

Fifty-sixth  
Legislative Assembly  
of North Dakota

ENGROSSED SENATE BILL NO. 2174

Introduced by

Judiciary Committee

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

1 A BILL for an Act to amend and reenact sections 30.1-03-03, 30.1-09-08, subsection 3 of  
2 section 30.1-10-03, subsection 2 of section 30.1-10-04, subsection 2 of section 30.1-18-03, and  
3 subsection 1 of section 30.1-19-03 of the North Dakota Century Code, relating to the Uniform  
4 Probate Code.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 30.1-03-03 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **30.1-03-03. (1-403) Pleadings - When parties bound by others - Notice.** In formal  
9 proceedings involving trusts or estates of decedents, minors, protected persons, or  
10 incapacitated persons, and in judicially supervised settlements, the following apply:

- 11 1. Interests to be affected ~~shall~~ must be described in pleadings ~~which~~ that give  
12 reasonable information to owners by name or class, by reference to the instrument  
13 creating the interests; or in ~~other~~ another appropriate manner.
- 14 2. ~~Persons are~~ A person is bound by ~~orders~~ an order binding ~~others~~ another in the  
15 following cases:
- 16 a. ~~Orders~~ An order binding the sole holder or all coholders of a power of  
17 revocation or a presently exercisable general power of appointment, including  
18 one in the form of a power of amendment, ~~bind other persons~~ binds another  
19 person to the extent ~~their~~ that person's interests, as objects, takers in default,  
20 or otherwise, are subject to the power.
- 21 b. To the extent there is no conflict of interest between them or among persons  
22 represented, ~~orders~~ an order binding a conservator ~~bind~~ binds the person  
23 whose estate the conservator controls; ~~orders~~ an order binding a guardian  
24 ~~bind~~ binds the ward if no conservator of the ward's estate has been

- 1 appointed; ~~orders~~ an order binding a trustee ~~bind beneficiaries~~ binds a  
2 beneficiary of the trust in proceedings to probate a will establishing or adding  
3 to a trust, to review the acts or accounts of a ~~prior~~ former fiduciary and in  
4 proceedings involving creditors or other third parties; ~~and orders~~ an order  
5 binding a personal representative ~~bind persons~~ binds a person interested in  
6 the undistributed assets of a decedent's estate in actions or proceedings by or  
7 against the estate. ~~If there is no conflict of interest and no conservator or~~  
8 ~~guardian has been appointed, a parent may represent that parent's minor~~  
9 ~~child;~~ and an order binding a sole holder or all coholders of a general  
10 testamentary power of appointment binds other persons to the extent their  
11 interests as objects, takers in default, or otherwise are subject to the power.
- 12 c. ~~An~~ Unless otherwise represented, a minor or an incapacitated, unborn, or  
13 unascertained person ~~who is not otherwise represented~~ is bound by an order  
14 to the extent the person's interest is adequately represented by another party  
15 having a substantially identical interest in the proceeding.
- 16 3. If no conservator or guardian has been appointed, a parent may represent a minor  
17 child.
- 18 4. Notice is required as follows:
- 19 a. ~~Notice as~~ The notice prescribed by section 30.1-03-01 ~~shall~~ must be given to  
20 every interested person or to one who can bind an interested person as  
21 described in subdivision a or b of subsection 2. Notice may be given both to  
22 a person and to another who may bind that person.
- 23 b. Notice is given to unborn or unascertained persons who are not represented  
24 under subdivision a or b of subsection 2 by giving notice to all known persons  
25 whose interests in the proceedings are substantially identical to those of the  
26 unborn or unascertained persons.
- 27 4- 5. At any point in a proceeding, a court may appoint a guardian ad litem to represent  
28 the interest of a minor, an incapacitated, unborn, or unascertained person, or a  
29 person whose identity or address is unknown, if the court determines that  
30 representation of the interest otherwise would be inadequate. If not precluded by  
31 conflict of interests, a guardian ad litem may be appointed to represent several

1 persons or interests. The court shall ~~set out~~ state its reasons for appointing a  
2 guardian ad litem as a part of the record of the proceeding.

3 **SECTION 2. AMENDMENT.** Section 30.1-09-08 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **30.1-09-08. (2-606) Nonademption of specific devises - Unpaid proceeds of sale,**  
6 **condemnation, or insurance - Sale by conservator.**

- 7 1. A specific devisee has the right to ~~the~~ specifically devised property in the testator's  
8 estate at the testator's death and to:
- 9 a. Any balance of the purchase price, together with any security interest, ~~owing~~  
10 ~~from~~ owed by a purchaser to ~~at the testator at~~ testator's death by reason of  
11 sale of the property by the testator.
- 12 b. Any amount of a condemnation award for the taking of the property unpaid at  
13 death.
- 14 c. Any proceeds unpaid at death on fire or casualty insurance on or other  
15 recovery for injury to the property.
- 16 d. ~~Property~~ Any property owned by the testator at death and acquired as a result  
17 of foreclosure, or obtained in lieu of foreclosure, of the security interest for a  
18 specifically devised obligation.
- 19 2. If specifically devised property is sold ~~or~~, mortgaged, or otherwise encumbered by  
20 a conservator or by an agent acting within the authority of a durable power of  
21 attorney for an incapacitated ~~principal person~~, or if a condemnation award,  
22 insurance proceeds, or recovery for injury to the property ~~are~~ is paid to a  
23 conservator or to an agent acting within the authority of a durable power of  
24 attorney for an incapacitated ~~principal person~~, the specific devisee has the right to  
25 a general pecuniary devise equal to the net sale price, the amount of the unpaid  
26 loan, the condemnation award, the insurance proceeds, or the recovery. This  
27 subsection does not apply if, after the sale, ~~mortgage~~ encumbrance,  
28 condemnation, casualty, or recovery, it was adjudicated that the testator's  
29 incapacity ceased and the testator survived the adjudication by at least one year.  
30 The right of a specific devisee under this subsection is reduced by any right the  
31 devisee has under subsection 1.

