

HOUSE BILL NO. 1226

Introduced by

Representatives Boschee, Hoverson, Magrum, McWilliams, Monson

Senators Bakke, Hogan

1 A BILL for an Act to amend and reenact sections 30.1-23-01 and 30.1-23-02 of the North
2 Dakota Century Code, relating to the collection of property by affidavit and the effect of the
3 affidavit.

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

5 **SECTION 1. AMENDMENT.** Section 30.1-23-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **30.1-23-01. (3-1201) Collection of ~~personal~~ property by affidavit.**

- 8 1. Thirty days after the death of a decedent, any person indebted to the decedent or
9 having possession of tangible personal property, unencumbered real property, or an
10 instrument evidencing a debt, obligation, stock, or chose in action belonging to the
11 decedent shall make payment of the indebtedness or deliver the tangible personal
12 property, unencumbered real property, or an instrument evidencing a debt, obligation,
13 stock, or chose in action to a person claiming to be the successor of the decedent
14 upon being presented an affidavit made by or on behalf of the successor stating that:
- 15 a. The value of the entire estate subject to distribution or succession under chapters
16 30.1-01 through 30.1-23, wherever located, less liens and encumbrances, does
17 not exceed fifty thousand dollars.
 - 18 b. Thirty days have elapsed since the death of the decedent.
 - 19 c. An application or petition for the appointment of a personal representative is not
20 pending or has not been granted in any jurisdiction.
 - 21 d. The claiming successor is entitled to payment or delivery of the property.
 - 22 e. A description sufficient to identify each tract of unencumbered real property
23 owned by the decedent at the time of the decedent's death.

1 2. A person claiming to be a successor to the decedent's interest in unencumbered real
2 property shall file the affidavit with the county recorder of the county the
3 unencumbered real property of the decedent which is subject to the affidavit is located.
4 The affidavit must be signed by all persons claiming to be successors or by legal
5 parties legally acting on those person's behalf, and is prima facie evidence of the facts
6 stated in the affidavit. The affidavit must include a certified or authenticated copy of the
7 decedent's death certificate attached to the affidavit. In addition to the requirements
8 under subsection 1, an affidavit for the collection of unencumbered real property must
9 state:

10 a. The claiming successor has made an investigation and has been unable to
11 determine any subsequent will;

12 b. Another person does not have a right to the interest of the decedent in the
13 described unencumbered real property;

14 c. The claiming successor's relationship to the decedent and the value of the entire
15 estate of the decedent; and

16 d. The person claiming to be a successor under the affidavit swears or affirms all
17 statements in the affidavit are true and material and further acknowledges any
18 false statement may subject the person to penalties under section 12.1-11-02.

19 3. A transfer agent of any security shall change the registered ownership on the books of
20 a corporation or limited liability company from the decedent to the successor upon the
21 presentation of an affidavit as provided in subsection 1.

22 **SECTION 2. AMENDMENT.** Section 30.1-23-02 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **30.1-23-02. (3-1202) Effect of affidavit.**

25 The person paying, delivering, transferring, or issuing personal property, unencumbered
26 real property, or the evidence thereof pursuant to affidavit is discharged and released to the
27 same extent as if the person dealt with a personal representative of the decedent. The person is
28 not required to see to the application of the personal property, unencumbered real property, or
29 evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to
30 whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property,
31 unencumbered real property, or evidence thereof, it may be recovered or its payment, delivery,

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- 1 transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose
- 2 by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer,
- 3 or issuance is made is answerable and accountable therefor to any personal representative of
- 4 the estate or to any other person having a superior right.