. Section 30.1-12-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-12-08. (3-108) Probate, testacy, and appointment proceedings - Ultimate time limit. No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than three years after the decedent's death, except:

1. If a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a

finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceedings.

2. Appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person.
3. A proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful, may be commenced within the later of twelve months from the informal probate or three years from the decedent's death.
4. If no proceeding concerning the succession or administration of the estate has occurred within three years after the decedent's death, a formal testacy proceeding may be commenced at any time three years or more after the decedent's death for the sole purpose of establishing a devise of property that the devisee or the devisee's successors and assigns possessed under the will or property that was not possessed or claimed by anyone by virtue of the decedent's title during the three-year period, and the order of the court is limited to that property.

These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate. In cases under subsection 1 or 2, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this title which relate to the date of death.

SECTION 5. AMENDMENT. Section 30.1-14-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-14-04. (3-304) Informal probate - Unavailable in certain cases. Applications for informal probate which relate to one or more of a known series of testamentary instruments, other than wills a will and one or more codicils to the will, the latest of which does not expressly revoke the earlier, ~~shall~~ must be declined.

SECTION 6. AMENDMENT. Section 30.1-18-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-18-05. (3-705) Duty of personal representative - Information to heirs and devisees. Not later than thirty days after ~~his~~ appointment, every personal representative, except any special administrator, shall give information of ~~his~~ the appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information ~~shall~~ must be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate. The information ~~shall~~ must include the name and address of the personal

representative, indicate that it is being sent to persons who have or may have some interest in the estate being administered, indicate whether bond has been filed, and describe the court where papers relating to the estate are on file. The information must state that the estate is being administered by the personal representative under this title without supervision by the court, but that recipients are entitled to information regarding the administration from the personal representative and may petition the court in any matter relating to the estate, including distribution of assets and expenses of administration. The personal representative's failure to give this information is a breach of his duty to the persons concerned but does not affect the validity of his the appointment, his the personal representative's powers, or other duties. A personal representative may inform other persons of his the appointment by delivery or ordinary first-class mail.

SECTION 7. AMENDMENT. Section 30.1-19-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-19-06. (3-806) Allowance of claims.

1. As to claims presented in the manner described in section 30.1-19-04 within the time limit prescribed in section 30.1-19-03, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his decision concerning the claim, ~~he~~ the personal representative shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed, in whole or in part, by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than sixty days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on his claim for sixty days after the time for original presentation of the claim has expired has the effect of a notice of allowance.
2. After allowing a claim, the personal representative may before payment change the allowance to a disallowance in whole or in part, but not after allowance by a court order or judgment or an order directing payment of the claim. The personal representative shall notify the claimant of the change to disallowance, and the disallowed claim is then subject to bar as provided under subsection 1. After disallowing a claim, the personal representative may change a disallowance to an allowance in whole or in part until it is barred under subsection 1; after it is barred, it may be allowed and paid only if the estate is solvent and all successors whose interests would be affected consent.
3. Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow, in whole or in part, any claim or claims presented to the personal representative or filed with the clerk of the court in due time and not barred by subsection 1. Notice in this proceeding ~~shall~~ must

be given to the claimant, the personal representative, and those other persons interested in the estate as the court may direct, by order entered at the time the proceeding is commenced.

- ~~3-~~ 4. A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.
- ~~4-~~ 5. Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear interest at the legal rate for the period commencing sixty days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they allowed claims bear interest in accordance with that provision.

SECTION 8. AMENDMENT. Subdivision d of subsection 1 of section 30.1-20-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- d. The residuary estate ~~shall~~ must be distributed in ~~kind if there is no objection to the proposed distribution and it is practicable to distribute undivided interests. In other cases,~~ residuary property may be converted into cash for distribution any equitable manner.

SECTION 9. AMENDMENT. Section 30.1-20-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-20-15. (3-915) Distribution to person under disability.

1. A personal representative may discharge ~~his~~ the personal representative's obligation to distribute to any person under legal disability by distributing to ~~his conservator, or any other person authorized by this title or otherwise to give a valid receipt and discharge for the distribution in a manner expressly provided in the will.~~
2. Unless contrary to an express provision in the will, the personal representative may discharge the personal representative's obligation to distribute to a minor or to a person under other disability by distributing to the distributor's attorney in fact. If the personal representative knows that a conservator has been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute only to the conservator.
3. If the heir or devisee is under disability other than minority, the personal representative is authorized to distribute to any of the following:
- a. An attorney in fact who has authority under a power of attorney to receive property for that person.
- b. The spouse, parent, or other close relative with whom the person under disability resides, if the distribution is of an

amount or value not exceeding ten thousand dollars per year, unless the court authorizes a larger amount or greater value.

