

LEGISLATIVE BILL 650

Approved by the Governor April 20, 1978

Introduced by Judiciary Committee, Barnett, 26 Chmn.;
Chambers, 11; Reutzel, 15; Venditte, 7;
Stoney, 4; Carsten, 2; E. Dvorak, 8

AN ACT to amend sections 24-541, 30-2209, 30-2220, 30-2221, 30-2307, 30-2322, 30-2323, 30-2324, 30-2329, 30-2352, 30-2412, 30-2414, 30-2416, 30-2433, 30-2436, 30-2453, 30-2458, 30-2459, 30-2460, 30-2461, 30-2476, 30-2483, 30-2489, 30-24,119, 30-2611, 30-2619, 30-2625, 30-2626, 30-2634, 30-2636, 77-2003, 77-2010, 77-2101.01, and 77-2102, Reissue Revised Statutes of Nebraska, 1943, and section 77-2037, Revised Statutes Supplement, 1977, relating to the administration and taxation of estates; to clarify priority of administration expenses; to provide a discovery procedure for property of decedent; to change provisions relating to probate and appointment proceedings as prescribed; to change provisions with respect to the self-proved will; to change provisions relating to notice; to change when inheritance and estate taxes are due; to change inheritance and estate tax provisions as prescribed; and to repeal the original sections, and also section 23-1604, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 30-2209, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2209. Subject to additional definitions contained in the subsequent articles which are applicable to specific articles or parts, and unless the context otherwise requires, in this code:

(1) Application means a written request to the registrar for an order of informal probate or appointment under part 3 of Article 24.

(2) Beneficiary, as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer, and as it relates to a charitable trust includes any

person entitled to enforce the trust.

(3) Child includes any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild or any more remote descendant.

(4) Claims, in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(5) Court means the court or branch having jurisdiction in matters relating to the affairs of decedents. This court in this state is known as county court.

(6) Conservator means a person who is appointed by a court to manage the estate of a protected person.

(7) Devise, when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

(8) Devisee means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(9) Disability means cause for a protective order as described by section 30-2630.

(10) Disinterested witness to a will means any individual who acts as a witness to a will and is not an interested witness to such will.

(11) Distributee means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal

representative. For purposes of this provision, testamentary trustee includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(12) Estate includes the property of the decedent, trust, or other person whose affairs are subject to this code as originally constituted and as it exists from time to time during administration.

(13) Exempt property means that property of a decedent's estate which is described in section 30-2323.

(14) Fiduciary includes personal representative, guardian, conservator and trustee.

(15) Foreign personal representative means a personal representative of another jurisdiction.

(16) Formal proceedings means those conducted before a judge with notice to interested persons.

(17) Guardian means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

(18) Heirs means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(19) Incapacitated person is as defined in section 30-2601.

(20) Informal proceedings mean those conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

(21) Interested person includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent, ward or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(22) Interested witness to a will means any individual who acts as a witness to a will at the date of

its execution and who is or would be entitled to receive any property thereunder if the testator then died under the circumstances existing at the date of its execution, but does not include any individual, merely because of such nomination, who acts as a witness to a will by which he is nominated as personal representative, conservator, guardian, or trustee.

(23) Issue of a person means all his lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this code.

(24) Lease includes an oil, gas, or other mineral lease.

(25) Letters includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(26) Minor means an individual under nineteen years of age, but in case any person marries under the age of nineteen years his minority ends.

(27) Mortgage means any conveyance, agreement or arrangement in which property is used as security.

(28) Nonresident decedent means a decedent who was domiciled in another jurisdiction at the time of his death.

(29) Notice means compliance with the requirements of notice pursuant to subdivisions (a) (1) and (a) (2) of section 30-2220.

(30) Organization includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal entity.

(31) Parent includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code, by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(32) Person means an individual, a corporation, an organization, or other legal entity.

(33) Personal representative includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. ~~General---personal---representative---excludes---special administrator.~~

(34) Petition means a written request to the court for an order after notice.

(35) Proceeding includes action at law and suit in equity, but does not include a determination of inheritance tax under Chapter 77, article 20, or estate tax apportionment as provided in sections 77-2107 to 77-2112.

(36) Property includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(37) Protected person is as defined in section 30-2601.

