



MAKING A CLAIM AGAINST AN ESTATE

An Informational Guide to a North Dakota State Civil Court Process

The North Dakota Legal Self Help Center provides resources to people who represent themselves in civil matters in the North Dakota state courts. The information provided in this informational guide is not intended for legal advice but only as a general guide to a civil court process. **If you decide to represent yourself, you will need to do additional research to prepare.**

When you represent yourself, you must abide by the following:

- State or federal laws that apply to your case;
- Case law, also called court opinions, that applies to your case; and
- Court rules that apply to your case, which may include:
 - North Dakota Rules of Civil Procedure;
 - North Dakota Rules of Court;
 - North Dakota Rules of Evidence;
 - North Dakota Administrative Rules and Orders;
 - Any local court rules.

Links to the laws, case law, and court rules can be found at www.ndcourts.gov.

A glossary with definitions of legal terms is available at www.ndcourts.gov/legal-self-help.

When you represent yourself, you are held to same requirements and responsibilities as a lawyer, even if you don't understand the rules or procedures. If you are unsure if this information suits your circumstances, consult a lawyer.

***This information is not a complete statement of the law.** This covers basic information about the process of making a claim against an estate that is being probated in a North Dakota State District Court probate case. The Center is not responsible for any consequences that may result from the information provided. The information cannot replace the advice of competent legal counsel licensed in the state of North Dakota. Use at your own risk.*

This Informational Guide Applies to the Following Situation:

- 1. You have a claim against the estate of a deceased individual; AND**
- 2. A probate case for the estate of the deceased individual is filed in a North Dakota state district court.**

If this DOES NOT apply to your situation, consult a lawyer.

INFORMATION ABOUT CLAIMS AGAINST ESTATES IN NORTH DAKOTA

HOW DO I FIND OUT IF A PROBATE CASE IS FILED?

To find out if a probate case for a deceased individual is filed in a North Dakota state district court, search public court records at www.ndcourts.gov by clicking on the “Search Records and Pay Fines” link.

- Read the information, then click "Click Here to Proceed."
- Select a location from the pull down menu.
 - Select an individual county or select the State of North Dakota.
- Click the “Civil, Family & Probate Case Records” link.
- In the “Last Name” field:
 - Enter at least the first three letters of the deceased individual’s last name, followed by an asterisk (*).
 - For example, if the last name is Smith, enter at least smi*.
- In the “First Name” field:
 - Enter at least the first letter of the deceased individual’s first name, followed by an asterisk (*).
 - For example, if the first name is Jane, enter at least j*.
- In the “Case Types” box:
 - Hold down the Ctrl key on your keyboard and select:
 - “Domiciliary Proceeding”
 - “Heirship”
 - “Other Probate”
 - “Probate Administration (Formal)”
 - “Probate Administration (Informal)”
 - “Probate of Will (Formal)”
 - “Probate of Will (Informal)”
- Click the "Search" box.
- The screen will list publically accessible court cases based on your search.

Case numbers are listed on the left-hand side of the page.

WHAT IF A PROBATE CASE HAS NOT BEEN FILED?

If a probate case for the deceased individual has not been filed in a North Dakota state district court, consult a lawyer licensed to practice in North Dakota. Go to the end of this Informational Guide for resources for finding a lawyer.

WHAT IS A CLAIM AGAINST AN ESTATE?

When a deceased individual owes debts or obligations before death, and when the estate of the deceased individual owes debts or obligations after death, creditors make claims against the estate for payment.

IS THERE A DEADLINE FOR CREDITORS TO MAKE CLAIMS AGAINST AN ESTATE?

Yes, when an estate is probated in a North Dakota state district court, creditors have a specific period of time to make a formal claim for payment of the debt.

If the debt or obligation occurred before death, the deadline to make a claim is:

- Three months after the date the notice was first published IF the personal representative chose to publish notice to creditors AND the notice of publication met the requirements of North Dakota Century Code Section 30.1-19-01.
- Three years after the date of death IF the personal representative chose NOT to publish notice to creditors.

If the debt or obligation occurred after death, the deadline to make a claim is:

- Four months after performance of the contract by the personal representative, IF the claim is based on a contract with the personal representative.
- Three months after the claim arises, for any other claim.

(In North Dakota state district court probate cases, a personal representative is appointed by the court to handle the estate.)

DOES THE ND LEGAL SELF HELP CENTER HAVE FORMS TO MAKE A CLAIM AGAINST AN ESTATE?

No, the ND Legal Self Help Center does not have a packet of forms for making a claim against an estate. If you decide to represent yourself, you will need to create and prepare your own legal documents.

However, an example of a form to make a claim against an estate probated in North Dakota District Court is included at the end of this Informational Guide. It may be of interest as a formatting example.

