

UNIFORM PROBATE CODE

CHAPTER 230

HOUSE BILL NO. 1095

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

AN ACT to amend and reenact sections 30.1-01-06 and 30.1-28-03, subsection 3 of section 30.1-28-04, subdivision d of subsection 1 of section 30.1-28-09, section 30.1-29-01, subsection 2 of section 30.1-29-04, subsection 1 of section 30.1-29-05, sections 30.1-29-07 and 30.1-29-08, subsection 2 of section 30.1-29-14, and section 30.1-29-19 of the North Dakota Century Code, relating to guardianship and conservatorship proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-01-06 of 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.
3. "Augmented estate" means the estate described in section 30.1-05-02.
4. "Beneficiary", as it relates to a trust 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; 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 account with a payable on death designation, of a security registered in beneficiary form transferable on death, 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, 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 account with payable on death designation, of a security

- registered in beneficiary form transferable on death, or other nonprobate transfer at death.
6. "Child" includes an individual entitled to take as a child under this title by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.
 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.
 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.
 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.
 12. "Devisee" means 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.
 13. "Disability" means cause for a protective order as described in section 30.1-29-01.
 14. "Distributee" means any person who has received property of a decedent from 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 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.
 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.
 16. "Exempt property" means that property of a decedent's estate which is described in section 30.1-07-01.
 17. "Expert examiner" means:

- a. A licensed physician;
 - b. A psychiatrist;
 - c. A licensed psychologist trained in a clinical program;
 - d. An advanced practice registered nurse who is licensed under chapter 43-12.1 within the role of a certified nurse practitioner or certified clinical nurse specialist, who has completed the requirements for a minimum of a master's degree from an accredited program, and who is functioning within the scope of practice in one of the population foci as approved by the state board of nursing; or
 - e. A physician assistant who is licensed under chapter 43-17 and authorized by the state board of medical examiners to practice in this state.
18. "Fiduciary" includes a personal representative, guardian, conservator, and trustee.
- 18-19. "Foreign personal representative" means a personal representative appointed by another jurisdiction.
- 19-20. "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.
- 20-21. "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.
- 21-22. "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.
- 22-23. "Heirs", except as controlled by section 30.1-09.1-11, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.
- 23-24. "Incapacitated person" means an individual described in section 30.1-26-01.
- 24-25. "Informal proceedings" means those conducted by the court for probate of a will or appointment of a personal representative without notice to interested persons.
- 25-26. "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. 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.

- 26-27. "Issue" of a person means descendant as defined in subsection 10.
- 27-28. "Joint tenants with the right of survivorship" and "community property with the right of survivorship" includes co-owners 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 co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.
- 28-29. "Lease" includes an oil, gas, or other mineral lease.
- 29-30. "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.
- 30-31. "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.
- 31-32. "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.
- 32-33. "Minor" means a person who is under eighteen years of age.
- 33-34. "Mortgage" means any conveyance, agreement, or arrangement in which property is encumbered or used as security.
- 34-35. "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death.
- 35-36. "Organization" means a corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.
- 36-37. "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.
- 37-38. "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.
- 38-39. "Person" means an individual, a corporation, a limited liability company, an organization, or other legal entity.
- 39-40. "Person with limited capacity" is as defined in section 30.1-26-01.
- 40-41. "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.
- 41-42. "Petition" means a written request to the court for an order after notice.

- 42-43.** "Proceeding" includes action at law and suit in equity.
- 43-44.** "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.
- 44-45.** "Protected person" is as defined in section 30.1-26-01.
- 45-46.** "Protective proceeding" means a proceeding described in section 30.1-26-01.
- 46-47.** "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- 47-48.** "Security" includes any note, stock, treasury stock, bond, debenture, membership interest in a limited liability company, 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.
- 48-49.** "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.
- 49-50.** "Sign" means, with present intent to authenticate or adopt a record other than a will, to execute or adopt a tangible symbol or to attach to or logically associate with the record an electronic symbol, sound, or process.
- 50-51.** "Special administrator" means a personal representative as described by sections 30.1-17-14 through 30.1-17-18.
- 51-52.** "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.
- 52-53.** "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.
- 53-54.** "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or this title.
- 54-55.** "Supervised administration" refers to the proceedings described in chapter 30.1-16.
- 55-56.** "Survive" 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".
- 56-57.** "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

- 57-58. "Trust" includes an express trust, private or charitable, with additions thereto, wherever and however created. 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. The term excludes other constructive trusts and 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.
- 58-59. "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.
- 59-60. "Visitor" means an individual, in guardianship proceedings, who is in nursing or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.
61. "Ward" means an individual described in section 30.1-26-01.
- 60-62. "Will" includes 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.

