

## **CHAPTER 30-16 HOMESTEAD EXEMPTION AND ALLOWANCE**

### **30-16-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Homestead" has the meaning set forth in section 47-18-01.
2. "Homestead estate" means the right to the possession, use, control, income, and rents of the real property held or occupied by the decedent as a homestead at death.
3. "Youngest" means the decedent's child, either by birth or adoption, last to attain majority.

### **30-16-02. Descent and distribution of homestead estate.**

Upon the death of a person in whom the title to real property constituting a homestead is vested, a homestead estate shall survive, and, until otherwise disposed of according to law, shall be set over to the persons and in the order following:

1. To the surviving spouse for life or until the surviving spouse again marries.
2. If there is no surviving spouse, to the decedent's minor child or children, if any, until the youngest attains majority.
3. If the surviving spouse dies before the youngest child attains majority, then after such death to the decedent's minor child or children, if any, until the youngest attains majority. If a surviving minor child dies before the homestead estate has been terminated, such estate thereafter shall be dealt with as though such child had not lived.

### **30-16-03. Homestead, ascertainment - Setting apart.**

After the death of the owner, the homestead, upon the selection of the person or persons entitled to the possession thereof, must be ascertained and set apart as provided in this chapter, except that if the homestead was ascertained and set off to the decedent before the decedent's death, in the manner provided by law, such homestead, as defined in section 30-16-01, must not be again ascertained and the homestead estate provided for in section 30-16-02 shall be commensurate therewith. The homestead shall not be subject to the payment of any debt or liability contracted by or existing against the husband or wife, or either of them, previous to or at the time of the death of such husband or wife, other than the liabilities set forth in section 47-18-04, and except as otherwise provided in section 30-16-04.

### **30-16-04. Descent and distribution of real property subject to homestead estate.**

The real property subjected to the homestead estate descends, subject to the full satisfaction of that estate, exempt from decedent's debts except claims in favor of the county for county general assistance, the department of health and human services for general assistance, and also for claims of the state of North Dakota for repayment of old-age assistance and aid to the permanently and totally disabled and as otherwise provided in section 47-18-04, and must be distributed in the manner in which real property not subjected to a homestead estate is distributed or as directed in the decedent's will. The real property constituting the homestead of a decedent, or any part thereof, may not descend or be distributed to any person other than the surviving spouse and decedent's heirs in the direct descending line as prescribed in title 30.1 until all the decedent's debts are fully paid.

### **30-16-05. Personal representative to value homestead.**

The personal representative of an estate must procure from the person or persons to whom real property subjected to a homestead estate has descended a description of such property and must appraise the same at its value at the time of the death of the decedent. If necessary, the personal representative shall cause the boundaries thereof to be ascertained and marked in the personal representative's presence by a competent surveyor. If the personal representative finds that it has been selected in such form as will materially diminish the value of any remaining part of the property, the personal representative may modify its boundaries so as to avoid such

injury if it can be done without material injury to the homestead property. Should the personal representative find that the property selected as a homestead exceeds in value any limitation in value fixed by law, the personal representative in like manner shall set off the homestead in such form as to exclude the excess unless the personal representative further finds that the property cannot be divided without material injury. The personal representative shall make a full report of all the personal representative's findings in relation to the homestead and annex the same to the inventory.

**30-16-06. Exempt personal property - Selection.**

Repealed by S.L. 1973, ch. 257, § 82.

**30-16-07. Return of inventory and appraisalment - Objections - Hearing.**

Repealed by S.L. 1973, ch. 257, § 82.

**30-16-08. Decree setting apart homestead estate.**

In its decree made in proceedings to set apart the homestead estate, the court must set apart the homestead estate and set forth the name and the date on which each minor will attain majority and shall direct that in case the surviving spouse dies before the last of such dates is reached, the minor child or children then surviving, from the time of such death, shall succeed to such homestead estate until the youngest child attains majority.

**30-16-09. Excess value of homestead available for debts.**

If the court finds that the homestead selected in an estate exceeds in value any limitation fixed by law and that the property cannot be divided without material injury, the order setting it apart must determine the amount of such excess, and thereafter the property to the extent of the excess so determined may be subjected, after all of the other available property has been exhausted, to the payment of debts in the same manner as other property.

**30-16-10. Allowance for the family - Preferred claim - When effective.**

Repealed by S.L. 1973, ch. 257, § 82.