Persons receiving money or property for a disabled person are obligated to apply the money or property to the support of that person, but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the disabled person. Excess sums must be preserved for future support of the disabled person. The personal representative is not responsible for the proper application of money or property distributed under this subsection.

SECTION 10. AMENDMENT. Section 30.1-29-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-29-19. (5-419) Accounts. Every conservator must account to the court for his administration of the trust not less than annually unless the court directs otherwise, upon his resignation or removal, and at other times as the court may direct. On termination of the protected person's minority or disability, a conservator may account to the court, or he may account to the former protected person or his the protected person's personal representative. Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to his liabilities concerning the matters considered in connection therewith. An order, made upon notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or his the protected person's successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate in his control, to be made in any manner the court may specify.

SECTION 11. AMENDMENT. Section 30.1-30-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-30-01. (5-501) Definition. A durable power of attorney is a power of attorney by which a principal designates another his as the principal's attorney in fact in writing and the writing contains the words "This power of attorney is not affected by subsequent disability or incapacity of the principal or by lapse of time," or "This power of attorney becomes effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred is exercisable notwithstanding the principal's subsequent disability or incapacity, and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument.

SECTION 12. AMENDMENT. Section 30.1-30-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-30-02. (5-502) Durable power of attorney not affected by disability or lapse of time. All acts done by an attorney in fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and the principal's successors in interest as if the principal were competent and not disabled. Unless the instrument states a time of termination, the power is exercisable notwithstanding the lapse of time since the execution of the instrument.

CHAPTER 402

SENATE BILL NO. 2307
(Senator Nalewaja)
(Representatives R. Berg, Bernstein)

ESTATE INVENTORY DUE DATE

AN ACT to amend and reenact subsection 1 of section 30.1-18-06 of the North Dakota Century Code, relating to the duties of personal representatives of decedents' estates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 30.1-18-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Within ~~three~~ six months after ~~his~~ appointment, or nine months after the death of the decedent, whichever is later, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory of property owned by the decedent at the time of ~~his~~ the decedent's death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 403

SENATE BILL NO. 2434
(Senators Krauter, O'Connell)
(Representatives Brokaw, Urlacher, Kingsbury)

ATTORNEYS' FEES FROM DECEDENTS' ESTATES

AN ACT to amend and reenact section 30.1-18-21 of the North Dakota Century Code, relating to attorneys' fees payable from a decedent's estate.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-18-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-18-21. (3-721) Proceedings for review of employment of agents and compensation of personal representatives and employees of estate. After notice to all interested persons, or on petition of an interested person, or on appropriate motion if administration is supervised, the propriety of employment of any person by a personal representative including any attorney, auditor, investment adviser, or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for ~~his~~ that person's own services, including services rendered as attorney, may be reviewed by the court. If the amount of attorneys' fees is based upon the value of the decedent's estate, the fee agreement must be in writing and mailed to all parties who are heirs of the estate pursuant to the last will and testament of the decedent. If the decedent died intestate, notice must be provided to all heirs of the estate in accordance with chapter 30.1-03. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 404

HOUSE BILL NO. 1054
(Legislative Council)
(Interim Judiciary Committee)

NOTICE TO ESTATE CREDITORS

AN ACT to amend and reenact sections 30.1-19-01, 30.1-19-02, subsection 1 of section 30.1-19-03, subsection 1 of section 30.1-19-07, and section 30.1-21-03 of the North Dakota Century Code, relating to notice to creditors with claims against decedents' estates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-19-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-19-01. (3-801) Notice to creditors. Unless notice has already been given under this section, a personal representative upon ~~his~~ appointment may publish a notice to creditors whose identities are not reasonably ascertainable. The notice must be published once a week for three successive weeks in a newspaper of general circulation in the county announcing his. If the personal representative elects to publish a notice to creditors then, in addition to publishing the notice to creditors, the personal representative shall mail a copy of the notice to those creditors whose identities are known to the personal representative or are reasonably ascertainable and who have not already filed a claim. The notice must announce the personal representative's appointment and address and notifying notify creditors of the estate to present their claims within three months after the date of the first publication or mailing of the notice or be forever barred. For the purpose of this section, a reasonably ascertainable creditor includes a creditor who regularly submits billings to the decedent or the decedent's estate and to whose billings the personal representative has had access.

