

JUDICIAL PROCEDURE, PROBATE

CHAPTER 305

S. B. No. 173
(Stroup, Freed)

SUMMARY GUARDIANSHIP PROCEDURE

AN ACT

To amend and reenact sections 30-10-25 and 30-10-26 of the North Dakota Century Code, relating to summary guardianships.

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

Section 1. Amendment.) Section 30-10-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30-10-25. Summary Guardianship Permitted.) In all cases arising hereafter where the county court shall have jurisdiction to appoint guardians of the estate of minors or other persons, and where the value of the property involved does not exceed the sum of three thousand dollars, and does not involve real estate, the county court having jurisdiction shall have power, at its discretion, to dispense with the requirements of law generally governing the appointment and qualification of guardians, and to make a summary appointment of a guardian to have charge of such property.

Section 2. Amendment.) Section 30-10-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30-10-26. Procedure for Summary Guardianship.) Whenever the court shall find that the property involved does not exceed the value of three thousand dollars and that no part thereof is real estate, and that the circumstances are such that

the usual requirements for the establishment of a guardianship would be unduly cumbersome and expensive, the court may, upon its own motion or upon the application of some interested party, make a summary order appointing some suitable person to take charge of such property and in lieu of the otherwise applicable provisions of law for the guidance and control of such guardian, the court may include in such order such provisions for the application and use of the funds of the guardianship as the court deems wise and necessary, making provisions for such things as the bond of such guardian, his reports to the court, his investment, disposal and use of the funds entrusted to him and any other provisions which a court might make in instructing or controlling a trustee. The court shall have continuing jurisdiction to make such modifications of its original order as circumstances may require.

Approved March 13, 1969.

CHAPTER 306

S. B. No. 106
(Stroup)

INVESTMENT OF ESTATE FUNDS BY
EXECUTOR OR ADMINISTRATOR

AN ACT

To amend and reenact section 30-13-22 of the North Dakota Century Code, relating to the investment of funds of an estate by an executor or administrator.

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

Section 1. Amendment.) Section 30-13-22 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30-13-22. Investment of Funds Only on Order of Court.) No executor or administrator shall invest funds of the estate unless authorized to do so by an order made and entered in the county court of the county in which such executor or administrator was appointed, except that he may invest without liability in bonds of the state of North Dakota, bonds of the United States of America, commercial banks to the extent that certificates of deposit or savings accounts may be used which are fully insured and guaranteed by the United States or an instrumentality or agency thereof and in investments classified as legal investments under section 21-10-07 of the North Dakota Century Code.

Approved March 17, 1969.

CHAPTER 307

S. B. No. 287
(Chesrown, Freed)

REMOVAL OF GUARDIANSHIP OR
ESTATE PROPERTY FROM STATE

AN ACT

To create and enact section 30-14-32.1 of the North Dakota Century Code, relating to the removal of guardianship or estate property from the state without the consent of the court, and providing a penalty.

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

Section 1.) Section 30-14-32.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

30-14-32.1. Removal of Property from State—Consent Required—Penalty.) No guardian, executor, or administrator shall remove any property of a guardianship or of an estate from the state of North Dakota with intent to avoid control of the property by the court, without obtaining the written consent of the court. Any person who violates the provisions of this section shall be guilty of a felony and punishable by imprisonment in the penitentiary for not less than one year nor more than three years, or by imprisonment in the county jail for not more than one year, or by a fine of not more than three times the value of the property involved, or by both such fine and imprisonment.

Approved March 17, 1969.

CHAPTER 308

H. B. No. 271
(Kelsch, Aamoth)

SUMMARY ADMINISTRATION OF SMALL ESTATES

AN ACT

To create and enact sections 30-17-07 and 30-17-08 of the North Dakota Century Code, relating to summary administration by affidavit, and to amend and reenact sections 30-16-06, 30-17-01, 30-17-03, 30-17-04, and 30-17-05 of the North Dakota Century Code, relating to personal property exemptions and the summary administration of small estates.

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

Section 1. Amendment.) Section 30-16-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30-16-06. Exempt Personal Property—Selection.) There also shall be set apart absolutely to the surviving wife or husband or minor children of a decedent all of the personal property of the decedent which by law is absolutely exempt to the head of the family, and other personal property selected by the surviving wife or husband or minor children to the amount in value of five thousand dollars according to the appraisal. Such property shall not be liable for any prior debt of the decedent except the necessary charges of his last sickness and funeral and expenses of the administration, if there are no other assets available for the payment of such charges.

