

HOUSE BILL NO. 1213

Introduced by

Representative Klemin

Senator Hogue

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

1 A BILL for an Act to create and enact chapter 14-21 of the North Dakota Century Code, relating
2 to the uniform disposition of community property rights at death act.

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

4 **SECTION 1.** Chapter 14-21 of the North Dakota Century Code is created and enacted as
5 follows:

6 **14-21-01. Application.**

7 This chapter applies to the disposition at death of the following property acquired by a
8 married person:

9 1. All personal property, wherever situated:

10 a. Which was acquired as or became, and remained, community property under the
11 laws of another jurisdiction;

12 b. All or the proportionate part of that property acquired with the rents, issues, or
13 income of, or the proceeds from, or in exchange for, that community property; or

14 c. Traceable to that community property;

15 2. All or the proportionate part of any real property situated in this state which was
16 acquired with the rents, issues, or income of, the proceeds from, or in exchange for,
17 property acquired as or which became, and remained, community property under the
18 laws of another jurisdiction, or property traceable to that community property.

19 **14-21-02. Rebuttable presumptions.**

20 In determining whether this chapter applies to specific property, the following rebuttable
21 presumptions apply:

22 1. Property acquired during marriage by a spouse of that marriage while domiciled in a
23 jurisdiction under whose laws property could then be acquired as community property

1 is presumed to have been acquired as or to have become, and remained, property to
2 which this chapter applies; and

3 2. Real property situated in this state and personal property wherever situated acquired
4 by a married person while domiciled in a jurisdiction under whose laws property could
5 not then be acquired as community property, title to which was taken in a form which
6 created rights of survivorship, is presumed not to be property to which this chapter
7 applies.

8 **14-21-03. Disposition upon death.**

9 Upon death of a married person, one-half of the property to which this chapter applies is the
10 property of the surviving spouse and is not subject to testamentary disposition by the decedent
11 or distribution under the laws of succession of this state. One-half of that property is the
12 property of the decedent and is subject to testamentary disposition or distribution under the
13 laws of succession of this state. With respect to property to which this chapter applies, the
14 one-half of the property which is the property of the decedent is not subject to the surviving
15 spouse's right to elect against the will and no estate of dower or curtesy exists in the property of
16 the decedent.

17 **14-21-04. Perfection of title of surviving spouse.**

18 If the title to any property to which this chapter applies was held by the decedent at the time
19 of death, title of the surviving spouse may be perfected by an order of the court or by execution
20 of an instrument by the personal representative or the heirs or devisees of the decedent with
21 the approval of the court. Neither the personal representative nor the court in which the
22 decedent's estate is being administered has a duty to discover or attempt to discover whether
23 property held by the decedent is property to which this chapter applies, unless a written demand
24 is made by the surviving spouse or the spouse's successor in interest.

25 **14-21-05. Perfection of title of personal representative, heir, or devisee.**

26 If the title to any property to which this chapter applies is held by the surviving spouse at the
27 time of the decedent's death, the personal representative or an heir or devisee of the decedent
28 may institute an action to perfect title to the property. The personal representative does not have
29 a fiduciary duty to discover or attempt to discover whether any property held by the surviving
30 spouse is property to which this chapter applies, unless a written demand is made by an heir,
31 devisee, or creditor of the decedent.

1 **14-21-06. Purchaser for value or lender.**

2 1. If a surviving spouse has apparent title to property to which this chapter applies, a
3 purchaser for value or a lender taking a security interest in the property takes the
4 purchaser's or lender's interest in the property free of any rights of the personal
5 representative or an heir or devisee of the decedent.

6 2. If a personal representative or an heir or devisee of the decedent has apparent title to
7 property to which this chapter applies, a purchaser for value or a lender taking a
8 security interest in the property takes the purchaser's or lender's interest in the
9 property free of any rights of the surviving spouse.

10 3. A purchaser for value or a lender need not inquire whether a vendor or borrower acted
11 properly.

12 4. The proceeds of a sale or creation of a security interest must be treated in the same
13 manner as the property transferred to the purchaser for value or a lender.

14 **14-21-07. Creditor's rights.**

15 This chapter does not affect rights of creditors with respect to property to which this chapter
16 applies.

17 **14-21-08. Acts of married persons.**

18 This chapter does not prevent married persons from severing or altering their interests in
19 property to which this chapter applies.

20 **14-21-09. Limitations on testamentary disposition.**

21 This chapter does not authorize a person to dispose of property by will if the property is held
22 under limitations imposed by law preventing testamentary disposition by that person.

23 **14-21-10. Uniformity of application and construction.**

24 This chapter must be applied and construed to effectuate its general purpose to make
25 uniform the law with respect to the subject of this chapter among those states that enact it.