(38) Protective proceeding is as defined in section 30-2601.

(39) Registrar refers to the official of the court designated to perform the functions of registrar as provided in section 30-2216.

(40) Relative or relation of a person means all persons who are related to him by blood or legal adoption.

(41) Security includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

(42) Settlement, in reference to a decedent's estate, includes the full process of administration, distribution and closing.

(43) Special administrator means a personal representative as described by sections 30-2457 to 30-2461.

(44) State includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(45) Successor personal representative means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(46) Successors means those persons, other than creditors, who are entitled to property of a decedent under his will or this code.

(47) Supervised administration refers to the proceedings described in Article 24, part 5.

(48) Testacy proceeding means a proceeding to establish a will or determine intestacy.

(49) Testator means the maker of a will.

(50) Trust includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. Trust excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in Article 27, custodial arrangements pursuant to the Nebraska Uniform Gifts to Minors Act, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

(51) Trustee includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(52) Ward is as defined in section 30-2602
30-2601.

(53) Will means any instrument, including any codicil or other testamentary instrument complying with sections 30-2326 to 30-2338, which disposes of personal or real property, appoints a personal representative, conservator, guardian, or trustee, revokes or revises an earlier executed testamentary instrument, or encompasses

any one or more of such objects or purposes.

Sec. 2. That section 30-2220, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2220. (a) If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given:

(1) if the identity and address of any person is known, (i) by mailing a copy thereof at least fourteen days before the time set for the hearing by certified, registered or ordinary first-class mail addressed to the person being notified at the post-office address given in his demand for notice, if any, or at his office or place of residence, if known; or (ii) by delivering a copy thereof to the person being notified personally at least fourteen days before the time set for the hearing; and

(2) by publishing at least once a week for three consecutive weeks a copy thereof in a legal newspaper having general circulation in the county where the hearing is to be held, the last publication of which is to be at least ~~ten~~ three days before the time set for the hearing.

(b) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(c) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

Sec. 3. That section 30-2307, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2307. The degrees of kindred shall be computed according to the rule of civil law. Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

Sec. 4. That section 30-2322, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2322. A surviving spouse of a decedent who was domiciled in this state is entitled to a homestead

allowance of five thousand dollars. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to five thousand dollars divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate except for costs and expenses of administration. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided therein, by intestate succession or by way of elective share.

Sec. 5. That section 30-2323, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2323. In addition to the homestead allowance, the surviving spouse of a decedent who was domiciled in this state is entitled from the estate to value not exceeding three thousand five hundred dollars in excess of any security interests therein in household furniture, automobiles, furnishings, appliances and personal effects. If there is no surviving spouse, children of the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than three thousand five hundred dollars, or if there is not three thousand five hundred dollars worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the three thousand five hundred dollars value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate except for costs and expenses of administration, and except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided therein, by intestate succession, or by way of elective share.

Sec. 6. That section 30-2324, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2324. In addition to the right to homestead allowance and exempt property, if the decedent was domiciled in this state, the surviving spouse and minor children whom the decedent was obligated to support and

children who were in fact being supported by him are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody; but in case any minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having his care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims ~~but not over~~ except for costs and expenses of administration and the homestead allowance.

The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided therein, by intestate succession, or by way of elective share. The death of any person entitled to family allowance, other than the surviving spouse, terminates his right to allowances not yet paid.

Sec. 7. That section 30-2329, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2329. (1) Any will may be simultaneously executed, attested, and made self-proved by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of this state or under the laws of the state where execution occurs and evidenced by the officer's certificate, under official seal, in form and content substantially as follows:

I,, the testator, sign my name to this instrument this day of, 19..... and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly or willingly direct another to sign for me, that I execute it as my free and voluntary act for the purposes therein expressed and that I am eighteen years of age or older or am not at this time a minor, and am of sound mind and under no constraint or undue influence.

.....
Testator

We, and, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly or willingly directs another to sign for him, and that he executes it as his free and voluntary act for the purposes therein expressed, and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of his knowledge the testator is eighteen years of age or older or is not at this time a minor, and is of sound mind and under no constraint or undue influence.