Section 2. Amendment.) Section 30-17-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30-17-01. Summary Administration Permitted.) There may be a summary administration of the estate of a deceased person as provided in this chapter, if:

1. Upon the return of the inventory of the estate of a deceased person whether he died testate or intestate, it appears that the value of the whole estate after deduction of expenses of the last illness of decedent,

funeral expenses, and expenses of administration, does not exceed the sum of five thousand dollars.

2. A petition for a summary administration is filed as provided in section 30-17-02.
3. An affidavit in lieu of a petition for summary administration is filed as provided in section 30-17-07.

Section 3. Amendment.) Section 30-17-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30-17-03. Petition for Summary Administration—Contents.) A petition for the summary administration of an estate of small value shall set forth:

1. The name, address, and place of death of the deceased testator or intestate;
2. The name and relationship of the petitioner to the deceased person;
3. In case the deceased person died testate and left a surviving spouse or a minor child or children, the whereabouts of the will if known to the petitioner, and if it is in the custody of the petitioner it must be presented to the court with the petition. In all other cases the petition must state and the court must find that the deceased died intestate in order to qualify for summary administration by petition under this chapter;
4. The name, age, and address of the surviving husband, or wife, or minor child or children of the deceased, as the case may be, and the name, age, address, and relationship of any other heir, devisee, or legatee of the deceased person;
5. Each encumbrance shown of record in the office of the register of deeds which is a lien upon any property of the estate, together with the name and address of the lien holder and the amount still due upon the lien;
6. So far as is known to the petitioner, the name and

address of every other creditor of the decedent and the amount owing to each, with a further statement that if there are other unnamed creditors they are unknown to the petitioner and cannot be ascertained;

7. A statement as to all property left by the decedent, with a legal description of each tract of real estate and a description of the items of personal property sufficient to identify the same, with a statement of the value of each item according to petitioner's best knowledge, information, and belief;
8. If the decedent left a homestead, a description of the tracts constituting the same, the encumbrances thereon, and the facts regarding the occupancy thereof as a homestead at the time of the death of the decedent, and if not so occupied, the basis for the homestead claim and the name of any person entitled to the possession thereof as a homestead;
9. If any person designated in subsection 4 or subsection 5 of this section is a minor or has been adjudged mentally incompetent, the name and post-office address of any guardian of the person and estate, or either, of such person, and the name and post-office address of any guardian ad litem;
10. The amount due and to whom such payments are due for expenses of the last illness, funeral expenses, and expenses of administration, or if such payments have been made, the amounts of such payments and to whom paid.

Section 4. Amendment.) Section 30-17-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30-17-04. Citation and Service Thereof.) If the inventory returned discloses the facts mentioned in subsection 1 of section 30-17-01, or if a petition for a summary administration is filed as provided in section 30-17-03, the court shall issue a citation fixing the time for a hearing upon such inventory or petition, as the case may be. Such citation shall be served in the manner provided by chapter 30-02. If the record discloses that there is no surviving spouse or minor child or children of

the deceased, the court shall order that a short term of notice to creditors be given in the following form:

SHORT TERM NOTICE TO CREDITORS

STATE OF NORTH DAKOTA

COUNTY OF _____

IN THE MATTER OF THE ESTATE OF _____,
deceased.

Notice is given by the undersigned to all creditors of, and all persons having claims against _____ deceased, to file them with the necessary vouchers within 15 days after the publication of this notice, with the County Court of _____ County, North Dakota, in the Court-house in the City of _____ in said County and State, or stand forever barred.

You are further notified that Honorable _____, Judge of said County Court, has by order fixed the _____ day of _____, A.D. 19____, at the hour of _____ o'clock in the _____ noon of said day at said County Courtrooms as the time and place for hearing and adjusting all claims against the estate of said decedent which have been filed as hereinbefore provided, and all persons interested in said estate are required then and there to show cause why such claims should not be allowed.

Dated _____ A.D. 19_____.

(Seal) _____

Such notice shall be published once in a newspaper published in the city of decedent's residence, or if decedent did not reside in a city or resided in a city where no newspaper is published, then in the newspaper in the county of his residence or in the county closest to decedent's residence. Such publication shall be deemed complete service upon all parties interested in the estate. The time for hearing or examining and adjusting claims shall be held not less than twenty days nor more than thirty days after publication of the notice. All claims not filed within the time allowed shall be barred as provided in section 30-18-04 and all claims filed shall be in conform-

ity with chapter 30-18. The person signing the petition and notice to creditors under this chapter shall have all of the powers and duties of an executor or administrator under chapter 30-18 dealing with approval and allowance of claims, and all procedures of chapter 30-18 dealing with allowance and priority of claims shall be followed.

