

FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2291

Introduced by

Senators Dwyer, Sickler, Larson, Weston

Representatives Hanson, Klemin

1 A BILL for an Act to create and enact two new sections to chapter 30.1-28 and two new sections
2 to chapter 30.1-29 of the North Dakota Century Code, relating to removal, resignation and
3 death of a guardian, notices in a guardianship, notices in a conservatorship, and confidentiality
4 of reports; to amend and reenact subsection 1 of section 23-12-13, subsection 1 of section
5 25-03.1-18.1, subsection 1 of section 27-20.1-17, sections 30.1-01-06 and 30.1-28-03.1,
6 subsection 3 of section 30.1-28-03.2, section 30.1-28-04, subsection 1 of section 30.1-28-05,
7 section 30.1-28-07, subsection 1 of section 30.1-28-09, sections 30.1-28-10.1, 30.1-28-12,
8 30.1-28-12.1, 30.1-28-12.2, and 30.1-29-05, subsection 6 of section 30.1-29-07, subsection 2 of
9 section 30.1-29-08, sections 30.1-29-13 and 30.1-29-18, subsection 3 of section 30.1-29-19,
10 subsection 1 of section 30.1-29-20.1, subsection 2 of section 30.1-29-22, and subsection 5 of
11 section 30.1-29-25 of the North Dakota Century Code, relating to incapacitated persons, court-
12 authorized involuntary treatment, guardianship of a child, guardianship of an incapacitated
13 person, and protection of property of persons under disability and minors; and to repeal
14 sections 30.1-26-01, 30.1-28-08, and 30.1-28-15 of the North Dakota Century Code, relating to
15 visitors in a guardianship proceeding and appointment of successor guardians.

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

17 **SECTION 1. AMENDMENT.** Subsection 1 of section 23-12-13 of the North Dakota Century
18 Code is amended and reenacted as follows:

19 1. Informed consent for health care for a minor patient or a patient who is determined by
20 a physician, psychiatrist, or psychologist to be an incapacitated person, as defined in
21 ~~subsection 2 of section 30.1-26-01~~30.1-01-06, and unable to consent may be obtained
22 from a person authorized to consent on behalf of the patient. Persons in the following

1 classes and in the following order of priority may provide informed consent to health
2 care on behalf of the patient:

- 3 a. The individual, if any, to whom the patient has given a durable power of attorney
4 that encompasses the authority to make health care decisions, unless a court of
5 competent jurisdiction specifically authorizes a guardian to make medical
6 decisions for the incapacitated person;
- 7 b. The appointed guardian or custodian of the patient, if any;
- 8 c. The patient's spouse who has maintained significant contacts with the
9 incapacitated person;
- 10 d. Children of the patient who are at least eighteen years of age and who have
11 maintained significant contacts with the incapacitated person;
- 12 e. Parents of the patient, including a stepparent who has maintained significant
13 contacts with the incapacitated person;
- 14 f. Adult brothers and sisters of the patient who have maintained significant contacts
15 with the incapacitated person;
- 16 g. Grandparents of the patient who have maintained significant contacts with the
17 incapacitated person;
- 18 h. Grandchildren of the patient who are at least eighteen years of age and who
19 have maintained significant contacts with the incapacitated person; or
- 20 i. A close relative or friend of the patient who is at least eighteen years of age and
21 who has maintained significant contacts with the incapacitated person.

22 **SECTION 2. AMENDMENT.** Subsection 1 of section 25-03.1-18.1 of the North Dakota
23 Century Code is amended and reenacted as follows:

- 24 1. a. Upon notice and hearing, a tier 1b mental health professional may request
25 authorization from the court to treat an individual under a mental health treatment
26 order, or an individual voluntarily admitted to a public treatment facility under
27 section 25-03.1-04, with prescribed medication. The request may be considered
28 by the court in an involuntary treatment hearing. As a part of the request, a
29 psychiatrist or a final year psychiatric resident physician not involved in the
30 current diagnosis or treatment of the patient shall certify:

- 1 (1) That the proposed prescribed medication is clinically appropriate and
- 2 necessary to effectively treat the patient and that the patient is a person
- 3 requiring treatment;
- 4 (2) That the patient was offered that treatment and refused it or that the patient
- 5 lacks the capacity to make or communicate a responsible decision about
- 6 that treatment;
- 7 (3) That prescribed medication is the least restrictive form of intervention
- 8 necessary to meet the treatment needs of the patient; and
- 9 (4) That the benefits of the treatment outweigh the known risks to the patient.
- 10 b. The court shall inquire whether the patient has had a sufficient opportunity to
- 11 adequately prepare to meet the issue of involuntary treatment with prescribed
- 12 medication and, at the request of the patient, the court may continue the
- 13 involuntary treatment hearing for a period not exceeding seven days or may
- 14 appoint an independent expert examiner as provided in subsection 4.

15 **SECTION 3. AMENDMENT.** Subsection 1 of section 27-20.1-17 of the North Dakota
16 Century Code is amended and reenacted as follows:

- 17 1. An order appointing or reappointing a guardian under this chapter is effective for up to
- 18 one year unless the court, upon a finding of good cause, sets a different time frame.
- 19 An order may not be effective for more than three years. At least sixty days before the
- 20 expiration of the initial order of appointment or any following order of reappointment,
- 21 the court shall request and consider information submitted by the guardian, the child, if
- 22 fourteen years of age or older, the child's attorney, if any, the child's parents, and any
- 23 interested persons regarding whether the need for a guardianship continues to exist.
- 24 The court, at its discretion, may appoint a guardian ad litem in accordance with section
- 25 27-20.1-08, before the hearing. The court shall hold a hearing on whether the
- 26 guardianship should continue. Following the hearing and consideration of submitted
- 27 information, the court may:
 - 28 a. Terminate the guardianship if shown by clear and convincing evidence that the
 - 29 circumstances that led to the guardianship no longer exist;
 - 30 b. Reappoint the guardian for up to three years; or
 - 31 c. Appoint a new guardian.

1 The court may extend a guardianship up to ninety days past the expiration of the initial
2 order, for good cause shown, if the hearing cannot be held before the expiration of the
3 order. If the court extends an initial order for guardianship, new letters of guardianship
4 must be issued reflecting the extended expiration date.

