

Introduced by

Human Services Committee

(At the request of the Supreme Court)

1 A BILL for an Act to create and enact a new section to chapter 30.1-28 and a new subsection to  
2 section 30.1-29-09 of the North Dakota Century Code, relating to the sale of real or personal  
3 property of a ward and protective arrangements and single transactions; and to amend and  
4 reenact subsection 7 of section 30.1-28-12 of the North Dakota Century Code, relating to  
5 powers and duties of a guardian.

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

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

9 7. If no conservator for the estate of the ward has been appointed and if the guardian  
10 has been granted authority to make financial decisions on behalf of the ward, the  
11 guardian may:

12 a. Institute proceedings to compel any person under a duty to support the ward or to  
13 pay sums for the welfare of the ward to perform that duty.

14 b. Receive money and tangible property deliverable to the ward and apply the  
15 money and property for support, care, and education of the ward; but, the  
16 guardian may not use funds from the ward's estate for room and board which the  
17 guardian or the guardian's spouse, parent, or child have furnished the ward  
18 unless a charge for the service is approved by order of the court made upon  
19 notice to at least one of the next of kin of the ward, if notice is possible. The  
20 guardian shall exercise care to conserve any excess for the ward's needs.

21 c. Move the court under section 2 of this Act for authority to sell, mortgage, or  
22 otherwise encumber or transfer ownership or beneficiary of:

23 (1) The real property of the ward; or

1           (2) The personal property of the ward valued over two thousand five hundred  
2           dollars upon such terms as the court may order, for the purpose of paying  
3           the ward's debts; providing for the care, maintenance, rehabilitation,  
4           training, or education of the ward or the ward's dependents; or for any other  
5           purpose which is in the best interests of the ward. The sale, mortgage, or  
6           other encumbrance or transfer of ownership of personal property of the  
7           ward valued at two thousand five hundred dollars or less does not require a  
8           court order.

9           d. Move the court under section 2 of this Act for authority to lease the real or  
10          personal property of the ward.

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

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

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

18          1. A guardian may move the court for authorization to sell, mortgage, lease, or otherwise  
19          encumber or transfer ownership of the real or personal property of the ward, valued at  
20          over two thousand five hundred dollars, upon such terms as the court may order, for  
21          the purpose of paying the ward's debts; providing for the care, maintenance,  
22          rehabilitation, training, or education of the ward or the ward's dependents; or for any  
23          other purpose which is in the best interests of the ward.

24          2. The motion must contain:

25          a. The type of property;

26          b. A description of the property;

27          c. The type of transaction;

28          d. The details of the transaction;

29          e. The reason for the transaction;

30          f. The current fair market value of the property;

- 1                   (1) For real property, an appraisal must be provided unless good cause is  
2                               shown;
- 3                   (2) For personal property, a description of how the guardian arrived at the fair  
4                               market value must be provided;
- 5           g. An explanation of why the transaction is in the best interests of the ward; and  
6           h. A notice that any person interested in the ward's property that opposes the  
7                       transaction shall file an objection within ten days of the notice and demand a  
8                       hearing.
- 9           3. The motion must be served upon the ward, the ward's spouse, and all interested  
10                   persons.
- 11           4. Any consents of the ward's spouse or interested persons must be filed with the  
12                   motion. If the motion is unopposed, the court may authorize the transaction without a  
13                   hearing or may conduct a hearing and require proof of the matters necessary to  
14                   support the authorization of the transaction.
- 15           5. The court's order must include specific findings regarding whether the transaction is in  
16                   the best interests of the ward.

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

19                   This section does not apply to a guardian or conservator.