1           **SECTION 3. AMENDMENT.** Subsection 3 of section 30.1-10-03 of the 1997  
2 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 3           3. The intentional and felonious killing of the decedent:
- 4               a. Revokes any revocable disposition or appointment of property made by the  
5               decedent to the killer in a governing instrument, provision in a governing  
6               instrument conferring a general or nongeneral power of appointment on the  
7               killer, and nomination of the killer in a governing instrument, nominating or  
8               appointing the killer to serve in any fiduciary or representative capacity,  
9               including a personal representative, executor, trustee, or agent.
- 10              b. Severs the interests of the decedent and killer in property held by them at the  
11              time of the killing as joint tenants with the right of survivorship, transforming  
12              the interests of the decedent and killer into equal tenancies in common.

13           **SECTION 4. AMENDMENT.** Subsection 2 of section 30.1-10-04 of the North Dakota  
14 Century Code is amended and reenacted as follows:

- 15           2. Except as provided by the express terms of a governing instrument, a court order,  
16           or a contract relating to the division of the marital estate made between the  
17           divorced individuals before or after the marriage, divorce, or annulment, the  
18           divorce or annulment of a marriage:
- 19              a. Revokes any revocable disposition or appointment of property made by a  
20              divorced individual to the individual's former spouse in a governing instrument  
21              and any disposition or appointment created by law or in a governing  
22              instrument to a relative of the divorced individual's former spouse, provision in  
23              a governing instrument conferring a general or special power of appointment  
24              on the divorced individual's former spouse or on a relative of the divorced  
25              individual's former spouse, and nomination in a governing instrument,  
26              nominating a divorced individual's former spouse or a relative of the divorced  
27              individual's former spouse to serve in any fiduciary or representative capacity,  
28              including a personal representative, executor, trustee, conservator, agent, or  
29              guardian.

- 1           b.    Severs the interests of the former spouses in property held by them at the  
2                   time of the divorce or annulment as joint tenants with the right of survivorship,  
3                   transforming the interests of former spouses into equal tenancies in common.

4           **SECTION 5. AMENDMENT.** Subsection 2 of section 30.1-18-03 of the North Dakota  
5 Century Code is amended and reenacted as follows:

- 6           2.    A personal representative ~~shall~~ may not be surcharged for acts of administration or  
7                   distribution if the conduct in question was authorized at the time. Subject to other  
8                   obligations of administration, an informally probated will ~~is authority~~ authorizes a  
9                   personal representative to administer and distribute the estate according to its  
10                  terms. An order of appointment of a personal representative, whether issued in  
11                  informal or formal proceedings, ~~is authority to~~ authorizes the personal  
12                  representative to distribute apparently intestate assets to the heirs of the decedent  
13                  if, at the time of distribution, the personal representative is not aware of a pending  
14                  testacy proceeding, a proceeding to vacate an order entered in an earlier testacy  
15                  proceeding, a formal proceeding questioning his appointment or fitness to  
16                  continue, or a supervised administration proceeding. ~~Nothing in this~~ This section  
17                  ~~affects~~ does not affect the duty of the personal representative to administer and  
18                  distribute the estate in accordance with the rights of claimants whose claims have  
19                  been allowed, the surviving spouse, any minor and dependent children, and any  
20                  pretermitted child of the decedent as described ~~elsewhere~~ in this title.

21           **SECTION 6. AMENDMENT.** Subsection 1 of section 30.1-19-03 of the North Dakota  
22 Century Code is amended and reenacted as follows:

- 23           1.    All claims against a decedent's estate which arose before the death of the  
24                   decedent, including claims of the state ~~and~~ or any political subdivision ~~thereof~~,  
25                   whether due or to become due, absolute or contingent, liquidated or unliquidated,  
26                   founded on contract, tort, or other legal basis, if not barred earlier by other statute  
27                   of limitations, are barred against the estate, the personal representative, ~~and~~ the  
28                   heirs and devisees of the decedent, and nonprobate transferees unless presented  
29                   as follows:  
30                   a.    Within three months after the date of the first publication and mailing of notice  
31                          to creditors if notice is given in compliance with section 30.1-19-01; provided,

- 1                   claims barred by the nonclaim statute at the decedent's domicile before the  
2                   first publication for claims in this state are also barred in this state.  
3                   b.   Within three years after the decedent's death, if notice to creditors has not  
4                   been published and mailed.