

# UNIFORM PROBATE CODE

## CHAPTER 334

HOUSE BILL NO. 1111  
(Judiciary Committee)

(At the request of the Commission on Uniform Laws)

### UNIFORM PROBATE CODE CHANGES

AN ACT to create and enact chapters 30.1-05, 30.1-06, a new section to chapter 30.1-07, chapters 30.1-09.1, and 30.1-10 of the North Dakota Century Code, relating to the provisions of the Uniform Probate Code Article II - Intestacy, Wills, and Donative Transfers (1990) which pertain to the elective share of a surviving spouse, a spouse and children unprovided for in a will, applicable law at the time of death, rules of construction applicable to donative dispositions, and general provisions concerning probate and nonprobate transfers; to amend and reenact sections 30.1-01-04, 30.1-01-06, 30.1-04-01, 30.1-04-02, 30.1-04-03, 30.1-04-03.1, 30.1-04-04, 30.1-04-06, 30.1-04-08, 30.1-04-09, 30.1-04-10, 30.1-04-11, 30.1-04-12, 30.1-04-13, 30.1-07-01, 30.1-07-02, 30.1-07-03, 30.1-08-02, 30.1-08-04, 30.1-08-06, 30.1-08-07, 30.1-08-08, 30.1-08-09, 30.1-08-11, 30.1-08-13, 30.1-09-03, 30.1-09-04, 30.1-09-05, 30.1-09-06, 30.1-09-07, 30.1-09-08, 30.1-09-09, 30.1-09-10, 30.1-09-12, 30.1-09-13, 30.1-11-01, 30.1-11-02, 30.1-14-03, 30.1-14-08, 30.1-20-05, subsection 2 of section 30.1-29-07, subsection 1 of section 30.1-31-09, subsection 2 of section 30.1-31-12, and subsection 1 of section 47-24.1-18 of the North Dakota Century Code, relating to the provisions of the Uniform Probate Code Article II which pertain to evidence of death, definitions, intestate succession, exempt property and allowances, wills, will contracts, custody and deposit of wills, rules of construction applicable only to wills, the Uniform Probate Code Article VI - Nonprobate Transfers on Death (1989), and general probate provisions; to repeal present chapters 30.1-05, 30.1-06, sections 30.1-08-03, 30.1-09-01, 30.1-09-02, 30.1-09-11, chapters 30.1-10, 31-12, and 47-11.1 of the North Dakota Century Code, relating to the elective share of the surviving spouse, spouse and children unprovided for in wills, holographic wills, rules of construction, general provisions, Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act, and the Uniform Simultaneous Death Act; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 30.1-01-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**30.1-01-04. (1-167) Evidence as to of death or status.** In proceedings ~~under this title, addition to~~ the rules of evidence in courts of general jurisdiction, ~~including any relating to simultaneous deaths, are applicable unless specifically displaced by this title. In addition,~~ the following rules relating to a determination of death and status ~~are applicable apply~~:

1. Death occurs when an individual is determined to be dead under chapter 23-06.3.

2. A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie ~~proof~~ evidence of the fact, place, date, and time of death, and the identity of the decedent.
- ~~2-~~ 3. A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that ~~a person~~ an individual is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.
- ~~3-~~ 4. In the absence of prima facie evidence of death under subsection ~~1~~ 2 or ~~2~~ 3, the fact of death may be established by clear and convincing evidence, including circumstantial evidence.
- ~~4-~~ 5. ~~A person~~ An individual whose death is not ~~otherwise~~ established under this section, who is absent for a continuous period of ~~seven~~ five years, during which ~~time~~ the person has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. The death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.
6. In the absence of evidence disputing the time of death stated on a document described in subsection 2 or 3, a document described in subsection 2 or 3 that states a time of death one hundred twenty hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by one hundred twenty hours.

**SECTION 2. AMENDMENT.** Section 30.1-01-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted 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. "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.
2. "Application" means a written request to the court for an order of informal probate or appointment under chapter 30.1-14.
- ~~2-~~ 3. "Augmented estate" means the estate described in section 30.1-05-02.
- ~~3-~~ 4. "Beneficiary", as it relates to a trust beneficiaries beneficiary, 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; as it relates to a beneficiary of a beneficiary designation, refers to a beneficiary of an insurance or annuity policy, of an account with a payable on death designation, of a

security registered in beneficiary form transferable on death, or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated in a governing instrument", includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment, or a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

5. "Beneficiary designation" refers to a governing instrument naming a beneficiary of an insurance annuity policy, of an account with payable on death designation, of a security registered in beneficiary form transferable on death, or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death.
- 4- 6. "Child" includes any an individual entitled to take as a child under this title by intestate succession from the parent whose relationship is involved and excludes any a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.
- 5- 7. "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, or demands, or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.
- 6- ~~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- 8. "Conservator" means a person who is appointed by a court to manage the estate of a protected person, and includes limited conservators as defined in this section.
9. "Court" means the court having jurisdiction in matters relating to the affairs of decedents.
10. "Descendant" of an individual means all descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this title.
- 8- 11. "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- 12. "Devisee" means any a 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- 13. "Disability" means cause for a protective order as described by in section 30.1-29-01.

- ~~11-~~ 14. "Distributee" means any person who has received property of a decedent from ~~his~~ the decedent's 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~~ the trustee's 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 the purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will to the extent of the devised assets.
- ~~12-~~ 15. "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-~~ 16. "Exempt property" means that property of a decedent's estate which is described in section 30.1-07-01.
- ~~14-~~ 17. "Fiduciary" includes a personal representative, guardian, conservator, and trustee.
- ~~15-~~ 18. "Foreign personal representative" means a personal representative ~~of~~ appointed by another jurisdiction.
- ~~16-~~ 19. "Formal proceedings" means ~~those~~ proceedings conducted before a judge with notice to interested persons.
20. "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with payable on death designation, security registered in beneficiary form transferable on death, pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.
- ~~17-~~ 21. "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 defined in this section, but excludes one who is merely a guardian ad litem.
- ~~18-~~ 22. "Heirs", except as controlled by section 30.1-09.1-11, means ~~those~~ persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.
- ~~19-~~ 23. "Incapacitated person" ~~is as defined~~ means an individual described in section 30.1-26-01.
- ~~20-~~ 24. "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-~~ 25. "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.~~ The term 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-~~ 26. "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 descendant as defined in subsection 10.~~
27. "Joint tenants with the right of survivorship" and "community property with the right of survivorship" includes coowners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of coownership registration in which the underlying ownership of each party is in proportion to that party's contribution.
- ~~23-~~ 28. "Lease" includes an oil, gas, or other mineral lease.
- ~~24-~~ 29. "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.
- ~~25-~~ 30. "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-~~ 31. "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-~~ 32. "Minor" means a person who is under eighteen years of age.
- ~~28-~~ 33. "Mortgage" means any conveyance, agreement, or arrangement in which property is encumbered or used as security.
- ~~29-~~ 34. "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of ~~his~~ death.
- ~~30-~~ 35. "Organization" ~~includes~~ means a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership ~~or~~, joint venture, association, ~~two or more persons having a joint or common interest,~~ or any other legal or commercial entity.
- ~~31-~~ 36. "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.
37. "Payer" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.
- ~~32-~~ 38. "Person" means an individual, a corporation, an organization, or other legal entity.

- ~~33-~~ 39. "Person with limited capacity" is as defined in section 30.1-26-01.
- ~~34-~~ 40. "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-~~ 41. "Petition" means a written request to the court for an order after notice.
- ~~36-~~ 42. "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-~~ 43. "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.
- ~~38-~~ 44. "Protected person" is as defined in section 30.1-26-01.
- ~~39-~~ 45. "Protective proceeding" ~~is as defined~~ means a proceeding described in section 30.1-26-01.
- ~~40-~~ 46. "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.
- ~~41-~~ 47. "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.
- ~~42-~~ 48. "Special administrator" means a personal representative as described by sections 30.1-17-14 through 30.1-17-18.
- ~~43-~~ 49. "State" ~~includes any~~ means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, ~~and or~~ any territory or insular possession subject to the ~~legislative authority~~ jurisdiction of the United States.
- ~~44-~~ 50. "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.
- ~~45-~~ 51. "Successors" means ~~those~~ persons, other than creditors, who are entitled to property of a decedent under ~~his~~ the decedent's will or this title.
- ~~46-~~ 52. "Supervised administration" refers to the proceedings described in chapter 30.1-16.
53. "Survive", ~~except for purposes of sections 30.1-31-21 through 30.1-31-30,~~ means that an individual has neither predeceased an event, including the death of another individual, nor predeceased an event under sections

30.1-04-04 and 30.1-09.1-02. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".

- ~~47-~~ 54. "Testacy proceeding" means a proceeding to establish a will or determine intestacy.
- ~~48-~~ 55. "Trust" includes ~~any~~ an express trust, private or charitable, with additions thereto, wherever and however created. ~~It~~ The term 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"~~ The term excludes other constructive trusts, and ~~it~~ excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in custodial arrangements pursuant to chapter 11-22, chapter 12-48, sections 25-01.1-19 to 25-01.1-21, chapter 32-10, section 32-16-37, chapter 32-26, former chapter 47-24, chapter 47-24.1, 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.
- ~~49-~~ 56. "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.
- ~~50-~~ 57. "Ward" ~~is as defined~~ means an individual described in section 30.1-26-01.
- ~~51-~~ 58. "Will" includes codicil and any testamentary instrument ~~which that~~ merely appoints an executor or, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

**SECTION 3. AMENDMENT.** Section 30.1-04-01 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-04-01. (2-101) Intestate estate.**

1. Any part of ~~the~~ a decedent's estate of a decedent not effectively disposed of by his will passes by intestate succession to his the decedent's heirs as prescribed in the following sections of this title, except as modified by the decedent's will.
2. A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed the intestate share.