5 **SECTION 4. AMENDMENT.** Section 30.1-01-06 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **30.1-01-06. (1-201) General definitions.**

8 Subject to additional definitions contained in the subsequent chapters which are applicable
9 to specific chapters, and unless the context otherwise requires, in this title:

- 10 1. "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney,
11 an individual authorized to make decisions concerning another's health care, and an
12 individual authorized to make decisions for another under a natural death act.
- 13 2. "Alternative resource plan" means an alternative plan to guardianship which uses
14 available support services and arrangements acceptable to the alleged incapacitated
15 person. The term includes the use of support services such as visiting nurses,
16 homemakers, home health aides, personal care attendants, adult day care, home and
17 community-based care, human service zones, developmental disability services,
18 powers of attorney, durable powers of attorney, health care directives, supported
19 decisionmaking, representative and protective payees, and licensed congregate care
20 facilities.
- 21 3. "Application" means a written request to the court for an order of informal probate or
22 appointment under chapter 30.1-14.
- 23 ~~3.4.~~ "Augmented estate" means the estate described in section 30.1-05-02.
- 24 ~~4.5.~~ "Beneficiary", as it relates to a trust beneficiary, includes a person who has any
25 present or future interest, vested or contingent, and also includes the owner of an
26 interest by assignment or other transfer; as it relates to a charitable trust, includes any
27 person entitled to enforce the trust; as it relates to a beneficiary of a beneficiary
28 designation, refers to a beneficiary of an account with a payable on death designation,
29 of a security registered in beneficiary form transferable on death, or other nonprobate
30 transfer at death; and, as it relates to a "beneficiary designated in a governing
31 instrument", includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary

- 1 of a beneficiary designation, a donee, or a person in whose favor a power of attorney
2 or a power held in any individual, fiduciary, or representative capacity is exercised.
- 3 ~~5-6.~~ "Beneficiary designation" refers to a governing instrument naming a beneficiary of an
4 account with payable on death designation, of a security registered in beneficiary form
5 transferable on death, or other nonprobate transfer at death.
- 6 ~~6-7.~~ "Child" includes an individual entitled to take as a child under this title by intestate
7 succession from the parent whose relationship is involved and excludes a person who
8 is only a stepchild, a foster child, a grandchild, or any more remote descendant.
- 9 ~~7-8.~~ "Claims", in respect to estates of decedents and protected persons, includes liabilities
10 of the decedent or protected person whether arising in contract, in tort, or otherwise,
11 and liabilities of the estate which arise at or after the death of the decedent or after the
12 appointment of a conservator, including funeral expenses and expenses of
13 administration. The term does not include estate or inheritance taxes or demands or
14 disputes regarding title of a decedent or protected person to specific assets alleged to
15 be included in the estate.
- 16 ~~8-9.~~ "Conservator" means a person who is appointed by a court to manage the estate of a
17 protected person, and includes limited conservators as defined in this section.
- 18 ~~9-10.~~ "Court" means the court having jurisdiction in matters relating to the affairs of
19 decedents.
- 20 ~~10-11.~~ "Descendant" of an individual means all descendants of all generations, with the
21 relationship of parent and child at each generation being determined by the definition
22 of child and parent contained in this title.
- 23 ~~11-12.~~ "Devise", when used as a noun, means a testamentary disposition of real or personal
24 property, and when used as a verb, means to dispose of real or personal property by
25 will.
- 26 ~~12-13.~~ "Devisee" means a person designated in a will to receive a devise. In the case of a
27 devise to an existing trust or trustee, or to a trustee or trust described by will, the trust
28 or trustee is the devisee and the beneficiaries are not devisees.
- 29 ~~13-14.~~ "Disability" means cause for a protective order as described in section 30.1-29-01.
- 30 ~~14-15.~~ "Distributee" means any person who has received property of a decedent from the
31 decedent's personal representative other than as a creditor or purchaser. A

- 1 testamentary trustee is a distributee only to the extent of distributed assets or
2 increment thereto remaining in the trustee's hands. A beneficiary of a testamentary
3 trust to whom the trustee has distributed property received from a personal
4 representative is a distributee of the personal representative. For the purposes of this
5 provision, "testamentary trustee" includes a trustee to whom assets are transferred by
6 will to the extent of the devised assets.
- 7 ~~15-16.~~ "Estate" includes the property of the decedent, trust, or other person whose affairs are
8 subject to this title as originally constituted and as it exists from time to time during
9 administration.
- 10 ~~16-17.~~ "Exempt property" means that property of a decedent's estate which is described in
11 section 30.1-07-01.
- 12 ~~17-18.~~ "Expert examiner" means:
- 13 a. A licensed physician;
- 14 b. A psychiatrist;
- 15 c. A licensed psychologist trained in a clinical program;
- 16 d. An advanced practice registered nurse who is licensed under chapter 43-12.1
17 within the role of a certified nurse practitioner or certified clinical nurse specialist,
18 who has completed the requirements for a minimum of a master's degree from an
19 accredited program, and who is functioning within the scope of practice in one of
20 the population foci as approved by the state board of nursing; or
- 21 e. A physician assistant who is licensed under chapter 43-17 and authorized by the
22 state board of medical examiners to practice in this state.
- 23 ~~18-19.~~ "Fiduciary" includes a personal representative, guardian, conservator, and trustee.
- 24 ~~19-20.~~ "Foreign personal representative" means a personal representative appointed by
25 another jurisdiction.
- 26 ~~20-21.~~ "Formal proceedings" means proceedings conducted before a judge with notice to
27 interested persons.
- 28 ~~21-22.~~ "Governing instrument" means a deed, will, trust, insurance or annuity policy, account
29 with payable on death designation, security registered in beneficiary form transferable
30 on death, pension, profit-sharing, retirement, or similar benefit plan, instrument

1 creating or exercising a power of appointment or a power of attorney, or a dispositive,
2 appointive, or nominative instrument of any similar type.

3 ~~22-23.~~ "Guardian" means a person who or nonprofit corporation that has qualified as a
4 guardian of a minor or incapacitated person pursuant to testamentary or court
5 appointment, and includes limited guardians as defined in this section, but excludes
6 one who is merely a guardian ad litem.

7 ~~23-24.~~ "Heirs", except as controlled by section 30.1-09.1-11, means persons, including the
8 surviving spouse and the state, who are entitled under the statutes of intestate
9 succession to the property of a decedent.

10 ~~24-25.~~ "Incapacitated person" means ~~an individual described in section 30.1-26-04~~any adult
11 individual who is impaired by reason of mental illness, mental deficiency, physical
12 illness or disability, or chemical dependency to the extent that the individual lacks
13 capacity to make or communicate responsible decisions concerning the individual's
14 matters of residence, education, medical treatment, legal affairs, vocation, finance, or
15 other matters, or if the incapacity endangers the individual's health or safety.

16 ~~25-26.~~ "Informal proceedings" means those conducted by the court for probate of a will or
17 appointment of a personal representative without notice to interested persons.

18 ~~26-27.~~ "Interested person" includes ~~heirs;~~

19 a. Except as provided under section b:

20 (1) Heirs and devisees, ~~children, spouses, creditors, beneficiaries, and any~~
21 ~~others;~~

22 (2) Children;

23 (3) Spouses;

24 (4) Creditors;

25 (5) Beneficiaries;

26 (6) Any individual having a property right in or claim against a trust estate or the
27 estate of a decedent, ward, or protected person.~~The term also includes~~
28 ~~persons;~~

29 (7) Person having priority for appointment as personal representative; and ~~other~~

30 (8) Other fiduciaries representing interested persons.

31 b. For purposes of guardianships and conservatorships:

- 1 (1) The petitioner for appointment of the guardian;
- 2 (2) The spouse, parent, adult children, or siblings of the ward, protected person,
- 3 or an adult relative if a spouse, parent, adult child, sibling, or protected
- 4 person cannot be found;
- 5 (3) An adult individual who has lived with a ward or a protected person for a
- 6 period of more than six months;
- 7 (4) An attorney for the ward or protected person;
- 8 (5) A representative payee for the ward or protected person; and
- 9 (6) Any other person designated by the court.

10 The meaning as it relates to particular persons may vary from time to time and must
11 be determined according to the particular purposes of, and matter involved in, any
12 proceeding.

13 ~~27-28.~~ "Issue" of a person an individual means descendant as defined in subsection 4011.

