

UNIFORM PROBATE CODE

CHAPTER 367

HOUSE BILL NO. 1095
(Riley)

RENUNCIATION BY PERSONAL REPRESENTATIVE

AN ACT to amend and reenact subsection 1 of section 30.1-10-01 and section 47-11.1-01 of the North Dakota Century Code, relating to the right of a personal representative of a deceased person to renounce property.

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

SECTION 1. AMENDMENT. Subsection 1 of section 30.1-10-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A person, the personal representative of a deceased 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 instrument shall:
 - a. Describe the property or interest renounced.
 - b. Declare the renunciation and the extent thereof.
 - c. Be signed by the person renouncing.

SECTION 2. AMENDMENT. Section 47-11.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-11.1-01. **Right to disclaim transfer.** A person, the personal representative of a deceased person, or the representative of an incapacitated person or protected person, who is a grantee, donee, surviving joint tenant, person succeeding to a disclaimed interest, beneficiary under a nontestamentary instrument or contract, or

appointee under a power of appointment exercised by a nontestamentary instrument, may disclaim in whole or in part the right of transfer to ~~him~~ that person of any property or interest therein by delivering or filing a written disclaimer under this chapter. A surviving joint tenant may disclaim as a separate interest any property or interest therein devolving to ~~him~~ the survivor by right of survivorship. A surviving joint tenant may disclaim the entire interest in any property or interest therein that is the subject of a joint tenancy devolving to ~~him~~ the survivor, if the joint tenancy was created by act of a deceased joint tenant, the survivor did not join in creating the joint tenancy, and the survivor has not accepted a benefit thereunder. ~~The right to disclaim does not survive the death of the person having it.~~ The disclaimer shall describe the property or interest therein disclaimed, declare the disclaimer and extent thereof, and be signed by the disclaimant.

Approved March 14, 1985

CHAPTER 368

HOUSE BILL NO. 1424
(Schneider, Riley)

PROBATE JURY TRIALS

AN ACT to amend and reenact section 30.1-15-04 of the North Dakota Century Code, relating to the right of and the demand for a jury trial in contested formal testacy proceedings.

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

SECTION 1. AMENDMENT. Section 30.1-15-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-15-04. (3-404) Formal testacy proceedings - Written objections to probate - Demand for jury trial. Any party to a formal proceeding who opposes the probate of a will for any reason shall state in his that party's pleadings his the objections to probate of the will. In a contested formal testacy proceeding, any party is entitled to a jury trial of all issues of fact by serving upon all appropriate parties and filing with the court a written demand for jury trial. The written demand must be affixed to the pleading of the party which raises any issues of fact and may not be served and filed later than seven days before the time set for hearing.

Approved March 22, 1985

CHAPTER 369

SENATE BILL NO. 2417
(Senator Stenehjem)
(Representatives Ulmer, D. Olsen)

GRAFTON STATE SCHOOL SUPERINTENDENT AS GUARDIAN

AN ACT to amend and reenact sections 25-04-13.1, 30.1-01-06, 30.1-26-01, 30.1-28-03, 30.1-28-04, and 30.1-28-11 of the North Dakota Century Code, and section 16 of chapter 313 of the 1983 Session Laws of North Dakota, relating to the superintendent of Grafton state school acting as guardian and limited guardianship or conservatorship.

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

SECTION 1. AMENDMENT. Section 25-04-13.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-04-13.1. Guardianship - Superintendent to act as guardian.