**SECTION 4. AMENDMENT.** Section 30.1-04-02 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-04-02. (2-102) Share of the spouse.** The intestate share of the a decedent's surviving spouse is:

1. ~~If there is no surviving issue or parent of the decedent, the~~ The entire intestate estate if:
  - a. No descendant or parent of the decedent survives the decedent; or
  - b. All of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent.
2. ~~If there is no surviving issue but the decedent is survived by a parent or parents, the~~ The first fifty two hundred thousand dollars, plus one-half three-fourths of the any balance of the intestate estate, if no descendant of the decedent survives the decedent, but a parent of the decedent survives the decedent.
3. ~~If there are surviving issue all of whom are issue of the surviving spouse also, the~~ The first one hundred fifty thousand dollars, plus one-half of any balance of the intestate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent.
4. The first fifty one hundred thousand dollars, plus one-half of the any balance of the intestate estate, if one or more of the decedent's surviving descendants are not descendants of the surviving spouse.
4. ~~If there are surviving issue, one or more of whom are not issue of the surviving spouse, one-half of the intestate estate.~~

**SECTION 5. AMENDMENT.** Section 30.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-04-03. (2-103) Share of heirs other than surviving spouse.** The Any part of the intestate estate not passing to the decedent's surviving spouse under section 30.1-04-02, or the entire intestate estate if there is no surviving spouse, passes as follows in the following order to the individuals designated below who survive the decedent:

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~~ decedent's descendants by representation.
2. ~~If there is no surviving issue~~ descendant, to his ~~parent or the decedent's~~ parents equally if both survive, or to the surviving parent.
3. ~~If there is no surviving issue~~ descendant or parent, to the ~~issue~~ descendants of the decedent's parents or either of them by representation.
4. ~~If there is no surviving issue~~ descendant, parent, or ~~issue~~ descendant of a parent, but the decedent is survived by one or more grandparents or ~~issue~~ descendants of grandparents, half of the estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the ~~issue~~ descendants of the decedent's paternal grandparents or either of them if both are deceased,

~~the descendant's taking by representation; and the other half passes to the decedent's maternal relatives in the same manner.—If; but if there be is no surviving grandparent or issue descendant of a grandparent on either the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other side in the same manner as the half.~~

**SECTION 6. AMENDMENT.** Section 30.1-04-03.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**30.1-04-03.1. Persons Individuals related to decedent through two lines.** A ~~person~~ An individual who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle him the individual to the larger share.

**SECTION 7. AMENDMENT.** Section 30.1-04-04 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-04-04. (2-104) Requirement that heir survive decedent for one hundred twenty hours.** ~~Any person~~ An individual who fails to survive the decedent by one hundred twenty hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. ~~If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be is not established by clear and convincing evidence that the person an individual who would otherwise be an heir has survived the decedent by one hundred twenty hours, it is deemed that the person individual failed to survive for the required period. This section is not to be applied where if its application would result in a taking of intestate estate by the state under section 30.1-04-05.~~

**SECTION 8. AMENDMENT.** Section 30.1-04-06 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-04-06. (2-106) Representation.**

**1. In this section:**

a. "Deceased descendant", "deceased parents", or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is deemed to have predeceased the decedent under section 30.1-04-04.

b. "Surviving descendant" means a decedent who neither predeceased the decedent nor is deemed to have predeceased the decedent under section 30.1-04-04.

**2. ~~If representation is called for by this title, under subsection 1 of section 30.1-04-03, a decedent's intestate estate or a part thereof passes "by representation" to the decedent's descendants, the estate or part thereof is divided into as many equal shares as there are surviving heirs descendants in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one share and the share of each deceased person in the same degree being divided among his issue in the same manner generation nearest to the decedent which contains one or more surviving~~**

descendants and deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

3. If under subsection 3 or 4 of section 30.1-04-03 a decedent's intestate estate or a part thereof passes "by representation" to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part thereof is divided into as many equal shares as there are surviving descendants in the generation nearest the deceased parents or either of them, or the deceased grandparents or either of them, that contains one or more surviving descendants and deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

**SECTION 9. AMENDMENT.** Section 30.1-04-08 of the North Dakota Century Code is amended and reenacted as follows:

30.1-04-08. (2-108) Afterborn heirs. Relatives of the decedent conceived before his death but born thereafter inherit as if they had been born in the lifetime of the decedent. An individual in gestation at a particular time is treated as living at that time if the individual lives one hundred twenty hours or more after birth.

**SECTION 10. AMENDMENT.** Section 30.1-04-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

30.1-04-09. (2-109) (2-114) Meaning of child and related terms. If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

1. An adopted ~~person~~ individual is the child of an adopting parent or parents and not of the natural parents, except that but adoption of a child by the spouse of a either natural parent has no effect on the relationship between the child and either that natural parent or the right of the child or a descendant of the child to inherit from or through the other natural parent.
2. Inheritance from and through a child by either natural parent or kindred is precluded unless that natural parent has openly treated the child as the parent's, and has not refused to support the child.
3. In cases not covered by subsection subsections 1 and 2, a person an individual is the child of its natural parents regardless of the marital status of its parents and the. The parent and child relationship may be established under the Uniform Parentage Act chapter 14-17.

**SECTION 11. AMENDMENT.** Section 30.1-04-10 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-04-10. ~~(2-110)~~ (2-109) Advancements.**

1. If ~~a person an individual~~ dies intestate as to all ~~his or a portion of~~ the individual's estate, property ~~which he~~ the decedent gave ~~in his~~ during the decedent's lifetime to an ~~individual who, at the decedent's death, is an heir~~ is treated as an advancement against the ~~latter's heir's intestate share of the estate~~ only if the decedent declared in a contemporaneous writing ~~by the decedent or the heir~~ acknowledged in writing by the heir to be that the gift is an advancement or the decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.
2. For ~~this purpose the purposes~~ of subsection 1, property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death ~~of the decedent~~, whichever first occurs.
3. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the ~~intestate share to be received by the recipient's issue~~ division and distribution of the decedent's intestate estate, unless the ~~declaration or acknowledgment~~ decedent's contemporaneous writing provides otherwise.

**SECTION 12. AMENDMENT.** Section 30.1-04-11 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-04-11. ~~(2-111)~~ (2-110) Debts to decedent.** A debt owed to ~~the a~~ decedent is not charged against the intestate share of any ~~person individual~~ except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's ~~issue~~ descendants.

**SECTION 13. AMENDMENT.** Section 30.1-04-12 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-04-12. ~~(2-112)~~ (2-111) Alienage.** No ~~person individual~~ is disqualified to take as an heir because he the individual or a ~~person an individual~~ through whom he that individual claims is or has been an alien.

**SECTION 14. AMENDMENT.** Section 30.1-04-13 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-04-13. ~~(2-113)~~ (2-112) Dower and curtesy abolished.** The estates of dower and curtesy are abolished.

**SECTION 15.** Chapter 30.1-05 of the North Dakota Century Code is created and enacted as follows:

**30.1-05-01. (2-201) Elective share.**

1. The surviving spouse of a decedent who dies domiciled in this state has a right of election, under the limitations and conditions stated in this chapter, to take an elective-share amount equal to the value of the

elective-share percentage of the augmented estate, determined by the length of time the spouse and the decedent were married to each other, in accordance with the following schedule:

If the decedent and the spouse were married to each other:

Less than 1 year  
1 year but less than 2 years  
2 years but less than 3 years  
3 years but less than 4 years  
4 years but less than 5 years  
5 years but less than 6 years  
6 years but less than 7 years  
7 years but less than 8 years  
8 years but less than 9 years  
9 years but less than 10 years  
10 years but less than 11 years  
11 years but less than 12 years  
12 years but less than 13 years  
13 years but less than 14 years  
14 years but less than 15 years  
15 years or more

The elective-share percentage is:

Supplemental amount only  
3% of the augmented estate  
6% of the augmented estate  
9% of the augmented estate  
12% of the augmented estate  
15% of the augmented estate  
18% of the augmented estate  
21% of the augmented estate  
24% of the augmented estate  
27% of the augmented estate  
30% of the augmented estate  
34% of the augmented estate  
38% of the augmented estate  
42% of the augmented estate  
46% of the augmented estate  
50% of the augmented estate

2. If the sum of the amounts described in subdivisions c and d of subsection 2 of section 30.1-05-02, subdivisions a and c of subsection 1 of section 30.1-05-07, and that part of the elective-share amount payable from the decedent's probate and reclaimable estates under subsections 2 and 3 of section 30.1-05-07 is less than fifty thousand dollars, the surviving spouse is entitled to a supplemental elective-share amount equal to fifty thousand dollars minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's probate estate and from recipients of the decedent's reclaimable estate in the order of priority set forth in subsections 2 and 3 of section 30.1-05-07.
3. The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state to take an elective share in property in this state is governed by the law of the decedent's domicile at death.

30.1-05-02. (2-202) Augmented estate.

1. a. In this section:

- (1) "Bona fide purchaser" means a purchaser for value in good faith and without notice of an adverse claim. Any recorded instrument on which a state documentary fee is noted is prima facie evidence that the transfer described therein was made to a bona fide purchaser.
- (2) "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that the person possesses respecting the trust or other property arrangement. A person having a general power of

appointment over property is deemed to have a beneficial interest in the property.

- (3) "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent by an exercise of the power could have created an interest, present or future, in the decedent or the decedent's creditors.
- (4) "Probate estate" means property, whether movable or immovable, wherever situated, that would pass by intestate succession if the decedent died without a valid will.
- (5) "Right to income" includes a right to payments under an annuity or similar contractual arrangement.
- (6) "Value of property owned by the surviving spouse at the decedent's death" and "value of property to which the surviving spouse succeeds by reason of the decedent's death" include the commuted value of any present or future interest then held by the surviving spouse and the commuted value of amounts payable to the surviving spouse after the decedent's death under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social security system.

b. In paragraphs 3 and 4 of subdivision b of subsection 2, a "transfer" includes an exercise or release of a power of appointment, but does not include a lapse of a power of appointment.