14 ~~28-29.~~ "Joint tenants with the right of survivorship" and "community property with the right of
15 survivorship" includes co-owners of property held under circumstances that entitle one
16 or more to the whole of the property on the death of the other or others, but excludes
17 forms of co-ownership registration in which the underlying ownership of each party is
18 in proportion to that party's contribution.

19 ~~29-30.~~ "Lease" includes an oil, gas, or other mineral lease.

20 ~~30-31.~~ "Least restrictive form of intervention" includes only the limitations necessary to
21 provide the needed care and services for a guardianship, and the ward must enjoy the
22 greatest amount of personal freedom and civil liberties consistent with the ward's
23 mental and physical limitations.

24 ~~32.~~ "Letters" includes letters testamentary, letters of guardianship, letters of administration,
25 and letters of conservatorship.

26 ~~31-33.~~ "Limited conservator" means a person or nonprofit corporation, appointed by the court,
27 to manage only those financial resources specifically enumerated by the court for the
28 person with limited capacity and includes limited conservators as described by section
29 30.1-29-20.

Sixty-ninth
Legislative Assembly

- 1 ~~32-34.~~ "Limited guardian" means a person or nonprofit corporation, appointed by the court, to
2 supervise certain specified aspects of the care of a person with limited capacity and
3 includes limited guardians as described by section 30.1-28-04.
- 4 ~~33-35.~~ "Minor" means a person who is under eighteen years of age.
- 5 ~~34-36.~~ "Mortgage" means any conveyance, agreement, or arrangement in which property is
6 encumbered or used as security.
- 7 ~~35-37.~~ "Nonresident decedent" means a decedent who was domiciled in another jurisdiction
8 at the time of death.
- 9 ~~36-38.~~ "Organization" means a corporation, limited liability company, government or
10 governmental subdivision or agency, business trust, estate, trust, partnership, joint
11 venture, association, or any other legal or commercial entity.
- 12 ~~37-39.~~ "Parent" includes any ~~person~~individual entitled to take, or who would be entitled to
13 take if the child died without a will, as a parent under this title, by intestate succession
14 from the child whose relationship is in question and excludes any person who is only a
15 stepparent, foster parent, or grandparent.
- 16 ~~38-40.~~ "Payer" means a trustee, insurer, business entity, employer, government,
17 governmental agency or subdivision, or any other person authorized or obligated by
18 law or a governing instrument to make payments.
- 19 ~~39-41.~~ "Person" means an individual, a corporation, a limited liability company, an
20 organization, or other legal entity.
- 21 ~~40.~~ "~~Person with limited capacity~~" is as defined in section ~~30.1-26-01~~.
- 22 ~~41-42.~~ "Personal representative" includes executor, administrator, successor personal
23 representative, special administrator, and persons who perform substantially the same
24 function under the law governing their status. "General personal representative"
25 excludes special administrator.
- 26 ~~42-43.~~ "Petition" means a written request to the court for an order after notice.
- 27 ~~43-44.~~ "Proceeding" includes action at law and suit in equity.
- 28 ~~44-45.~~ "Property" includes both real and personal property or any interest therein and means
29 anything that may be the subject of ownership.

- 1 ~~45-46.~~ "Protected person" ~~is as defined in section 30.1-26-04~~ means a minor or other
2 individual for whom a conservator or limited conservator has been appointed, or other
3 protective order has been made.
- 4 ~~46-47.~~ "Protective proceeding" means a proceeding described in section 30.1-26-04 under
5 section 30.1-29-01 to determine that an individual cannot effectively manage or apply
6 the individual's estate to necessary ends, either because the individual lacks the ability
7 or is otherwise inconvenienced, or because the individual is a minor, and to secure
8 administration of the individual's estate by a conservator or other appropriate relief.
- 9 ~~47-48.~~ "Record" means information that is inscribed on a tangible medium or that is stored in
10 an electronic or other medium and is retrievable in perceivable form.
- 11 ~~48-49.~~ "Refusal" means declining to accept prescribed mood stabilizer or antipsychotic
12 medication by a clear and unequivocal response.
- 13 50. "Security" includes any note, stock, treasury stock, bond, debenture, membership
14 interest in a limited liability company, evidence of indebtedness, certificate of interest
15 or participation in an oil, gas, or mining title or lease or in payments out of production
16 under such a title or lease, collateral trust certificate, transferable share, voting trust
17 certificate or, in general, any interest or instrument commonly known as a security, or
18 any certificate of interest or participation, any temporary or interim certificate, receipt,
19 or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of
20 the foregoing.
- 21 ~~49-51.~~ "Settlement", in reference to a decedent's estate, includes the full process of
22 administration, distribution, and closing.
- 23 ~~50-52.~~ "Sign" means, with present intent to authenticate or adopt a record other than a will, to
24 execute or adopt a tangible symbol or to attach to or logically associate with the record
25 an electronic symbol, sound, or process.
- 26 ~~51-53.~~ "Special administrator" means a personal representative as described by sections
27 30.1-17-14 through 30.1-17-18.
- 28 ~~52-54.~~ "State" means a state of the United States, the District of Columbia, the
29 Commonwealth of Puerto Rico, or any territory or insular possession subject to the
30 jurisdiction of the United States.

Sixty-ninth
Legislative Assembly

- 1 ~~53-55.~~ "Successor personal representative" means a personal representative, other than a
2 special administrator, who is appointed to succeed a previously appointed personal
3 representative.
- 4 ~~54-56.~~ "Successors" means persons, other than creditors, who are entitled to property of a
5 decedent under the decedent's will or this title.
- 6 ~~55-57.~~ "Supervised administration" refers to the proceedings described in chapter 30.1-16.
- 7 ~~56-58.~~ "Survive" means that an individual has neither predeceased an event, including the
8 death of another individual, nor predeceased an event under sections 30.1-04-04 and
9 30.1-09.1-02. The term includes its derivatives, such as "survives", "survived",
10 "survivor", and "surviving".
- 11 ~~57-59.~~ "Testacy proceeding" means a proceeding to establish a will or determine intestacy.
- 12 ~~58-60.~~ "Trust" includes an express trust, private or charitable, with additions thereto,
13 wherever and however created. The term also includes a trust created or determined
14 by judgment or decree under which the trust is to be administered in the manner of an
15 express trust. The term excludes other constructive trusts and excludes resulting
16 trusts, conservatorships, personal representatives, trust accounts as defined in
17 custodial arrangements pursuant to chapter 11-22, chapter 12-48, sections 25-01.1-19
18 to 25-01.1-21, chapter 32-10, section 32-16-37, chapter 32-26, former chapter 47-24,
19 chapter 47-24.1, business trusts providing for certificates to be issued to beneficiaries,
20 common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts
21 for the primary purpose of paying debts, dividends, interest, salaries, wages, profits,
22 pensions, or employee benefits of any kind, and any arrangement under which a
23 person is nominee or escrowee for another.
- 24 ~~59-61.~~ "Trustee" includes an original, additional, or successor trustee, whether or not
25 appointed or confirmed by court.
- 26 ~~60-62.~~ "Visitor" means an individual, in guardianship proceedings, who is trained in nursing,
27 social work, medical care, mental health care, or rehabilitation and is an employee or
28 special appointee of the court with no personal interest in the proceedings.
- 29 ~~61-63.~~ "Ward" means an individual described in section 30.1-26-04 for whom a guardian has
30 been appointed. A "minor ward" is a minor for whom a guardian has been appointed
31 solely because of minority.