IS THERE HELP AVAILABLE FOR CREATING LEGAL DOCUMENTS?

If you would like assistance creating your legal documents, consult a lawyer licensed to practice in North Dakota. Ask the lawyer about Limited Legal Representation. Lawyers licensed to practice in North Dakota may agree to help you with part of your civil action, such as preparing legal documents, while you handle the rest of your civil action. You and the lawyer must agree in writing to Limited Legal Representation.

WHAT ARE NORTH DAKOTA LAWS AND RULES RELATED TO CLAIMS AGAINST ESTATES?

Title 30.1 of the North Dakota Century Code www.legis.nd.gov/cencode/t30-1.html contains laws governing probate in North Dakota.

Chapter 30.1-19 of the North Dakota Century Code www.legis.nd.gov/cencode/t30-1c19.pdf contains requirements for creditor claims against estates. Review the entire Chapter.

The North Dakota Rules of Civil Procedure apply to civil matters in North Dakota state district courts. The rules are available at www.ndcourts.gov/legal-resources/rules/ndrcivp.

The North Dakota Rules of Court apply to civil matters in North Dakota state district courts. The rules are available at www.ndcourts.gov/legal-resources/rules/ndrct.

The North Dakota Rules of Evidence apply to civil matters in North Dakota state district courts. The rules are available at www.ndcourts.gov/legal-resources/rules/ndrev.

North Dakota case law is useful for interpreting what the law means for your individual circumstances. When the decision of a case is appealed from a North Dakota State District Court to the North Dakota Supreme Court, the Supreme Court writes their opinion to explain how and why they interpreted the laws or rules to decide the appeal the way they did. The opinions are case law and are followed by North Dakota courts deciding later cases with similar facts and issues.

To search North Dakota case law, go to www.ndcourts.gov and click on the “Supreme Court Opinions” link.

Laws constantly change through legislation, administrative rulings and case law (court decisions). To determine how a law applies to your situation, review the applicable law or laws, administrative rulings and case law (court decisions).

Only a lawyer licensed to practice in North Dakota who has agreed to represent you can give you legal advice. Legal advice includes interpreting how the laws and rules apply to your situation.

THE PROCESS OF MAKING A CLAIM AGAINST AN ESTATE IN A NORTH DAKOTA STATE DISTRICT COURT PROBATE CASE

STEP ONE: REVIEW N.D.C.C. CHAPTER 30.1-19; MAKE DECISIONS

Review [North Dakota Century Code Chapter 30.1-19](#) **carefully**. Chapter 30.1-19 contains requirements for making a claim against an estate. As a self-represented individual, you are responsible for following all of the requirements.

Based on your review of Chapter 30.1-19, decide if you meet the requirements to make a claim against an estate.

STEP TWO: CREATE YOUR LEGAL DOCUMENT

If you decide you meet the requirements to make a claim against an estate, you will need to create your written statement of your claim.

Create the Following Legal Document:

- Claim Against Estate:
 - Must include:
 - The basis for your claim;
 - Your name and address, as the claimant; and
 - The amount you claim you are owed by the estate.

An example of a form to make a written statement of a claim against an estate probated in North Dakota District Court is included at the end of this Informational Guide. It may be of interest as a formatting example.

STEP THREE: PRESENT YOUR CLAIM AGAINST THE ESTATE

After you create your Claim Against Estate legal document, North Dakota Century Code Section 30.1-19-04 allows two options to present your claim against the estate.

Option One: Deliver or Mail to the Personal Representative

You may deliver or mail your Claim Against Estate legal document to the personal representative and any attorney of record.

- The name of the personal representative and any attorney representing the personal representative or the estate are listed in the public court records for the probate case.

You may wish to have proof that you delivered or mailed your Claim Against Estate legal document to the personal representative and any attorney of record.

In court cases, this is called proof of service. See Step Four: Proof of Service of Your Claim Against the Estate for more information.

Option Two: File with the Clerk of District Court

You may file your Claim Against Estate legal document with the Clerk of District Court in the probate case.

- The name of the County is listed in the public court records for the probate case.
- Contact information for Clerks of District Court by North Dakota county is available at www.ndcourts.gov/court-locations.

A copy of all documents filed with the Clerk of District Court must also be given, or served, to the personal representative. If the personal representative is represented by an attorney, you serve the attorney instead.

You will need to prove that you served a copy of your Claim Against Estate legal document. This is called proof of service. See Step Four: Proof of Service of Your Claim Against the Estate for more information.

STEP FOUR: PROOF OF SERVICE OF YOUR CLAIM AGAINST THE ESTATE

Service is providing copies of your Claim Against Estate legal document to the people who are required to be served. Proof of service is with the District Court. An affidavit of service gives the District Court proof of service.

