

HOUSE BILL NO. 1364

Introduced by

Representative Kading

1 A BILL for an Act to amend and reenact sections 30.1-18-09 and 59-18-05 of the North Dakota
2 Century Code, relating to the duties of a personal representative and actions against a trustee.

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

4 **SECTION 1. AMENDMENT.** Section 30.1-18-09 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **30.1-18-09. (3-709) Duty of personal representative - Possession of estate.**

7 Except as otherwise provided by a decedent's will, every personal representative has a
8 right to, and shall take possession or control of, the decedent's personal property, ~~except that~~
9 ~~any. Any real property or tangible personal property may~~must be left with or surrendered to the
10 person presumptively entitled thereto unless ~~or until, in the judgment of the personal~~
11 ~~representative, the personal representative secures a court order determining~~ possession of the
12 property by the personal representative will be necessary for purposes of administration. The
13 request by a personal representative for delivery of any personal property possessed by an heir
14 or devisee is conclusive evidence, in any action against the heir or devisee for possession
15 thereof, that the possession of the property by the personal representative is necessary for
16 purposes of administration. The personal representative shall pay taxes on, and take all steps
17 reasonably necessary for the management, protection, and preservation of, the estate in the
18 personal representative's possession, to include payment of mortgages and liens due during the
19 personal representative's possession. The personal representative may maintain an action to
20 recover possession of property or to determine the title thereto.

21 **SECTION 2. AMENDMENT.** Section 59-18-05 of the North Dakota Century Code is
22 amended and reenacted as follows:

1 **59-18-05. (1005) Limitation of action against trustee.**

- 2 1. A beneficiary may not commence a proceeding against a trustee for breach of trust
3 more than one year after the date the beneficiary or a representative of the beneficiary
4 was sent a report that adequately disclosed the existence of a potential claim for
5 breach of trust and informed the beneficiary in the report or in a separate notice
6 accompanying the report of the time allowed for commencing a proceeding.
- 7 2. A report adequately discloses the existence of a potential claim for breach of trust if it
8 provides sufficient information so that the beneficiary or representative knows of the
9 potential claim or should have inquired into its existence.
- 10 3. If subsection 1 does not apply, a judicial proceeding by a beneficiary against a trustee
11 for breach of trust must be commenced within five years after whichever occurs first:
12 the removal, resignation, or death of the trustee; the termination of the beneficiary's
13 interest in the trust; or the termination of the trust. A trust terminates when it becomes
14 the duty of the trustee to wind up administration of the trust, not when that winding up
15 period actually is accomplished.