1. The superintendent of Grafton state school shall continue to be guardian until July 1, ~~1985~~ 1987, of any resident of Grafton state school for ~~which~~ whom he is guardian on July 1, ~~1983~~ 1985, except as otherwise provided by court order, except where the resident is discharged from Grafton, or except as otherwise provided by this section. The superintendent may renounce in writing his guardianship of any resident between July 1, ~~1983~~ 1985, and July 1, ~~1985~~ 1987. The resident will not have a guardian upon renunciation by the superintendent. The guardianship of a minor for ~~which~~ whom there has been no court-ordered alternate guardian appointed will revert back to the minor's parents on renunciation by the superintendent or on July 1, ~~1985~~ 1987. The superintendent shall provide written notice of any intended renunciation to the resident and the resident's parent, advocate, and case manager thirty days before the effective date of the renunciation, or on June 1, ~~1985~~ 1987, whichever date occurs first.
2. The guardianship provided by this section carries the same duties and powers as court-appointed guardians provided

for in chapters 30.1-26 through 30.1-30. Nothing contained in this section affects any parental financial responsibility for the resident as may otherwise be required by law.

3. Court proceedings for the appointment of a guardian for an individual presently or formerly a ward of the superintendent of the Grafton state school pursuant to this section must, upon request of the petitioner, be handled by the state's attorney of the county in which the action is brought. The county of any state's attorney involved in more than ~~thirty~~ fifteen petitions per calendar year is entitled to reimbursement for the time and expenses of the state's attorney from the director of institutions in the amount the director of institutions determines reasonable.
4. The costs necessitated by guardianship hearings held pursuant to this section must be paid, in order of priority, by:
 - a. The incapacitated person if, in the discretion of the court, sufficient assets are available.
 - b. The state through the department of human services.

SECTION 2. AMENDMENT. Section 30.1-01-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-01-06. (1-201) General definitions. Subject to additional definitions contained in the subsequent chapters which are applicable to specific chapters, and unless the context otherwise requires, in this title:

1. "Application" means a written request to the court for an order of informal probate or appointment under chapter 30.1-14.
2. "Augmented estate" means the estate described in section 30.1-05-02.
3. "Beneficiary", as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer, and as it relates to a charitable trust, includes any person entitled to enforce the trust.
4. "Child" includes any individual entitled to take as a child under this title by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

5. "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, demands, or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.
6. "Court" means the court having jurisdiction in matters relating to the affairs of decedents. This court in this state is known as the county court.
7. "Conservator" means a person who is appointed by a court to manage the estate of a protected person, and includes limited conservators as described by sections 30.1-29-20 defined in this section.
8. "Devise", when used as a noun, means a testamentary disposition of real or personal property, and when used as a verb, means to dispose of real or personal property by will.
9. "Devisee" means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee or trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.
10. "Disability" means cause for a protective order as described by section 30.1-29-01.
11. "Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will to the extent of the devised assets.
12. "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this title as originally constituted and as it exists from time to time during administration.
13. "Exempt property" means that property of a decedent's estate which is described in section 30.1-07-01.

14. "Fiduciary" includes personal representative, guardian, conservator, and trustee.
15. "Foreign personal representative" means a personal representative of another jurisdiction.
16. "Formal proceedings" means those conducted before a judge with notice to interested persons.
17. "Guardian" means a person who or nonprofit corporation that has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, and includes limited guardians as described by section 30.1-28-04 defined in this section, but excludes one who is merely a guardian ad litem.
18. "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.
19. "Incapacitated person" is as defined in section 30.1-26-01.
20. "Informal proceedings" means those conducted by the court for probate of a will or appointment of a personal representative without notice to interested persons.
21. "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.
22. "Issue" of a person means all his lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this title.
23. "Lease" includes an oil, gas, or other mineral lease.
24. "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.
25. "Limited conservator" means a person or nonprofit corporation, appointed by the court, to manage only those financial resources specifically enumerated by the court

for the person with limited capacity, and includes limited conservators as described by section 30.1-29-20.