SECTION 2. AMENDMENT. Section 30.1-28-03 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Any person interested in the welfare of an allegedly incapacitated person may petition for the appointment of a guardian. No filing fee under this or any other section may be required when a petition for guardianship of an incapacitated person is filed by a member of the individual treatment plan team for the alleged incapacitated person or by any state employee in the performance of official duties.
2. The petition for appointment of a guardian must state:
 - a. The name, address, and corporate or agency status of the petitioner, and its connection with or relationship to the proposed ward;
 - b. The name, age, and address of the proposed ward;
 - c. The name and address of any person or institution having care or custody over the proposed ward;
 - d. The names and addresses of the spouse, parents, and adult children or, if none, any adult siblings and any adult with whom the proposed ward resides in a private residence, or, if none, the nearest adult relative;

- e. A brief description of and the approximate value of the real and personal property and income of the proposed ward, so far as they are known to the petitioner;
 - f. The extent of guardianship authority sought, including full authority, limited authority, or no authority in each area of residential, educational, medical, legal, vocational, and financial decisionmaking unless the petitioner is undecided on the extent of authority in any area, in which case the petition must state the specific areas in which the authority is sought;
 - g. The occupation and qualifications of the proposed guardian;
 - h. The name and address of the attorney, if known, who most recently represented the proposed ward;
 - i. A statement alleging specific facts establishing the necessity for the appointment of a guardian;
 - j. The name and address of any current conservator appointed for the proposed ward;
 - k. The name and address of any person designated as an attorney in fact or agent in a power of attorney or as an agent in a health care directive;
 - l. The name and address of any representative payee for the proposed ward;
 - m. That less intrusive alternatives to guardianship have been considered; and
 - n. In the form of an attached recent statement, the physical, mental, and emotional limitations of the proposed ward; from a ~~physician, mental health services provider, or other health care provider~~ an expert examiner, if available; and
 - o. Whether the petition seeks to restrict any of the following rights:
 - (1) To vote;
 - (2) To seek to change marital status; or
 - (3) To obtain or retain a motor vehicle operator's license.
3. Upon the filing of a petition, the court promptly shall set a date for hearing on the issues of incapacity, appoint an attorney to act as guardian ad litem, appoint a ~~physician or clinical psychologist~~ expert examiner to examine the proposed ward, and appoint a visitor to interview the proposed guardian and the proposed ward. The proposed guardian shall attend the hearing on the petition unless excused by the court for good cause.
 4. The duties of the guardian ad litem include:
 - a. Personally interviewing the proposed ward;
 - b. Explaining the guardianship proceeding to the proposed ward in the language, mode of communication, and terms that the proposed ward is most likely to understand, including the nature and possible consequences

- of the proceeding, the right to which the proposed ward is entitled, and the legal options that are available, including the right to retain an attorney to represent the proposed ward;
- c. Advocating for the best interests of the proposed ward. The appointed attorney serving as legal guardian ad litem may not represent the proposed ward or ward in a legal capacity; and
 - d. Submitting a written report to the court containing the guardian ad litem's response to the petition; and
 - e. Reviewing the visitor's written report submitted in accordance with subdivision h and i of subsection 6 and discussing the report with the proposed ward.
5. The ~~physician or clinical psychologist~~expert examiner shall examine the proposed ward and submit a written report to the court. The written report must contain:
- a. A description of the nature and degree of any current incapacity or disability, including the medical or psychological history, if reasonably available;
 - b. A medical prognosis or psychological evaluation specifying the estimated severity and duration of any current incapacity or disability;
 - c. A statement as to how or in what manner any underlying condition of physical or mental health affects the proposed ward's ability to provide for personal needs; and
 - d. A statement as to whether any current medication affects the demeanor of the proposed ward or the ability of the proposed ward to participate fully in any court proceeding or in any other procedure required by the court or by court rule.
6. The visitor shall have the following duties:
- a. To meet, interview, and consult with the proposed ward regarding the guardianship proceeding, including explaining the purpose for the interview in a manner the proposed ward can reasonably be expected to understand.
 - b. To ascertain the proposed ward's views concerning the proposed guardian, the powers and duties of the proposed guardian, the proposed guardianship, and the scope and duration thereof.
 - c. To interview the person seeking appointment as guardian.
 - d. To interview other persons interested in the welfare of the proposed ward.
 - e. To visit the proposed ward's present place of residence.
 - e.f. To discuss an alternative resource plan with the proposed ward, if appropriate.