.....
Witness

.....
Witness

THE STATE OF
COUNTY OF

Subscribed, sworn to and acknowledged before me by, the testator, and subscribed and sworn to before me by and, witnesses, this
..... day of

(SEAL) (Signed)

.....
(Official capacity of officer)

The execution of the acknowledgment by the testator and the affidavits of the witnesses as provided for in this section shall be sufficient to satisfy the requirements of the signing of the will by the testator and the witnesses under section 30-2327.

(2) An attested will may at the any time subsequent to of its execution or-at-any-subsequent--date be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of this state or under the laws of the state where execution occurs, and evidenced by the officer's certificate, under official seal, attached or annexed to the will in form and content substantially as follows:

THE STATE OF
COUNTY OF

We,,, and, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly or directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator,

signed the will as witness and that to the best of his knowledge the testator was at that time eighteen or more years of age or was not at that time a minor, and was of sound mind and under no constraint or undue influence.

.....
Testator
.....
Witness
.....
Witness

Subscribed, sworn to and acknowledged before me by, the testator, and subscribed and sworn to before me by and, witnesses, this day of,

(SEAL) (Signed)
.....
{Official capacity of officer}

Sec. 8. That section 30-2412, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2412. (a) Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

- (1) the person with priority as determined by a probated will including a person nominated by a power conferred in a will;
- (2) the surviving spouse of the decedent who is a devisee of the decedent;
- (3) other devisees of the decedent;
- (4) the surviving spouse of the decedent;
- (5) other heirs of the decedent;
- (6) forty-five days after the death of the decedent, any creditor.

(b) An objection to an appointment can be made only in formal proceedings. In case of objection the priorities stated in (a) apply except that

- (1) if the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of a creditor, may appoint any qualified person;

(2) in case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value or, in default of this accord, any suitable person.

(c) A person entitled to letters under (2) through (5) of (a) above, and a person aged eighteen and over who would be entitled to letters but for his age, may nominate a qualified person to act as personal representative. Any person aged eighteen and over may renounce his right to nominate or to an appointment by appropriate writing filed with the court. When two or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them, or in applying for appointment.

(d) Conservators of the estates of protected persons, or if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person, may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.

(e) Appointment of one who does not have priority, ~~including priority resulting from renunciation or nomination determined pursuant to this section,~~ may be made only in formal proceedings except that appointment of one having priority resulting from renunciation or nomination may be made in informal proceedings. Before appointing one without priority, the court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment, and that administration is necessary.

(f) No person is qualified to serve as a personal representative who is:

(1) under the age of nineteen;

(2) a person whom the court finds unsuitable in formal proceedings.

(g) A personal representative appointed by a court of the decedent's domicile has priority over all other persons except where the decedent's will nominates different persons to be personal representative in this

state and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

(h) This section governs priority for appointment of a successor personal representative but does not apply to the selection of a special administrator.

Sec. 9. That section 30-2414, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2414. Applications for informal probate or informal appointment shall be directed to the registrar and verified by the applicant to be accurate and complete to the best of his knowledge and belief as to the following information:

(1) Every application for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative, shall contain the following:

(i) a statement of the interest of the applicant;

(ii) the name and date of death of the decedent, his age, and the county and state of his domicile at the time of death, and the names and addresses of the spouse, children, heirs and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;

(iii) if the decedent was not domiciled in the state at the time of his death, a statement showing venue;

(iv) a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;

(v) a statement indicating whether the applicant has received a demand for notice or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere.

(2) An application for informal probate of a will shall state the following in addition to the statements required by (1):

(i) that the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application;

(ii) that the applicant, to the best of his knowledge, believes the will to have been validly executed; and

(iii) that after the exercise of reasonable diligence the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will. †

~~(iv) that the time limit for informal probate as provided in this article has not expired either because three years or less have passed since the decedent's death, or, if more than three years from death have passed, that circumstances as described by section 30-2408 authorizing tardy probate have occurred.~~

(3) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address and priority for appointment of the person whose appointment is sought.

(4) An application for informal appointment of an administrator in intestacy shall state in addition to the statements required by (1):

(i) that after the exercise of reasonable diligence the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this state under section 30-2210, or a statement why any such instrument of which he may be aware is not being probated;

(ii) the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under section 30-2412.

(5) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state

the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.

(6) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in section 30-2453 (c), or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.