1 ~~62-64.~~ "Will" includes codicil and any testamentary instrument that merely appoints an
2 executor, revokes or revises another will, nominates a guardian, or expressly excludes
3 or limits the right of an individual or class to succeed to property of the decedent
4 passing by intestate succession.

5 **SECTION 5. AMENDMENT.** Section 30.1-28-03.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **30.1-28-03.1. Confidentiality - Reports - Personal information.**

- 8 1. A written report prepared and submitted ~~under subsection 5 or 6 of section 30.1-28-03-~~
9 ~~is~~by a guardian ad litem, visitor, or expert examiner and annual and final reports and
10 financial accounting prepared and submitted by a guardian are closed to the public
11 and isare not open to inspection except by the court, parties to the proceeding or their
12 counsel, other persons for those purposes as the court may order for good cause, and
13 others authorized by court rule.
- 14 2. Medical, psychological, or other treatment information protected by federal law or
15 regulation and any financial account numbers related to a ward or proposed ward are
16 confidential and may not be disclosed except to parties to the proceeding, their
17 counsel, and others authorized by court rule. The court may permit access by other
18 persons for good cause.

19 **SECTION 6. AMENDMENT.** Subsection 3 of section 30.1-28-03.2 of the North Dakota
20 Century Code is amended and reenacted as follows:

- 21 3. The motion must be served upon ~~the ward, the ward's spouse, and all interested-~~
22 ~~person~~those identified in section 12 of this Act.

23 **SECTION 7. AMENDMENT.** Section 30.1-28-04 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **30.1-28-04. (5-304) Findings - Order of appointment.**

- 26 1. The court shall exercise the authority conferred in this chapter consistent with the
27 maximum self-reliance and independence of the incapacitated person and make
28 appointive and other orders only to the extent necessitated by the incapacitated
29 person's actual mental and adaptive limitations or other conditions warranting the
30 procedure.
- 31 2. At a hearing held under this chapter, the court shall:

- 1 a. Hear evidence that the proposed ward is an incapacitated person. Age,
2 eccentricity, poverty, or medical diagnosis alone is not sufficient to justify a finding
3 of incapacity;
- 4 b. Hear evidence and determine whether there are any existing general durable
5 powers of attorney and durable powers of attorney for health care. If there are
6 validly executed durable powers of attorney, the court shall consider the
7 appointed attorneys in fact and agents appointed thereunder when assessing
8 alternative resource plans and the need for a guardian; and
- 9 c. Appoint a guardian and confer specific powers of guardianship only after finding
10 in the record based on clear and convincing evidence that:
 - 11 (1) The proposed ward is an incapacitated person;
 - 12 (2) There is no available alternative resource plan that is suitable to safeguard
13 the proposed ward's health, safety, or habilitation which could be used
14 instead of a guardianship;
 - 15 (3) The guardianship is necessary as the best means of providing care,
16 supervision, or habilitation of the ward; and
 - 17 (4) The powers and duties conferred upon the guardian are appropriate as the
18 least restrictive form of intervention consistent with the ability of the ward for
19 self-care.
- 20 3. Except upon specific findings of the court, a ward may not be deprived of any of the
21 following legal rights: to vote, to seek to change marital status, or to obtain or retain a
22 motor vehicle operator's license.
- 23 4. The court may find that the ward retains other specific rights.
- 24 5. The order appointing a guardian confers upon the guardian only those powers and
25 duties specified in the order. In addition to any other powers conferred upon the
26 guardian, the court's order must state whether the guardian has no authority, general
27 authority, or limited authority to make decisions on behalf of the ward in each of the
28 areas of residential, educational, medical, legal, vocational, and financial
29 decisionmaking. A grant of limited authority must specify the limitations upon the
30 authority of the guardian or the authority retained by the ward. The court's order must
31 require the guardian to provide within ninety days from the date of the order a

1 beginning inventory of all assets owned by the ward or in which the ward has an
2 interest. The guardian shall provide a copy of the beginning inventory to ~~the ward and~~
3 ~~any interested persons designated by the court in its order~~those identified in
4 section 12 of this Act. Unless terminated earlier by the court, an order appointing or
5 reappointing a guardian under this section is effective for up to five years. At least
6 ninety days before the expiration of the initial order of appointment or any following
7 order of reappointment, the court shall request and consider information submitted by
8 the guardian, ward, ward's attorney, if any, and any interested persons regarding
9 whether the need for a guardian continues to exist. If it is recommended that the
10 guardianship continue, the court may appoint a guardian ad litem ~~or~~ visitor, or ~~both~~all,
11 in accordance with section 30.1-28-03. The court shall hold a hearing on whether the
12 guardianship should continue. Following the hearing and consideration of submitted
13 information, the court may reappoint the guardian for up to another five years, allow
14 the existing order to expire, or appoint a new guardian in accordance with this section.
15 If a review hearing cannot be held before the expiration of an initial order for
16 guardianship, the court may extend the initial order for up to an additional ninety days
17 upon good cause shown. New letters of guardianship must be issued reflecting the
18 extended expiration date. The supreme court, by rule or order, shall provide for the
19 regular review of guardianship in existence on August 1, 2015.

- 20 6. Unless a court of competent jurisdiction determines otherwise, a durable power of
21 attorney for health care executed pursuant to chapter 23-06.5 takes precedence over
22 any authority to make medical decisions granted to a guardian pursuant to chapter
23 30.1-28.
- 24 7. The court may require a guardian to furnish a bond in the amount and with sureties as
25 the court specifies.
- 26 8. After the hearing, the guardian ad litem, visitor, and expert examiner must be
27 discharged of ~~the person's~~their duties as ~~guardian ad litem~~.

28 **SECTION 8. AMENDMENT.** Subsection 1 of section 30.1-28-05 of the North Dakota
29 Century Code is amended and reenacted as follows:

- 30 1. By accepting appointment, a guardian submits personally to the jurisdiction of the
31 court in any proceeding relating to the guardianship that may be instituted by any

1 interested person. Notice of any proceeding so instituted must be served upon the
2 guardian by the petitioner.

3 **SECTION 9. AMENDMENT.** Section 30.1-28-07 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **30.1-28-07. (5-307) Removal or resignation of guardian - Change in or termination of**
6 **guardianship.**

7 1. ~~On petition of the ward or any person interested in the ward's welfare, the court may~~
8 ~~remove a guardian and appoint a successor if in the best interests of the ward. On~~
9 ~~petition of the guardian, the court may accept the guardian's resignation and make any~~
10 ~~other order which may be appropriate.~~

11 2. The ward or any person interested in the ward's welfare may petition for an order that
12 the ward is no longer incapacitated or no longer incapacitated to the same extent as
13 the ward was when the original guardianship order was made or last reviewed by the
14 court, or that the duties and authority of the guardian require modification, ~~and for~~
15 ~~removal or resignation of the guardian, termination of the guardianship,~~ or change in
16 the duties and authority of the guardian. A request for this order may be made by
17 informal letter to the court or judge. The clerk of district court shall send a copy of the
18 informal request to the parties and those identified in section 12 of this Act. Any person
19 who knowingly interferes with transmission of this kind of request to the court or judge
20 may be adjudged guilty of contempt of court.

