

UNIFORM PROBATE CODE

CHAPTER 254

HOUSE BILL NO. 1048

(Judiciary Committee)
(At the request of the Supreme Court)

AN ACT to create and enact a new subsection to section 30.1-28-04 of the North Dakota Century Code, relating to the requirement of a guardian to obtain a bond.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 30.1-28-04 of the North Dakota Century Code is created and enacted as follows:

The court may require a guardian to furnish a bond in the amount and with sureties as the court specifies.

Approved March 9, 2021

Filed March 10, 2021

CHAPTER 255

SENATE BILL NO. 2057

(Human Services Committee)
(At the request of the Supreme Court)

AN ACT to create and enact a new section to chapter 30.1-28 and a new subsection to section 30.1-29-09 of the North Dakota Century Code, relating to the sale of real or personal property of a ward and protective arrangements and single transactions; and to amend and reenact subsection 7 of section 30.1-28-12 of the North Dakota Century Code, relating to powers and duties of a guardian.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 30.1-28-12 of the North Dakota Century Code is amended and reenacted as follows:

7. If no conservator for the estate of the ward has been appointed and if the guardian has been granted authority to make financial decisions on behalf of the ward, the guardian may:
 - a. Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform that duty.
 - b. Receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but, the guardian may not use funds from the ward's estate for room and board which the guardian or the guardian's spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. The guardian shall exercise care to conserve any excess for the ward's needs.
 - c. Move the court under section 2 of this Act for authority to sell, mortgage, or otherwise encumber or transfer ownership or beneficiary of:
 - (1) The real property of the ward; or
 - (2) The personal property of the ward valued over two thousand five hundred dollars upon such terms as the court may order, for the purpose of paying the ward's debts; providing for the care, maintenance, rehabilitation, training, or education of the ward or the ward's dependents; or for any other purpose which is in the best interests of the ward. The sale, mortgage, or other encumbrance or transfer of ownership of personal property of the ward valued at two thousand five hundred dollars or less does not require a court order.
 - d. Move the court under section 2 of this Act for authority to lease the real or personal property of the ward.

- e. A guardian may not purchase, lease, or obtain ownership or become the beneficiary of property of the ward unless the price and manner of the sale are approved by the court.

SECTION 2. A new section to chapter 30.1-28 of the North Dakota Century Code is created and enacted as follows:

Authorization of a single transaction to sell, encumber, or transfer ownership of real or personal property of the ward.

1. A guardian may move the court for authorization to sell, mortgage, lease, or otherwise encumber or transfer ownership of the real or personal property of the ward, valued at over two thousand five hundred dollars, upon such terms as the court may order, for the purpose of paying the ward's debts; providing for the care, maintenance, rehabilitation, training, or education of the ward or the ward's dependents; or for any other purpose which is in the best interests of the ward.
2. The motion must contain:
 - a. The type of property;
 - b. A description of the property;
 - c. The type of transaction;
 - d. The details of the transaction;
 - e. The reason for the transaction;
 - f. The current fair market value of the property:
 - (1) For real property, an appraisal must be provided unless good cause is shown;
 - (2) For personal property, a description of how the guardian arrived at the fair market value must be provided;
 - g. An explanation of why the transaction is in the best interests of the ward; and
 - h. A notice that any person interested in the ward's property that opposes the transaction shall file an objection within ten days of the notice and demand a hearing.
3. The motion must be served upon the ward, the ward's spouse, and all interested persons.
4. Any consents of the ward's spouse or interested persons must be filed with the motion. If the motion is unopposed, the court may authorize the transaction without a hearing or may conduct a hearing and require proof of the matters necessary to support the authorization of the transaction.
5. The court's order must include specific findings regarding whether the transaction is in the best interests of the ward.

SECTION 3. A new subsection to section 30.1-29-09 of the North Dakota Century Code is created and enacted as follows:

This section does not apply to a guardian or conservator.

Approved March 17, 2021

Filed March 18, 2021

CHAPTER 256

HOUSE BILL NO. 1049

(Judiciary Committee)
(At the request of the Supreme Court)

AN ACT to create and enact a new section to chapter 30.1-28 of the North Dakota Century Code, relating to restrictions on visitation, communication, and interaction with the ward.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 30.1-28 of the North Dakota Century Code is created and enacted as follows:

Restrictions on visitation, communication, and interaction with the ward - Removal of restriction.

1. If it is in the best interests of the ward, a guardian may restrict visitation, communication, and interaction with the ward.
2. A family member, friend, the ward, clergy member, attorney, agency charged with the protection of vulnerable adults, or other interested person may move the court to remove the restriction on visitation, communication, and interaction with the ward.
3. The motion must state:
 - a. The movant's relationship to the ward;
 - b. Whether the guardian is unreasonably or arbitrarily denying or restricting visitation, communication, or interaction between the restricted party and the ward; and
 - c. The facts supporting the movant's allegation that the guardian is unreasonably or arbitrarily denying or restricting visitation, communication, or interaction between the restricted party and the ward.
4. The movant shall serve the motion on the guardian, the ward, the ward's spouse, and any other interested person.
5. The court shall set a hearing on the motion and provide notice of the hearing to the movant, the guardian, the ward, the ward's spouse, and any other interested person.
6. The court shall take into consideration the ward's wishes, and may conduct an in-camera interview with the ward and appoint a visitor or guardian ad litem.
7. If the court grants the motion for visitation, communication, or interaction, the court may impose conditions on visitation, communication, and interaction between the restricted party and the ward.