- f.g. To obtain other relevant information as directed by the court.
- g-h. To submit a written report to the court.
- h-i. The visitor's written report must contain:
- (1) A description of the nature and degree of any current impairment of the proposed ward's understanding or capacity to make or communicate decisions;
 - (2) A statement of the qualifications and appropriateness of the proposed guardian and a recommendation regarding whether the proposed guardian should be appointed;
 - (3) If the visitor recommends the proposed guardian should not be appointed, a recommendation regarding an alternative individual or entity that should be appointed as guardian;
 - (4) Recommendations, if any, on the powers to be granted to the proposed guardian, including an evaluation of the proposed ward's capacity to perform the functions enumerated under subsections 3 and 4 of section 30.1-28-04; and
- ~~(4)~~(5)An assessment of the capacity of the proposed ward to perform the activities of daily living.
7. In determining whether appointment of a guardian is appropriate, the court shall consider the reports ordered by the court under this section from a guardian ad litem, visitor, and ~~either a physician or a clinical psychologist an~~ expert examiner. The court, guardian ad litem, petitioner, or proposed ward may subpoena the individual who prepared and submitted the report to appear, testify, and be cross-examined.
 8. The proposed ward must be present at the hearing in person, unless good cause is shown for the absence. Good cause does not consist only of the physical difficulty of the proposed ward to attend the hearing. The proposed ward has the right to present evidence, and to cross-examine witnesses, including the court-appointed ~~physician~~expert examiner and the visitor. The issue may be determined at a closed hearing if the proposed ward or the proposed ward's counsel so requests.
 9. The court shall take all necessary steps to make the courts and court proceedings accessible and understandable to impaired persons. Accordingly, the court may convene temporarily, or for the entire proceeding, at any other location if it is in the best interest of the proposed ward.
 10. If the court approves a visitor, lawyer, ~~physician~~expert examiner, guardian, or emergency guardian appointed in a guardianship proceeding, that person may receive reasonable compensation from the ward's estate if the compensation will not unreasonably jeopardize the ward's well-being.

²²²**SECTION 3. AMENDMENT.** Subsection 3 of section 30.1-28-04 of the North Dakota Century Code is amended and reenacted as follows:

222Section 30.1-28-04 was also amended by section 2 of House Bill No.1365, chapter 231.

3. Except upon specific findings of the court, ~~ne~~ ward may not be deprived of any of the following legal rights: to vote, to seek to change marital status, or to obtain or retain a motor vehicle operator's license, ~~or to testify in any judicial or administrative proceedings.~~

SECTION 4. AMENDMENT. Subdivision d of subsection 1 of section 30.1-28-09 of the North Dakota Century Code is amended and reenacted as follows:

- d. The attorney for the proposed ward, the visitor, and the ~~physician or clinical psychologist~~expert examiner, together with a copy of the respective order of appointment for each.

SECTION 5. AMENDMENT. Section 30.1-29-01 of the North Dakota Century Code is amended and reenacted as follows:

30.1-29-01. (5-401) Protective proceedings - Burden of proof.

Upon petition and after notice and hearing in accordance with the provisions of this chapter, the court may appoint a conservator or make other protective order for cause as follows:

1. Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines by a preponderance of the evidence that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by the minor's minority, or that funds are needed for the minor's support and education and that protection is necessary or desirable to obtain or provide funds.
2. Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person, including a minor, if the court determines ~~that~~by clear and convincing evidence:
 - a. The person is unable to manage the person's property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, or chronic intoxication, ~~confinement, detention by a foreign power, or disappearance;~~
 - b. The person is unable to manage the person's property and affairs effectively for reasons of confinement, detention by a foreign power, or disappearance; or
 - c. The person has property ~~which~~that will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care, and welfare of the person or those entitled to be supported by the person and that protection is necessary or desirable to obtain or provide funds.