2. The augmented estate consists of the sum of:

- a. The value of the decedent's probate estate, reduced by funeral and administration expenses, homestead allowance as defined in section 47-18-01, family allowances and exemptions, and enforceable claims.
- b. The value of the decedent's reclaimable estate, which is composed of all property, whether movable or immovable, wherever situated, not including in the decedent's probate estate, of any of the following types:
  - (1) Property to the extent the passing of the principal thereof to or for the benefit of any person, other than the decedent's surviving spouse, was subject to a presently exercisable general power of appointment held by the decedent alone, if the decedent held that power immediately before death or if and to the extent the decedent, while married to the surviving spouse and during the two-year period next preceding the decedent's death, released that power or exercised that power in favor of any person other than the decedent or the decedent's estate, spouse, or surviving spouse.
  - (2) Property, to the extent of the decedent's unilaterally severable interest therein, held by the decedent and any other person,

- except the decedent's surviving spouse, with right of survivorship, if the decedent held that interest immediately before death or if and to the extent the decedent, while married to the surviving spouse and during the two-year period next preceding the decedent's death, transferred that interest to any person other than the decedent's surviving spouse.
- (3) Proceeds of insurance, including accidental death benefits, on the life of the decedent payable to any person other than the decedent's surviving spouse, if the decedent owned the insurance policy, had the power to change the beneficiary of the insurance policy, or the insurance policy was subject to a presently exercisable general power of appointment held by the decedent alone immediately before death or if and to the extent the decedent, while married to the surviving spouse and during the two-year period next preceding the decedent's death, transferred that policy to any person other than the decedent's surviving spouse.
- (4) Property transferred by the decedent to any person other than a bona fide purchaser at any time during the decedent's marriage to the surviving spouse, to or for the benefit of any person, other than the decedent's surviving spouse, if the transfer is of any of the following types:
- (a) Any transfer to the extent that the decedent retained at the time of or during the two-year period next preceding death the possession or enjoyment of, or right to income from, the property.
- (b) Any transfer to the extent that, at the time of or during the two-year period next preceding the decedent's death, the income or principal was subject to a power, exercisable by the decedent alone or in conjunction with any other person or exercisable by a nonadverse party, for the benefit of the decedent or the decedent's estate.
- (c) Any transfer of property, to the extent the decedent's contribution to it, as a percentage of the whole, was made during the two-year period next preceding the decedent's death, by which the property is held, at the time of or during the two-year period preceding the decedent's death, by the decedent and another, other than the decedent's surviving spouse, with right of survivorship.
- (d) Any transfer made to a donee during the two-year period next preceding the decedent's death to the extent that the aggregate transfers to any one donee in either of the years exceed ten thousand dollars.
- c. The value of property to which the surviving spouse succeeds by reason of the decedent's death (other than by homestead allowance, exempt property, family allowance, testate succession, or intestate succession), including the proceeds of insurance (including accidental

death benefits) on the life of the decedent and benefits payable under a retirement plan in which the decedent was a participant, exclusive of the federal social security system.

- d. The value of property owned by the surviving spouse at the decedent's death, reduced by enforceable claims against that property or that spouse, plus the value of amounts that would have been includable in the surviving spouse's reclaimable estate had the spouse predeceased the decedent. But amounts that would have been includable in the surviving spouse's reclaimable estate under paragraph 3 of subdivision b of subsection 2 are not valued as if the spouse were deceased.
3. Any transfer or exercise or release of a power of appointment is excluded from the decedent's reclaimable estate to the extent the decedent received adequate and full consideration in money or money's worth for the transfer, exercise, or release or if irrevocably made with the written consent or joinder of the surviving spouse.
4. Property is valued as of the decedent's death, but property irrevocably transferred during the two-year period next preceding the decedent's death which is included in the decedent's reclaimable estate under paragraphs 1, 2, and 4 of subdivision b of subsection 2 is valued as of the time of the transfer. If the terms of more than one of the paragraphs or subparagraphs of subdivision b of subsection 2 apply, the property is included in the augmented estate under the paragraph or subparagraph that yields the highest value. For the purposes of this section, an "irrevocable transfer of property" includes an irrevocable exercise or release of a power of appointment.
5.
  - a. Although under this section a payment, item of property, or other benefit is included in the decedent's reclaimable estate, a payer or other third party is not liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument, or for having taken any other action in good faith reliance on the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the payer or other third party received written notice from the surviving spouse or spouse's representative of an intention to file a petition for the elective share or that a petition for the elective share has been filed. A payer or other third party is liable for payments made or other actions taken after the payer or other third party received written notice of an intention to file a petition for the elective share or that a petition for the elective share has been filed.
  - b. The written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed must be mailed to the payer's or other third-party's main office or home by registered mail or served upon the payer or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payer or other third party may pay any amount owed or transfer or deposit any item of

property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under subsection 4 of section 30.1-05-05, shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under subsection 1 of section 30.1-05-05, or, if filed, the demand for an elective share is withdrawn under subsection 3 of section 30.1-05-05, the court shall order disbursement to the designated beneficiary. Payments, transfers, or deposits made to or with the court discharge the payer or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

- c. Upon petition to the court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this section.
6. a. A person who purchases property from a recipient for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this chapter to return the payment, item of property, or benefit nor liable under this chapter for the amount of that payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit included in the decedent's reclaimable estate is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, as provided in section 30.1-14-07.

b. If any section or part of any section of this chapter is preempted by federal law with respect to a payment, an item of property, or any other benefit included in the decedent's reclaimable estate, a person who, not for value, receives the payment, item of property, or any other benefit, is obligated to return that payment, item of property, or benefit or is personally liable for the amount of that payment or the value of that item of property or benefit, as provided in section 30.1-05-07, to the person who would have been entitled to it were that section or part of that section not preempted.

30.1-05-03. (2-203) Right of election personal to surviving spouse.

1. The right of election may be exercised only by a surviving spouse who is living when the petition for the elective share is filed in the court under subsection 1 of section 30.1-05-05. If the election is not exercised by the surviving spouse personally, it may be exercised on the surviving spouse's behalf by the surviving spouse's conservator, guardian, or agent under the authority of a power of attorney.
2. If the election is exercised on behalf of a surviving spouse who is an incapacitated person, the court must set aside that portion of the

elective-share and supplemental elective-share amounts due from the decedent's probate estate and recipients of the decedent's reclaimable estate under subsections 2 and 3 of section 30.1-05-07 and must appoint a trustee to administer that property for the support of the surviving spouse. For the purposes of this subsection, an election on behalf of a surviving spouse by an agent under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an incapacitated person. The trustee must administer the trust in accordance with the following terms and such additional terms as the court determines appropriate:

- a. Expenditures of income and principal may be made in the manner, when, and to the extent that the trustee determines suitable and proper for the surviving spouse's support, without court order but with regard to other support, income, and property of the surviving spouse exclusive of benefits of medical or other forms of assistance from any state or federal government or governmental agency for which the surviving spouse must qualify on the basis of need.
- b. During the surviving spouse's incapacity, neither the surviving spouse nor anyone acting on behalf of the surviving spouse has a power to terminate the trust; but if the surviving spouse regains capacity, the surviving spouse then acquires the power to terminate the trust and acquire full ownership of the trust property free of trust, by delivering to the trustee a writing signed by the surviving spouse declaring the termination.
- c. Upon the surviving spouse's death, the trustee shall transfer the unexpended trust property in the following order: under the residuary clause, if any, of the will of the predeceased spouse against whom the elective share was taken, as if that predeceased spouse died immediately after the surviving spouse; or to that predeceased spouse's heirs under section 30.1-09.1-11.

30.1-05-04. (2-204) Waiver of right to elect and of other rights.

1. The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the surviving spouse.
2. A surviving spouse's waiver is not enforceable if the surviving spouse proves that:
  - a. The waiver, if given effect, would reduce the assets or income available to the surviving spouse to an amount less than those allowed for persons eligible for a program of public assistance;
  - b. The surviving spouse did not execute the waiver voluntarily; or
  - c. The waiver was unconscionable when it was executed and, before execution of the waiver, the surviving spouse:
    - (1) Was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent.



4. After notice and hearing, the court shall determine the elective-share and supplemental elective-share amounts, and shall order its payment from the assets of the augmented estate or by contribution as appears appropriate under section 30.1-05-07. If it appears that a fund or property included in the augmented estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than the person would have been under section 30.1-05-07 had relief been secured against all persons subject to contribution.
5. An order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions.
6. A copy of the order or judgment of the court shall be forwarded immediately to the tax commissioner by the court.

30.1-05-06. (2-206) Effect of election on statutory benefits. If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead allowance, exempt property, and family allowance, if any, are not charged against but are in addition to the elective-share and supplemental elective-share amounts.

30.1-05-07. (2-207) Charging spouse with owned assets and gifts received - Liability of others for balance of elective share.

1. In a proceeding for an elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any contributions due from the decedent's probate estate and recipients of the decedent's reclaimable estate:
  - a. Amounts included in the augmented estate which pass or have passed to the surviving spouse by testate or intestate succession.
  - b. Amounts included in the augmented estate under subdivision c of subsection 2 of section 30.1-05-02.
  - c. Amounts included in the augmented estate which would have passed to the spouse but were disclaimed.
  - d. Amounts included in the augmented estate under subdivision d of subsection 2 of section 30.1-05-02 up to the applicable percentage thereof. For the purposes of this subdivision, the "applicable percentage" is twice the elective-share percentage set forth in the schedule in subsection 1 of section 30.1-05-01 appropriate to the length of time the spouse and the decedent were married to each other.
2. If, after the application of subsection 1, the elective-share amount is not fully satisfied or if the surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's probate estate and that portion of the decedent's reclaimable estate other

than amounts irrevocably transferred within two years before the decedent's death are applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's probate estate and that portion of the decedent's reclaimable estate are so applied that liability for the unsatisfied balance of the elective share amount or for the supplemental elective-share amount is equitably apportioned among the recipients of the decedent's probate estate and that portion of the decedent's reclaimable estate in proportion to the value of their interests therein.

