

UNIFORM PROBATE CODE

CHAPTER 376

HOUSE BILL NO. 1202
(Winkjer)

INTERNATIONAL WILLS

AN ACT to provide for the execution, validity, and registration of international wills.

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

SECTION 1. DEFINITIONS.) In this Act:

1. "Authorized person" and "person authorized to act in connection with international wills" mean a person who by section 8, or by the laws of the United States, including members of the diplomatic and consular service of the United States designated by foreign service regulations, is empowered to supervise the execution of international wills.
2. "International will" means a will executed in conformity with sections 2 through 5.

SECTION 2. INTERNATIONAL WILL - VALIDITY.)

1. A will is valid in form, irrespective of the place where it is made, of the location of the assets and of the nationality, domicile, or residence of the testator, if it is made in the form of an international will complying with the requirements of this chapter.
2. The invalidity of the will as an international will does not affect its formal validity as a will of another kind.
3. This Act does not apply to the form of testamentary dispositions made by two or more persons in one instrument.

SECTION 3. INTERNATIONAL WILL - REQUIREMENTS.)

1. The will must be made in writing. It need not be written by the testator himself. It may be written in any language, by hand or by any other means.
2. The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents thereof. The testator need not inform the witnesses, or the authorized person, of the contents of the will.
3. In the presence of the witnesses, and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.
4. If the testator is unable to sign, the absence of his signature does not affect the validity of the international will if the testator indicates the reason for his inability to sign and the authorized person makes note thereof on the will. In that case, it is permissible for any other person present, including the authorized person or one of the witnesses, at the direction of the testator, to sign the testator's name for him if the authorized person makes note of this on the will, but it is not required that any person sign the testator's name for him.
5. The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

SECTION 4. INTERNATIONAL WILLS - OTHER POINTS OF FORM.)

1. The signatures must be placed at the end of the will. If the will consists of several sheets, each sheet must be signed by the testator or, if he is unable to sign, by the person signing on his behalf or, if there is no such person, by the authorized person. In addition, each sheet must be numbered.
2. The date of the will must be the date of its signature by the authorized person. That date must be noted at the end of the will by the authorized person.
3. The authorized person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator, the place where he intends to have his will kept must be mentioned in the certificate provided for in section 5.
4. A will executed in compliance with section 3 is not invalid merely because it does not comply with this section.

SECTION 5. INTERNATIONAL WILL - CERTIFICATE.) The authorized person shall attach to the will a certificate to be signed by him establishing that the requirements of this Act for valid execution of an international will have been fulfilled. The authorized person shall keep a copy of the certificate and deliver another to the testator. The certificate must be substantially in the following form:

CERTIFICATE

I, _____ (name, address, and capacity), a person authorized to act in connection with international wills, certify that on _____ (date) at _____ (place) _____ (name, address, date and place of birth of testator) in my presence and that of the witnesses _____ (name, address, date and place of birth of first witness) and _____ (name, address, date and place of birth of second witness) has declared that the attached document is his will and that he knows the contents thereof.

I further certify that in my presence and in that of the witnesses the testator has signed the will or has acknowledged his signature previously affixed or that following a declaration of the testator stating that he was unable to sign his will for the following reason _____, I have mentioned this declaration on the will, and the signature has been affixed by _____ (name and address).

I further certify that the witnesses and I have signed the will; each page of the will has been signed by _____ and numbered [to be completed if appropriate]; I have satisfied myself as to the identity of the testator and of the witnesses as designated above; the witnesses met the conditions requisite to act as such according to the law under which I am acting; the testator has requested me to include the following statement concerning the safekeeping of his will [to be completed if appropriate]:
_____.

_____ (Place of execution)
_____ (Date)
_____ (Signature)

SECTION 6. INTERNATIONAL WILL - EFFECT OF CERTIFICATE.) In the absence of evidence to the contrary, the certificate of the authorized person is conclusive of the formal validity of the instrument as a will under this Act. The absence or irregularity of a certificate does not affect the formal validity of a will under this Act.