SECTION 6. AMENDMENT. Subsection 2 of section 30.1-29-04 of the North Dakota Century Code is amended and reenacted as follows:

2. The petition ~~shall set forth~~must state or include, to the extent known, ~~the~~:
 - a. The interest of the petitioner; ~~the~~

- b. The name, age, residence, and address of the person to be protected; the
- c. The name and address of the guardian of the person to be protected, if any; the
- d. The name and address of the nearest relative of the person to be protected known to the petitioner; a
- e. A general statement of property of the person to be protected with an estimate of the value thereof, including any compensation, insurance, pension, or allowance to which the person to be protected is entitled; and the
- f. The extent of conservatorship authority sought;
- g. The name and address of any person designated as an attorney in fact or agent in a power of attorney;
- h. The name and address of any representative payee for the person to be protected;
- i. That less intrusive alternatives to conservatorship have been considered;
- j. If the appointment of a conservator is requested under subdivision a of subsection 2 of section 30.1-29-01, an attached recent statement, if any, from an expert examiner which describes the physical, mental, and emotional limitations of the person to be protected;
- k. The reason why appointment of a conservator or other protective order is necessary; and
- l. If the appointment of a conservator is requested, the petition also shall set forth the name and address of the person whose appointment is sought and the basis of the person's priority for appointment.

SECTION 7. AMENDMENT. Subsection 1 of section 30.1-29-05 of the North Dakota Century Code is amended and reenacted as follows:

1. On a petition for appointment of a conservator or other protective order, the person to be protected and the spouse of the person to be protected or, if none, the parents of the person to be protected, must be served personally by the petitioning party with notice of the proceeding at least fourteen days before the date of hearing if they can be found within the state, or, if they cannot be found within the state, they, any other guardian or conservator, and any government agency paying benefits to the person sought to be protected, if the person seeking the appointment has knowledge of the existence of these benefits, must be given notice in accordance with section 30.1-03-01. Waiver by the person to be protected is not effective unless the proceedings are limited to payment of veterans' administration benefits, the person to be protected attends the hearing, or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor.

SECTION 8. AMENDMENT. Section 30.1-29-07 of the North Dakota Century Code is amended and reenacted as follows:

30.1-29-07. (5-407) Procedure concerning hearing and order on original petition.

1. Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. The proposed conservator, if any, shall attend the hearing unless excused by the court for good cause. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent/serve as guardian ad litem for the minor, giving consideration to the choice of the minor if fourteen years of age or older. ~~A lawyer appointed by the court to represent a minor has the powers and~~The duties of a guardian ad litem include:
 - a. Meeting, interviewing, and consulting with the person to be protected regarding the conservatorship proceeding, including explaining the purpose for the interview in the language, mode of communication, and terms the person is most likely to understand, the nature and possible consequences of the proceeding, the rights to which the person is entitled, and the legal options available, including the right to retain an attorney to represent the person;
 - b. Advocating for the best interests of the person to be protected. The appointed attorney serving as guardian ad litem may not represent the person in a legal capacity;
 - c. Ascertaining the views of the person to be protected concerning the proposed conservator, the powers and duties of the proposed conservator, the proposed conservatorship, and the scope and duration of the conservatorship;
 - d. Interviewing the person seeking appointment as conservator;
 - e. Obtaining any other relevant information;
 - f. Submitting a written report to the court containing the guardian ad litem's response to the petition; and
 - g. Attending the hearing unless excused by the court for good cause.
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. The proposed conservator, if any, shall attend the hearing unless excused by the court for good cause. 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~~the court shall appoint an attorney to represent/serve as guardian ad litem for the person to be protected. ~~An attorney appointed by the court to represent a protected person has the powers and~~The duties of a guardian ad litem include:
 - a. Meeting, interviewing, and consulting with the person to be protected regarding the conservatorship proceeding, including explaining the purpose for the interview in the language, mode of communication, and terms the person is most likely to understand, the nature and possible consequences of the proceeding, the rights to which the person is entitled, and the legal options available, including the right to retain an attorney to represent the person;