3. If, after the application of subsections 1 and 2, the elective-share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's reclaimable estate is so applied that liability for the unsatisfied balance of the elective-share or supplemental elective-share amount is equitably apportioned among the recipients of that portion of the decedent's reclaimable estate in proportion to the value of their interests therein.
4. Only original recipients of the reclaimable estate described in subdivision b of subsection 2 of section 30.1-05-02, and the donees of the recipients of the reclaimable estate to the extent the donees have the property or its proceeds, are liable to make a proportional contribution toward satisfaction of the surviving spouse's elective-share or supplemental elective-share amount. A person liable to make contribution may choose to give up the proportional part of the reclaimable estate or to pay the value of the amount for which the person is liable.

**SECTION 16.** Chapter 30.1-06 of the North Dakota Century Code is created and enacted as follows:

30.1-06-01. (2-301) Entitlement of spouse - Premarital will.

1. If the testator's surviving spouse married the testator after the testator executed a will, the surviving spouse is entitled to receive, as an intestate share, no less than the value of the share of the estate the surviving spouse would have received if the testator had died intestate as to that portion of the testator's estate, if any, that neither is devised to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse nor is devised or passes under section 30.1-09-05 or 30.1-09-06 to a descendant of such a child, unless:
  - a. It appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse;
  - b. The will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or
  - c. The testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.
2. In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse, if any, are applied first, and other

devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse or a devise or substitute gift under section 30.1-09-05 or 30.1-09-06 to a descendant of such a child, abate as provided in section 30.1-20-02.

30.1-06-02. (2-302) Omitted children.

1. Except as provided in subsection 2, if a testator fails to provide in the will for any of testator's children born or adopted after the execution of the will, the omitted afterborn or after-adopted child receives a share in the estate as follows:

a. If the testator had no child living when the testator executed the will, an omitted afterborn or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.

b. If the testator had one or more children living when the testator executed the will, and the will devised property or an interest in property to one or more of the then-living children, an omitted afterborn or after-adopted child is entitled to share in the testator's estate as follows:

(1) The portion of the testator's estate in which the omitted afterborn or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will.

(2) The omitted afterborn or after-adopted child is entitled to receive the share of the testator's estate, as limited in paragraph 1, that the child would have received had the testator included all omitted afterborn and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child.

(3) To the extent feasible, the interest granted an omitted afterborn or after-adopted child under this section must be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will.

(4) In satisfying a share provided by this subdivision, devises to the testator's children who were living when the will was executed abate ratably. In abating the devises of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.

2. Neither subdivision a nor subdivision b of subsection 1 applies if:

a. It appears from the will that the omission was intentional; or

- b. The testator provided for the omitted afterborn or after-adopted child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.
3. Except as provided in subsection 1, if at the time of execution of the will the testator fails to provide in the will for a living child solely because the testator believes the child to be dead, the child is entitled to share in the estate as if the child were an omitted afterborn, or after-adopted child.
4. In satisfying a share provided by subdivision a of subsection 1 or subsection 3, devises made by the will abate under section 30.1-20-02.

**SECTION 17.** A new section to chapter 30.1-07 of the North Dakota Century Code is created and enacted as follows:

(2-401) Applicable law. This chapter applies to the estate of a decedent who dies domiciled in this state. The rights to homestead allowance, exempt property, and family allowance for a decedent who dies not domiciled in this state are governed by the law of the decedent's domicile at death.

**SECTION 18. AMENDMENT.** Section 30.1-07-01 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-07-01. ~~(2-402)~~ (2-403) Exempt property entitlement — Personal property.** In addition to the homestead defined in section 47-18-01, the decedent's surviving spouse ~~of a decedent who was domiciled in this state~~ is entitled to receive from the estate, to a value, not exceeding five ten thousand dollars in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the decedent's minor children of, whom the decedent was obligated to support and children who were in fact being supported by the decedent, are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than five ten thousand dollars, or if there is not five ten thousand dollars worth of exempt property in the estate, the spouse or such children are entitled to other assets of the estate, if any, to the extent necessary to make up the five ten thousand dollar value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, ~~except that~~ but the right to any assets to make up a deficiency of exempt property ~~shall abate~~ abates as necessary to permit ~~prior~~ earlier payment of the homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the decedent's will of the decedent, unless otherwise provided, by intestate succession, or by way of elective share.

**SECTION 19. AMENDMENT.** Section 30.1-07-02 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-07-02. ~~(2-403)~~ (2-404) Family allowance.**

1. In addition to the right to homestead ~~rights~~ allowance and exempt property, if the ~~decedent was domiciled in this state,~~ the decedent's surviving spouse and minor children whom the decedent was obligated to

support and children who were in fact being supported by ~~him~~ the decedent are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the ~~minor and dependent~~ children, or persons having their care and custody. ~~In case any~~ If a minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or ~~his~~ the child's guardian or other person having ~~his~~ the child's care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims, ~~but not over~~ except the homestead allowance.

2. The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent, unless otherwise provided, by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates ~~his~~ the right to allowances not yet paid.

**SECTION 20. AMENDMENT.** Section 30.1-07-03 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-07-03. ~~(2-404)~~ (2-405) Source, determination, and documentation.**

1. If the estate is otherwise sufficient, property specifically devised ~~is~~ may not be used to satisfy rights to exempt property. Subject to this restriction, the surviving spouse, ~~the~~ guardians of ~~the~~ minor children, or children who are adults may select property of the estate as exempt property. The personal representative may make ~~this selection~~ those selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time, or ~~if there are is no guardians guardian of the a minor children child.~~ The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as exempt property. ~~He~~ The personal representative may determine the family allowance in a lump sum not exceeding ~~six~~ eighteen thousand dollars or periodic installments not exceeding one thousand five hundred dollars per month for one year, and may disburse funds of the estate in payment of the family allowance. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which ~~relief may provide~~ include a family allowance ~~larger or smaller~~ other than that which the personal representative determined or could have determined.
2. If the right to an elective share is exercised on behalf of a surviving spouse who is an incapacitated person, the personal representative may add any unexpended portions payable under the homestead allowance, exempt property, and family allowance to the trust established under subsection 2 of section 30.1-05-03.

SECTION 21. AMENDMENT. Section 30.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

30.1-08-02. (2-502) Execution - Witnessed wills - Holographic wills.

- 1. ~~Except as provided for holographic wills, writings within section 30.1-08-13, and wills within section in subsection 2 and in sections 30.1-08-06, every and 30.1-08-13, a will shall must be in:~~
  - a. ~~In writing signed.~~
  - b. ~~Signed by the testator or in the testator's name by some other person individual in the testator's conscious presence and by his the testator's direction, and shall be signed.~~
  - c. ~~Signed by at least two persons individuals, each of whom witnessed signed within a reasonable time after witnessing either the signing of the will as described in subdivision b or the testator's acknowledgment of the that signature or acknowledgment of the will.~~
- 2. ~~A will that does not comply with subsection 1 is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.~~
- 3. ~~Intent that the document constitute the testator's will can be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting.~~

SECTION 22. AMENDMENT. Section 30.1-08-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

30.1-08-04. (2-504) Self-proved will.

- 1. ~~Any A~~ will may be simultaneously executed, attested, and made self-proved, by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, attached or annexed to the will in substantially the following form:

THE STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, the testator, sign my name to this instrument this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and being first sworn, declare to the undersigned authority that I sign and execute this instrument as my ~~last will,~~ and that I sign it willingly or willingly direct another to sign for me, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
Testator

We, \_\_\_\_\_, \_\_\_\_\_, the witnesses, sign our names to this instrument, and being first sworn, declare to the undersigned authority that the testator ~~signed signs~~ and ~~executed~~

executes this instrument as ~~his last the testator's~~ will, and that he ~~signed the testator signs~~ it willingly or willingly directed ~~directs~~ another to sign for ~~him the testator~~, and that each of us, in the presence and hearing of the testator, signs this will as a witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Subscribed, sworn to, and acknowledged before me by \_\_\_\_\_, the testator, and subscribed and sworn to before me by \_\_\_\_\_, and \_\_\_\_\_, witnesses witness, this \_\_\_\_\_ day of \_\_\_\_\_.  
(SEAL) (Signed) \_\_\_\_\_

\_\_\_\_\_  
(Official capacity of officer)

- 2. An attested will may at any time after its execution be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

THE STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

We, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as ~~his last the testator's~~ will and that he the testator had signed willingly or willingly directed another to sign for ~~him the testator~~, and that he the testator executed it as ~~his the testator's~~ free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of our knowledge the testator was at that time eighteen or more years of age, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
Testator

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Subscribed, sworn to and acknowledged before me by \_\_\_\_\_, the testator, and subscribed and sworn to before me by \_\_\_\_\_ and \_\_\_\_\_, witnesses, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
(SEAL) (Signed) \_\_\_\_\_

\_\_\_\_\_  
(Official capacity of officer)

3. A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will, if necessary to prove the will's due execution.

**SECTION 23. AMENDMENT.** Section 30.1-08-06 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-08-06. (2-506) Choice of law as to execution.** A written will is valid if executed in compliance with section 30.1-08-02 ~~or 30.1-08-03~~ or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national.

**SECTION 24. AMENDMENT.** Section 30.1-08-07 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-08-07. (2-507) Revocation by writing or by act.**

1. A will or any part thereof is revoked:
  - 1- a. By executing a subsequent will which that revokes the prior previous will or part expressly or by inconsistency; or
  - 2- b. By being burned, torn, canceled, obliterated, or destroyed, performing a revocatory act on the will, if the testator performed the act with the intent and for the purpose of revoking it by the testator or by another person the will or part or if another individual performed the act in his the testator's conscious presence and by his the testator's direction. For purposes of this subdivision, "revocatory act on the will" includes burning, tearing, canceling, obliterating, or destroying the will or any part of it. A burning, tearing, or canceling is a "revocatory act on the will", whether or not the burn, tear, or cancellation touched any of the words on the will.
2. If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.
3. The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked; only the subsequent will is operative on the testator's death.
4. The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will; each will is fully operative on the testator's death to the extent they are not inconsistent.