21 ~~3.2.~~ Before ~~removing a guardian,~~ changing the guardian's duties and authority, accepting
22 the resignation of a guardian, or on finding that the ward is no longer incapacitated, or
23 no longer incapacitated to the same extent and ordering the guardianship terminated
24 or modified, the court, following the same procedures to safeguard the rights of the
25 ward as apply to a petition for appointment of a guardian, may send a visitor to the
26 place where the ward resides or is detained, to observe conditions and report in
27 writing to the court.

28 ~~4.3.~~ A hearing must be held no later than sixty days following the filing of the petition or
29 informal request, unless good cause is shown. Following the hearing, the court shall
30 make written findings of fact. Before terminating or modifying the guardianship, the
31 court shall find by a preponderance of the evidence that the ward is no longer

1 incapacitated, no longer incapacitated to the same extent as the ward was when the
2 original guardianship order was made or last reviewed by the court, or that it is in the
3 best interests of the ward that the duties and authority of the guardian be modified.
4 New letters of guardianship must be issued to the guardian in the same manner as
5 provided in section 30.1-28-05.

6 ~~5.4.~~ In deciding whether to terminate or modify a guardianship, the court may require a
7 report by and consider the recommendations of an expert examiner.

8 ~~6.~~ If the guardian dies, or if on the basis of a petition filed under this section or a report or
9 other information, there is probable cause to believe a guardian is not performing the
10 guardian's duties effectively and there is an imminent danger the ward's physical,
11 mental, or emotional health or safety will be seriously impaired, the court shall take
12 whatever action is necessary to protect the ward, including dismissal of the guardian
13 and appointment of an emergency guardian as provided in section 30.1-28-10.1.

14 ~~7.5.~~ On termination of the guardianship, a guardian shall file a final report and accounting
15 and provide a copy of the report and accounting to those given notice under section
16 ~~30.1-28-09~~12 of this Act. The report and accounting must be filed with the clerk of
17 district court. The filing of the report and accounting does not constitute the court's
18 approval of the report and accounting. The court may approve a report and settle and
19 allow an accounting only upon notice to the ward and other interested persons who
20 ~~have made an appearance or requested notice of the proceedings to those identified in~~
21 section 12 of this Act.

22 **SECTION 10.** A new section to chapter 30.1-28 of the North Dakota Century Code is
23 created and enacted as follows:

24 **Removal, resignation, or death of guardian - Appointment of successor guardian.**

- 25 1. The court may remove a guardian on its own motion or on petition of the ward or any
26 interested person if removal is in the best interests of the ward. A request for this order
27 may be made by informal letter to the court or judge. The clerk of district court shall
28 send a copy of the informal request to the parties and those identified in section 12 of
29 this Act. Any person that knowingly interferes with the transmission of a request under
30 this section may be adjudged guilty of contempt of court.
31 2. The court may accept the resignation of a guardian upon petition by the guardian.

- 1 3. Upon the death of a guardian, the personal representative of the guardian shall submit
2 a final report and accounting to the court. Upon removal or resignation of the guardian,
3 the guardian shall submit a final report and accounting to the court. The report and
4 accounting must be filed with the clerk of district court. The filing of the report and
5 accounting does not constitute the court's approval of the report and accounting. The
6 court may approve a report and settle and allow an accounting only upon notice to
7 those identified in section 12 of this Act.
- 8 4. A hearing must be held no later than sixty days following the filing of the petition or
9 informal request, unless good cause is shown. Following the hearing, the court shall
10 make written findings of fact and conclusions of law.
- 11 5. Upon the removal, resignation, or death of a guardian, the court, upon the court's own
12 motion or upon a motion filed by any interested person, may appoint a successor
13 guardian or make any other appropriate order.
- 14 6. A notice of motion must accompany the motion for appointment of successor guardian
15 and must include a statement that provides an opportunity for hearing if requested in
16 regard to the appointment of a successor guardian. The notice of motion and motion
17 must be served on those identified in section 12 of this Act.
- 18 7. If a hearing is not requested by or on behalf of the ward listed in the notice, the court
19 may sign an order appointing a successor guardian for that ward.

20 **SECTION 11. AMENDMENT.** Subsection 1 of section 30.1-28-09 of the North Dakota
21 Century Code is amended and reenacted as follows:

- 22 1. In a proceeding for the appointment ~~or removal~~ of a guardian ~~or for an alteration or~~
23 ~~termination of a guardianship other than~~ and, if notice is required, for the appointment
24 of an emergency guardian ~~or for the temporary suspension of a guardian~~, notice of
25 hearing shall be given by the petitioning party, unless otherwise directed by the court,
26 to each of the following:
 - 27 a. The ward or the proposed ward and the ward's or proposed ward's spouse,
28 parents, and adult children;
 - 29 b. Any person, corporation, or institution who is serving as the ward's guardian,
30 attorney in fact, representative payee for public benefits, or conservator, or who
31 has the ward's care and custody;

- 1 c. If no other person is notified under subdivision a, then the adult siblings and any
2 adult with whom the proposed ward resides in a private residence, or if none can
3 be found, any known adult relative; and
- 4 d. The attorney for the proposed ward, the visitor, and the expert examiner, together
5 with a copy of the respective order of appointment for each.

6 **SECTION 12.** A new section to chapter 30.1-28 of the North Dakota Century Code is
7 created and enacted as follows:

8 **Notices in guardianship proceedings subsequent to appointment.**

9 Notice in a guardianship proceeding subsequent to appointment of a guardian must be
10 given to the parties, the conservator, if any, the ward, and any interested persons designated in
11 the order of the court.

12 **SECTION 13. AMENDMENT.** Section 30.1-28-10.1 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **30.1-28-10.1. Emergency guardian.**

- 15 1. On petition by a person interested in the alleged incapacitated individual's welfare, the
16 court may appoint an emergency guardian if the court finds that compliance with the
17 procedures of this chapter likely will result in substantial harm to the alleged
18 incapacitated individual's health, safety, or welfare, and that no other person appears
19 to have authority and willingness to act in the circumstances. The court may appoint
20 the guardian for a specified period of time, not to exceed ninety days. Immediately
21 upon receipt of the petition for an emergency guardianship, the court shall appoint a
22 guardian ad litem to advocate for the best interests of the alleged incapacitated
23 individual in the proceeding and any subsequent proceeding. ~~Except as otherwise-~~
24 ~~provided in subsection 2, reasonable notice of the time and place of a hearing on the~~
25 ~~petition must be given to the alleged incapacitated individual, the individual's spouse, if~~
26 ~~any, and any other person as the court directs~~The court shall hold a hearing within
27 ten days of the filing of the petition to determine if appointment of an emergency
28 guardian is appropriate.
- 29 2. An emergency guardian may be appointed without notice to the alleged incapacitated
30 individual and the alleged incapacitated individual's guardian ad litem only if the court
31 finds from affidavit or other sworn testimony that the alleged incapacitated individual

1 will be substantially harmed before a hearing on the appointment can be held. If the
2 court appoints an emergency guardian without notice to the alleged incapacitated
3 individual, the alleged incapacitated individual and the individual's spouse, if any, and
4 any other person the court directs must be given notice of the appointment within forty-
5 eight hours after the appointment. The court shall hold a hearing on the
6 appropriateness of the appointment within ten days after the appointment.

