

PROBATE PROCEDURE

CHAPTER 221

(H. B. No. 106—Craig)

QUALIFICATION—APPOINTMENT—REMOVAL, ETC. EXECUTORS
ADMINISTRATORS OR GUARDIANS

An Act to Amend and Re-enact Sections 8651, 8657 and 8682 of the Compiled Laws of 1913, Relating to the Qualification, Appointment, Removal and Discharge of Executors, Administrators and Guardians, and to Repeal All Acts and Parts of Acts in Conflict Herewith.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] Section 8651 of the Compiled Laws of the State of North Dakota for 1913 is hereby amended and re-enacted to read as follows:

§ 8651. Letters testamentary and of administration with the will annexed, how and to whom issued. The court admitting the will to probate after the same is proved and allowed, must issue letters thereon to the persons named therein as executors, who are competent to discharge the trust, who may appear and qualify unless objection be made as provided hereinafter. No person is competent to serve as executor who at the time the will is admitted to probate is

1. Under the age of majority.
2. Convicted of an infamous crime.
3. Adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence or want of understanding or integrity.

If the sole executor or all of the executors are incompetent, or renounce, or fail to apply for letters, or to appear and qualify, or if there is no executor named in the will, letters of administration with the will annexed must be issued. Any person interested in a will may file objections in writing to granting letters testamentary to persons named as executors, or to any of them; and the objections must be heard and determined by the court. A petition may, at the same time, be filed for letters of administration with the will annexed. When a married woman is named as executrix she may be appointed and serve in every respect as a femme sole. No executor of an executor shall, as such, be authorized to administer on the estate of the first testator, but on the death of the sole or surviving executor of any last will, letter of administration with the will annexed, of the estate of the first testator, left unadministered, must be issued. Where a person, absent from the state,

or a minor, is named executor, and there is another executor who accepts the trust and qualifies, the latter may have letters testamentary, and administer the estate until the return of the absentee, or the majority of the minor, who may then be admitted as joint executor. If there is no other executor, letters of administration with the will annexed, must be granted; but the court may, in its discretion, revoke them upon the return of the absent executor, or the arrival of the minor at the age of majority. When all executors named are not appointed by the court, those appointed have the same authority to perform all acts and discharge the trust required by the will, as effectually for every purpose as if all were appointed and should act together; when there are two executors or administrators, the act of one alone shall be effectual, if the other is absent from the state, or laboring under any legal disability from serving, or if he has given his co-executor or co-administrator authority in writing, to act for both; and when there are more than two executors or administrators, the act of a majority of them is valid.

§ 2. AMENDMENT.] Section 8657 of the Compiled Laws of North Dakota for 1913 is hereby amended and re-enacted to read as follows:

§ 8657. LETTERS OF ADMINISTRATION, WHO ENTITLED TO.] Administration of the estate of a person dying intestate must be granted to some one or more of the persons hereinafter mentioned, and they are respectively entitled thereto in the following order:

1. The surviving husband or wife, or some competent person whom he or she may request to have appointed.
2. The children.
3. The father or mother.
4. The brothers.
5. The sisters.
6. The grand-children.
7. The next of kin entitled to share in the distribution of the estate.
8. The creditors.
9. Any person legally competent.
10. The public administrator of the county wherein there is property of the decedent which remains unadministered, as general or special administrator thereof.

If the decedent was a member of a partnership at the time of his decease, the surviving partner must in no case be appointed administrator of his estate. If any person entitled to administration is a minor, letters must be granted to his or her guardian, or any other

person entitled to letters of administration, in the discretion of the Court. No person is competent to serve as administrator or administratrix, who, when appointed, is

1. Under the age of majority.
2. Convicted of an infamous crime.
3. Adjudged by the Court incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity.

§ 3. AMENDMENT.] Section 8682 of the compiled laws of North Dakota for 1913 is hereby amended and re-enacted to read as follows:

§ 8682. EXECUTOR, ADMINISTRATOR, GUARDIAN. WHO COMPETENT FOR.] No person under twenty-one years of age, or other person who is incapable by law of making a contract, or has been convicted of a felony, is competent to serve as executor, administrator or guardian; and no person shall be appointed as such who was a partner of the decedent at the time of his death, or is by the Court found unfit to discharge the duties of the trust by reason of drunkenness, improvidence, mental or physical infirmity or lack of integrity. The husband of the widow of a deceased man shall not be appointed guardian of such deceased man's children if such husband has minor children living; provided, however, that the court may in its discretion, upon the probate of a foreign will, issue letters testamentary to the executor named in the will.

§ 4. REPEAL.] All acts or parts of acts in conflict herewith are hereby repealed.

Approved February 28, 1927.