Section 5. Amendment.) Section 30-17-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30-17-05. Assignment of Estate.) If, upon the hearing held pursuant to a petition made as provided in section 30-17-02, or upon the return of an inventory as provided in section 30-17-01, the court finds that the value of the estate after deduction of the expenses of the last illness of the decedent, funeral expenses, and expenses of administration, does not exceed the sum of five thousand dollars, it, by a decree for that purpose, shall assign the estate, real and personal, after payment of such expenses, as follows:

1. The entire estate to the surviving spouse, if there is a surviving spouse; or
2. The entire estate to the minor child or children of the deceased, if there are minor children and no surviving spouse; or
3. If there is no surviving spouse and no minor child or children of the deceased, that portion of the estate remaining after assignment to all creditors of the sum in cash equal to the amount of their claims as allowed, shall be assigned to the person or persons entitled thereto under the will admitted to probate, if any, or to the person or persons entitled thereto under the law of succession of this state. In the event there is not sufficient cash to satisfy all creditors' claims as allowed, the court, upon petition showing that fact, may order the sale of estate assets pursuant to section 30-17-06. All claims shall be paid in the order and under conditions provided by chapter 30-18.

The title to such real and personal property shall vest absolutely in the person or persons entitled thereto subject to the mortgages, liens, or encumbrances upon said estate at the

time of the death of the decedent and there must be no further proceedings in the administration unless further estate is discovered.

In its decree assigning the estate, the court may order any person, firm, or corporation holding assets of the estate to pay or deliver all or a part of such assets to such persons as are entitled thereto in order to make proper distribution under the decree, and such payment or delivery under the decree shall relieve the person, firm, or corporation holding such assets from further liability.

Section 6. Section 30-17-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

30-17-07. Affidavit in Lieu of Petition for Summary Administration—Transfer by Affidavit—Contents.) The surviving spouse, if there be one, otherwise any person entitled to personal property of the decedent by will or intestate succession, hereafter termed "distributee", shall have a defeasible right to the personal property thereof, without awaiting the appointment of a personal representative or the probate of a will if:

1. The value of the entire estate does not exceed the sum of five hundred dollars.
2. Thirty days have elapsed since the death of the decedent.
3. No petition has been presented to the probate court as provided for under chapter 30-05, chapter 30-08, or under this chapter.

The surviving spouse, distributee, or distributees, shall be entitled to receive the personal property or to have evidence of ownership thereof transferred to said surviving spouse, distributee, or distributees upon such person or persons filing with the county court in the county where the deceased person last resided an affidavit showing that such surviving spouse, distributee, or distributees have a defeasible right to receive the personal property or properties set forth in such affidavit, or to have evidence of ownership thereof transferred from the decedent to said surviving spouse, distributee, or distributees. A copy of any will of which the decedent may have died possessed shall be attached to such affidavit upon

filing. Upon the filing of such affidavit, and upon the payment of a filing fee of three dollars, the court may order the transfer of the personal property or evidence of ownership thereof, as the same shall appear in the affidavit. Upon delivering a certified copy of such affidavit an order to any person owing any money to the decedent, having custody of any personal property belonging to the decedent, or acting as registrar or transfer agent of any evidence of interest, indebtedness, or property right of the decedent, such person shall forthwith make such transfer to the surviving spouse, distributee, or distributees as the court may direct in its order.

The defeasible right of the surviving spouse, distributee, or distributees declared by this section shall be subject only to any proceedings to administer the estate or probate of the will of the decedent, and to the superior rights of any other person to such personal property as may be established by such probate proceedings.

Section 7. Section 30-17-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

30-17-08. Effect of Affidavit—Release—Action—Accountability of Spouse, Distributees, or Transferor.) The person making payment, delivery, transfer, or issuance of personal property or evidence of ownership thereof pursuant to the provisions of section 30-17-07 shall be discharged and released to the same extent as if such payment, delivery, transfer, or issuance had been made to a personal representative of the decedent, and he shall not be required to see to the application thereof or to inquire into the truth of any statement in the affidavit. If any person to whom such affidavit and order are delivered refused to pay, deliver, transfer, or issue any personal property or evidence of ownership thereof, as required by section 30-17-07, payment, delivery, transfer, or issuance may be compelled in an action brought for such purpose by or on behalf of the person entitled thereto under section 30-17-07, upon proof of the defeasible right declared by such section. Any person to whom payment, delivery, transfer, or issuance is made shall be answerable therefor to any personal representative of the estate of the decedent, his heirs, or distributees, or to any other person or public body having a superior right.

Approved March 29, 1969.