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8. If the visitation, communication, or interaction is not in the best interests of the ward, the court may prohibit visitation, communication, or interaction between the restricted party and the ward.
 9. The court may award reasonable costs and attorney's fees to the prevailing party if the court finds:
 - a. The guardian unreasonably, arbitrarily, or in bad faith denied or restricted visitation, communication, or interaction between the restricted party and the ward; or
 - b. The motion was frivolous.
 10. Costs and attorney's fees awarded against the guardian may not be paid from the ward's estate.
 11. If a movant for visitation, communication, and interaction states the ward's health is in significant decline or the ward's death may be imminent, the court shall conduct an emergency hearing on the motion as soon as practicable but not later than fourteen days after the date the motion is filed or at a later date upon a showing of good cause.

Approved March 9, 2021

Filed March 10, 2021

CHAPTER 257

HOUSE BILL NO. 1077

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact chapter 30.1-37 of the North Dakota Century Code, relating to the Uniform Electronic Wills Act; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 30.1-37 of the North Dakota Century Code is created and enacted as follows:

30.1-37-01. Definitions.

As used in this chapter:

1. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
2. "Electronic will" means a will executed electronically in compliance with subsection 1 of section 30.1-37-04.
3. "Record" means information inscribed on a tangible medium or stored in an electronic or other medium and is retrievable in perceivable form.
4. "Sign" means, with present intent to authenticate or adopt a record to:
 - a. Execute or adopt a tangible symbol; or
 - b. Affix to or logically associate with the record an electronic symbol or process.
5. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.
6. "Will" includes a codicil and any testamentary instrument that merely appoints an executor, 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.

30.1-37-02. Law applicable to electronic will - Principles of equity.

An electronic will is a will for all purposes of the law of this state. The law of this state applicable to wills and principles of equity apply to an electronic will, except as modified by this chapter.

30.1-37-03. Choice of law regarding execution.

A will executed electronically but not in compliance with subsection 1 of section 30.1-37-04 is an electronic will under this chapter if executed in compliance with the law of the jurisdiction where the testator is:

1. Physically located when the will is signed; or
2. Domiciled or resides when the will is signed or when the testator dies.

30.1-37-04. Execution of electronic will.

1. Subject to subsection 4 of section 30.1-37-06, an electronic will must be:
 - a. A record that is readable as text at the time of signing as provided under subdivision b;
 - b. Signed by:
 - (1) The testator; or
 - (2) Another individual in the testator's name, in the testator's conscious presence, and by the testator's direction; and
 - c. Either:
 - (1) Signed by at least two individuals, each of whom signed within a reasonable time after witnessing:
 - (a) The signing of the will as provided under subdivision b; or
 - (b) The testator's acknowledgment of the signature as provided under subdivision b or acknowledgment of the will; or
 - (2) Acknowledged by the testator before a notary public or other individual authorized by law to take acknowledgments.
2. Intent of a testator that the record under subdivision a of subsection 1 be the testator's electronic will may be established by extrinsic evidence.

30.1-37-05. Revocation.

1. An electronic will may revoke all or part of a previous will.
2. All or part of an electronic will is revoked by:
 - a. A subsequent will that revokes all or part of the electronic will expressly or by inconsistency; or
 - b. A physical act, if it is established by a preponderance of the evidence that the testator, with the intent of revoking all or part of the will, performed the act or directed another individual who performed the act in the testator's physical presence.

30.1-37-06. Electronic will attested and made self-proving at time of execution.

1. An electronic will may be simultaneously executed, attested, and made self-proving by acknowledgment of the testator and affidavits of the witnesses.
2. The acknowledgment and affidavits under subsection 1 must be:
 - a. Made before an officer authorized to administer oaths under law of the state in which execution occurs; and
 - b. Evidenced by the officer's certificate under official seal affixed to or logically associated with the electronic will.
3. The acknowledgment and affidavits under subsection 1 must be in substantially the following form:

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 electronic 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 18 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 signs and executes this instrument as the testator's electronic will and that the testator signs it willingly or willingly directs another to sign for the testator, and that each of us, in the presence and hearing of the testator, signs this electronic will as witness to the testator's signing, and that to the best of our knowledge the testator is 18 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, this _____ day of _____.

(SEAL)

(Signed) _____

(Official capacity of officer)

4. A signature physically or electronically affixed to an affidavit that is affixed to or logically associated with an electronic will under this chapter is deemed a signature of the electronic will under subsection 1 of section 30.1-37-04.

30.1-37-07. Certification of paper copy.

An individual may create a certified paper copy of an electronic will by affirming under penalty of perjury that a paper copy of the electronic will is a complete, true, and accurate copy of the electronic will. If the electronic will is made self-proving, the certified paper copy of the will must include the self-proving affidavits.

SECTION 2. APPLICATION. This Act applies to the will of a decedent who dies after July 31, 2021.

Approved March 9, 2021

Filed March 10, 2021