- b. Advocating for the best interests of the person to be protected. The appointed attorney serving as guardian ad litem may not represent the person in a legal capacity;
 - c. Ascertaining the views of the person to be protected concerning the proposed conservator, the powers and duties of the proposed conservator, the proposed conservatorship, and the scope and duration of the conservatorship;
 - d. Interviewing the person seeking appointment as conservator;
 - e. Obtaining any other relevant information;
 - f. Submitting a written report to the court containing the guardian ad litem's response to the petition; and
 - g. Attending the hearing unless excused by the court for good cause.
3. If the petition seeks appointment of a conservator or other protective order for reasons other than minority and the alleged disability is mental illness, mental deficiency, physical illness or disability, chronic use of drugs, or chronic intoxication, the court may shall direct that the person to be protected be examined by a physician an expert examiner designated by the court. The expert examiner preferably a physicianshould be someone 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.
- a. An expert examiner appointed under this subsection shall examine the person to be protected and submit a written report to the court. The report must contain:
 - (1) A description of the nature and degree of any current disability, including the medical or psychological history, if reasonably available;
 - (2) A medical prognosis or psychological evaluation specifying the estimated severity and duration of any current disability;
 - (3) A statement about how or in what manner any underlying condition of physical or mental health affects the ability of the person to be protected to provide for personal needs; and
 - (4) A statement about whether any current medication affects the demeanor of the person to be protected or the ability of the person to participate fully in any court proceeding or in any other procedure required by the court or by court rule.
 - b. In determining whether appointment of a conservator is appropriate, the court shall consider the reports ordered by the court under this subsection from a guardian ad litem and an expert examiner. The court, guardian ad litem, petitioner, or person to be protected may subpoena the expert examiner who prepared and submitted the report to appear, testify, and be cross-examined.

4. The person to be protected must be present at the hearing in person, unless good cause is shown for the absence. Good cause does not consist of the physical difficulty of the person to be protected to attend the hearing. The court shall take all necessary steps to make the courts and court proceedings accessible and understandable to impaired persons. The court may convene temporarily, or for the entire proceeding, at any other location if it is in the best interest of the person to be protected.
5. In any case in which 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~~ a conservator or other protective order.
- ~~3-6.~~ After hearing, upon finding that a ~~basis for the appointment of a conservator or other protective order has been established~~ is appropriate, the court shall make an appointment or other appropriate protective order.

SECTION 9. AMENDMENT. Section 30.1-29-08 of the North Dakota Century Code is amended and reenacted as follows:

30.1-29-08. (5-408) Permissible court orders.

1. The court shall exercise the authority conferred in this chapter consistent with the maximum self-reliance and independence of the protected person and make protective orders only to the extent necessitated by the protected person's actual mental and adaptive limitations and other conditions warranting the procedure.
2. The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons:
 - a. While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for the benefit of the person to be protected or the benefit of the dependents of the person to be protected.
 - b. After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, the minor's family, and members of the minor's household.
 - c. After hearing and upon determining that ~~a basis for an appointment of a conservator~~ is appropriate with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of the person's household, all the powers over the person's estate and affairs which the person could exercise if present and not under disability, except the power to make a will. These powers include power to make gifts, to convey or release the person's contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy, to exercise or release the person's powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment, to enter into contracts, to

create revocable or irrevocable trusts of property of the estate which may extend beyond the person's disability or life, to exercise options of the disabled person to purchase securities or other property, to exercise the person's rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value, to exercise the person's right to an elective share in the estate of the person's deceased spouse, and to renounce any interest by testate or intestate succession or by inter vivos transfer.

- d. The court may exercise or direct the exercise of its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding twenty percent of any year's income of the estate, or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person, and that the protected person either is incapable of consenting or has consented to the proposed exercise of power.
 - e. An order made pursuant to this section determining that a ~~basis for~~ appointment of a conservator or other protective order ~~exists~~ is appropriate has no effect on the capacity of the protected person.
3. Unless terminated earlier by the court, an order appointing or reappointing a conservator under this section is effective for up to five years. At least ninety days before the expiration of the initial order of appointment or any following order of reappointment, the court shall request and consider information submitted by the conservator, the protected person, the protected person's attorney, if any, and any interested persons regarding whether the need for a conservator continues to exist. If it is recommended the conservatorship continue, the court may appoint a guardian ad litem in accordance with section 30.1-29-07. The court shall hold a hearing on whether the conservatorship should continue. Following the hearing and consideration of submitted information, the court may reappoint the conservator for up to another five years, allow the existing order to expire, or appoint a new conservator in accordance with this section. The supreme court, by rule or order, shall provide for regular review of conservatorships in existence on the effective date of this Act.