**SECTION 25. AMENDMENT.** Section 30.1-08-08 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-08-08. (2-508) Revocation by divorce** ~~No revocation by other changes change of circumstances. If after executing a will the testator is divorced or his marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly provides otherwise. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse. For purposes of this section, divorce or annulment means any divorce or annulment which would exclude the spouse as a surviving spouse within the meaning of section 30.1-10-02. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section. No change of circumstances other than as described in this section revokes a will. Except as provided in sections 30.1-10-03 and 30.1-10-04, a change of circumstances does not revoke a will or any part of it.~~

**SECTION 26. AMENDMENT.** Section 30.1-08-09 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-08-09. (2-509) Revival of revoked will.**

1. If a subsequent will which, had it remained effective at death, would have that wholly revoked a prior previous will in whole or in part, is thereafter revoked by acts a revocatory act under subdivision b of subsection 1 of section 30.1-08-07, the prior previous will is remains revoked in whole or in part unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that he the testator intended the prior previous will to take effect as executed.
2. If a subsequent will that partly revoked a previous will is thereafter revoked by a revocatory act under subdivision b of subsection 1 of section 30.1-08-07, a revoked part of the previous will is revived unless it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part to take effect as executed.
3. If a subsequent will which, had it remained effective at death, would have that revoked a prior previous will in whole or in part, is thereafter revoked by a subsequent another, later, will, the prior previous will is remains revoked in whole or in part, except unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent it appears from the terms of the subsequent later will that the testator intended the prior previous will to take effect.

**SECTION 27. AMENDMENT.** Section 30.1-08-11 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-08-11. (2-511) Testamentary additions to trusts.**

1. ~~A devise or bequest, the validity of which is determinable by the law of this state, may be made by a will~~ may validly devise property to the trustee of a trust established or to be established during the testator's lifetime by the testator ~~or~~ by the testator and some other person, or by some other person, including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts, or at the testator's death by the testator's devise to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, or concurrently with, or after the execution of the testator's will or in ~~the valid last~~ another individual's will of a person who if that other individual has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust. The devise is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or ~~after~~ the testator's death of the testator.
2. Unless the testator's will provides otherwise, ~~the property so~~ devised to a trust described in subsection 1:
  1. a. Is not ~~deemed to be~~ held under a testamentary trust of the testator but becomes a part of the trust to which it is given ~~devised~~.
  2. b. ~~Shall~~ Must be administered and disposed of in accordance with the provisions of the governing instrument or will setting forth the terms of the trust, including any amendments thereto made before or after the testator's death of the testator, regardless of whether made before or after the execution of the testator's will, and, if the testator's will so provides, including any amendments to the trust made after the death of the testator.
3. A ~~Unless the testator's will provides otherwise, a~~ revocation or termination of the trust before the testator's death of the testator causes the devise to lapse.

**SECTION 28. AMENDMENT.** Section 30.1-08-13 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-08-13. (2-513) Separate writing identifying bequest devise of certain types of tangible personal property.** Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, ~~evidences of indebtedness, documents of title, and securities, and property used in trade or business.~~ To be admissible under this section as evidence of the intended disposition, the writing must ~~either be in the handwriting of the testator or be signed by him~~ the testator and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing which that has no significance apart from its effect ~~upon~~ on the dispositions made by the will.

**SECTION 29. AMENDMENT.** Section 30.1-09-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**30.1-09-03. ~~(2-603)~~ (2-601) Rules of construction and intention applicable only to wills.** The intention of a testator as expressed in ~~his~~ the testator's will controls the legal effect of ~~his~~ the testator's dispositions. The rules of construction expressed in ~~the succeeding sections~~ of this chapter apply unless a contrary intention is indicated by the will.

**SECTION 30. AMENDMENT.** Section 30.1-09-04 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-09-04. ~~(2-604)~~ (2-602) Construction that will** Will passes all property - After-acquired property. A will ~~is construed to pass~~ may provide for the passage of all property which the testator owns at his death including and all property acquired by the estate after the execution of the will testator's death.

**SECTION 31. AMENDMENT.** Section 30.1-09-05 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-09-05. ~~(2-605)~~ (2-603) Antilapse - Deceased devisee - Class gifts.** ~~If a devisee who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if he predeceased the testator, the issue of the deceased devisee who survive the testator by one hundred twenty hours take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee they take equally, but if of unequal degree, then those of more remote degree take by representation. One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the will.~~

1. In this section:

- a. "Alternative devise" means that a devise that is expressly created by the will and, under the terms of the will, can take effect instead of another devise on the happening of one or more events, including survival of the testator or failure to survive the testator, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause constitutes an alternative devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise, or nonresiduary devises in general, pass under the residuary clause.
- b. "Class member" includes an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had the individual survived the testator.
- c. "Devise" includes an alternative devise, a devise in the form of a class gift, and an exercise of a power of appointment.
- d. "Devisee" includes a class member if the devise is in the form of a class gift, an individual or class member who was deceased at the time the testator executed the will as well as an individual or class member who was then living but who failed to survive the testator, and

- an appointee under a power of appointment exercised by the testator's will.
- e. "Stepchild" is a child of the surviving, deceased, or former spouse of the testator or of the donor of a power of appointment, and not of the testator.
  - f. "Surviving devisee" or "surviving descendant" means a devisee or a descendant who neither predeceased the testator nor is deemed to have predeceased the testator under section 30.1-09.1-02.
  - g. "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.
2. If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply:
- a. Except as provided in subdivision d, if a devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take by representation the property to which the devisee would have been entitled had the devisee survived the testator.
  - b. Except as provided in subdivision d, if a devise is in the form of a class gift, other than a devise to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", "family", or a class described by language of similar import, a substitute gift is created in the deceased devisee or devisee's surviving descendants. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of deceased devisees. Each surviving devisee takes the share to which the devisee would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take by representation the share to which that deceased devisee would have been entitled had the deceased devisee survived the testator. For the purposes of this subdivision, "deceased devisee" means a class member who failed to survive the testator and left one or more surviving descendants.
  - c. For purposes of section 30.1-09-03, words of survivorship, such as in a devise to an individual "if the individual survives me", or in a devise to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.
  - d. If the will creates an alternative devise with respect to a devise for which a substitute gift is created by subdivision a or b, the substitute gift is superseded by the alternative devise only if an expressly designated devisee of the alternative devise is entitled to take under the will.

- e. Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment can be substituted for the appointee under this section, whether or not the descendant is an object of the power.
3. If under subsection 2, substitute gifts are created and not superseded with respect to more than one devise and the devises are alternative devises, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:
- a. Except as provided in subdivision b, the devised property passes under the primary substitute gift.
- b. If there is a younger-generation devise, the devised property passes under the younger-generation substitute gift and not under the primary substitute gift.
- c. In this subsection:
- (1) "Primary devise" means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator.
- (2) "Primary substitute gift" means the substitute gift created with respect to the primary devise.
- (3) "Younger-generation devise" means a devise that is to a descendant of a devisee of the primary devise, is an alternative devise with respect to the primary devise, is a devise for which a substitute gift is created, and would have taken effect had all the deceased devisees who left surviving descendants survived the testator except the deceased devisee or devisees of the primary devise.
- (4) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation devise.

**SECTION 32. AMENDMENT.** Section 30.1-09-06 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-09-06. ~~(2-606)~~ (2-604) Failure of testamentary provision.**

1. Except as provided in section 30.1-09-05, ~~if~~ a devise, other than a residuary devise, that fails for any reason,~~it~~ becomes a part of the residue.
2. Except as provided in section 30.1-09-05, if the residue is devised to two or more persons ~~and~~, the share ~~of one of the~~ a residuary ~~devises~~ devisee ~~that fails for any reason,~~ his share passes to the other residuary devisee, or to other residuary devisees in proportion to ~~their~~ the interests of each in the remaining part of the residue.

**SECTION 33. AMENDMENT.** Section 30.1-09-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**30.1-09-07. ~~(2-607)~~ (2-605) Change Increase in securities - Accessions - Nonademption.**

1. ~~If the a testator intended a specific devise of certain executes a will that devises securities rather than the equivalent value thereof, the specific devisee is entitled only to and the testator then owned securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities were acquired by the testator after the will was executed as a result of the testator's ownership of the described securities and are securities of any of the following types:~~
  - a. ~~As much of the devised securities as is a part of the estate at the time of the testator's death. Securities of the same organization acquired by reason of action initiated by the organization or any successor, related, or acquiring organization, excluding any acquired by exercise of purchase options.~~
  - b. ~~Any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity excluding any acquired by exercise of purchase options. Securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization.~~
  - c. ~~Securities of another entity owned by the testator as a result of a merger, consolidation, reorganization, or other similar action initiated by the entity. Securities of the same organization acquired as a result of a plan of reinvestment.~~
  - d. ~~Any additional securities of the entity owned by the testator as a result of a plan of reinvestment.~~
2. ~~Distributions in cash before death with respect to a specifically devised described security not provided for in subsection 1 are not part of the specific devise.~~

**SECTION 34. AMENDMENT.** Section 30.1-09-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**30.1-09-08. ~~(2-608)~~ (2-606) Nonademption of specific devises in certain cases - Unpaid proceeds of sale, condemnation, or insurance - Sale by conservator or agent.**

1. A specific devisee has the right to the ~~remaining~~ specifically devised property in the testator's estate at death and:
  - a. Any balance of the purchase price, together with any security interest, owing from a purchaser to the testator at death by reason of sale of the property.
  - b. Any amount of a condemnation award for the taking of the property unpaid at death.
  - c. Any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property.

