

# UNIFORM PROBATE CODE

## CHAPTER 294

### SENATE BILL NO. 2174

(Judiciary Committee)

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

## UNIFORM PROBATE CODE REVISIONS

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 ~~other~~ 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.

Approved March 4, 1999  
 Filed March 4, 1999

## CHAPTER 295

### HOUSE BILL NO. 1329

(Representatives Wald, Byerly, Meyer)  
(Senators Kinnoin, Wardner, Watne)

## ESTATE CLOSING AND ATTORNEY'S FEES

AN ACT to amend and reenact section 30.1-21-03.1 of the North Dakota Century Code, relating to closing an estate and attorney's fees; and to provide for retroactive application.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 30.1-21-03.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **30.1-21-03.1. Estate closing - Procedures.**

1. If the personal representative has not filed with the court a verified statement to close the estate, or as part of the supervised administration proceedings in accordance with this chapter, within three years from the date of death of the decedent, any devisee, heir, distributee, or claimant may petition the court, formally or by any informal request, or the court on its own motion may order, that the personal representative and the attorney employed by the personal representative be required to show cause to the court why the estate has not been closed; ~~and the~~. The court shall order the personal representative and the attorney employed by the personal representative to show cause to the court at a hearing scheduled within ninety days why the estate has not been closed; and. The court shall serve notice upon all heirs, devisees, claimants, distributees, and beneficiaries of the estate of such the order to show cause and, the date of the hearing, and invite such respondents of their right to participate in the hearing proceedings; after which the court shall issue its order establishing a timetable for the closing of the estate based upon the showing made at such proceeding. The court may award attorneys' fees and costs in favor of a petitioner if the court finds at such hearing that the personal representative has failed to show cause why the estate has not been closed within three years from the date of death of the decedent.
2. Within twenty days of receipt of the order to show cause, the personal representative or the attorney employed by the personal representative shall provide the court with a report containing a timeframe for the anticipated closure of the estate; a detailed explanation as to why the estate has not been closed; and a detailed accounting of all disbursements made by the estate, including specific information as to all fees and other disbursements made to the personal representative, and to any attorney, auditor, investment advisor, or other specialized agent or assistant employed to do work for the estate.
3. After the order to show cause hearing, the court shall issue an order establishing a timetable for the closing of the estate based upon the information provided in the report and the evidence provided during the

hearing. The court may award attorney's fees and costs in favor of a petitioner if the court finds that the personal representative or the attorney employed by the personal representative has failed to show cause why the estate has not been closed within three years from the date of death of the decedent unless extended by the court. The court may file a complaint with the disciplinary board against the attorney.

**SECTION 2. RETROACTIVE APPLICATION.** This Act applies retroactively to an estate proceeding initiated before August 1, 1999.

Approved April 14, 1999

Filed April 15, 1999

## CHAPTER 296

### SENATE BILL NO. 2049

(Legislative Council)  
(Judiciary Committee)

### SAFE DEPOSIT BOX ENTRY

AN ACT to create and enact a new section to chapter 30.1-23 of the North Dakota Century Code, relating to the entry of a safe deposit box.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 30.1-23 of the North Dakota Century Code is created and enacted as follows:

**Will searches, burial documents procurement, and inventory of contents.**

1. Upon being furnished with satisfactory proof of death of a sole lessee or the last surviving co-lessee of a safe deposit box, the safe deposit company may open the box for an individual who appears in person and furnishes an affidavit stating the following:
  - a. The box may contain the will or deed to a burial lot or a document containing instructions for the burial of the lessee or that the box may contain property belonging to the estate of the lessee;
  - b. The individual is an interested person and wishes to open the box:
    - (1) To conduct a will search;
    - (2) To obtain a document required to facilitate the lessee's wishes regarding body, funeral, or burial arrangements; or
    - (3) To make an inventory of the contents of the box; and
  - c. There has been no application for or appointment of a personal representative or administrator for the decedent's estate.
2. The safe deposit company may not open the box under this section if it has received a copy of letters from the representative of the deceased lessee's estate or other applicable court order.
3. The safe deposit company need not open the box if the lessee's key or combination is not available.
4. For purposes of this section, the term "interested person" means:
  - a. A person named as personal representative in a purported will of the lessee;
  - b. A person who immediately prior to the death of the lessee had the right of access to the box;

- c. The surviving spouse of the lessee;
  - d. A devisee of the lessee;
  - e. An heir of the lessee; or
  - f. A person designated by the lessee in a writing acceptable to the safe deposit company which is filed with the safe deposit company before death.
5. The safe deposit company need not ascertain the truth of any statement in the affidavit required to be furnished under this section, and when acting in reliance upon an affidavit, it is discharged as if it dealt with the personal representative of the lessee. The safe deposit company is not responsible for the adequacy of the description of any property included in an inventory of the contents of a safe deposit box, nor for conversion of the property in connection with actions performed under this section, except for conversion by intentional acts of the company or its employees, directors, officers, or agents. If the safe deposit company is not satisfied that the requirements of this section have been met, it may decline to open the box.
  6. No contents of a box other than a will and a document required to facilitate the lessee's wishes regarding body, funeral, or burial arrangements may be removed pursuant to this section.

Approved March 4, 1999  
Filed March 4, 1999

## CHAPTER 297

### SENATE BILL NO. 2327

(Senator W. Stenehjem)

## GUARDIAN DECISIONMAKING AND COMPENSATION

AN ACT to create and enact a new subsection to section 30.1-28-03 and a new subsection to section 30.1-28-04 of the North Dakota Century Code, relating to authority of guardians to make health care decisions and compensation for services in guardianship proceedings; and to amend and reenact subsection 2 of section 30.1-28-04 of the North Dakota Century Code, relating to authority of guardians to make health care decisions.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new subsection to section 30.1-28-03 of the North Dakota Century Code is created and enacted as follows:

If the court approves a visitor, lawyer, physician, guardian, or temporary guardian appointed in a guardianship proceeding, that person may receive reasonable compensation from the ward's estate if the compensation will not unreasonably jeopardize the ward's well-being.

**SECTION 2. AMENDMENT.** Subsection 2 of section 30.1-28-04 of the North Dakota Century Code is amended and reenacted as follows:

2. 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. Hear evidence and determine whether there are any existing general durable powers of attorney and durable powers of attorney for health care. If there are validly executed durable powers of attorney, the court shall consider the appointed attorneys in fact and agents appointed thereunder when assessing alternative resource plans and the need for a guardian; and
  - c. 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.

**SECTION 3.** A new subsection to section 30.1-28-04 of the North Dakota Century Code is created and enacted as follows:

Unless a court of competent jurisdiction determines otherwise, a durable power of attorney for health care executed pursuant to chapter 23-06.5 takes precedence over any authority to make medical decisions granted to a guardian pursuant to chapter 30.1-28.

Approved April 9, 1999  
Filed April 9, 1999