Sec. 10. That section 30-2416, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2416. (a) In an informal proceeding for original probate of a will, the registrar shall determine whether:

(1) the application is complete;

(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in section 30-2209 (21);

(4) on the basis of the statements in the application, venue is proper;

(5) an original, duly executed and apparently unrevoked will is in the registrar's possession; and

(6) any notice required by section 30-2413 has been given and that the application is not within section 30-2417. ~~and~~

~~(7) it appears from the application that the time limit for original probate has not expired.~~

(b) The application shall be denied if it indicates that a personal representative has been appointed in another county of this state or, except as provided in subsection (d) below, if it appears that this or another will of the decedent has been the subject of a previous probate order.

(c) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under section 30-2327, 30-2328, or 30-2331 have been met shall be probated without further proof. In other cases, the registrar may assume execution if the will appears to have been properly executed, or he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

(d) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(e) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under subsection (a) above may be probated in this state upon receipt by the registrar of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

Sec. 11. That section 30-2433, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2433. After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, if the court finds that the testator is dead, and venue is proper, ~~and--that--the proceeding was commenced within the limitation prescribed by section 30-2408,~~ it shall determine the decedent's domicile at death, his heirs and his state of testacy. Any will found to be valid and unrevoked shall be formally probated. Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by section 30-2455. The petition shall be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead. A will from a place which does not provide for probate of a will after death may be proved for probate in this state by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become effective under the law of the other place.

Sec. 12. That section 30-2436, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2436. Subject to appeal and subject to vacation as provided herein and in section 30-2437, a formal testacy order under sections 30-2433 to 30-2435, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will, and to the determination of heirs, except that:

(1) The court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will were unaware of its existence at the time of the earlier proceeding or were unaware of the earlier proceeding and were given no notice thereof, except by publication.

(2) If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship to the decedent, were unaware of his death or were given no notice of any proceeding concerning his estate, except by publication.

(3) A petition for vacation under either (1) or (2) above must be filed prior to the earlier of the following time limits:

(i) If a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate, or, if the estate is closed by statement, six months after the filing of the closing statement.

(ii) Whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by subdivisions (1), (2), or (3) of section 30-2408 when it is no longer possible to initiate an original proceeding to probate a will of the decedent.

(iii) Twelve months after the entry of the order sought to be vacated.

(4) The order originally rendered in the testacy proceeding may be modified or vacated, if appropriate

under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs.

(5) The finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at his last-known address and the court finds that a search under section 30-2427 (b) was made.

If the alleged decedent is not dead, even if notice was sent and search was made, he may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.

Sec. 13. That section 30-2453, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2453. (a) An appointment of a personal representative terminates as provided in section 30-24,117 one year after the filing of a closing statement.

(b) An order closing an estate as provided in section 30-24,115 or 30-24,116 terminates an appointment of a personal representative at the time and on the conditions provided for in the order.

(c) A personal representative may resign his position by filing a written statement of resignation with the registrar after he has given at least fifteen days' written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to him.

Sec. 14. That section 30-2459, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2459. A special administrator appointed by the registrar in informal proceedings pursuant to section 30-2457 (1) has the duty to collect and manage the assets of the estate, to preserve them, to account therefor and to deliver them to the ~~general~~ personal representative upon his qualification, or to such other person as shall be legally entitled to receive the same. The special administrator has the power of a personal representative under this code necessary to perform his duties.

Sec. 15. That section 30-2460, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2460. A special administrator appointed by order of the court in any formal proceeding has the power of a ~~general~~ personal representative except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts or on other terms as the court may direct.

Sec. 16. That section 30-2461, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2461. The appointment of a special administrator terminates in accordance with the provisions of the order of appointment, other order of the court, or on the appointment of a ~~general~~ personal representative. In other cases, the appointment of a special administrator is subject to termination as provided in sections 30-2451 to 30-2454.