- d. ~~Any property~~ Property owned by the testator at his death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security interest for a specifically devised obligation.
- e. Real or tangible personal property owned by the testator at death which the testator acquired as a replacement for specifically devised real or tangible personal property.
2. If specifically devised property is sold or mortgaged by a conservator or by an agent acting within the authority of a durable power of attorney for a ~~an incapacitated principal who is under a disability~~, or if a condemnation award ~~or~~ insurance proceeds, or recovery for injury to the property are paid to a conservator or to an agent acting within the authority of a durable power of attorney for a ~~an incapacitated principal who is under a disability as a result of condemnation, fire, or casualty~~, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, or the insurance proceeds, or the recovery. ~~This subsection does not apply if, after the sale, condemnation, fire, or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one year.~~
3. The right of ~~the a~~ specific devisee under ~~this~~ subsection 2 is reduced by any right the devisee has under subsection 1.
4. For the purposes of the references in subsection 2 to a conservator, subsection 2 does not apply if after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by one year.
5. For the purposes of the references in subsection 2 to an agent acting within the authority of a durable power of attorney for an incapacitated principal, "incapacitated principal" means a principal who is an incapacitated person, no adjudication of incapacity before death is necessary, and the acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal.

**SECTION 35. AMENDMENT.** Section 30.1-09-09 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-09-09. ~~(2-609)~~ (2-607) Nonexoneration.** A specific devise passes subject to any security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

**SECTION 36. AMENDMENT.** Section 30.1-09-10 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-09-10. ~~(2-610)~~ (2-608) Exercise of power of appointment.** A In the absence of a requirement that a power of appointment be exercised by a reference, or by an express or specific reference, to the power, a general residuary clause in a will, or a will making general disposition of all of the testator's property, does not express an intention to exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of only if the power is a general power and the creating instrument does not contain a

gift if the power is not exercised or the testator's will manifests an intention to include the property subject to the power.

**SECTION 37. AMENDMENT.** Section 30.1-09-12 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-09-12. ~~(2-612)~~ (2-609) Ademption by satisfaction.**

1. Property which a testator gave in his the testator's lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part, only if the will provides for deduction of the lifetime gift, or the testator declares declared in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devise or that its value is to be deducted from the value of the devise, or the devisee acknowledges acknowledged in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.
2. For the purpose purposes of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or as of at the time of testator's death of the testator, whichever occurs first.
3. If the devisee fails to survive the testator, the gift is treated as a full or partial satisfaction of the devise, as appropriate, in applying sections 30.1-09-05 and 30.1-09-06, unless the testator's contemporaneous writing provides otherwise.

**SECTION 38. AMENDMENT.** Section 30.1-09-13 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-09-13. ~~(2-701)~~ (2-514) Contracts concerning succession.** A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after July 1, 1975, can be established only by:

1. Provisions of a will stating material provisions of the contract;
2. An express reference in a will to a contract and extrinsic evidence proving the terms of the contract;
3. A writing signed by the decedent evidencing the contract.

The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

**SECTION 39.** Chapter 30.1-09.1 of the North Dakota Century Code is created and enacted as follows:

**30.1-09.1-01. (2-701) Scope.** In the absence of a finding of a contrary intention, the rules of construction in this chapter control the construction of a governing instrument. The rules of construction in this chapter apply to a governing instrument of any type, except as the application of a particular section is limited by its terms to a specific type or types of provisions or governing instrument.

**30.1-09.1-02. (2-702) Requirement of survival by one hundred twenty hours.**

1. For the purposes of this title, except for purposes of sections 30.1-31-21 through 30.1-31-30, and except as provided in subsection 4 an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by one hundred twenty hours is deemed to have predeceased the event.
2. Except as provided in subsection 4 and except for a security registered in beneficiary form under sections 30.1-31-21 through 30.1-31-30, for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by one hundred twenty hours is deemed to have predeceased the event.
3. Except as provided in subsection 4, if it is not established by clear and convincing evidence that one of two coowners with right of survivorship survived the other coowner by one hundred twenty hours, one-half of the property passes as if one had survived by one hundred twenty hours and one-half as if the other had survived by one hundred twenty hours and there are more than two coowners and it is not established by clear and convincing evidence that at least one of them survived the others by one hundred twenty hours, the property passes in the proportion that one bears to the whole number of coowners. For purposes of this subsection, the term "coowners with right of survivorship" includes joint tenants, tenants by the entireties, and other coowners of property or accounts held under circumstances that entitles one or more to the whole of the property or account on the death of the other or others.
4. This section does not apply if:
  - a. The governing instrument contains some language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;
  - b. The governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specific period or expressly requires the individual to survive the event by a specific period;
  - c. Imposition of a one hundred twenty-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under subdivision a of subsection 1, subdivision a of subsection 2, or subdivision a of subsection 3 of section 47-02-27.1, or to become invalid under subdivision b of subsection 1, subdivision b of subsection 2, or subdivision b of subsection 3 of section 47-02-27.1; or
  - d. The application of this section to multiple governing instruments would result in an unintended failure or duplication of a disposition.
5. a. A payer or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument who, under this section, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the

beneficiary's apparent entitlement under the terms of the governing instrument, before the payer or other third party received written notice of a claimed lack of entitlement under this section. A payer or other third party is liable for a payment made or other action taken after the payer or other third party received written notice of a claimed lack of entitlement under this section.

- b. Written notice of a claimed lack of entitlement under subdivision a must be mailed to the payer's or other third party's main office or home by registered mail or served upon the payer or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this section, a payer or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payer or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.
6. a. A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.
- b. If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

30.1-09.1-03. (2-703) Choice of law as to meaning and effect of governing instrument. The meaning and legal effect of a governing instrument is determined by the local law of the state selected by the transferor in the governing instrument, unless the application of that law is contrary to the provisions relating to the elective share described in chapter 30.1-05, the provisions relating

to exempt property and allowances described in chapter 30.1-07, or any other public policy of this state otherwise applicable to the disposition.

30.1-09.1-04. (2-704) Power of appointment - Meaning of specific reference requirement. If a governing instrument creating a power of appointment expressly requires that the power be exercised by a reference, an express reference, or a specific reference, to the power or its source, it is presumed that the donor's intention, in requiring that the donee exercise the power by making reference to the particular power or to the creating instrument, was to prevent an inadvertent exercise of the power.

30.1-09.1-05. (2-705) Class gifts construed to accord with intestate succession.

1. Adopted individuals and individuals born out of wedlock, and their respective descendants if appropriate to the class, are included in class gifts and other terms of relationship in accordance with the rules for intestate succession. Terms of relationship that do not differentiate relationships by blood from those by affinity, such as "uncles", "aunts", "nieces", or "nephews", are construed to exclude relatives by affinity. Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as "brothers", "sisters", "nieces", or "nephews", are construed to include both types of relationships.
2. In addition to the requirements of subsection 1, in construing a dispositive provision of a transferor who is not the natural parent, an individual born to the natural parent is not considered the child of that parent unless the individual lived while a minor as a regular member of the household of that natural parent or of that parent's parent, brother, sister, spouse, or surviving spouse.
3. In addition to the requirements of subsection 1, in construing a dispositive provision of a transferor who is not the adopting parent, an adopted individual is not considered the child of the adopting parent unless the adopted individual lived while a minor, either before or after the adoption, as a regular member of the household of the adopting parent.

30.1-09.1-06. (2-706) Life insurance - Retirement plan - Account with payable on death designation - Transfer-on-death registration - Deceased beneficiary.

1. In this section:

- a. "Alternative beneficiary designation" means a beneficiary designation that is expressly created by the governing instrument and, under the terms of the governing instrument, can take effect instead of another beneficiary designation on the happening of one or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent, or any other form.
- b. "Beneficiary" means the beneficiary of a beneficiary designation and includes a class member if the beneficiary designation is in the form of a class gift and includes an individual or class member who was

- deceased at the time the beneficiary designation was executed as well as an individual or class member who was then living but who failed to survive the decedent.
- c. "Beneficiary designation" includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift.
  - d. "Class member" includes an individual who fails to survive the decedent but who would have taken under a beneficiary designation in the form of a class gift had the individual survived the decedent.
  - e. "Stepchild" means a child of the decedent's surviving, deceased, or former spouse, and not of the decedent.
  - f. "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who neither predeceased the decedent nor is deemed to have predeceased the decedent under section 30.1-09.1-02.
2. If a beneficiary fails to survive the decedent and is a grandparent, a descendant of a grandparent, or a stepchild of the decedent, the following apply:
- a. Except as provided in subdivision d, if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent.
  - b. Except as provided in subdivision d, if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", "family", or a class described by language of similar import, a substitute gift is created in the deceased beneficiary of beneficiaries' surviving descendants. The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For the purposes of this subdivision, "deceased beneficiary" means a class member who failed to survive the decedent and left one or more surviving descendants.
  - c. For purposes of section 30.1-09.1-01, words of survivorship, such as in a beneficiary designation to an individual "if the individual survives me", or in a beneficiary designation to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

- d. If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by subdivision a or b, the substitute gift is superseded by the alternative beneficiary designation only if an expressly designated beneficiary of the alternative beneficiary designation is entitled to take.
3. If, under subsection 2, substitute gifts are created and not superseded with respect to more than one beneficiary designation, and the beneficiary designations are alternative beneficiary designations, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:
- a. Except as provided in subdivision b, the property passes under the primary substitute gift.
- b. If there is a younger-generation beneficiary designation, the property passes under the younger-generation substitute gift and not under the primary substitute gift.
- c. In this subsection:
- (1) "Primary beneficiary designation" means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent.
- (2) "Primary substitute gift" means the substitute gift created with respect to the primary beneficiary designation.
- (3) "Younger-generation beneficiary designation" means a beneficiary designation that is to a descendant of a beneficiary of the primary beneficiary designation, is an alternative beneficiary designation with respect to the primary beneficiary designation, is a beneficiary designation for which a substitute gift is created, and would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation.
- (4) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation beneficiary designation.
4. a. A payer is protected from liability in making payments under the terms of the beneficiary designation until the payer has received written notice of a claim to a substitute gift under this section. Payment made before the receipt of written notice of a claim to a substitute gift under this section discharges the payer, but not the recipient, from all claims for the amounts paid. A payer is liable for a payment made after the payer has received written notice of the claim. A recipient is liable for a payment received, whether or not written notice of the claim is given.

