

UNIFORM PROBATE CODE

CHAPTER 290

HOUSE BILL NO. 1046
(Kretschmar, Eagles, Irving, Winkjer)
(From Legislative Council Study)

PROBATE CODE AMENDMENTS

AN ACT to create and enact subsection 6 of section 30.1-05-05 and to amend and reenact section 30.1-02-05, subsection 1 of section 30.1-04-03, subsection 2 of section 30.1-12-02, subsection 1 of section 30.1-14-07, subsection 1 of section 30.1-15-03, subsection 2 of section 30.1-15-15, subsection 2 of section 30.1-18-06, subsection 1 of section 30.1-21-01, section 30.1-26-02, the initial paragraph of section 30.1-29-01, subsection 2 of section 30.1-29-07, sections 30.1-29-11, 30.1-29-14, 30.1-32-01, and 30.1-34-04 as contained in section 1 of chapter 257 of the 1973 Session Laws of North Dakota, relating to decedents' estates, conservatorships, and trusts; to amend and reenact section 38-13-01 of the North Dakota Century Code, relating to trustees for execution of mineral leases.

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

SECTION 1. AMENDMENT.) Section 30.1-02-05 as contained in section 1 of chapter 257 of the 1973 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

30.1-02-05 (1-305). RECORDS AND CERTIFIED COPIES.) The court or clerk of court shall keep a record for each decedent, ward, protected person, or trust involved in any document which may be filed with the court under this title, including petitions and applications, demands for notices or bonds, and of any orders or responses relating thereto by the court, and establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information. Certifications of probated wills must indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. Certifications of letters must show the date of appointment.

SECTION 2. AMENDMENT.) Subsection 1 of section 30.1-04-03 as contained in section 1 of chapter 257 of the 1973 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

1. To the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation.

SECTION 3.) Subsection 6 of section 30.1-05-05 as contained in section 1 of chapter 257 of the 1973 Session Laws of North Dakota is hereby created and enacted to read as follows:

6. A copy of the order or judgment of the court shall be immediately forwarded to the tax commissioner by the court.

SECTION 4. AMENDMENT.) Subsection 2 of section 30.1-12-02 as contained in section 1 of chapter 257 of the 1973 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

2. Either the devisee or his successors and assigns possessed the property devised in accordance with the provisions of the will, or the property devised was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings.

SECTION 5. AMENDMENT.) Subsection 1 of section 30.1-14-07 as contained in section 1 of chapter 257 of the 1973 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

1. Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in section 30.1-17-14, if at least one hundred twenty hours have elapsed since the decedent's death, the court, after making the findings required by section 30.1-14-08, shall appoint the applicant subject to qualification and acceptance; provided, that if the decedent was a nonresident, the court shall delay the order of appointment until thirty days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant, or unless the decedent's will directs that his estate be subject to the laws of this state. A copy of the order of appointment shall be forwarded immediately by the court to the tax commissioner.

SECTION 6. AMENDMENT.) Subsection 1 of section 30.1-15-03 as contained in section 1 of chapter 257 of the 1973 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

1. Upon commencement of a formal testacy proceeding, the court shall fix a time and place of hearing. Notice shall be given in the manner prescribed by section 30.1-03-01 by the petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under section 30.1-13-04.

SECTION 7. AMENDMENT.) Subsection 2 of section 30.1-15-14 as contained in section 1 of chapter 257 of the 1973 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

2. After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative and any person having or claiming priority for appointment as personal representative, the court shall determine who is entitled to appointment under section 30.1-13-03, make a proper appointment and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under section 30.1-17-11. A copy of the order of appointment shall be immediately forwarded by the court to the tax commissioner.

SECTION 8. AMENDMENT.) Subsection 2 of section 30.1-18-06 as contained in section 1 of chapter 257 of the 1973 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

2. The personal representative may file the original of the inventory with the court and send a copy of the inventory only to interested persons who request it; or, if he elects not to file the inventory with the court, he must mail a copy of the inventory to each of the heirs in an intestate estate, or to each of the devisees if a will has been probated, and to any other interested persons who request it.

SECTION 9. AMENDMENT.) Subsection 1 of section 30.1-21-01 as contained in section 1 of chapter 257 of the 1973 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

30.1-21-01 (3-1001). FORMAL PROCEEDINGS TERMINATING ADMINISTRATION - TESTATE OR INTESTATE - ORDER OF GENERAL PROTECTION.)

1. A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may petition at any time, and any other interested person may petition after one year from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to determine testacy, if not previously determined, to consider the final account or compel or approve an accounting and distribution, to construe any will or determine heirs and adjudicate the final settlement and distribution of the estate. After notice to all interested persons and hearing the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of

the estate, and, as circumstances require, approving settlement and, after receiving satisfactory evidence of payment of any estate tax due, directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person.

SECTION 10. AMENDMENT.) Section 30.1-26-02 as contained in section 1 of chapter 257 of the 1973 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

30.1-26-02 (5-102). JURISDICTION OF SUBJECT MATTER - CONSOLIDATION OF PROCEEDINGS.) The court has jurisdiction over protective proceedings and guardianship proceedings.