7 3. If a conservator has not been appointed for the alleged incapacitated individual and
8 the emergency guardian has authority for financial decisionmaking, the court's order of
9 appointment must state that the guardian shall safeguard any assets held by the
10 alleged incapacitated individual and, during the period of appointment and subject to
11 any further order of the court, may expend the individual's assets only for the
12 necessary support and care of the individual.

13 4. Appointment of an emergency guardian, with or without notice, is not a determination
14 of the alleged incapacitated individual's incapacity.

15 5. The court may remove an emergency guardian at any time. An emergency guardian
16 shall make any report the court requires. In all other respects, the provisions of this
17 chapter concerning guardians apply to an emergency guardian.

18 6. The petitioner may request the court extend the emergency order for up to an
19 additional ninety days upon good cause shown. The request must be filed with the
20 court at least fourteen days before the expiration of the emergency order and served
21 on the alleged incapacitated individual, the individual's spouse, if any, and any other
22 persons as the court directs. The court shall hold a hearing on the appropriateness of
23 the extension within ten days of the request. No additional extensions of the
24 emergency guardianship may be granted.

25 **SECTION 14. AMENDMENT.** Section 30.1-28-12 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **30.1-28-12. (5-312) General powers and duties of guardian.**

- 28 1. A guardian of an incapacitated person has only the powers and duties specified by the
29 court.
- 30 2. To the extent that it is consistent with the terms of an order by a court of competent
31 jurisdiction, the guardian is entitled to custody of the person of the ward and may

1 establish the ward's place of residence within or without this state. However, no
2 guardian may voluntarily admit a ward to a mental health facility or state institution for
3 a period of more than forty-five days without a mental health commitment proceeding
4 or other court order. Notwithstanding the other provisions of this subsection, the
5 guardian may readmit a ward to a mental health facility or a state institution within sixty
6 days of discharge from that institution, if the original admission to the facility or
7 institution had been authorized by the court.

8 3. If entitled to custody of the ward, the guardian should make provision for the care,
9 comfort, and maintenance of the ward and, whenever appropriate, arrange for the
10 ward's training, education, or habilitative services. The guardian shall take reasonable
11 care of the ward's clothing, furniture, vehicles, and personal effects.

12 4. Notwithstanding general or limited authority to make medical decisions on behalf of
13 the ward, no guardian may consent to psychosurgery, abortion, sterilization, or
14 experimental treatment of any kind unless the procedure is first approved by order of
15 the court.

16 5. When exercising the authority granted by the court, the guardian shall safeguard the
17 civil rights and personal autonomy of the ward to the fullest extent possible by:

- 18 a. Meeting with the ward following the hearing, unless the ward is represented by
19 an attorney, and explaining to the fullest extent possible the contents of the
20 court's order and the extent of the guardian's authority;
- 21 b. Involving the ward as fully as is practicable in making decisions with respect to
22 the ward's living arrangements, health care, and other aspects of the ward's care;
23 and
- 24 c. Ensuring the ward's maximum personal freedom by using the least restrictive
25 forms of intervention and only as necessary for the safety of the ward or others.

26 6. If no conservator for the estate of the ward has been appointed and if the guardian
27 has been granted authority to make financial decisions on behalf of the ward, the
28 guardian shall:

- 29 a. Institute proceedings to compel any person under a duty to support the ward or to
30 pay sums for the welfare of the ward to perform that duty.

- 1 b. Receive money and tangible property deliverable to the ward and apply the
2 money and property for support, care, and education of the ward; but, the
3 guardian may not use funds from the ward's estate for room and board which the
4 guardian or the guardian's spouse, parent, or child have furnished the ward
5 unless a charge for the service is approved by order of the court made upon
6 notice to ~~at least one of the next of kin of the ward, if notice is possible~~those
7 identified in section 12 of this Act. The guardian shall exercise care to conserve
8 any excess for the ward's needs.
- 9 c. Move the court under section 30.1-28-03.2 for authority to sell, mortgage, or
10 otherwise encumber or transfer ownership or beneficiary of:
- 11 (1) The real property of the ward; or
- 12 (2) The personal property of the ward valued over two thousand five hundred
13 dollars upon such terms as the court may order, for the purpose of paying
14 the ward's debts; providing for the care, maintenance, rehabilitation,
15 training, or education of the ward or the ward's dependents; or for any other
16 purpose which is in the best interests of the ward. The sale, mortgage, or
17 other encumbrance or transfer of ownership of personal property of the
18 ward valued at two thousand five hundred dollars or less does not require a
19 court order.
- 20 d. Move the court under section 30.1-28-03.2 for authority to lease the real or
21 personal property of the ward.
- 22 e. A guardian may not purchase, lease, or obtain ownership or become the
23 beneficiary of property of the ward unless the price and manner of the sale are
24 approved by the court.
- 25 7. If a conservator has been appointed, all of the ward's estate received by the guardian
26 in excess of those funds expended to meet current expenses for support, care, and
27 education of the ward must be paid to the conservator for management as provided in
28 this title, and the guardian must account to the conservator for funds expended.
- 29 8. A guardian shall file an annual report with the court regarding the exercise of powers
30 and duties in areas of authority specified in the court's order of appointment. The
31 report must describe the status or condition of the ward, including any change of

1 residence and reasons for the change, any medical treatment received by or withheld
2 from the ward, any expenditure and income affecting the ward, any sale or transfer of
3 property affecting the ward, and any exercise of legal authority by the guardian
4 affecting the ward. The report must include changes that have occurred since the
5 previous reporting period and an accounting of the ward's estate. The guardian also
6 shall report whether the ward continues to require guardianship and whether any
7 powers of the guardian should be increased or limited. The report must be filed with
8 the clerk of district court. The filing of the report does not constitute an adjudication or
9 a determination of the merits of the report nor does the filing of the report constitute
10 the court's approval of the report. The court may approve a report and allow and settle
11 an accounting only upon notice to the ward's guardian ad litem and other interested
12 persons who have made an appearance or requested notice of proceedings. The
13 office of the state court administrator shall provide printed forms that may be used to
14 fulfill reporting requirements. Any report must be similar in substance to the state court
15 administrator's form. The forms must be available in the office of clerk of district court
16 or obtainable through the supreme court's internet website.

17 9. Copies of the guardian's annual report to the court and of any other reports required
18 by the court must be mailed to ~~the ward and any interested persons designated by the~~
19 ~~court in its order~~those identified in section 12 of this Act. The ward's copy must be
20 accompanied by a statement, printed with not less than double-spaced twelve-point
21 type, of the ward's right to seek alteration, limitation, or termination of the guardianship
22 at any time.

23 10. The guardian is entitled to receive reasonable sums for services and for room and
24 board furnished to the ward as approved by the court or as agreed upon between the
25 guardian and the conservator, provided the amounts agreed upon are reasonable
26 under the circumstances. The guardian may request the conservator to expend the
27 ward's estate by payment to third persons or institutions for the ward's care and
28 maintenance.

29 11. A guardian has a fiduciary duty to the ward and may be held liable for a breach of that
30 duty.

1 12. A guardian is not liable for the acts of the ward, unless the guardian is grossly
2 negligent as defined in section 1-01-17.