- ~~26-~~ 26. "Limited guardian" means a person or nonprofit corporation, appointed by the court, to supervise certain specified aspects of the care of a person with limited capacity, and includes limited guardians as described by section 30.1-28-04.
- ~~27-~~ 27. "Minor" means a person who is under eighteen years of age.
- ~~28-~~ 28. "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.
- ~~29-~~ 29. "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death.
- ~~30-~~ 30. "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal entity.
- ~~31-~~ 31. "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this title, by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.
- ~~32-~~ 32. "Person" means an individual, a corporation, an organization, or other legal entity.
- ~~33-~~ 33. "Person with limited capacity" is as defined in section 30.1-26-01.
- ~~34-~~ 34. "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.
- ~~35-~~ 35. "Petition" means a written request to the court for an order after notice.
- ~~36-~~ 36. "Proceeding" includes an action at law, and a suit in equity in a district court or an exercise by the court of equitable powers or an application of equitable principles.
- ~~37-~~ 37. "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

- ~~35-~~ 38. "Protected person" is as defined in section 30.1-26-01.
- ~~36-~~ 39. "Protective proceeding" is as defined in section 30.1-26-01.
- ~~37-~~ 40. "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.
- ~~38-~~ 41. "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.
- ~~39-~~ 42. "Special administrator" means a personal representative as described by sections 30.1-17-14 through 30.1-17-18.
- ~~40-~~ 43. "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.
- ~~41-~~ 44. "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.
- ~~42-~~ 45. "Successors" means those persons, other than creditors, who are entitled to property of a decedent under his will or this title.
- ~~43-~~ 46. "Supervised administration" refers to the proceedings described in chapter 30.1-16.
- ~~44-~~ 47. "Testacy proceeding" means a proceeding to establish a will or determine intestacy.
- ~~45-~~ 48. "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in custodial arrangements pursuant to chapter 11-22, sections 25-01.1-19 to 25-01.1-21, chapter 32-10, section 32-16-37, chapter 32-26, chapter 47-24, sections

54-23-27 to 54-23-29, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

- 46- 49. "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.
- 47- 50. "Ward" is as defined in section 30.1-26-01.
- 48- 51. "Will" includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

SECTION 3. AMENDMENT. Section 30.1-26-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-26-01. (5-101) Definitions and use of terms. Unless otherwise apparent from the context, in this title:

1. "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, ~~advanced age~~, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person.
2. "Person with limited capacity" means a person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause except minority, but who is able to make independently some, but not all, of the decisions necessary for that person's own care and the management of that person's property.
3. A "protective proceeding" is a proceeding under the provisions of section 30.1-29-01 to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced, or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief.
- 3- 4. A "protected person" is a minor or other person for whom a conservator or limited conservator has been appointed or other protective order has been made.

- ~~4-~~ 5. A "ward" is a person for whom a guardian or limited guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

SECTION 4. AMENDMENT. Section 30.1-28-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-03. (5-303) Procedure for court appointment of a guardian of an incapacitated person.

1. The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian, limited or general.
2. Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person has counsel of his own choice, it shall appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall be examined by a physician appointed by the court who shall submit his report in writing to the court and shall also be interviewed by a visitor sent by the court. The visitor also shall interview the person seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made. The visitor shall submit his report in writing to the court. The person appointed as visitor may not also be appointed as guardian ad litem for the person alleged to be incapacitated.
3. Where possible without undue delay and expense beyond the ability to pay of the allegedly incapacitated person or any other person paying costs, the court, in formulating the judgment, may utilize the service of any public or charitable agency or nonprofit corporation that offers or is willing to evaluate the condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in his affairs. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be present by counsel, to present evidence, and to cross-examine witnesses, including the court-appointed physician and the visitor. The issue may be determined at a closed hearing if the person alleged to be incapacitated or his counsel so requests.
- ~~4-~~ The costs necessitated by hearings held pursuant to this chapter must be paid, in order of priority, by-

- a- The incapacitated person, if in the discretion of the court, sufficient assets are available-
- b- The spouse or parents of the incapacitated person if the court finds costs would not cause undue hardship-
- c- The state through the department of human services-

SECTION 5. AMENDMENT. Section 30.1-28-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