SECTION 7. INTERNATIONAL WILL - REVOCATION.) An international will is subject to the ordinary rules of revocation of wills.

SECTION 8. PERSONS AUTHORIZED TO ACT IN RELATION TO INTERNATIONAL WILL - ELIGIBILITY - RECOGNITION BY AUTHORIZING AGENCY.) Individuals who have been admitted to practice law before the courts of this state and are currently licensed so to do are authorized persons in relation to international wills.

SECTION 9. INTERNATIONAL WILL INFORMATION REGISTRATION.) The secretary of state shall establish a registry system by which authorized persons may register in a central information center, information regarding the execution of international wills, keeping that information in strictest confidence until the death of the maker and then making it available to any person desiring information about any will who presents a death certificate or other satisfactory evidence of the testator's death to the center. Information that may be received, preserved in confidence until death, and reported as indicated is limited to the name, social security or any other individual identifying number established by law, address, and date and place of birth of the testator, and the intended place of deposit or safekeeping of the instrument pending the death of the maker. The secretary of state, at the request of the authorized person, may cause the information it receives about execution of any international will to be transmitted to the registry system of another jurisdiction as identified by the testator, if that other system adheres to rules protecting the confidentiality of the information similar to those established in this state.

Approved March 15, 1979

CHAPTER 377

HOUSE BILL NO. 1161
(Winkjer)

RENUNCIATION OF SUCCESSION

AN ACT to amend and reenact sections 30.1-10-01 and 30.1-21-03 of the North Dakota Century Code, relating to renunciation of succession and closing estates under the uniform probate code; and to provide for retroactivity.

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

SECTION 1. AMENDMENT.) Section 30.1-10-01 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-10-01. (2-801) RENUNCIATION OF SUCCESSION.)

1. A person, or the representative of an incapacitated or protected person, who is an heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument, or appointee under a power of appointment exercised by a testamentary instrument may renounce, in whole or in part, the right of succession to any property or interest therein, including a future interest, by filing a written renunciation under this section. The right to renounce does not survive the death of the person having it. The instrument shall:
 - a. Describe the property or interest renounced.
 - b. Declare the renunciation and the extent thereof.
 - c. Be signed by the person renouncing.
2.
 - a. An instrument renouncing a present interest shall be filed not later than ~~six~~ nine months after the death of the decedent or the donee of the power.
 - b. An instrument renouncing a future interest shall be filed not later than ~~six~~ nine months after the event that determines that the taker of the property or

interest is finally ascertained and his interest indefeasibly vested.

- c. The renunciation shall be filed in the county court of the county in which proceedings have been commenced for the administration of the estate of the deceased owner or deceased donee of the power or, if they have not been commenced, in which they could be commenced. A copy of the renunciation shall be delivered in person or mailed by registered or certified mail to any personal representative, or other fiduciary of the decedent or donee of the power. If real property or an interest therein is renounced, a copy of the renunciation may be recorded in the office of the register of deeds of the county in which the real estate is situated.
3. Unless the decedent or donee of the power has provided otherwise, the property or interest renounced devolves as though the person renouncing predeceased the decedent or, if the person renouncing is designated to take under a power of appointment exercised by a testamentary instrument, as though the person renouncing predeceased the donee of the power. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as though the person renouncing predeceased the decedent or the donee of the power. A renunciation relates back for all purposes to the date of the death of the decedent or the donee of the power.
4. a. The right to renounce property or an interest therein is barred by any of the following:
- (1) An assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract therefor.
 - (2) A written waiver of the right to renounce.
 - (3) An acceptance of the property or interest or benefit thereunder.
 - (4) A sale of the property or interest under judicial sale made before the renunciation is effected.
- b. The right to renounce exists notwithstanding any limitation upon the interest of the person renouncing in the nature of a spendthrift provision or similar restriction.
- c. The renunciation or the written waiver of the right to renounce is binding upon the person renouncing or

person waiving and all persons claiming through or under that person.

