

# UNIFORM PROBATE CODE

## CHAPTER 249

### SENATE BILL NO. 2164

(Senators Holmberg, Hogue)  
(Representatives K. Koppelman, Delmore)

AN ACT to amend and reenact section 30.1-19-04 of the North Dakota Century Code, relating to presentation of claims to the personal representative.

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

**SECTION 1. AMENDMENT.** Section 30.1-19-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **30.1-19-04. (3-804) Manner of presentation of claims.**

Claims against a decedent's estate may be presented as follows:

1. The claimant may deliver or mail to the personal representative and any attorney of record for the estate a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court. The claim is deemed presented on the first to occur, either receipt of the written statement of claim by the personal representative, or the filing of the claim with the court. If a claim is not yet due, the claimant shall state the date when it will become due ~~shall be stated~~. If the claim is contingent or unliquidated, the claimant shall state the nature of the uncertainty ~~shall be stated~~. If the claim is secured, the claimant shall describe the security ~~shall be described~~. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation ~~made~~.
2. The claimant may commence a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction, to obtain payment of the claimant's claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. ~~No~~ presentation of claim is not required in regard to matters claimed in proceedings against the decedent which were pending at the time of death.
3. If a claim is presented under subsection 1, ~~no~~ proceeding ~~thereon~~ the claim may not be commenced more than sixty days after the personal representative has mailed a notice of disallowance, but, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the sixty-day period, or to avoid injustice, the court, on petition, may order an extension of the sixty-day period,

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but in no event may the extension run beyond the applicable statute of limitations.

Approved April 12, 2013  
Filed April 12, 2013

## CHAPTER 250

### HOUSE BILL NO. 1040

(Legislative Management)  
(Human Services Committee)

AN ACT to create and enact section 30.1-28-10.1 of the North Dakota Century Code, relating to the appointment of an emergency guardian; to amend and reenact section 30.1-28-09 of the North Dakota Century Code, relating to requirements of guardianship proceedings; and to repeal section 30.1-28-10 of the North Dakota Century Code, relating to the appointment of temporary guardians.

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

**SECTION 1. AMENDMENT.** Section 30.1-28-09 of the North Dakota Century Code is amended and reenacted as follows:

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

1. In a proceeding for the appointment or removal of a guardian or for an alteration or termination of a guardianship other than for the appointment of a ~~temporary~~ an emergency 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 proposed ward and the ward's or proposed ward's spouse, parents, and adult children;
  - b. Any person, corporation, or institution who is serving as the ward's guardian, attorney in fact, representative payee for public benefits, or conservator, or who has the ward's care and custody;
  - c. If no other person is notified under subdivision a, 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 must be served personally on the ward or proposed ward, and 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 ward or proposed ward must be given as provided in section 30.1-03-01. Waiver of notice by the ward or proposed ward is not effective unless the ward or proposed ward attends the hearing or the ward's or proposed ward's waiver of notice is confirmed in an interview with the visitor.
3. The notice must be printed with not less than double-spaced twelve-point type. The notice must inform the ward or proposed ward of the ward's or proposed ward's rights at the hearing and must include a description of the nature, purpose, and consequences of an appointment of a guardian.

**SECTION 2.** Section 30.1-28-10.1 of the North Dakota Century Code is created and enacted as follows:

**30.1-28-10.1. Emergency guardian.**

1. If the court finds that compliance with the procedures of this chapter likely will result in substantial harm to the alleged incapacitated individual's health, safety, or welfare, and that no other person appears to have authority and willingness to act in the circumstances, the court, on petition by a person interested in the alleged incapacitated individual's welfare, may appoint an emergency guardian whose authority may not exceed sixty days and who may exercise only the powers specified in the order. Immediately upon receipt of the petition for an emergency guardianship, the court shall appoint an attorney to represent the alleged incapacitated individual in the proceeding. Except as otherwise provided in subsection 2, reasonable notice of the time and place of a hearing on the petition must be given to the alleged incapacitated individual and any other person as the court directs.
2. An emergency guardian may be appointed without notice to the alleged incapacitated individual and the alleged incapacitated individual's attorney only if the court finds from affidavit or other sworn testimony that the alleged incapacitated individual will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency guardian without notice to the alleged incapacitated individual, the alleged incapacitated individual must be given notice of the appointment within forty-eight hours after the appointment. The court shall hold a hearing on the appropriateness of the appointment within five days after the appointment.
3. Appointment of an emergency guardian, with or without notice, is not a determination of the alleged incapacitated individual's incapacity.
4. The court may remove an emergency guardian at any time. An emergency guardian shall make any report the court requires. In all other respects, the provisions of this chapter concerning guardians apply to an emergency guardian.

**SECTION 3. REPEAL.** Section 30.1-28-10 of the North Dakota Century Code is repealed.

Approved April 8, 2013  
Filed April 8, 2013

## CHAPTER 251

### SENATE BILL NO. 2165

(Senators Holmberg, Hogue)  
(Representative Delmore)

AN ACT to amend and reenact section 30.1-32.1-12 of the North Dakota Century Code, relating to transfer on death deeds.

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

**SECTION 1. AMENDMENT.** Section 30.1-32.1-12 of the North Dakota Century Code is amended and reenacted as follows:

#### **30.1-32.1-12. Liability for creditor claims and statutory allowances.**

1. To the extent the transferor's probate estate is insufficient to satisfy an allowed claim against the estate or a statutory allowance to a surviving spouse or child, the estate may enforce the liability against property transferred at the transferor's death by a transfer on death deed. The estate may not enforce the liability against a purchaser of the property for value or a person that acquires an encumbrance in the property for value from the person that received the property by a transfer on death deed.
2. If more than one property is transferred by one or more transfer on death deeds, the liability under subsection 1 is apportioned among the properties in proportion to ~~their~~the net values of the property at the transferor's death.
3. A proceeding to enforce the liability under this section ~~must~~may not be commenced ~~not~~ later than eighteen months after the transferor's death. Any proceeding to enforce the liability as to property that has been purchased or encumbered for value must be brought against the person that received the property by a transfer on death deed for the net value at the time of the transferor's death.

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