Sec. 17. That section 30-2476, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2476. Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in section 30-24,100, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries or other sources;

(3) perform, compromise or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(i) execute and deliver a deed of conveyance for cash payment of all sums remaining due on the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(ii) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including money received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally;

(6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(8) subdivide, develop or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; or adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew,

for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by general or limited proxy;

(13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) insure the assets of the estate against damage, loss and liability and himself against liability as to third persons;

(16) borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;

(17) effect a fair and reasonable compromise with any debtor or obligor, or extend, renew or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;

(18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(19) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances, except that unless authorized by will, real property may be sold only following a court order with notice given in the manner prescribed by subdivisions (a) (1) and (a) (2) of section 30-2220. The court order may authorize a single transaction or may authorize the sale of all or a specified portion of the real properties of the estate, either upon such terms as the personal representative may determine, or upon specified terms;

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of his death (i) in the same business form for a period of not more than four months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will, (ii) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties, or (iii) throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;

(25) incorporate any business or venture in which the decedent was engaged at the time of his death;

(26) provide for exoneration of the personal representative from personal liability in any contract

entered into on behalf of the estate;

(27) satisfy and settle claims and distribute the estate as provided in this code.

Sec. 18. That section 30-2483, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2483. Unless notice has already been given under this article and except when an appointment of a personal representative is made pursuant to subdivision (4) of section 30-2408, the clerk of the court upon the appointment of a personal representative shall publish a notice once a week for three successive weeks in a newspaper of general circulation in the county announcing the appointment and the address of the personal representative, and notifying creditors of the estate to present their claims within two months after the date of the first publication of the notice or be forever barred. The first publication shall be made within thirty days after the appointment. The party instituting or maintaining the proceeding or his attorney is required to mail the published notice and give proof thereof in accordance with section 25-520.01.

Sec. 19. That section 30-2489, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2489. (a) Upon the expiration of two months from the date of the first publication of the notice to creditors, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making allowance for costs and expenses of administration and after making provision for homestead, family and support allowances, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented. ~~7-including-costs-and expenses-of-administration-~~ By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided herein may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.

(b) The personal representative at any time may pay any enforceable claim which has not been barred, with or without formal presentation, but he is personally liable to any other claimant whose claim is allowed and who is injured by such payment if

(1) the payment was made before the expiration of the time limit stated in subsection (a) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

(2) the payment was made, due to the negligence or willful fault of the personal representative, in such manner as to deprive the injured claimant of his priority.

Sec. 20. That section 30-2611, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2611. (a) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by section 30-2220 to:

(1) the minor, if he is fourteen or more years of age;

(2) the person who has had the principal care and custody of the minor during the sixty days preceding the date of the petition; and

(3) any living parent of the minor.

(b) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 30-2608 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interest of the minor.

(c) If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than six months. In an emergency, the court may appoint a temporary guardian of a minor without notice, pending notice and hearing.

(d) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen years of age or older.

Sec. 21. That section 30-2619, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2619. (a) The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian.

(b) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person has counsel of his own choice, it shall may appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated may be examined by a physician appointed by the court who shall submit his report in writing to the court and may be interviewed by a visitor, if so appointed, sent by the court. The visitor also shall interview the person seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made and submit his report in writing to the court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be present by counsel, to present evidence, and to cross-examine witnesses, including the court-appointed physician and the visitor. The issue may be determined at a closed hearing if the person alleged to be incapacitated or his counsel so requests.

Sec. 22. That section 30-2626, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2626. If an incapacitated person has no guardian and an emergency exists, the court may, ~~exercise the power of--a--guardian~~ pending notice and hearing, exercise the power of a guardian or appoint a temporary guardian. If an appointed guardian is not effectively performing his duties and the court further finds that the welfare of the incapacitated person requires immediate action, it may, with or without notice, appoint a temporary guardian for the incapacitated person for a specified period not to exceed six months. A temporary guardian is entitled to the care and custody of the ward and the authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority. A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires. In other respects

the provisions of this code concerning guardians apply to temporary guardians.

Sec. 23. That section 30-2636, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2636. (a) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if fourteen years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

(b) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of his own choice, the court ~~must~~ may appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(c) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order.

Sec. 24. If any personal representative, heir, devisee, creditor, or other person interested in the estate of any deceased person shall complain to the judge of the county court, on an oath given on information and belief, that any person may have concealed, embezzled, carried away, or disposed of any money, goods, or chattels of the deceased, or that such person may have in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings, which contain evidence of or tend to disclose the right, title, interest, or claim of the deceased to any real or personal estate, or any claim or demand, or any will of

the deceased, the judge may cite such person to appear before the court of probate. Any personal representative, heir, devisee, creditor, or other person interested in the estate of such deceased person may examine such person upon oath upon the matter of such complaint or direct interrogatories to him. The citation may also direct the person cited to bring with him, for examination by the judge and parties interested, any such documents or writings, or any will of the deceased, which may be in his possession or under his control.