5. This section does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest therein under any other statute.
6. An interest in property existing on or after July 1, 1977, as to which the time for filing a renunciation under this section would have begun to run were this section in effect when the interest was created, may be renounced prior to April 1, 1980.

SECTION 2. AMENDMENT.) Section 30.1-21-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-21-03. (3-1003) CLOSING ESTATES - BY SWORN STATEMENT OF PERSONAL REPRESENTATIVE.)

1. Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court, ~~no earlier than six months after the date of original appointment of a general personal representative for the estate,~~ a verified statement stating that he, or a prior personal representative whom he has succeeded, has or have:
 - a. ~~Published notice to creditors as provided by section 30.1-19-01 and that the first publication occurred more than six months prior to the date of the statement.~~
 - b- Fully administered the estate of the decedent by making payment, settlement, or other disposition of all claims which were presented, expenses of administration, and estate, inheritance and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled. If any claims remain undischarged, the statement shall state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or it shall state in detail other arrangements which have been made to accommodate outstanding liabilities.
 - e- b. Sent a copy thereof to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected thereby.

If the personal representative has published notice to creditors as provided by section 30.1-19-01, he may not file the verified statement until six months after the date of the first publication.

2. If no proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.

SECTION 3. RETROACTIVITY OF SECTION 1.) The provisions of section 1 of this Act are retroactive and effective as of July 1, 1977.

Approved March 3, 1979

CHAPTER 378

SENATE BILL NO. 2304
(Fritzell)

**INFORMAL PROBATE OR APPOINTMENT
PROCEDURE FORMS**

AN ACT to amend and reenact section 30.1-14-01.1 of the North Dakota Century Code, relating to forms to be provided by a county court and county courts with increased jurisdiction to an applicant for informal probate or informal appointment proceedings under the Uniform Probate Code.

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

SECTION 1. AMENDMENT.) Section 30.1-14-01.1 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-14-01.1. DUTY OF COURT TO PROVIDE FORMS TO AN APPLICANT.) The court shall provide the necessary forms to an applicant who requests aid in using the informal probate or appointment procedure. The forms and explanatory materials shall be prepared by the state court administrator and provided at cost with charge to an applicant not represented by counsel. ~~The North Dakota judicial council shall approve standard printed forms to be used under this chapter.~~

Approved March 15, 1979

CHAPTER 379

HOUSE BILL NO. 1571
(Winkjer)

ERROR IN DEED OF DISTRIBUTION

AN ACT to create and enact a new section to chapter 30.1-20 of the North Dakota Century Code, relating to errors in a deed of distribution of assets.

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

SECTION 1.) A new section to chapter 30.1-20 of the North Dakota Century Code is hereby created and enacted to read as follows:

DEED OF DISTRIBUTION - ERROR IN DESCRIPTION.) If a deed of distribution contains an error in its description of the property distributed or its ownership, the distributee may petition a court of proper jurisdiction to issue an ex parte order allowing an amendment of the deed of distribution to correct the error.

Approved March 19, 1979

CHAPTER 380

HOUSE BILL NO. 1466
(Weber)

PROPERTY COLLECTIBLE BY AFFIDAVIT

AN ACT to amend and reenact subsection 1 of section 30.1-23-01 of the North Dakota Century Code, relating to the value of estates that may be collected as personal property by affidavit.

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

SECTION 1. AMENDMENT.) Subsection 1 of section 30.1-23-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:
 - a. The value of the entire estate, wherever located, less liens and encumbrances, does not exceed ~~five~~ fifteen thousand dollars.
 - b. Thirty days have elapsed since the death of the decedent.
 - c. No application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction.
 - d. The claiming successor is entitled to payment or delivery of the property.

Approved March 7, 1979