

CHAPTER 30.1-17

PERSONAL REPRESENTATIVE - APPOINTMENT, CONTROL, AND TERMINATION

30.1-17-01. (3-601) Qualification.

Prior to receiving letters, a personal representative shall qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office.

30.1-17-02. (3-602) Acceptance of appointment - Consent to jurisdiction.

By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the personal representative, or mailed by ordinary first-class mail to the personal representative's address as listed in the application or petition for appointment or as thereafter reported to the court and to the personal representative's address as then known to the petitioner.

30.1-17-03. (3-603) Bond not required without court order - Exceptions.

No bond is required of a personal representative appointed in informal proceedings, except:

1. Upon the appointment of a special administrator;
2. When an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond; or
3. When bond is required under section 30.1-17-05.

Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding, except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond, unless bond has been requested by an interested party and the court is satisfied that it is desirable. Bond required by any will may be dispensed with in formal proceedings upon determination by the court that it is not necessary. No bond is required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of this state to secure performance of the personal representative's duties.

30.1-17-04. (3-604) Bond amount - Security - Procedure - Reduction.

If bond is required and the provisions of the will or order do not specify the amount, unless stated in that person's application or petition, the person qualifying shall file a statement under oath with the court indicating that person's best estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and shall execute and file a bond with the court, or give other suitable security, in an amount not less than the estimate. The court shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security. The court may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution, as defined in section 30.1-31-02, in a manner that prevents their unauthorized disposition. On petition of the personal representative or another interested person, the court may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties.

30.1-17-05. (3-605) Demand for bond by interested person.

Any person apparently having an interest in the estate worth in excess of one thousand dollars, or any creditor having a claim in excess of one thousand dollars, may make a written demand that a personal representative give bond. The demand must be filed with the court and a copy mailed to the personal representative if appointment and qualification have occurred. Thereupon, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate, or if bond is excused as provided in section 30.1-17-03 or 30.1-17-04. After receiving notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of office except as

necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within thirty days after receipt of notice is cause for removal and appointment of a successor personal representative.

30.1-17-06. (3-606) Terms and conditions of bonds.

1. The following requirements and provisions apply to any bond required by this chapter:
 - a. Bonds shall name the state of North Dakota as obligee for the benefit of the persons interested in the estate and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law.
 - b. Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties shall be stated in the bond.
 - c. By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the probate court which issued letters to the primary obligor in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any proceeding shall be delivered to the surety or mailed to the surety by registered or certified mail at the surety's address as listed with the court where the bond is filed and to the surety's address as then known to the petitioner.
 - d. On petition of a successor personal representative, any other personal representative of the same decedent, or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative.
 - e. The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.
2. No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

30.1-17-07. (3-607) Order restraining personal representative.

1. On petition of any person who appears to have an interest in the estate, the court, by temporary order, may restrain a personal representative from performing specified acts of administration, disbursement, or distribution, or exercise of any powers or discharge of any duties of the personal representative's office, or make any other order to secure proper performance of the personal representative's duty, if it appears to the court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.
2. The matter shall be set for hearing within ten days unless the parties otherwise agree. Notice, as the court directs, shall be given to the personal representative and the personal representative's attorney of record, if any, and to any other parties named defendant in the petition.

30.1-17-08. (3-608) Termination of appointment - General.

Termination of appointment of a personal representative occurs as indicated in sections 30.1-17-09 through 30.1-17-12. Termination ends the right and power pertaining to the office of personal representative as conferred by this title or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve the personal representative of the duty to preserve assets subject to the personal representative's control, to account therefor, and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative, but terminates the personal representative's authority to represent the estate in any pending or future proceeding.

30.1-17-09. (3-609) Termination of appointment - Death or disability.

The death of a personal representative or the appointment of a conservator for the estate of a personal representative terminates the personal representative's appointment. Until appointment and qualification of a successor or special representative to replace the deceased or protected representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by the decedent or ward at the time the decedent's or ward's appointment terminates, has the power to perform acts necessary for protection, and shall account for and deliver the estate assets to a successor or special personal representative upon the successor's or special personal representative's appointment and qualification.

30.1-17-10. (3-610) Termination of appointment - Voluntary.

1. An appointment of a personal representative terminates as provided in section 30.1-21-03, one year after the filing of a closing statement.
2. An order closing an estate as provided in section 30.1-21-01 or 30.1-21-02 terminates an appointment of a personal representative.
3. A personal representative may resign the position by filing a written statement of resignation with the court after giving at least fifteen days' written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to the successor representative.

30.1-17-11. (3-611) Termination of appointment by removal - Cause - Procedure.

1. A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative, and to other persons as the court may order. Except as otherwise ordered as provided in section 30.1-17-07, after receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration or preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.
2. Cause for removal exists when removal would be in the best interests of the estate, or if it is shown that a personal representative or the person seeking the personal representative's appointment intentionally misrepresented material facts in the proceedings leading to the personal representative's appointment, or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of the office, or has mismanaged the estate or failed to perform any duty pertaining to the office. Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing appointment of the personal representative or the personal representative's nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this state to administer local assets.

30.1-17-12. (3-612) Termination of appointment - Change of testacy status.

Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will which is superseded by formal probate of another will, or the vacation of an informal probate of a will subsequent to the appointment of the personal representative thereunder, does not terminate the appointment of the personal representative although the personal representative's powers may be reduced as provided in section 30.1-15-01. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within thirty days after expiration

of time for appeal from the order in formal testacy proceedings, or from the informal probate, changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will, or as in intestacy, as the case may be.

30.1-17-13. (3-613) Successor personal representative.

Chapters 30.1-14 and 30.1-15 govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated. After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and no notice, process, or claim which was given or served upon the former personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative. Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if the appointment had not been terminated.

30.1-17-14. (3-614) Special administrator - Appointment.

A special administrator may be appointed:

1. Informally by the court on the application of any interested person when necessary to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated as provided in section 30.1-17-09.
2. In a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration, including its administration in circumstances in which a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice.

30.1-17-15. (3-615) Special administrator - Who may be appointed.

1. If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available and qualified.
2. In other cases, any proper person may be appointed special administrator.

30.1-17-16. (3-616) Special administrator - Appointed informally - Powers and duties.

A special administrator appointed by the court in informal proceedings pursuant to subsection 1 of section 30.1-17-14 has the duty to collect and manage the assets of the estate, to preserve them, to account therefor, and to deliver them to the general personal representative upon the personal representative's qualification. The special administrator has the power of a personal representative, under this title, necessary to perform the special administrator's duties.

30.1-17-17. (3-617) Special administrator - Formal proceedings - Power and duties.

A special administrator appointed by order of the court in any formal proceeding has the power of a general personal representative, except as limited in the appointment, and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts, or on other terms as the court may direct.

30.1-17-18. (3-618) Termination of appointment - Special administrator.

The appointment of a special administrator terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In other cases, the appointment of a special administrator is subject to termination as provided in sections 30.1-17-08 through 30.1-17-11.