Sec. 25. If the person so cited shall refuse to appear and submit to such examination, or to answer such interrogatories as may be put to him touching the matter of such complaint, or to bring with him any of the documents or writings set forth in the citation which may be in his possession or control, the court may, by warrant, commit him to the county jail of the county to remain in custody until he shall submit to the order of the court. All such interrogatories and answers shall be in writing, and shall be signed by the party examined, and filed in the county court.

Sec. 26. The judge of the county court, upon the complaint on oath of any personal representative, may cite any person who shall have been entrusted by such personal representative with any part of the estate of the deceased person, to appear before such court, and may require such person to render a full account, on oath, of any money, goods, chattels, bonds, accounts, or other papers belonging to such estate which shall have come to his possession, in trust for such personal representative, and of his proceedings thereon, and if a person so cited shall refuse to appear and render such account, the court may proceed against him as provided in section 25 of this act.

Sec. 27. If any such person as described in sections 24 to 26 of this act is not in the county where administration is granted, the proceedings under sections 24 to 26 of this act may be had before the county judge of the county where such person resides or may be found. A certified copy of the written interrogatories, if any, and the examination or other proceeding thereon or connected therewith shall be filed in the county court of the county where administration is granted. If the person so cited refuses to appear or answer such interrogatories as may be allowed to be put to him touching the matter charged, he may be punished as provided in section 25 of this act.

Sec. 28. That section 77-2003, Reissue Revised Statutes of Nebraska, 1943, be amended to read as

follows:

77-2003. The tax imposed upon transfers under sections 77-2001 and 77-2002 shall be paid to the treasurer of the proper county and all heirs, legatees and devisees, ~~administrators,--executors~~ personal representatives, other recipients of property subject to tax, and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. This tax shall be a lien on the real property subject thereto until paid or otherwise terminated pursuant to section 77-2037.

Sec. 29. That section 77-2010, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2010. All taxes imposed by sections 77-2001 to 77-2037, unless otherwise herein provided for, shall be due and payable ~~ten~~ twelve months after the date of the death of the decedent, and interest at the rate of nine per cent per annum shall be charged and collected from the date of the death of the decedent for such time as such taxes are not paid, except if the tax is paid within ~~ten~~ twelve months from the date of such death, interest shall not be charged or collected thereon, and in all cases where the ~~executors--and--administrators~~ personal representatives or trustees do not pay such tax within ~~ten~~ twelve months from the death of the decedent, they shall be required to give bond in the form and to the effect prescribed in section 77-2009 for the payment of the tax together with interest.

Sec. 30. That section 77-2037, Revised Statutes Supplement, 1977, be amended to read as follows:

77-2037. Regardless of any defect in the proceedings in which such inheritance tax was determined, or the jurisdiction of the court to make such determination, the lien of the inheritance tax shall cease upon the first to occur of: (1) Ten years from the date of death of a decedent and no action shall be maintained for the determination, assessment or collection of such tax, unless a determination of the amount of such tax by the court having jurisdiction thereof shall have been made within such ten-year period, in which case such lien and the right to maintain any action for the assessment or collection of any tax shall cease five years after such determination or upon payment of such tax, whichever first occurs; (2) the payment of the amount of inheritance tax finally determined by the county court to be due with respect to property described in such proceedings; or (3) the release or discharge of

any lien pursuant to section ~~77-2102~~ or 77-2039.

Sec. 31. That section 77-2101.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2101.01. In the case of decedents dying after August 16, 1954, in addition to the inheritance taxes imposed by the laws of the State of Nebraska, there is levied and imposed an estate or excise tax upon the transfer ~~at--death~~ of the estate of every resident decedent and upon the value of any interest in Nebraska real estate of a nonresident decedent. The amount of such tax shall be the amount by which the maximum credit allowance upon the ~~estate~~ tax imposed by the Federal Revenue Act imposing such tax ~~on-estates~~ shall exceed the aggregate amount of all estate, inheritance, legacy, or succession taxes paid to any state or territory or the District of Columbia, or any possession of the United States, in respect of any property ~~included-in-the--gross estate subject to such tax.~~