SECTION 11. AMENDMENT.) The initial paragraph of section 30.1-29-01 as contained in section 1 of chapter 257 of the 1973 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

30.1-29-01 (5-401). PROTECTIVE PROCEEDINGS.) Upon petition and after notice and hearing in accordance with the provisions of this chapter, the court may appoint a conservator or make other protective order for cause as follows:

SECTION 12. AMENDMENT.) Subsection 2 of section 30.1-29-07 as contained in section 1 of chapter 257 of the 1973 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

2. Upon a receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. If, at any time in the proceeding, the court determines that the interests of the person to be protected are or may be inadequately represented, it may appoint an attorney to represent the person to be protected. An attorney appointed by the court to represent a protected person has the powers and duties of a guardian ad litem. If the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer, employee, or special appointee of the court. In any case where the veterans' administration is or may be an interested party, a certificate of an authorized official of the veterans' administration that the person to be protected has been found incapable of handling the benefits

payable on examination in accordance with the laws and regulations governing the veterans' administration, shall be prima facie evidence of the necessity for such appointment.

SECTION 13. AMENDMENT.) Section 30.1-29-11 as contained in section 1 of chapter 257 of the 1973 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

30.1-29-11. BOND.) Except as provided herein, the court shall require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it shall specify. Unless reduced or waived by the court for good cause, the bond shall be in the amount of the aggregate capital value of the property of the estate in his control plus one year's estimated income, including veterans' administration benefits received during that year, minus the value of securities deposited under arrangements requiring an order of the court for their removal and the value of any land which the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization. The court in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land.

SECTION 14. AMENDMENT.) Section 30.1-29-14 as contained in section 1 of chapter 257 of the 1973 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

30.1-29-14 (5-414). COMPENSATION AND EXPENSE.)

1. When the estate is derived, in whole or in part, from money paid or being paid by the veterans' administration to the conservator or his predecessor for the benefit of the protected person, the compensation allowed from such money to the conservator shall be limited to five percent of the amount of money received from the agency during the period covered by the account, except that the court may allow a minimum compensation of not to exceed fifty dollars per year. No commission or compensation will be allowed for receipt of moneys or other assets received from a prior fiduciary nor upon the amount received from liquidation of loans or other investments.
2. If not otherwise compensated for services rendered, any visitor, lawyer, physician, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate.

SECTION 15. AMENDMENT.) Section 30.1-32-01 as contained in section 1 of chapter 257 of the 1973 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

30.1-32-01 (7-101). DUTY TO REGISTER TRUSTS.) The trustee of a trust having its principal place of administration in this state shall register the trust in the district court of this state

in the county encompassing the principal place of administration. Unless otherwise designated in the trust instrument, the principal place of administration of a trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if he has no such place of business. In the case of co-trustees, the principal place of administration, if not otherwise designated in the trust instrument, is:

1. The usual place of business of the corporate trustee if there is but one corporate co-trustee; or
2. The usual place of business or residence of the individual trustee who is a professional fiduciary if there is but one such person and no corporate co-trustee; and otherwise
3. The usual place of business or residence of any of the co-trustees as agreed upon by them.

The duty to register under this chapter does not apply to the trustee of a trust if registration would be inconsistent with the retained jurisdiction of a foreign court from which the trustee cannot obtain release. The clerk of the district court shall keep a record of all trust registrations in his county, and of any orders, or responses relating thereto, by the district court, and shall establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information.

SECTION 16. AMENDMENT.) Section 30.1-34-04 as contained in section 1 of chapter 257 of the 1973 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

30.1-34-04 (7-304). DUTY TO PROVIDE BOND.) A trustee shall provide bond to secure performance of his duties unless the terms of the trust expressly excuse the trustee from furnishing bond. On petition of the trustee or other interested person, the district court may excuse a requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties. If bond is required, it shall be filed in the court of registration or other appropriate court in amounts and with the sureties and liabilities as provided in sections 30.1-17-04 and 30.1-17-06 relating to bonds of personal representatives.

SECTION 17. AMENDMENT.) Section 38-13-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-13-01. APPOINTMENT OF TRUSTEE TO EXECUTE MINERAL LEASE AND OTHER DOCUMENTS WHERE OWNER OR CLAIMANT HAS ABSENTED HIMSELF - ADMINISTRATION OF TRUST.) Where any undivided mineral, leasehold, or royalty interest in land is claimed or owned by a person whose

place of residence and whereabouts is unknown, and cannot reasonably be ascertained, the district court of the county in which the said land or a portion thereof is situated shall have the power to declare a trust in the interest of such owner or claimant and appoint a trustee therefor. Upon satisfactory proof made by the petitioner that a diligent but unsuccessful effort to locate such owner or claimant has been made and that it will be in the best interest of all owners of interests in said lands, the court shall authorize such trustee to execute and deliver an oil, gas, or other mineral lease, an assignment of leasehold interest, a ratification, division orders or other related documents or instruments, on such terms and conditions as the court may approve. All proceedings shall substantially comply with that provided for the administration of trusts in chapters 30.1-33, 30.1-34, and 59-04.

Approved April 8, 1975