SECTION 2. AMENDMENT. Section 30.1-19-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-19-02. (3-802) Statutes of limitations. Unless an estate is insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim ~~which that~~ was barred by any statute of limitations at the time of the decedent's death ~~shall~~ may be allowed or paid. The running of any statute of limitations measured from some other event than death and advertisement and mailing of notice for claims against a decedent is suspended during the three months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow. For purposes of any statute of limitations, the proper presentation of a claim under section 30.1-19-04 is equivalent to commencement of a proceeding on the claim.

SECTION 3. AMENDMENT. Subsection 1 of section 30.1-19-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any 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, 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.

SECTION 4. AMENDMENT. Subsection 1 of section 30.1-19-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Upon the expiration of three months from the date of the first publication and mailing of the notice to creditors, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family, and support allowances, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims ~~which~~ that may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided herein may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.

SECTION 5. AMENDMENT. Section 30.1-21-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-21-03. (3-1003) Closing estates - By sworn statement of personal representative.

1. Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court a verified statement stating that he the personal representative, or a prior personal representative whom he the personal representative has succeeded, has ~~or have~~:
 - a. Fully administered the estate of the decedent by making payment, settlement, or other disposition of all claims ~~which~~

that were presented, expenses of administration, and estate, inheritance, and other death taxes, except as specified in the statement, and ~~that~~ by distributing the assets of the estate ~~have been distributed~~ to the persons entitled. If any claims remain undischarged, the statement ~~shall~~ must state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or ~~it shall~~ the statement must state in detail other arrangements ~~which that~~ have been made to accommodate outstanding liabilities.

- b. Sent a copy thereof to all distributees of the estate and to all creditors or other claimants of whom ~~he~~ the personal representative is aware whose claims are neither paid nor barred and has furnished a full account in writing of ~~his~~ the personal representative's administration to the distributees whose interests are affected thereby.

If the personal representative has published and mailed notice to creditors as provided by section 30.1-19-01, ~~he~~ the personal representative may not file the verified statement until three months after the date of the first publication and mailing.

2. If no proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 405

HOUSE BILL NO. 1480
(Representatives Ulmer, R. Larson)
(Senators Heinrich, Yockim)

INCAPACITATED PERSON GUARDIAN

AN ACT to create two new sections to chapter 30.1-28 of the North Dakota Century Code, relating to guardians of incapacitated persons; to amend and reenact sections 30.1-26-01, 30.1-28-01, 30.1-28-02, 30.1-28-03, 30.1-28-04, 30.1-28-05, 30.1-28-06, 30.1-28-07, 30.1-28-08, 30.1-28-09, 30.1-28-10, and 30.1-28-12 of the North Dakota Century Code, relating to guardians of incapacitated persons; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-26-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-26-01. (5-101) Definitions and use of terms. Unless otherwise apparent from the context, in this title:

1. "Alternative resource plan" means a plan that provides an alternative to guardianship, using available support services and arrangements which are acceptable to the alleged incapacitated person. The plan may include the use of providers of service such as visiting nurses, homemakers, home health aides, personal care attendants, adult day care and multi-purpose senior citizen centers; home and community based care, county social services, and developmental disability services; powers of attorney, representative and protective payees; and licensed congregate care facilities.
2. "Least restrictive form of intervention" means that the guardianship imposed on the ward must compensate for only those limitations necessary to provide the needed care and services, and that the ward must enjoy the greatest amount of personal freedom and civil liberties consistent with the ward's mental and physical limitations.
3. "Incapacitated person" means any adult person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause (except minority) or chemical dependency to the extent that he the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person that person's matters of residence, education, medical treatment, legal affairs, vocation, finance, or other matters, or which incapacity endangers the person's health or safety.

- 2- "Person with limited capacity" means a person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause except minority, but who is able to make independently some, but not all, of the decisions necessary for that person's own care and the management of that person's property.
- 3- 4. A "protective proceeding" is a proceeding under the provisions of section 30.1-29-01 to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced, or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief.
- 4- 5. A "protected person" is a minor or other person for whom a conservator or limited conservator has been appointed or other protective order has been made.
- 5- 6. A "ward" is a person for whom a guardian or limited guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

SECTION 2. AMENDMENT. Section 30.1-28-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-01. (5-301) Testamentary appointment of guardian for incapacitated person.