CHAPTER 222
(H. B. No. 245—Lynch)

INVENTORY AND ACCOUNTS OF GUARDIANS

An Act to Amend and Re-enact Section 8895 of the Compiled Laws of North Dakota for the Year 1913, and the Repeal Section 8896 of Said Compiled Laws.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] Section 8895 of the Compiled Laws of North Dakota for the year 1913 is hereby amended and re-enacted to read as follows:

§ 8895. INVENTORY AND ACCOUNTS OF WARD'S ESTATE.] Every guardian must return to the County Court an inventory of the estate of his ward within three months after his appointment, and

annually thereafter shall make and render to the court a report and account. When the value of the estate exceeds the sum of twenty thousand dollars, semi-annual returns must be made to the Court.

(1) An appropriate diary shall be maintained by the County Court to insure the receipt of such inventory and reports and when three months have elapsed without the rendition of an inventory, the court shall cause a citation to be prepared and served on the guardian requiring him to show cause, if any, why the inventory should not be filed and the court may by order direct such inventory to be filed or for good cause shown, may extend the time for such filing not to exceed six months from the date of the appointment.

(2) Where the inventory submitted in any case shows personal or real property with a valuation in excess of five hundred dollars, the property may on order of the court, be appraised by appraisers appointed, sworn and acting in the manner provided for regulating the settlement of the estate of decedents.

(3) The court may at any time, upon application made for that purpose by any person, compel the guardian to render an account of the estate.

(4) When the inventory or accounting in an estate shows an estate in the hands of the guardian exceeding five hundred dollars in valuation, the county court at the time of filing such inventory or accounting shall cause a diary to be made on the case for one year. Upon the expiration of one year, the county judge shall notify the guardian by letter sent to him at his last known address according to the records in the county court, that an accounting is required in the case and further notifying the guardian that such report must be filed within thirty days unless, for good cause shown, the court extends the time not to exceed ninety days from the date the report was first due.

(5) Upon failure to receive a report as required, within the time limits fixed, the county court shall issue its citation over the signature of the county judge with the seal of the county court, directed to the guardian concerned, requiring him to appear, within thirty days from the date of service, and to show cause, if any, why an accounting should not be rendered in the case. Such citation shall be served in manner by law provided and where it appears that the guardian has wilfully neglected to obey such notice by the court, the expenses incident to the issuance and service of the citation may, in the discretion of the court, be assessed against the guardian personally.

(6) After an accounting has been filed the county court shall appoint a day certain not more than thirty days in the future, for hearing on said accounting, at which time the guardian shall be present either in person or by attorney to supplement his written re-

port in such manner as the court may require. Notice of said hearing shall be given, as required by law, provided, however, that when the report of the guardian shows any payments as having been received from the United States Veterans Bureau, the Regional office of the said Bureau shall in all cases be notified by registered letter.

(7) Upon each hearing on an accounting filed by a guardian, the court shall enter an order or decree, approving in whole or in part the accounting as filed or disapproving the accounting in whole or in part, and such order or decree shall contain any necessary direction to the guardian to file an amended accounting, to make restitution or add to or strike from the credits or debits in said accounting such items as the court may specify. Such further order as may be necessary in the case may also be entered by the court.

(8) Where an accounting or inventory by a guardian shows an estate of less than five hundred dollars valuation, the court may require such accountings as in its discretion are deemed necessary.

(9) The failure of the judge of the county court to enforce this section or any part thereof will be sufficient grounds for his removal as provided by Section 685 et seq.

§ 2. REPEAL.] Section 8896 of the Compiled Laws of North Dakota for the year 1913, is hereby repealed.

Approved March 5, 1927.

CHAPTER 223
(H. B. No. 244—Lynch)

APPOINTMENT GUARDIANS OF INSANE AND INCOMPETENTS

An Act to Amend and Re-enact Section 8887 of the Compiled Laws of North Dakota for the Year 1913.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ I. AMENDMENT.] That Section 8887 of the Compiled Laws of North Dakota for the year 1913 be amended and re-enacted to read as follows:

§ 8887. GUARDIANS.] If after a full hearing and examination upon such petition, it appears to the court that the person in question is incapable of taking care of himself and managing his property, he must appoint a guardian of his person and estate with the powers and duties in this chapter specified. Provided, however, that the court may in its discretion appoint separate guardians for the person and for the estate of the incompetent,

Approved February 28, 1927.

CHAPTER 224
(S. B. No. 101—Van Arnam)

DECREES OF DISTRIBUTION

An Act to Amend and Re-enact Section 8849 of the Compiled Laws of North Dakota, 1913, Relating to Decrees of Distribution in County Court.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] That Section 8849 of the Compiled Laws of North Dakota for the year 1913 be amended and re-enacted to read as follows:

§ 8849. In the decree the court must name the persons and the proportions or parts to which each shall be entitled, and such persons may demand, sue for and recover their respective shares from the executor or administrator or any person having the same in possession. Or the court may order a partition and after such further proceedings as may be necessary under the following sections shall make a further decree assigning to each party his separate share and confirming the distribution accordingly and, within thirty days after the date of rendition of said decree, it shall be the duty of said court to record such decree if the same effects the title to real estate in the office of the Register of Deeds in every county where such land distributed is situated, and the costs thereof shall be part of the expenses of administration and be paid by the administration or executors.