1. The court shall exercise the authority conferred in this chapter consistent with the maximum self-reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's actual mental and adaptive limitations or other conditions warranting the procedure. A guardianship order may limit the guardian's powers in areas including residential, educational, medical, legal, vocational and financial decisions. The court shall determine in all cases in which a guardian is appointed whether the incapacitated person is mentally incompetent and as such is not qualified to vote.
2. The court may appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the incapacitated person. Alternatively, the court may dismiss the proceeding or enter any other appropriate order, including the involvement of an advocate or the establishment of financial trusts or special bank accounts on behalf of the incapacitated person.
3. The court may appoint a limited guardian if it is satisfied that the person for whom a guardian is sought is a person with limited capacity and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the person with limited capacity. Alternatively, the court may dismiss the proceeding or enter any other appropriate order.
4. The court may, at the time of appointment or later, on its own motion or on appropriate petition or motion of the incapacitated person or other interested person, limit the powers of a guardian otherwise conferred by this section and thereby create a limited guardianship. Any limitation on the statutory power of a guardian of an incapacitated person shall be endorsed on the guardian's letters.

SECTION 6. AMENDMENT. Section 30.1-28-11 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-11. (5-311) Who may be guardian - Priorities.

1. Any competent person or a designated person from a suitable institution, agency, or nonprofit group home may be appointed guardian of an incapacitated person. No institution, agency, or nonprofit group home providing care and custody of the incapacitated person may be appointed guardian. However, if no one else can be found to serve as guardian, an employee of an agency, institution, or nonprofit group home providing care and custody may be appointed guardian if the employee does not provide direct care to the proposed ward and provided that the court makes a specific finding that the appointment presents no substantial risk of a conflict of interest.
2. Persons who are not disqualified have priority for appointment as guardian in the following order:
 - a. The spouse of the incapacitated person.
 - b. An adult child of the incapacitated person.
 - c. A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent.
 - d. Any relative of the incapacitated person with whom he has resided for more than six months prior to the filing of the petition.
 - e. Any relative or friend who has maintained significant contacts with the incapacitated person or a designated person from a volunteer agency.
 - f. A nonprofit corporation established to provide guardianship services; provided, that the corporation does not provide direct care to incapacitated persons. The corporation shall file with the court the name of an employee, volunteer, or other person from the corporation who is directly responsible for the guardianship of each incapacitated person, and shall notify the court in the event the person for any reason ceases to so act, or if a successor is named.
 - g. Any appropriate government agency, including county social service agencies, except as limited by subsection 1.
 - g- h. A person nominated by the person who is caring for the incapacitated person or paying benefits to him.

3. With respect to persons having equal priority, the court shall select the one it deems best qualified to serve. The court, acting in the best interest of the incapacitated person, may pass over a person having priority and appoint a person having a lower priority.

SECTION 7. AMENDMENT. Section 16 of chapter 313 of the 1983 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

SECTION 16. EFFECTIVE DATE. Section 15 shall be effective on July 1, ~~1985~~ 1987.

Approved March 30, 1985

CHAPTER 370

SENATE BILL NO. 2172
(Committee on Judiciary)
(At the request of the Commission on Uniform State Laws)

UNIFORM DURABLE POWER OF ATTORNEY ACT

AN ACT to create and enact chapter 30.1-30 of the North Dakota Century Code as a new part 5 of article V of the Uniform Probate Code, relating to the Uniform Durable Power of Attorney Act; to amend and reenact sections 30.1-28-11 and 30.1-29-10 of the North Dakota Century Code, relating to the appointment of guardians and conservators; and to repeal the present chapter 30.1-30 of the North Dakota Century Code.

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

SECTION 1. AMENDMENT. Section 30.1-28-11 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-11. (5-311) Who may be guardian - Priorities.