1. The guardian spouse or guardian parent of an adjudicated incapacitated person may, by will, appoint a successor guardian of the incapacitated person. A testamentary appointment by a guardian spouse or guardian parent becomes effective when, after having given seven days' prior written notice of his intention to do so to the incapacitated person and to the person having his care caring for the incapacitated person or to his the nearest adult relative of the incapacitated person, the successor guardian files acceptance of appointment in the court in which the will is informally or formally probated, ~~if prior thereto, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority unless it is terminated by the denial of probate in formal proceedings.~~
2. The spouse of a married incapacitated person may, by will, appoint a guardian of the incapacitated person. The appointment becomes effective when, after having given seven days' prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated. An effective appointment by a spouse has priority over an appointment by a parent unless it is terminated by the denial of probate in formal proceedings.
- 3- This state shall recognize a testamentary appointment effected by filing acceptance under a will probated at the testator's domicile in another state.

- 4- 3. On the filing with the court in which the will was probated of written objection to the appointment by the person for whom a testamentary appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person upon an adjudication of incapacity in proceedings under the succeeding sections of this chapter.

SECTION 3. AMENDMENT. Section 30.1-28-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-02. (5-302) Venue. The venue for guardianship proceedings for an incapacitated person a proposed ward is in the place where the incapacitated person proposed ward resides or is present and expected to remain during the pendency of the proceedings. If the incapacitated person is admitted to an institution pursuant to order of a county court, venue is also in the county in which that court sits Notwithstanding section 30.1-02-03, the proposed ward may demand change of venue to either the county of residence or the county where the proposed ward is present. The court shall grant the demand if it is filed and served upon the petitioner more than three days before the hearing. If the demand is filed within three days of the hearing, the court may grant the demand upon good cause shown.

SECTION 4. AMENDMENT. Section 30.1-28-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-03. (5-303) Procedure for court appointment of a guardian of an incapacitated person.

1. ~~The incapacitated person or any~~ Any person interested in his the welfare of an allegedly incapacitated person may petition for a finding of incapacity and the appointment of a guardian. ~~limited or general.~~ No filing fee under this or any other section may be required when a petition for guardianship of an incapacitated person is filed by a member of the individual habilitation treatment plan team for the alleged incapacitated person or by any state employee in the performance of official duties.
2. The petition for appointment of a guardian must state:
 - a. The name, address, and corporate or agency status of the petitioner, and its connection with or relationship to the proposed ward;
 - b. The name, age, and address of the proposed ward;
 - c. The name and address of any person or institution having care or custody over the proposed ward;
 - d. The names and addresses of the spouse, parents, and adult children or, if none, any adult siblings and any adult with whom the proposed ward resides in a private residence, or, if none, the nearest adult relative;

- e. A brief description of and the approximate value of the real and personal property and income of the proposed ward, so far as they are known to the petitioner;
 - f. The extent of the guardianship sought, including whether the nominated guardian seeks to have full authority, limited authority, or no authority in each area of residential, educational, medical, legal, vocational, and financial decisionmaking;
 - g. The occupation and qualifications of the proposed guardian;
 - h. The name and address of the attorney, if known, who most recently represented the proposed ward; and
 - i. A statement alleging specific facts establishing the necessity for the appointment of a guardian.
3. Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person has counsel of his own choice, it shall, appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a act as guardian ad litem. The person alleged to be incapacitated shall be examined by, appoint a physician appointed by the court who shall submit his report in writing to the court and shall also be interviewed by or clinical psychologist to examine the proposed ward, and appoint a visitor sent by the court. The visitor also shall to interview the person seeking appointment as proposed guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made. The visitor shall submit his report in writing to the court. The person appointed as visitor may not also be appointed as guardian ad litem for the person alleged to be incapacitated the proposed ward.
4. The duties of the attorney include:
- a. Personally interviewing the proposed ward;
 - b. Explaining the guardianship proceeding to the proposed ward in the language, mode of communication, and terms that the proposed ward is most likely to understand, including the nature and possible consequences of the proceeding, the right to which the proposed ward is entitled, and the legal options that are available; and
 - c. Representing the proposed ward as guardian ad litem. If the appointed attorney or other attorney is retained by the proposed ward to act as an advocate, the attorney shall promptly notify the court, and the court may determine whether the attorney should be discharged from the duties of guardian ad litem.

5. The physician or clinical psychologist shall examine the proposed ward and submit a written report to the court. The written report must contain:
 - a. A description of the nature and degree of any current incapacity or disability, including the medical or psychological history, if reasonably available;
 - b. A medical prognosis or psychological evaluation specifying the estimated severity and duration of any current incapacity or disability;
 - c. A statement as to how or in what manner any underlying condition of physical or mental health affects the proposed ward's ability to provide for personal needs; and
 - d. A statement as to whether any current medication affects the demeanor of the proposed ward or the ability of the proposed ward to participate fully in any court proceeding or in any other procedure required by the court or by court rule.