Approved February 19, 1927.

CHAPTER 225
(H. B. No. 168—Freeman)

DECEDENTS LIFE INSURANCE

An Act to Amend Section 8719 of the Compiled Laws of North Dakota for 1913, Relating to the Exemption of the Avails of Life Insurance Payable to the Personal Representatives of a Deceased, His Heirs, or Estate.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] That Section 8719 of the Compiled Laws for 1913 be, and the same is, hereby amended and re-enacted to read as follows:

§ 8719. The avails of a life insurance policy or of a contract payable by any mutual aid or benevolent society, when made payable to the personal representatives of a deceased, his heirs or estate, upon the death of a member of such society or of such insured shall not be subject to the debts of the decedent, except by special con-

tract, but such avails shall be inventoried as part of the estate of the deceased and shall be distributed without deduction, and pass to the heirs at law or legatees of the deceased, in due course of administration, in accordance with the laws of succession or will, as the case may be. The insured may by will or contract transfer the avails of such life insurance policies or contracts heretofore made. Provided, however, nothing herein contained shall be construed as permitting any insured to dispose by will of the avails of such policy or contract as heretofore mentioned if the same is payable to either a designated person, including the spouse of insured, or persons, or to the members of a family designated as class—for example as “all children” or “all brothers and sisters”, even though such children or brothers and sisters are not designated by name. Nor as permitting the assured to dispose by will of the avails of a contract by a mutual or fraternal society to anyone who could not be a beneficiary in such contract under the charter or by-laws of such society.

Approved March 7, 1927.

CHAPTER 226
(H. B. No. 271—Fowler)

ASSIGNMENT OF MORTGAGES BY FOREIGN EXECUTOR AND ADMINISTRATOR AND VALIDATING PRIOR ASSIGNMENTS

An Act Empowering Foreign Executors, Administrators, Guardians, Heirs and Legatees of Deceased Non-residents Whose Estates Have Been Probated Outside This State to Assign Mortgages; and Confirming and Legalizing Assignments Heretofore Made by Such Executors, Administrators, Guardians, Heirs and Legatees.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. When an executor or administrator shall have been appointed in any other state or foreign country, on the estate of any person, and no executor or administrator thereon shall have been appointed in this state, such foreign executor or administrator, upon filing in the office of the Register of Deeds of any county in which any mortgage held by the estate of such deceased person is filed or recorded, an authenticated copy of his appointment, may execute, acknowledge and deliver an assignment of such mortgage, the same as and with like effect as executors and administrators appointed under the laws of this state may do.

§ 2. Any heir or legatee of such deceased person, residing within or without the state, upon recording in the office of the Register of Deeds an authenticated copy of the judgment or decree of the foreign court, transferring to such heir or legatee the owner-

ship of any such mortgage, may, in like manner and with like effect, assign such mortgage.

§ 3. Any guardian appointed in any other state or foreign country of a minor holding and owning a mortgage upon property in this state, upon filing in the office of the Register of Deeds of the county in which the property is situated an authenticated copy of his appointment as guardian, and the same proof of ownership of such mortgage as is required in the last section, may, in like manner and with like effect, assign such mortgage.

§ 4. All assignments of mortgages upon property within this state heretofore made by any executor or administrator appointed in any other state or foreign country on the estate of any person, where no executor or administrator thereon had been appointed in this state, which executor or administrator has filed in the office of the Register of Deeds of any county in which any such mortgage held by the estate of such deceased person was filed or recorded, an authenticated copy of his appointment, and all assignments of mortgages upon property within this state heretofore made by any heir or legatee of such deceased person, which heir or legatee has recorded in the office of the Register of Deeds an authenticated copy of the judgment or decree of the foreign court transferring to such heir or legatee the ownership of such mortgage, and all assignments of mortgages upon property within this state heretofore made by any guardian, appointed in any other state or foreign country, of a minor holding and owning a mortgage upon property in this state, which guardian has filed in the office of the Register of Deeds of the county in which the property is situated an authenticated copy of his appointment as guardian and an authenticated copy of the judgment or decree of the foreign court, if any, transferring to his ward the ownership of such mortgage, which assignments were made prior to the date of the passage and approval of this Act, are hereby declared to be legal and valid for all purposes, and of the same force and effect as though such executors, administrators, guardians, heirs or legatees had been specifically authorized by law to make such assignments.

§ 5. The provisions of this act shall apply to all mortgages, judgments or other liens upon real or personal property, and to foreclosure of any such mortgage or lien on real or personal property.

§ 6. This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval by the Governor.

Approved March 7, 1927.

Note: The foregoing measure carried the following vote on final passage:

House—99—10—3.

Senate—30—17—2.