3 13. A guardian is not required to expend personal funds on behalf of the ward solely by
4 reason of the guardian relationship.

5 **SECTION 15. AMENDMENT.** Section 30.1-28-12.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **30.1-28-12.1. Annual reports and accounts - Failure of guardian to file.**

8 If a guardian fails to file an annual report as required by section 30.1-28-12, fails to file a
9 report at other times as the court may direct, or fails to provide an accounting of an estate, the
10 court, upon its own motion or upon petition of any interested ~~party~~ person, may issue an order
11 compelling the guardian to show cause why the guardian should not immediately make and file
12 the report or account, or be found in contempt for failure to comply.

13 **SECTION 16. AMENDMENT.** Section 30.1-28-12.2 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **30.1-28-12.2. Restrictions on visitation, communication, and interaction with the**
16 **ward - Removal of restriction.**

- 17 1. If it is in the best interests of the ward, a guardian may restrict visitation,
18 communication, and interaction with the ward.
- 19 2. A family member, friend, the ward, clergy member, attorney, agency charged with the
20 protection of vulnerable adults, or other interested person may move the court to
21 remove the restriction on visitation, communication, and interaction with the ward.
- 22 3. The motion must state:
- 23 a. The movant's relationship to the ward;
- 24 b. Whether the guardian is unreasonably or arbitrarily denying or restricting
25 visitation, communication, or interaction between the restricted party and the
26 ward; and
- 27 c. The facts supporting the movant's allegation that the guardian is unreasonably or
28 arbitrarily denying or restricting visitation, communication, or interaction between
29 the restricted party and the ward.
- 30 4. The movant shall serve the motion on ~~the guardian, the ward, the ward's spouse, and~~
31 ~~any other interested person~~ those identified in section 12 of this Act.

- 1 5. The court shall set a hearing on the motion and provide notice of the hearing to the
2 movant, ~~the guardian, the ward, the ward's spouse, and any other interested person~~
3 and those identified in section 12 of this Act.
- 4 6. The court shall take into consideration the ward's wishes, and may conduct an
5 in-camera interview with the ward and appoint a visitor or guardian ad litem.
- 6 7. If the court grants the motion for visitation, communication, or interaction, the court
7 may impose conditions on visitation, communication, and interaction between the
8 restricted party and the ward.
- 9 8. If the visitation, communication, or interaction is not in the best interests of the ward,
10 the court may prohibit visitation, communication, or interaction between the restricted
11 party and the ward.
- 12 9. The court may award reasonable costs and attorney's fees to the prevailing party if the
13 court finds:
- 14 a. The guardian unreasonably, arbitrarily, or in bad faith denied or restricted
15 visitation, communication, or interaction between the restricted party and the
16 ward; or
- 17 b. The motion was frivolous.
- 18 10. Costs and attorney's fees awarded against the guardian may not be paid from the
19 ward's estate.
- 20 11. If a movant for visitation, communication, and interaction states the ward's health is in
21 significant decline or the ward's death may be imminent, the court shall conduct an
22 emergency hearing on the motion as soon as practicable but not later than fourteen
23 days after the date the motion is filed or at a later date upon a showing of good cause.

24 **SECTION 17. AMENDMENT.** Section 30.1-29-05 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **30.1-29-05. (5-405) Notice.**

27 4. On a petition for appointment of a conservator or other protective order, the petitioning
28 party shall cause notice of the proceeding to be served personally on the person to be protected
29 and the spouse of the person to be protected or, if none, the parents of the person to be
30 protected, or any guardian or conservator, at least fourteen days before the date of hearing. If
31 none of these parties can be found, any government agency paying benefits to the person

1 sought to be protected, if the person seeking the appointment has knowledge of the existence
2 of these benefits, must be given notice in accordance with section 30.1-03-01.

3 ~~2. Notice of a petition for appointment of a conservator or other initial protective order,~~
4 ~~and of any subsequent hearing, must be given to any person who has filed a request~~
5 ~~for notice under section 30.1-29-06 and to interested persons and other persons as~~
6 ~~the court may direct. Except as otherwise provided in subsection 1, notice shall be~~
7 ~~given in accordance with section 30.1-03-01.~~

8 **SECTION 18.** A new section to chapter 30.1-29 of the North Dakota Century Code is
9 created and enacted as follows:

10 **Notices in conservatorship proceedings subsequent to appointment.**

11 Notice in a conservatorship proceeding subsequent to appointment of a conservator must
12 be given to the parties, the guardian, if any, the individual in need of protection, and any
13 interested persons designated by the court.

14 **SECTION 19. AMENDMENT.** Subsection 6 of section 30.1-29-07 of the North Dakota
15 Century Code is amended and reenacted as follows:

16 6. After hearing, upon finding that the appointment of a conservator or other protective
17 order is appropriate, the court shall make an appointment or other appropriate
18 protective order. The court, guardian ad litem, petitioner, or person to be protected
19 may subpoena the individual who prepared and submitted the report to appear, testify,
20 and be cross-examined. After the hearing, the guardian ad litem and expert examiner
21 must be discharged of their duties as guardian ad litem.

22 **SECTION 20.** A new section to chapter 30.1-29 of the North Dakota Century Code is
23 created and enacted as follows:

24 **Confidentiality - Reports - Personal information.**

25 1. A written report prepared and submitted by a guardian ad litem or expert examiner and
26 annual and final reports and financial accounting prepared and submitted by a
27 conservator are closed to the public and are not open to inspection except by the
28 court, parties to the proceeding or their counsel, other persons for those purposes as
29 the court may order for good cause, and others authorized by court rule.

30 2. Any medical, psychological, or other treatment information protected by federal law or
31 regulation, and any financial account numbers related to a protected person or

1 proposed protected person are confidential and may not be disclosed except to parties
2 to the proceeding, their counsel, and others authorized by court rule. The court may
3 permit access by other persons for good cause.

4 **SECTION 21. AMENDMENT.** Subsection 2 of section 30.1-29-08 of the North Dakota
5 Century Code is amended and reenacted as follows:

6 2. The court has the following powers which may be exercised directly or through a
7 conservator, subject to section 30.1-29-22, in respect to the estate and affairs of
8 protected persons:

9 a. While a petition for appointment of a conservator or other protective order is
10 pending and after preliminary hearing and without prior notice to others, the court
11 has power to preserve and apply the property of the person to be protected as
12 may be required for the benefit of the person to be protected or the benefit of the
13 dependents of the person to be protected.

14 b. After hearing and upon determining that a basis for an appointment or other
15 protective order exists with respect to a minor, the court has all those powers
16 over the estate and affairs of the minor which are or might be necessary for the
17 best interests of the minor, the minor's family, and members of the minor's
18 household.

19 c. After hearing and upon determining that appointment of a conservator or other
20 protective order is appropriate with respect to a person for reasons other than
21 minority, the court has, for the benefit of the person and members of the person's
22 household, all the powers over the person's estate and affairs which the person
23 could exercise if present and not under disability, except the power to make a will.
24 These powers include power to make gifts, to convey or release the person's
25 contingent and expectant interests in property, including marital property rights
26 and any right of survivorship incident to joint tenancy, to exercise or release the
27 person's powers as trustee, personal representative, custodian for minors,
28 conservator, or donee of a power of appointment, to enter into contracts, to
29 create revocable or irrevocable trusts of property of the estate which may extend
30 beyond the person's disability or life, to exercise options of the disabled person to
31 purchase securities or other property, to exercise the person's rights to elect

1 options and change beneficiaries under insurance and annuity policies and to
2 surrender the policies for their cash value, to exercise the person's right to an
3 elective share in the estate of the person's deceased spouse, and to renounce
4 any interest by testate or intestate succession or by inter vivos transfer.