- b. The written notice of the claim must be mailed to the payer's main office or home by registered mail, return receipt requested, or served upon the payer in the same manner as a summons in a civil action. Upon receipt of written notice of the claim, a payer may pay any amount owed by it to the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds and, upon its determination under this section, shall order disbursement in accordance with the determination. Payment made to the court discharges the payer from all claims for the amounts paid.
5. a. A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item or property or benefit, to the person who is entitled to it under this section.
- b. If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

30.1-09.1-07. (2-707) Survivorship with respect to future interests under the terms of a trust - Substitute takers.

1. In this section:

- a. "Alternative future interest" means to an expressly created future interest that can take effect in possession or enjoyment instead of another future interest on the happening of one or more events, including survival of an event or failure to survive an event, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause in a will does not create an alternative future interest with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause.
- b. "Beneficiary" means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift.

- c. "Class member" includes an individual who fails to survive the distribution date but who would have taken under a future interest in the form of a class gift had the individual survived the distribution date.
  - d. "Distribution date", with respect to a future interest, means the time when the future interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day.
  - e. "Future interest" includes an alternative future interest and a future interest in the form of a class gift.
  - f. "Future interest under the terms of a trust" means a future interest that was created by a transfer creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust, directing the continuance of an existing trust, designating a beneficiary of an existing trust, or creating a trust.
  - g. "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who neither predeceased the distribution date nor is deemed to have predeceased the distribution date under section 30.1-09.1-02.
2. A future interest under the terms of a trust is contingent on the beneficiary's surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following apply:
- a. Except as provided in subdivision d, if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date.
  - b. Except as provided in subdivision d, if the future interest is in the form of a class gift, other than a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family", or a class described by language of similar import, a substitute gift is created in the deceased beneficiary or beneficiaries' surviving descendants. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For the purposes of this paragraph, "deceased beneficiary" means a class member who failed to survive the distribution date and left one or more surviving descendants.

- c. For purposes of section 30.1-09.1-01, words of survivorship attached to a future interest are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. Words of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent, or any other form.
- d. If a governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by subdivision a or b, the substitute gift is superseded by the alternative future interest only if an expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment.
- 3. If, under subsection 2, substitute gifts are created and not superseded with respect to more than one future interest and the future interests are alternative future interests, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

  - a. Except as provided in subdivision b, the property passes under the primary substitute gift.
  - b. If there is a younger-generation future interest, the property passes under the younger-generation substitute gift and not under the primary substitute gift.
  - c. In this subsection:

    - (1) "Primary future interest" means the future interest that would have taken effect had all the deceased beneficiaries of the alternative future interest who left surviving descendants survived the distribution date.
    - (2) "Primary substitute gift" means the substitute gift created with respect to the primary future interest.
    - (3) "Younger-generation future interest" means a future interest that is to a descendant of a beneficiary of the primary future interest, is an alternative future interest with respect to the primary future interest, is a future interest for which a substitute gift is created, and would have taken effect had all the deceased beneficiaries who left surviving descendants survived the distribution date except the deceased beneficiary of beneficiaries of the primary future interest.
    - (4) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation future interest.
- 4. If, after the application of subsections 2 and 3, there is no surviving taker, the property passes in the following order:

  - a. If the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's will, the property passes under the residuary clause in the transferor's will; for purposes of

this section, the residuary clause is treated as creating a future interest under the terms of a trust.

- b. If no taker is produced by the application of subdivision a, the property passes to the transferor's heirs under section 30.1-09.1-11.

30.1-09.1-08. (2-708) Class gifts to descendants, issue, or heirs of the body - Form of distribution if none specified. If a class gift in favor of "descendants", "issue", or "heirs of the body" does not specify the manner in which the property is to be distributed among the class members, the property is distributed among the class members who are living when the interest is to take effect in possession or enjoyment, in such shares as they would receive, under the applicable law of intestate succession, if the designated ancestor had then died intestate owning the subject matter of the class gift.

30.1-09.1-09. (2-709) Representation - Per capita at each generation - Per stirpes.

1. In this section:

- a. "Deceased child" or "deceased descendant" means a child or a descendant who either predeceased the distribution date or is deemed to have predeceased the distribution date under section 30.1-09.1-02.
- b. "Distribution date", with respect to an interest, means the time when the interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day.
- c. "Surviving ancestor", "surviving child", or "surviving descendant" means an ancestor, a child, or a descendant who neither predeceased the distribution date nor is deemed to have predeceased the distribution date under section 30.1-09.1-02.

2. If an applicable statute or a governing instrument calls for property to be distributed "by representation" or "per capita at each generation", the property is divided into as many equal shares as there are surviving descendants in the generation nearest to the designated ancestor which contains one or more surviving descendants and deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.
3. If a governing instrument calls for property to be distributed "per stirpes", the property is divided into as many equal shares as there are surviving children of the designated ancestor and deceased children who left surviving descendants. Each surviving child is allocated one share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

4. For the purposes of subsections 2 and 3, an individual who is deceased and left no surviving descendant is disregarded, and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share.

30.1-09.1-10. (2-710) Worthier-title doctrine abolished. The doctrine of worthier title is abolished as a rule of law and as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor's "heirs", "heirs at law", "next of kin", "distributees", "relatives", "family", or language of similar import does not create or presumptively create a reversionary interest in the transferor.

30.1-09.1-11. (2-711) Future interests in heirs and like. If an applicable statute or a governing instrument calls for a future distribution to or creates a future interest in a designated individual's "heirs", "heirs at law", "next of kin", "relatives", or "family", or language of similar import, the property passes to those persons, including the state under section 30.1-04-05, and in such shares as would succeed to the designated individual's intestate estate under the intestate succession law of the designated individual's domicile if the designated individual died when the disposition is to take effect in possession or enjoyment. If the designated individual's surviving spouse is living but is remarried at the time the disposition is to take effect in possession or enjoyment, the surviving spouse is not an heir of the designated individual.

**SECTION 40.** Chapter 30.1-10 of the North Dakota Century Code is created and enacted as follows:

30.1-10-01. (2-801) Disclaimer of property interests.

1. A person, or the representative of a person, to whom an interest in or with respect to property or an interest therein devolves by whatever means may disclaim it in whole or in part by delivering or filing a written disclaimer under this section. The right to disclaim exists notwithstanding any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction or any restriction or limitation on the right to disclaim contained in the governing instrument. For purposes of this subsection, the "representative of a person" includes a personal representative of a decedent, a conservator of a disabled person, a guardian of a minor or incapacitated person, and an agent acting on behalf of the person within the authority of a power of attorney.
2. The following rules govern the time when a disclaimer must be filed or delivered:
  - a. If the property or interest has devolved to the disclaimant under a testamentary instrument or by the laws of intestacy, the disclaimer must be filed, if of a present interest, not later than nine months after the death of the deceased owner or deceased donee of a power of appointment and, if of a future interest, not later than nine months after the event determining that the taker of the property or interest is finally ascertained and the interest is indefeasibly vested. The disclaimer must be filed in the court of the county in which proceedings for the administration of the estate of the deceased owner

- or deceased donee of the power have been commenced. A copy of the disclaimer must be delivered in person or mailed by registered mail to any personal representative or other fiduciary of the decedent or donee of the power.
- b. If a property or interest has devolved to the disclaimant under a nontestamentary instrument or contract, the disclaimer must be delivered or filed, if of a present interest, not later than nine months after the effective date of the nontestamentary instrument or contract and, if of a future interest, not later than nine months after the event determining that the taker of the property or interest is finally ascertained and the interest is indefeasibly vested. If the person entitled to disclaim does not know of the existence of the interest, the disclaimer must be delivered or filed not later than nine months after the person learns of the existence of the interest. The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to transfer to the maker or another the entire legal and equitable ownership of the interest. The disclaimer or a copy thereof must be delivered in person or mailed by registered mail to the person who has legal title to or possession of the interest disclaimed.
- c. A surviving joint tenant may disclaim as a separate interest any property or interest therein devolving to 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 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 has not accepted a benefit under it.
- d. If real property or an interest therein is disclaimed, a copy of the disclaimer may be recorded in the office of the register of deeds of the county in which the property or interest disclaimed is located.
3. The disclaimer must describe the property or interest disclaimed, declare the disclaimer and extent thereof, and be signed by the disclaimant.
4. The effects of disclaimer are:
- a. If property or an interest therein devolves to a disclaimant under a testamentary instrument, under a power of appointment exercised by a testamentary instrument, or under the laws of intestacy, and the decedent has not provided for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the decedent, but if by law or under the testamentary instrument the descendants of the disclaimant would take the disclaimant's share by representation were the disclaimant to predecease the decedent, then the disclaimed interest passes by representation to the descendants of the disclaimant who survive the decedent. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest disclaimed takes effect as if the disclaimant had predeceased the decedent. A

disclaimer relates back for all purposes to the date of death of the decedent.