6. The visitor shall have the following duties:
 - a. To meet, interview, and consult with the proposed ward regarding the guardianship proceeding, including explaining the purpose for the interview in a manner the proposed ward can reasonably be expected to understand.
 - b. To ascertain the proposed ward's views concerning the proposed guardian, the powers and duties of the proposed guardian, the proposed guardianship, and the scope and duration thereof.
 - c. To interview the person seeking appointment as guardian.
 - d. To visit the proposed ward's present place of residence.
 - e. To discuss an alternative resource plan with the proposed ward, if appropriate.
 - f. To obtain other relevant information as directed by the court.
 - g. To submit a written report to the court.
 - h. The visitor's written report must contain:
 - (1) A description of the nature and degree of any current impairment of the proposed ward's understanding or capacity to make or communicate decisions;
 - (2) A statement of the qualifications and appropriateness of the proposed guardian;
 - (3) Recommendations, if any, on the powers to be granted to the proposed guardian, including an evaluation of the proposed ward's capacity to perform the functions enumerated under subsections 3 and 4 of section 30.1-28-04; and

- (4) An assessment of the capacity of the proposed ward to perform the activities of daily living.
3. ~~Where possible without undue delay and expense beyond the ability to pay of the allegedly incapacitated person or any other person paying costs, the court, in formulating the judgment, may utilize the service of any public or charitable agency or nonprofit corporation that offers or is willing to evaluate the condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in his affairs.~~
7. The person alleged to be incapacitated is entitled to proposed ward must be present at the hearing in person, unless good cause is shown for the absence. Good cause does not consist only of the physical difficulty of the proposed ward to attend the hearing. The proposed ward has the right and to see or hear all evidence bearing upon his condition. He is entitled to be present by counsel, to present evidence, and to cross-examine witnesses, including the court-appointed physician and the visitor. The issue may be determined at a closed hearing if the person alleged to be incapacitated proposed ward or his the proposed ward's counsel so requests.
8. The court shall take all necessary steps to make the courts and court proceedings accessible and understandable to impaired persons. Accordingly, the court may convene temporarily, or for the entire proceeding, at any other location if it is in the best interest of the proposed ward.

SECTION 5. AMENDMENT. Section 30.1-28-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-04. (5-304) Findings - Order of appointment.

1. The court shall exercise the authority conferred in this chapter consistent with the maximum self-reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's actual mental and adaptive limitations or other conditions warranting the procedure. A guardianship order may limit the guardian's powers in areas including residential, educational, medical, legal, vocational and financial decisions. The court shall determine in all cases in which a guardian is appointed whether the incapacitated person is mentally incompetent and as such is not qualified to vote.
2. The court may appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the incapacitated person. Alternatively, the court may dismiss the proceeding or enter any other appropriate order, including the involvement of an advocate or the establishment of financial trusts or special bank accounts on behalf of the incapacitated person. At a hearing held under this chapter, the court shall:

- a. Hear evidence that the proposed ward is an incapacitated person. Age, eccentricity, poverty, or medical diagnosis alone is not sufficient to justify a finding of incapacity;
- b. Appoint a guardian and confer specific powers of guardianship only after finding in the record based on clear and convincing evidence that:
 - (1) The proposed ward is an incapacitated person;
 - (2) There is no available alternative resource plan that is suitable to safeguard the proposed ward's health, safety, or habilitation which could be used instead of a guardianship;
 - (3) The guardianship is necessary as the best means of providing care, supervision, or habilitation of the ward; and
 - (4) The powers and duties conferred upon the guardian are appropriate as the least restrictive form of intervention consistent with the ability of the ward for self-care.
3. Except upon specific findings of the court, no ward may be deprived of any of the following legal rights: to vote, to seek to change marital status, to obtain or retain a motor vehicle operator's license, or to testify in any judicial or administrative proceedings.
4. The court may find that the ward retains other specific rights.
- 3- 5. The court may appoint a limited guardian if it is satisfied that the person for whom a guardian is sought is a person with limited capacity and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the person with limited capacity. Alternatively, the court may dismiss the proceeding or enter any other appropriate order.
- 4- The court may, at the time of appointment or later, on its own motion or on appropriate petition or motion of the incapacitated person or other interested person, limit the powers of a guardian otherwise conferred by this section and thereby create a limited guardianship. Any limitation on the statutory power of a guardian of an incapacitated person shall be endorsed on the guardian's letters. The order appointing a guardian confers upon the guardian only those powers and duties specified in the order. In addition to any other powers conferred upon the guardian, the court's order must state whether the guardian has no authority, general authority, or limited authority to make decisions on behalf of the ward in each of the areas of residential, educational, medical, legal, vocational, and financial decisionmaking. A grant of limited authority must specify the limitations upon the authority of the guardian or the authority retained by the ward.