Service by Mail:

You may arrange for service by mail. An Affidavit of Service by Mail form is available at www.ndcourts.gov/legal-self-help/informal-probate.

Put the copy of your Claim Against Estate legal document in an envelope. Address the envelope with the person's last known address. List your address as the return address on the envelope.

A person who is at least 18 years old takes the envelope to a United States Post Office and mails the envelope by First Class mail. Postage must be prepaid.

The person who took the envelope to the Post Office completes the Affidavit of Service by Mail.

Service by mail is complete upon mailing.

Service by Personal Delivery:

You may arrange for service by hand delivery. An Affidavit of Service by Personal Delivery form is available at www.ndcourts.gov/legal-self-help/informal-probate.

Give the copy of your Claim Against Estate legal document to a person who is at least 18 years old and not a party or interested in the probate case. That person hand delivers the copy to the person intended to be served.

The person who hand delivered the copy to the person intended to be served completes the Affidavit of Service by Personal Delivery.

Service by personal delivery is complete upon handing the copy of your Claim Against Estate legal document to the person intended to be served.

If You Chose Option One: Deliver or Mail to the Personal Representative:

Keep the completed affidavit(s) of service for your records. If you need to provide proof that you delivered or mail your Claim Against Estate legal document to the personal representative and any attorney of record, you will have your affidavit(s) of service available.

If you Chose Option Two: File with the Clerk of District Court:

Make a copy of each the completed affidavit(s) of service for your records. File the original(s) with the Clerk of District Court when you file your Claim Against Estate legal document.

STEP FIVE: PAYMENT OF CLAIMS

Review North Dakota Century Code Section 30.1-19-06 for allowing or disallowing a claim.

Review North Dakota Century Code Section 30.1-19-07 for payment of claims.

If there are not enough assets of an estate to pay claims, North Dakota Century Code Section 30.1-19-05 requires the personal representative to pay claims in the following order:

1. Costs and expenses of administration of the estate.
2. Reasonable funeral expenses.
3. Debts and taxes with preference under federal law.
4. Reasonable and necessary medical and hospital expenses of the last illness of the deceased individual, including compensation of persons attending the deceased individual.
5. The deceased individual's child support obligations due and unpaid before death.
6. Debts and taxes with preference under other laws of this state.
7. All other claims.

LAWYER RESOURCES AND LIMITED LEGAL REPRESENTATION

You are not required to hire a lawyer to bring a civil action in North Dakota State District Court. If you decide to represent yourself, you must follow all of the rules, laws and procedures that a lawyer is required to follow.

Lawyer Resources

If you decide to find a lawyer to represent you, you may find the following options of interest.

- Legal Services of North Dakota is a non-profit organization, providing free legal assistance to North Dakota residents in a variety of matters based on income. Legal Services of North Dakota can also determine whether an applicant meets the income requirements for the Volunteer Lawyers program that offers low-cost legal assistance based on income. Call (800) 634-5263 or go to www.legalassist.org.
- The State Bar Association of North Dakota provides a lawyer referral service to match paying clients in need of legal services with lawyers. Call (866) 450-9579 or go to www.sband.org. The cost is \$30.00 for a 30 minute consultation with a lawyer.
- For a list of all lawyers who are licensed to practice in North Dakota, go to the North Dakota Supreme Court website at www.ndcourts.gov/Lawyers. You can narrow your search by name or location.

Limited Legal Representation

Lawyers licensed to practice in North Dakota may provide Limited Legal Representation in civil actions. Limited Legal Representation (sometimes called “unbundling”) is a way that a lawyer can help you with part of your case while you do the rest of your case. You pay for the part of the case the lawyer handled.

For example:

- You may want an attorney to give you an expert opinion about your options, advise you on or your legal rights and responsibilities;
- You can consult with an attorney to prepare or review your legal documents, but attend hearings yourself;
- You can represent yourself through the whole case, and periodically consult with an attorney who can coach you on the law, procedures and strategy;
- You can do the preparation yourself and hire an attorney just to make court appearances for you.

You and the lawyer must agree in writing to Limited Legal Representation.

WRITTEN STATEMENT OF CLAIM AGAINST ESTATE DELIVERED OR MAILED TO PERSONAL REPRESENTATIVE OR FILED WITH COURT. (N.D.C.C. . 30.1-19-04).

Name, Address, and Telephone No. of Attorney

Space below for use of District Court only

Probate No. _____

Attorney _____ for:

IN THE DISTRICT COURT OF _____ COUNTY, STATE OF NORTH DAKOTA

In the Matter of the Estate of _____, Deceased.

CLAIM AGAINST ESTATE

_____, creditor of the estate of _____, deceased, hereby states that said estate is indebted to said creditor in the amount of \$_____ for:

Dated this _____ day of _____, _____.

Claimant

Address