Sec. 32. That section 77-2102, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2102. The estate tax imposed by sections 77-2101, 77-2101.01, and 77-2102 to 77-2107 shall become due and payable to the State Treasurer of Nebraska within ten twelve months from the date of the death of the decedent. The limitation of time during which a tax return, for the purpose of this tax, shall be open to inspection and examination shall be three years from the date of filing the same. ~~Executors,--administrators, Personal representatives,~~ trustees, grantees, donees, beneficiaries, and surviving joint owners, and other recipients of property subject to tax, shall be and remain liable for the tax until it is paid. If the tax indicated by the return of the taxpayer is not paid when due, interest at the rate of nine per cent per annum shall be charged and collected from the date the same became payable. This tax shall be a lien on the real property subject thereto until paid the first to occur of: (1) Payment; (2) ten years from the date of death of the decedent; or (3) the release or discharge of any lien pursuant to section 77-2039.

Sec. 33. That section 24-541, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-541. In all cases not otherwise specifically provided for, either party may appeal from the final

judgment of the county or municipal court to the district court of the county where the judgment was rendered. All such appeals shall be de novo on the record except those matters referred to in section ~~30-1604~~ 30-1606 relating to the probate or denial of probate of wills and the allowance or disallowance of claims filed against an estate, which matters shall be appealed de novo. In matters appealed de novo on the record, the district court may, in its discretion, receive additional evidence if the court determines that such evidence is reasonably necessary to determine the issues, make findings of fact and render judgment thereon. The district court may affirm, modify, or vacate the judgment, or may remand the case to the county or municipal court for a new trial.

Sec. 34. That section 30-2221, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2221. A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice of any other requirement for the mailing or receipt of instruments by a writing signed by him or his attorney and filed in the proceeding.

Sec. 35. That section 30-2352, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2352. (a) (1) A person (or his personal representative) who is an heir, devisee, person succeeding to a renounced interest, donee, beneficiary under a testamentary or nontestamentary instrument, donee of a power of appointment, grantee, surviving joint owner or surviving joint tenant, beneficiary of an insurance contract, person designated to take pursuant to a power of appointment exercised by a testamentary or nontestamentary instrument, or recipient of any benefit otherwise under a testamentary or nontestamentary instrument, may renounce in whole or in part, or with reference to specific parts, fractional shares or assets thereof, by filing a written instrument within the time and at the place hereinafter provided.

(2) The instrument shall (i) describe the property or part thereof or the interest therein renounced, (ii) be signed and acknowledged by the person renouncing in the manner provided for in the execution of deeds of real estate, and (iii) declare the renunciation and the extent thereof.

(3) The appropriate court may direct or permit a trustee under a testamentary or nontestamentary

instrument to renounce or deviate from any power of administration, management or allocation of benefit upon finding that exercise of such power may defeat or impair the accomplishment of the purposes of the trust whether by the imposition of tax or the allocation of beneficial interest inconsistent with such purposes. Such authority shall be exercised after hearing and upon notice to all known persons beneficially interested in such trust, in the manner directed by said court.

(b) The writing specified in (a) ~~(1) and (a) (2)~~ must be filed within nine months after the death of the decedent, settlor of the trust or donee of the power, or if the taker of the property is not then finally ascertained not later than nine months after the event by which the taker or the interest is finally ascertained. The writing must be filed in the court of the county where proceedings concerning the decedent's estate are pending, or where they would be pending if commenced. If an interest in real estate is renounced, a copy of the writing shall also be recorded in the office of the register of deeds in the county in which said real estate lies. A copy of the writing also shall be mailed to the personal representative of the decedent, the trustee of any trust in which the interest renouncing exists, or to such other person as has legal title to, or possession of, the property in which the interest renounced exists, and no such personal representative, trustee, or person shall be liable for any other proper distribution or other disposition made without actual notice of the renunciation.

(c) Unless the decedent or donee of the power has otherwise indicated by his will, the interest renounced, and any future interest which is to take effect in possession or enjoyment at or after the termination of the interest renounced, passes as if the person renouncing had predeceased the decedent, or if the person renouncing is one designated to take pursuant to a power of appointment exercised by a testamentary instrument, as if the person renouncing had predeceased the donee of the power. In every case the renunciation relates back for all purposes to the date of death of the decedent or the donee, as the case may be.