- b. If property or an interest therein devolves to a disclaimant under a nontestamentary instrument or contract and the instrument or contract does not provide for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant has predeceased the effective date of the instrument or contract, but if by law or under the nontestamentary instrument or contract the descendants of the disclaimant would take the disclaimant's share by representation were the disclaimant to predecease the effective date of the instrument, then the disclaimed interest passes by representation to the descendants of the disclaimant who survive the effective date of the instrument. A disclaimer relates back for all purposes to that date. A future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the disclaimant had died before the effective date of the instrument or contract that transferred the disclaimed interest.
- c. The disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and all persons claiming through or under either of them.
5. The right to disclaim property or an interest therein is barred by an assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract therefor; a written waiver of the right to disclaim; an acceptance of the property or interest or a benefit under it; or a sale of the property or interest under judicial sale made before the disclaimer is made.
6. 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.
7. An interest in property that exists on the effective date of this section as to which, if a present interest, the time for filing a disclaimer under this section has not expired or, if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained, may be disclaimed within nine months after the effective date of this section.

30.1-10-02. (2-802) Effect of divorce, annulment, and decree of separation.

1. An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, the spouse is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.
2. For purposes of chapters 30.1-04 through 30.1-07 and section 30.1-13-03, a surviving spouse does not include:

  - a. An individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless

subsequently that participate in a marriage ceremony purporting to marry each to the other or live together as husband and wife.

- b. An individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual; or
- c. An individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

30.1-10-03. (2-803) Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations.

1. In this section:

- a. "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.
- b. "Governing instrument" means a governing instrument executed by the decedent.
- c. "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation, in favor of the killer, whether or not the decedent was then empowered to designate the decedent in place of the decedent's killer or the decedent then had capacity to exercise the power.

2. An individual who intentionally and feloniously kills the decedent forfeits all benefits under this title with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt property, and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed the killer's intestate share.

3. The intentional and felonious killing of the decedent:

- a. Revokes any revocable disposition or appointment of property made by the decedent to the killer in a governing instrument, provision in a governing instrument conferring a general or nongeneral power of appointment on the killer, and nomination of the killer in a governing instrument, nominating or appointing the killer to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, or agent.
- b. Severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship, transforming the interests of the decedent and killer into tenancies in common.

4. The severance under subdivision b of subsection 3 does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a

- writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property that are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.
5. Provisions of a governing instrument which are not revoked by this section are given effect as if the killer disclaimed all revoked provisions or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.
  6. A wrongful acquisition of property or interest by a killer not covered by this section must be treated in accordance with the principle that a killer cannot profit from any wrong.
  7. After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. In the absence of a conviction, the court, upon the petition of an interested person, must determine whether, under the preponderance or evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that, under that standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.
  8.
    - a. A payer or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by an intentional and felonious killing, or for having taken any other action in good faith reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death, before the payer or other third party received written notice of a claimed forfeiture or revocation under this section. A payer or other third party is liable for a payment made or other action taken after the payer or other third party received written notice of a claimed forfeiture or revocation under this section.
    - b. Written notice of a claimed forfeiture or revocation under this subsection must be mailed to the payer's or third party's main office or home by registered mail or served upon the payer or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payer or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payer or other third party

from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

9. a. A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

b. If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

30.1-10-04. (2-804) Revocation of probate and nonprobate transfers by divorce - No revocation by other changes of circumstances.

1. In this section:

a. "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

b. "Divorce or annulment" means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of section 30.1-10-02. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

c. "Divorced individual" includes an individual whose marriage has been annulled.

d. "Governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of the marriage to the former spouse.

e. "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.



7. a. A payer or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payer or other third party received written notice of the divorce, annulment, or remarriage. A payer or other third party is liable for a payment made or other action taken after the payer or other third party received written notice of a claim forfeiture or revocation under this section.
- b. Written notice of the divorce, annulment, or remarriage under this subdivision must be mailed to the payer's or other third party's main office or home by registered mail or served upon the payer or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage, a payer or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payer or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.
8. a. A person who purchases property from a former spouse, relative of a former spouse, or any other person for value and without notice, or who receives from a former spouse, relative of a former spouse, or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. But a former spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.
- b. If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, relative of the former spouse, or any other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

**SECTION 41. AMENDMENT.** Section 30.1-11-01 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-11-01. ~~(2-901)~~ (2-515) Deposit of will with court in testator's lifetime.** A will may be deposited by the testator or ~~his~~ the testator's agent with any court for safekeeping, under rules of the court. The will ~~shall~~ must be sealed and kept confidential. During the testator's lifetime, a deposited will ~~shall~~ must be delivered only to ~~him~~ the testator or to a person authorized in a writing signed by ~~him~~ the testator to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible, and to assure ensure that it will be resealed and ~~left kept~~ on deposit after the examination. Upon being informed of the testator's death, the court shall notify any person designated to receive the will and deliver it to ~~him~~ that person on request; or the court may deliver the will to the appropriate court.

**SECTION 42. AMENDMENT.** Section 30.1-11-02 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-11-02. ~~(2-902)~~ (2-516) Duty of custodian of will - Liability.** After the death of a testator and on request of an interested person, ~~any~~ a person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate, and if none is known, to an appropriate court. ~~Any~~ A person who willfully fails to deliver a will is liable to any person aggrieved for ~~the any~~ damages which that may be sustained by the failure. ~~Any~~ A person who willfully refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.

**SECTION 43. AMENDMENT.** Section 30.1-14-03 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-14-03. (3-303) Informal probate - Proof and findings required.**

1. In an informal proceeding for original probate of a will, the court shall determine whether:
  - a. The application is complete.
  - b. The applicant has made oath or affirmation that the statements contained in the application are true to the best of ~~his~~ the applicant's knowledge and belief.
  - c. The applicant appears from the application to be an interested person as defined in subsection ~~24~~ 25 of section 30.1-01-06.
  - d. On the basis of the statements in the application, venue is proper.
  - e. An original, duly executed, and apparently unrevoked will is in the court's possession.
  - f. Any notice required by section 30.1-13-04 has been given and that the application is not within section 30.1-14-04.
  - g. It appears from the application that the time limit for original probate has not expired.

2. The application ~~shall~~ must be denied if it indicates that a personal representative has been appointed in another county of this state or, except as provided in subsection 4, if it appears that this or another will of the decedent has been the subject of a previous probate order.
3. A will ~~which~~ that appears to have the required signatures and which contains an attestation clause showing that requirements of execution under ~~sections~~ section 30.1-08-02, ~~30.1-08-03~~, or 30.1-08-06 have been met ~~shall~~ must be probated without further proof. In other cases, the court may assume execution if the will appears to have been properly executed, or ~~he~~ the court may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.
4. Informal probate of a will ~~which~~ that has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.
5. A will from a place which does not provide for probate of a will after death and which is not eligible for probate under subsection 1 may be probated in this state upon receipt by the court of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

**SECTION 44. AMENDMENT.** Section 30.1-14-08 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-14-08. (3-308) Informal appointment proceedings - Proof and findings required.**

1. In informal appointment proceedings, the court ~~must~~ shall determine whether:
  - a. The application for informal appointment of a personal representative is complete.
  - b. The applicant has made oath or affirmation that the statements contained in the application are true to the best of ~~his~~ the applicant's knowledge and belief.
  - c. The applicant appears from the application to be an interested person as defined in subsection ~~24~~ 25 of section 30.1-01-06.
  - d. On the basis of the statements in the application, venue is proper.
  - e. Any will to which the requested appointment relates has been formally or informally probated; but this requirement does not apply to the appointment of a special administrator.
  - f. Any notice required by section 30.1-13-04 has been given.
  - g. From the statements in the application, the person whose appointment is sought has priority entitling him to the appointment.

2. Unless section 30.1-17-12 controls, the application must be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in subsection 3 of section 30.1-17-10 has been appointed in this or another county of this state, that, unless the applicant is the domiciliary personal representative or ~~his~~ the representative's nominee, the decedent was not domiciled in this state and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile, or that other requirements of this section have not been met.

**SECTION 45. AMENDMENT.** Section 30.1-20-05 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-20-05. ~~(3-905)~~ (2-517) Penalty clause for contest.** A provision in a will purporting to penalize any an interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

**SECTION 46. AMENDMENT.** Subsection 2 of section 30.1-29-07 of the North Dakota Century Code is amended and reenacted as follows:

2. Upon 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 47. AMENDMENT.** Subsection 1 of section 30.1-31-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in this ~~section~~ chapter, on death of a party sums on deposit in a multiple-party account belong to the surviving party or parties. If two or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under section 30.1-31-08 belongs to the surviving spouse. If two or more parties survive and none is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under section

30.1-31-08 belongs to the surviving parties in equal shares, and augments the proportion to which each survivor, immediately before the decedent's death, was beneficially entitled under section 30.1-31-08, and the right of survivorship continues between the surviving parties.

**SECTION 48. AMENDMENT.** Subsection 2 of section 30.1-31-12 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A surviving party or beneficiary who receives payment from an account after death of a party is liable to account to the personal representative of the decedent for a proportionate share of the amount received to which the decedent, immediately before death, was beneficially entitled under section 30.1-31-08, to the extent necessary to discharge the claims and allowances described in subsection 1 remaining unpaid after application of the decedent's estate. A proceeding to assert the liability may not be commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a child of the decedent. The proceeding must be commenced within one year after death of the decedent.

**SECTION 49. AMENDMENT.** Subsection 1 of section 47-24.1-18 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A person nominated under section 47-24.1-03 or designated under section 47-24.1-09 as custodian may decline to serve by delivering a valid disclaimer under ~~chapter 47-11.1~~ section 30.1-10-01 to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under section 47-24.1-03, the person who made the nomination may nominate a substitute custodian under section 47-24.1-03; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under subsection 1 of section 47-24.1-09. The custodian so designated has the rights of a successor custodian.

**SECTION 50. REPEAL.** Chapters 30.1-05, 30.1-06, sections 30.1-08-03, 30.1-09-01, 30.1-09-02, chapters 30.1-10, 31-12, and 47-11.1 of the North Dakota Century Code, and section 30.1-09-11 of the 1991 Supplement to the North Dakota Century Code are repealed.

**SECTION 51. EFFECTIVE DATE.** This Act becomes effective on August 1, 1995.

Approved April 14, 1993  
Filed April 15, 1993