SECTION 6. AMENDMENT. Section 30.1-28-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-05. (5-305) Acceptance of appointment - Consent to jurisdiction - Order - Letters of guardianship.

1. By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding so instituted shall be delivered to served upon the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to by the petitioner.
2. A copy of the order appointing the guardian must be served upon the ward and the ward's attorney by the petitioner. The order must contain the name and address of the guardian as well as notice of the ward's right to appeal the guardianship appointment and of the ward's right to seek alteration or termination of the guardianship at any time.
3. Letters of guardianship must contain:
 - a. The name, address, and telephone number of the guardian;
 - b. The name, address, and telephone number of the ward;
 - c. Specifications of the guardian's authority to make decisions on behalf of the ward in each of the following areas: residential, educational, medical, legal, vocational, and financial. If limited authority has been granted in any area, the letters must describe the nature of the limitations;
 - d. Specification of any other powers or authority conferred upon the guardian; and
 - e. Specification of limitations by the court upon the rights and privileges of the ward in matters not governed by powers of the guardian, such as voting, marriage, and driving.
4. The letters must issue to the guardian. The court shall mail copies to the ward and the ward's counsel.

SECTION 7. AMENDMENT. Section 30.1-28-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-06. (5-306) Termination of guardianship ~~for incapacitated person~~. The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, except, the guardian may arrange for a deceased ward's burial and refer the ward's estate to probate, if no other person is available to perform those acts, the determination of incapacity of the guardian, or upon removal or resignation as provided in section 30.1-28-07. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect his the guardian's liability for prior acts nor his obligation to account for funds and assets of his the ward.

SECTION 8. AMENDMENT. Section 30.1-28-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-07. (5-307) Removal or resignation of guardian - Termination of ~~incapacity~~ guardianship.

1. On petition of the ward or any person interested in ~~his~~ the ward's welfare, the court may remove a guardian and appoint a successor if in the best interests of the ward. On petition of the guardian, the court may accept ~~his~~ the guardian's resignation and make any other order which may be appropriate.
2. ~~An order adjudicating incapacity may specify a minimum period, not exceeding one year, during which no petition for an adjudication that the ward is no longer incapacitated may be filed without special leave. Subject to this restriction, the~~ The ward or any person interested in ~~his~~ the ward's welfare may petition for an order that ~~he~~ the ward is no longer incapacitated, and for removal ~~or resignation~~ of the guardian. A request for this order may be made by informal letter to the court or judge. Any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.
3. Before removing a guardian, accepting the resignation of a guardian, or ~~ordering that a ward's incapacity has on finding that the ward is no longer incapacitated and ordering the guardianship terminated,~~ the court, following the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian, may send a visitor to the residence of the present guardian and to the place where the ward resides or is detained, to observe conditions and report in writing to the court.

SECTION 9. AMENDMENT. Section 30.1-28-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-08. (5-308) Visitor in guardianship proceedings. A visitor ~~is, with respect to~~ in guardianship proceedings, is a person who is ~~trained in law, nursing, or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.~~ trained in law, nursing, or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.

SECTION 10. AMENDMENT. Section 30.1-28-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-09. (5-309) Notices in guardianship proceedings.

1. In a proceeding for the appointment or removal of a guardian ~~of an incapacitated person or for an alteration or termination of a guardianship other than for the appointment of a temporary guardian or for the temporary suspension of a guardian,~~ notice of hearing shall be given to each of the following:
 - a. The ward or the ~~person alleged to be incapacitated proposed ward and his~~ the ward's or proposed ward's spouse, parents, and adult children-;
 - b. Any person, corporation, or institution who is serving as ~~his~~ the ward's guardian, attorney in fact, representative payee for public benefits, or conservator, or who has ~~his~~ the ward's care and custody-;

- c. In case If no other person is notified under subdivision a, at least one of his closest adult relatives, if any can be found then the adult siblings and any adult with whom the proposed ward resides in a private residence, or if none can be found, any known adult relative; and
 - d. The attorney for the proposed ward, the visitor, and the physician or clinical psychologist, together with a copy of the respective order of appointment for each.
2. Notice shall be served personally on the alleged incapacitated person ward or proposed ward, and his the ward's or proposed ward's spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the alleged incapacitated person ward or proposed ward shall be given as provided in section 30.1-03-01. Waiver of notice by the person alleged to be incapacitated ward or proposed ward is not effective unless he the ward or proposed ward attends the hearing or his the ward's or proposed ward's waiver of notice is confirmed in an interview with the visitor. Representation of the alleged incapacitated person by a guardian ad litem is not necessary.
 3. The notice must be printed with not less than double-spaced twelve-point type.