SECTION 10. AMENDMENT. Subsection 2 of section 30.1-29-14 of the North Dakota Century Code is amended and reenacted as follows:

2. If not otherwise compensated for services rendered, any visitor, lawyer, physician, expert examiner, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate.

SECTION 11. AMENDMENT. Section 30.1-29-19 of the North Dakota Century Code is amended and reenacted as follows:

30.1-29-19. (5-419) Annual reports and accounts.

1. At least once annually and at other times as the court may direct, a conservator ~~must~~ shall file a report and account with the court regarding the exercise of powers and duties specified in the court's order of appointment. The report must describe any expenditure and income affecting the protected person, any sale or transfer of property affecting the protected person, and any exercise of authority by the conservator affecting the protected person.

2. On termination of the protected person's minority or disability, a conservator shall file a final report and accounting and provide a copy of the report or accounting to the protected person. The report or accounting must be filed with the clerk of district court. The filing of the report or accounting ~~and the acceptance by the court or clerk of district court of the report or accounting~~ does not constitute the court's approval of the report or accounting. The court may approve a report and settle and allow an accounting only upon notice to the protected person and other interested persons who have made an appearance or requested notice of proceedings. Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to liabilities concerning the matters considered in connection therewith. An order, made upon notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or the protected person's successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate in the conservator's control, to be made in any manner the court may specify. The office of the state court administrator shall provide printed forms that may be used to fulfill reporting requirements. Any report must be similar in substance to the state court administrator's form. The forms must be available in the office of clerk of district court or obtainable through the supreme court's internet website.

3. Copies of the conservator's annual report to the court and of any other reports required by the court must be mailed by the conservator to the protected person and any interested persons designated by the court in its order. The protected person's copy must be accompanied by a statement, printed with not less than double-spaced twelve-point type, of the protected person's right to seek alteration, limitation, or termination of the conservatorship at any time.

Approved March 2, 2017

Filed March 3, 2017

CHAPTER 231

HOUSE BILL NO. 1365

(Representatives Vigesaa, Devlin, Skroch)
(Senators Anderson, Dever, O. Larsen)

AN ACT to create and enact a new section to chapter 25-03.1, a new subsection to section 30.1-28-04, and a new subsection to section 30.1-28-12 of the North Dakota Century Code, relating to powers, duties, and authority of a guardian regarding medical decisions; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 25-03.1 of the North Dakota Century Code is created and enacted as follows:

Guardian consent to involuntary treatment with prescribed medication.

Notwithstanding sections 25-03.1-16, 25-03.1-18.1, and 25-03.1-24, if a patient refuses treatment with prescribed medication, a treating physician, physician assistant, psychiatrist, or advanced practice registered nurse may treat the patient with prescribed medication upon consent of the patient's guardian pursuant to section 3 of this Act.

1. The guardian's consent for involuntary treatment with prescribed medication may not be in effect for more than ninety days without receiving another recommendation and determination pursuant to section 3 of this Act.
2. The patient has the right to be free of the effects of medication at the preliminary or treatment hearing by discontinuance of medication no later than twenty-four hours before the hearing unless, in the opinion of the prescriber, the need for the medication still exists or discontinuation would hamper the patient's preparation for and participation in the proceedings.

²²³**SECTION 2.** A new subsection to section 30.1-28-04 of the North Dakota Century Code is created and enacted as follows:

A grant of general authority to make medical decisions includes the authority to consent to involuntary treatment with prescribed medications. Except upon specific findings of the court, a grant of limited authority does not include authority to consent to involuntary treatment with prescribed medications.

SECTION 3. A new subsection to section 30.1-28-12 of the North Dakota Century Code is created and enacted as follows:

A guardian with authority to consent to involuntary treatment with prescribed medications may not provide consent without receiving a recommendation and determination from the ward's treating physician, physician assistant, psychiatrist, or advanced practice registered nurse that:

223 Section 30.1-28-04 was also amended by section 3 of House Bill No. 1095, chapter 230.

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- a. The proposed prescribed medication is clinically appropriate and necessary to effectively treat the ward and that the ward requires treatment;
 - b. The ward was offered that treatment and refused it or that the ward lacks the capacity to make or communicate a responsible decision about that treatment;
 - c. Prescribed medication is the least restrictive form of intervention necessary to meet the treatment needs of the ward; and
 - d. The benefits of the treatment outweigh the known risks to the ward.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 17, 2017

Filed April 17, 2017