1. Any competent person or a designated person from a suitable institution, agency, or nonprofit group home may be appointed guardian of an incapacitated person. No institution, agency, or nonprofit group home providing care and custody of the incapacitated person may be appointed guardian. However, if no one else can be found to serve as guardian, an employee of an agency, institution, or nonprofit group home providing care and custody may be appointed guardian if the employee does not provide direct care to the proposed ward and ~~provided that~~ the court makes a specific finding that the appointment presents no substantial risk of a conflict of interest.
2. Persons Unless lack of qualification or other good cause dictates the contrary, the court shall appoint a guardian in accordance with the incapacitated person's most recent nomination in a durable power of attorney.
3. Except as provided in subsection 2, persons who are not disqualified have priority for appointment as guardian in the following order:

- a. The spouse of the incapacitated person.
- b. An adult child of the incapacitated person.
- c. A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent.
- d. Any relative of the incapacitated person with whom he the incapacitated person has resided for more than six months prior to the filing of the petition.
- e. Any relative or friend who has maintained significant contacts with the incapacitated person or a designated person from a volunteer agency.
- f. Any appropriate government agency, including county social service agencies, except as limited by subsection 1.
- g. A person nominated by the person who is caring for the incapacitated person or paying benefits to him the incapacitated person.

SECTION 2. AMENDMENT. Section 30.1-29-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-29-10. (5-410) Who may be appointed conservator - Priorities.

1. The court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the estate of a protected person. ~~The following are entitled to consideration for appointment in the order listed-~~
2. Unless lack of qualification or other good cause dictates the contrary, the court shall appoint a conservator in accordance with the protected person's most recent nomination in a durable power of attorney.
3. Except as provided in subsection 2, persons who are not disqualified have priority for appointment as conservator in the following order:
 - a. A conservator, guardian of property, or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides.
 - b. An individual or corporation nominated by the protected person by other means than provided for in subsection 2 if he the protected person is fourteen or more years of age and has, in the opinion of the

court, has sufficient mental capacity to make an intelligent choice.

- c. The spouse of the protected person.
 - d. An adult child of the protected person.
 - e. A parent of the protected person, or a person nominated by the will of a deceased parent.
 - f. Any relative of the protected person with whom he the protected person has resided for more than six months prior to the filing of the petition.
 - g. A person nominated by the person who is caring for the protected person or paying benefits to him the protected person.
- 2- 4. A person denominated in subdivisions a, c, d, e, or f of subsection 1 3 may nominate, in writing, a person substitute to serve in his stead instead and thereby transfer the priority to the substitute. With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having higher priority and appoint a person having less lower priority or no priority.

SECTION 3. Chapter 30.1-30 of the North Dakota Century Code is hereby created and enacted to read as follows:

30.1-30-01. (5-501) Definition. A durable power of attorney is a power of attorney by which a principal designates another his attorney in fact in writing and the writing contains the words "This power of attorney is not affected by subsequent disability or incapacity of the principal," or "This power of attorney becomes effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred is exercisable notwithstanding the principal's subsequent disability or incapacity.

30.1-30-02. (5-502) Durable power of attorney not affected by disability. All acts done by an attorney in fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and the principal's successors in interest as if the principal were competent and not disabled.

30.1-30-03. (5-503) Relation of attorney in fact to court-appointed fiduciary.

1. If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator, guardian of the estate, or other fiduciary charged with

the management of all of the principal's property or all of the principal's property except specified exclusions, the attorney in fact is accountable to the fiduciary as well as to the principal. The fiduciary has the same power to revoke or amend the power of attorney that the principal would have had if the principal were not disabled or incapacitated.

2. A principal may nominate, by a durable power of attorney, the conservator, guardian of the principal's estate, or guardian of the principal's person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

30.1-30-04. (5-504) Power of attorney not revoked until notice.

1. The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal's successors in interest.
2. The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

30.1-30-05. (5-505) Proof of continuance of durable and other powers of attorney by affidavit. As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney in fact under a power of attorney, durable or otherwise, stating that the attorney in fact did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation or of the principal's death, disability, or incapacity is conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable. This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

SECTION 4. REPEAL. Chapter 30.1-30 of the North Dakota Century Code is hereby repealed.

Approved March 28, 1985