SECTION 11. AMENDMENT. Section 30.1-28-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-10. (5-310) Temporary guardians. If an incapacitated person has no guardian and an emergency exists, the court may exercise the power of a guardian pending notice and hearing. If an appointed guardian is not effectively performing his duties and the court further finds that the welfare of the incapacitated person requires immediate action, it may, with or without notice, appoint a temporary guardian for the incapacitated person for a specified period not to exceed six months.

1. The court may exercise the power of a guardian pending notice and hearing or, with or without notice, appoint a temporary guardian for a specified period of time, not to exceed ninety days, if:
 - a. An alleged incapacitated person has no guardian and an emergency exists; or
 - b. An appointed guardian is not effectively performing the guardian's duties, and the court finds that the welfare of the ward requires immediate action.
2. A temporary guardian is entitled to the care and custody of the ward and the authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority. A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires. In other respects the provisions of this title concerning guardians apply to temporary guardians.

Appointment of temporary guardian does not have the effect of an adjudication of incapacity or the effect of limitation on the legal rights of the ward other than those specified in the court order. Appointment of a temporary guardian is not evidence of incapacity.

SECTION 12. AMENDMENT. Section 30.1-28-12 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-12. (5-312) General powers and duties of guardian.

1. A guardian of an incapacitated person has only the same powers, rights, and duties respecting his ward that a parent has respecting his unemancipated minor child except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court when the guardianship is limited: powers and duties specified by the court.
- a- 2. To the extent that it is consistent with the terms of any an order by a court of competent jurisdiction relating to detention or commitment of the ward, he is, the guardian is entitled to custody of the person of his the ward and may establish the ward's place of abode residence within or without this state. However, no guardian may voluntarily admit a ward to a mental health facility, state institution, or secured unit of a long-term care facility for a period of more than forty-five days without a mental health commitment proceeding or other court order. Notwithstanding the other provisions of this subdivision, the guardian may readmit a ward to a mental health facility, state institution, or secured unit of a long-term care facility within sixty days of discharge from that institution, if the original admission to the facility, institution, or unit had been authorized by the court.
- b- 3. If entitled to custody of his the ward, he shall the guardian should make provision for his the care, comfort, and maintenance of the ward and, whenever appropriate, arrange for his the ward's training, and education, or habilitative services. Without regard to custodial rights of the ward's person, he The guardian shall take reasonable care of his the ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of his ward is in need of protection.
- c- 4. A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service. Notwithstanding general or limited authority to make medical decisions on behalf of the ward, no guardian may consent to psycho-surgery, abortion, sterilization, or experimental treatment of any kind unless the procedure is first approved by order of the court.
- d- 5. When exercising the authority granted by the court, the guardian shall safeguard the civil rights and personal autonomy of the ward to the fullest extent possible by:

- a. Involving the ward as fully as is practicable in making decisions with respect to the ward's living arrangements, health care, and other aspects of the ward's care; and
- b. Ensuring the ward's maximum personal freedom by using the least restrictive forms of intervention and only as necessary for the safety of the ward or others.
6. If no conservator for the estate of the ward has been appointed and if the guardian has been granted authority to make financial decisions on behalf of the ward, ~~he~~ the guardian may:
- ↔ a. Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform ~~his~~ that duty.
- ↔ b. Receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but, ~~he~~ the guardian may not use funds from ~~his~~ the ward's estate for room and board which ~~he, his~~ the guardian or the guardian's spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. ~~He must~~ The guardian shall exercise care to conserve any excess for the ward's needs.
- ~~e. A guardian is required to report the condition of his ward and of the estate which has been subject to his possession or control, as required by the court or court rule.~~
- f. 7. If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this title, and the guardian must account to the conservator for funds expended.
8. A guardian shall make written reports to the court at such times as the court shall require concerning the condition and affairs of the ward. The report must include:
- ↔ a. The name, address, and telephone number of the ward;
- b. The name, address, and telephone number of the guardian;
- c. A brief written description of the condition of the ward;
- d. The name and address of any person or institution having care or custody of the ward;
- e. If the guardian has authority to make residential decisions for the ward, a statement of the nature of the ward's care and of any changes or proposals for changes in the living situation of the ward;