5 d. The court may exercise or direct the exercise of its authority to exercise or
6 release powers of appointment of which the protected person is donee, to
7 renounce interests, to make gifts in trust or otherwise exceeding twenty percent
8 of any year's income of the estate, or to change beneficiaries under insurance
9 and annuity policies, only if satisfied, after notice to those identified in section 18
10 of this Act and hearing, that it is in the best interests of the protected person, and
11 that the protected person either is incapable of consenting or has consented to
12 the proposed exercise of power.

13 e. An order made pursuant to this section determining that appointment of a
14 conservator or other protective order is appropriate has no effect on the capacity
15 of the protected person.

16 **SECTION 22. AMENDMENT.** Section 30.1-29-13 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **30.1-29-13. (5-413) Acceptance of appointment - Consent to jurisdiction.**

19 By accepting appointment, a conservator submits personally to the jurisdiction of the court
20 in any proceeding, relating to the estate, that may be instituted by any interested person. ~~Notice~~
21 ~~of any proceeding shall be delivered to the conservator, or mailed to the conservator by~~
22 ~~registered or certified mail at the conservator's address as listed in the petition for appointment~~
23 ~~or as thereafter reported to the court and to the conservator's address as then known to the~~
24 ~~petitioner.~~

25 **SECTION 23. AMENDMENT.** Section 30.1-29-18 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **30.1-29-18. (5-418) Inventory and records.**

28 Within ninety days after appointment, every conservator shall prepare and file with the
29 appointing court a complete inventory of the estate of the protected person together with the
30 conservator's oath or affirmation that it is complete and accurate so far as the conservator is
31 informed. The conservator shall provide a copy thereof to the protected person if the protected

1 ~~person can be located, has attained the age of fourteen years, and has sufficient mental~~
2 ~~capacity to understand these matters, and to any guardian, spouse, or parent, if the protected~~
3 ~~person is a minor, and to any interested persons designated by the court in its order to those~~
4 identified in section 18 of this Act. The conservator shall keep suitable records of the
5 conservator's administration and exhibit the same on request of any interested person.

6 **SECTION 24. AMENDMENT.** Subsection 3 of section 30.1-29-19 of the North Dakota
7 Century Code is amended and reenacted as follows:

8 3. Copies of the conservator's annual report to the court and of any other reports
9 required by the court must be ~~mailed by the conservator to the protected person and~~
10 ~~other parties as required under section 30.1-29-18~~provided to those identified in
11 section 18 of this Act. The protected person's copy must be accompanied by a
12 statement, printed with not less than double-spaced twelve-point type, of the protected
13 person's right to seek alteration, limitation, or termination of the conservatorship at any
14 time.

15 **SECTION 25. AMENDMENT.** Subsection 1 of section 30.1-29-20.1 of the North Dakota
16 Century Code is amended and reenacted as follows:

17 1. On petition by a person interested in the estate of the person to be protected, the court
18 may appoint an emergency conservator if the court finds that compliance with the
19 procedures in this chapter likely will result in substantial harm to the estate of the
20 person to be protected, and that no other person appears to have authority and
21 willingness to act in the circumstances. The court may appoint the conservator for a
22 specified period of time, not to exceed ninety days. Immediately upon receipt of the
23 petition for an emergency conservator, the court shall appoint a guardian ad litem to
24 advocate for the best interests of the estate of the person to be protected in the
25 proceeding and any subsequent proceeding. The court shall hold a hearing within
26 ten days of the filing of the petition to determine if appointment of an emergency
27 conservator is appropriate. Except as otherwise provided in subsection 2, reasonable
28 notice of the time and place of a hearing on the petition must be given to ~~the person~~
29 ~~whose estate is to be protected, the person's spouse, if any, and any other persons as~~
30 ~~the court directs~~those identified in section 18 of this Act.

1 **SECTION 26. AMENDMENT.** Subsection 2 of section 30.1-29-22 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 2. A conservator shall move the court for authorization to sell real property of the person
4 to be protected, upon such terms as the court may order, for the purpose of paying the
5 protected person's debts; providing for the care, maintenance, rehabilitation, training,
6 or education of the person to be protected or the dependents of the person to be
7 protected; or for any other purpose in the best interests of the person to be protected.

8 a. The motion must contain:

- 9 (1) A description of the property;
10 (2) The details of the sale;
11 (3) The reason for the transaction;
12 (4) The current fair market value of the property, including an appraisal unless
13 good cause is shown;
14 (5) An explanation of why the transaction is in the best interest of the person to
15 be protected; and
16 (6) A notice that any person interested in the real property of the person to be
17 protected must file an objection to the transaction within ten days of the
18 notice and demand a hearing.

19 b. The motion must be served upon ~~the protected person, the spouse of the person~~
20 ~~to be protected, and all interested persons~~those identified in section 18 of this
21 Act.

22 c. Consent of the spouse of the person to be protected or interested persons must
23 be filed with the motion. If the motion is unopposed, the court may authorize the
24 transaction without a hearing or may conduct a hearing and require proof of the
25 matters necessary to support the authorization of the transaction.

26 d. The court's order must include specific findings regarding whether the transaction
27 is in the best interests of the person to be protected.

28 **SECTION 27. AMENDMENT.** Subsection 5 of section 30.1-29-25 of the North Dakota
29 Century Code is amended and reenacted as follows:

30 5. If a protected person dies, the conservator shall deliver to the court for safekeeping
31 any will of the deceased protected person which may have come into the

1 conservator's possession, inform the executor or a beneficiary named therein that the
2 conservator has done so, and retain the estate for delivery to a duly appointed
3 personal representative of the decedent or other persons entitled thereto. If after forty
4 days from the death of the protected person no other person has been appointed
5 personal representative and no application or petition for appointment is before the
6 court, the conservator may apply to exercise the powers and duties of a personal
7 representative so that the conservator may proceed to administer and distribute the
8 decedent's estate without additional or further appointment. Upon application for an
9 order granting the powers of a personal representative to a conservator, after notice to
10 any person demanding notice under section 30.1-13-04, those identified in section 18
11 of this Act, and to any person nominated executor in any will of which the applicant is
12 aware, the court may order the conferral of the power upon determining that there is
13 no objection, and endorse the letters of the conservator to note that the formerly
14 protected person is deceased and that the conservator has acquired all of the powers
15 and duties of a personal representative. The making and entry of an order under this
16 section has the effect of an order of appointment of a personal representative as
17 provided in section 30.1-14-08 and chapters 30.1-17 through 30.1-21, except that
18 estate in the name of the conservator, after administration, may be distributed to the
19 decedent's successors without prior retransfer to the conservator as personal
20 representative.

21 **SECTION 28. REPEAL.** Sections 30.1-26-01, 30.1-28-08, and 30.1-28-15 of the North
22 Dakota Century Code are repealed.