(d) Any (1) assignment, conveyance, encumbrance, pledge or transfer of property therein or any contract therefor, (2) written waiver of the right to renounce or any acceptance of property by an heir, devisee, person succeeding to a renounced interest, beneficiary or person designated to take pursuant to a power of appointment exercised by testamentary instrument, or (3) sale or other disposition of property pursuant to judicial

process, made before the expiration of the period in which he is permitted to renounce, bars the right to renounce as to the property.

(e) The right to renounce granted by this section exists irrespective of any limitation on the interest of the person renouncing in the nature of a spendthrift provision or similar restriction.

(f) This section does not abridge the right of any person to assign, convey, release, or renounce any property arising under any other section of this code or other statute.

(g) Any interest in property which exists on January 1, 1977, but which has not then become indefeasibly fixed both in quality and quantity, or the taker of which has not then become finally ascertained, may be renounced after January 1, 1977 as provided herein. An interest which has arisen prior to January 1, 1977 in any person other than the person renouncing is not destroyed or diminished by any action of the person renouncing taken under this section.

Sec. 36. That section 30-2458, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2458. (a) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor personal representative in the will shall be appointed if available and qualified.

(b) In other cases, any proper person may be appointed special administrator.

Sec. 37. That section 30-24,119, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-24,119. Unless previously barred by adjudication and except as provided in the closing statement, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within six months after the filing of the closing statement. The rights thus barred by reason of the filing of the closing statement do not include rights to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.

Sec. 38. That section 30-2625, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2625. (a) In a proceeding for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing shall be given to each of the following:

(1) the ward or the person alleged to be incapacitated and his spouse, parents and adult children;

(2) any person who is serving as his guardian or conservator or who has his care and custody; and

(3) in case no other person is notified under (1), at least one of his closest adult relatives, if any can be found.

(b) Notice shall be served personally on the alleged incapacitated person, and his spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the alleged incapacitated person shall be given as provided in section 30-2220. Waiver of notice by the person alleged to be incapacitated is not effective unless he attends the hearing or his waiver of notice is confirmed in an interview with the visitor or such notice is waived by a guardian ad litem. Representation of the alleged incapacitated person by a guardian ad litem is not necessary.

Sec. 39. That section 30-2634, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2634. (a) On a petition for appointment of a conservator or other protective order, the person to be protected and his spouse or, if none, his parents, must be served personally with notice of the proceeding at least fourteen days before the date of hearing if they can be found within the state, or, if they cannot be found within the state, they must be given notice in accordance with section 30-2220.

(b) If petitioners are the natural parents, or if petitioner is a surviving natural parent, or a parent who has been given sole and exclusive custody of the minor in a legal proceeding, petitioners or petitioner may waive notice to parents, and may also waive notice to the minor, if the minor be under the age of fourteen years.

~~If the petition for appointment is filed by the person to be protected, no such notice shall be required. In either event, the waiver of notice by the person alleged to be incapacitated is not effective unless he attends the hearing or his waiver of notice is confirmed in an interview with the visitor or such notice is waived by a guardian ad litem.~~ The court may, in its discretion, direct that notice be given as provided in section 30-2220 or in any other manner and to any other persons as the court may determine.

(c) Notice of a petition for appointment of a conservator or other initial protective order, and of any subsequent hearing, must be given to any person who has filed a request for notice under section 30-2635 and to interested persons and other persons as the court may direct. Except as otherwise provided in (a) and (b), notice shall be given in accordance with section 30-2220.

Sec. 40. That original sections 24-541, 30-2209, 30-2220, 30-2221, 30-2307, 30-2322, 30-2323, 30-2324, 30-2329, 30-2352, 30-2412, 30-2414, 30-2416, 30-2433, 30-2436, 30-2453, 30-2458, 30-2459, 30-2460, 30-2461, 30-2476, 30-2483, 30-2489, 30-24,119, 30-2611, 30-2619, 30-2625, 30-2626, 30-2634, 30-2636, 77-2003, 77-2010, 77-2101.01, and 77-2102, Reissue Revised Statutes of Nebraska, 1943, and section 77-2037, Revised Statutes Supplement, 1977, and also section 23-1604, Reissue Revised Statutes of Nebraska, 1943, are repealed.