- f. If the guardian has authority to make medical decisions, a summary of the medical treatment authorized by the guardian since the date of the last report;
 - g. The guardian's plans for maintaining the well-being of the ward and facts indicating the need for continuation or cessation of the guardianship or for any increase or limitation of the powers of the guardian;
 - h. A complete accounting of the financial transactions of the guardian undertaken on behalf of the ward or in connection with the guardianship; and
 - i. Any other information the court may require.
9. Copies of the guardian's annual report to the court and of any other reports required by the court must be mailed to the ward. The ward's copy must be accompanied by a statement, printed with not less than double-spaced twelve-point type, of the ward's right to seek alteration, limitation, or termination of the guardianship at any time.
- 2- 10. Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward; and The guardian is entitled to receive reasonable sums for his services and for room and board furnished to the ward as approved by the court or as agreed upon between him the guardian and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

SECTION 13. Two new sections to chapter 30.1-28 of the North Dakota Century Code are hereby created and enacted to read as follows:

Reports and accounts - Failure of guardian to file.

1. If a guardian fails to render any report or account within the time provided by law or the order of the court, or fails to settle the estate according to the order of the court, the court may, upon its own motion, or upon petition of any interested party, issue an order compelling the guardian to show cause why the guardian should not immediately make and file the report or account.
2. If a guardian fails, neglects, or refuses to file a report or accounting after having been cited by the court to do so, the court may, upon its own motion or upon the motion of any interested party, issue an order to show cause that the guardian be brought before the court and show why the guardian should not be held in contempt.

Prior guardianships. Guardianships established prior to July 1, 1990, must be reviewed by the court in accordance with this Act. Guardians and wards under such previously established guardianships must be notified by the court in writing in language reasonably understandable to them of their rights and duties under this chapter.

SECTION 14. EFFECTIVE DATE. This Act becomes effective on July 1, 1990.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 406

SENATE BILL NO. 2306
(Senator Nalewaja)
(Representatives R. Berg, Bernstein)

GUARDIAN NOMINATION BY INCAPACITATED PERSON

AN ACT to amend and reenact section 30.1-28-11 of the North Dakota Century Code, relating to the appointment of a guardian of an incapacitated person.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-28-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-11. (5-311) Who may be guardian - Priorities.

1. Any competent person or a designated person from a suitable institution, agency, or nonprofit group home may be appointed guardian of an incapacitated person. No institution, agency, or nonprofit group home providing care and custody of the incapacitated person may be appointed guardian. However, if no one else can be found to serve as guardian, an employee of an agency, institution, or nonprofit group home providing care and custody may be appointed guardian if the employee does not provide direct care to the proposed ward and the court makes a specific finding that the appointment presents no substantial risk of a conflict of interest.
2. Unless lack of qualification or other good cause dictates the contrary, the court shall appoint a guardian in accordance with the incapacitated person's most recent nomination in a durable power of attorney.
3. Except as provided in subsection 2, persons who are not disqualified have priority for appointment as guardian in the following order:
 - a. A person nominated by the incapacitated person prior to being determined to be incapacitated, when nominated by means other than provided in subsection 2, if the incapacitated person is fourteen or more years of age and, in the opinion of the court, acted with or has sufficient mental capacity to make an intelligent choice.
 - b. The spouse of the incapacitated person.
 - ~~b.~~ c. An adult child of the incapacitated person.

- ~~c.~~ d. A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent.
 - ~~d.~~ e. Any relative of the incapacitated person with whom the incapacitated person has resided for more than six months prior to the filing of the petition.
 - ~~e.~~ f. Any relative or friend who has maintained significant contacts with the incapacitated person or a designated person from a volunteer agency.
 - ~~f.~~ g. A nonprofit corporation established to provide guardianship services; provided, that the corporation does not provide direct care to incapacitated persons. The corporation shall file with the court the name of an employee, volunteer, or other person from the corporation who is directly responsible for the guardianship of each incapacitated person, and shall notify the court in the event the person for any reason ceases to so act, or if a successor is named.
 - ~~g.~~ h. Any appropriate government agency, including county social service agencies, except as limited by subsection 1.
 - ~~h.~~ i. A person nominated by the person who is caring for or paying benefits to the incapacitated person.
4. With respect to persons having equal priority, the court shall select the one it deems best qualified to serve. The court, acting in the best interest of the incapacitated person, may pass over a person having priority and appoint a person having a lower priority.

Approved April 6, 1989

Filed April 7, 1989