



Ninety-Ninth Legislature - First Session - 2005  
**Introducer's Statement of Intent**  
**LB 409**

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**Chairperson:** Patrick J. Bourne  
**Committee:** Judiciary  
**Date of Hearing:** March 2, 2005

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

In the last few years, the use of durable powers of attorney for business and health care has grown rapidly, largely because of their use as a simple substitute for guardianship and conservatorship in cases where the principal later becomes unable to handle his or her affairs.

LB 409 has an impact in both areas, affecting powers of attorney as well as guardianship and conservatorship.

The original statute being amended by this legislation was enacted in 1879 to address the then existing problem arising from the ownership of most marital property in one spouse's (usually the husband's) name. Its intent was to make sure that the family home could not be sold without the other spouse's knowledge and consent. In time, it became a principle in the minds of some members of the bar that a homestead deed needed to be a single document physically signed by both parties.

This approach to homestead deeds makes it impossible for either party to convey through an attorney in fact. The impact of this was felt during World War II, when many men and women were away from home and unable to sign documents of any kind; in anticipation of this problem they had left powers of attorney with their spouses. It may be felt again now, when many married personnel are in the Middle East.

LB 409 is intended to change this impact by clearly making it possible for homesteads to be conveyed through attorneys in fact.

The second impact of this bill is in the area of guardianship and conservatorship. The original statute took into account the fact that the statutes of that time did not allow for the conveyance of property by a non-owning spouse, in cases where the non-owning spouse was not competent. Most of the language in the existing Section 40-104 deals with this subject.

A statute dealing with conveyances by non-owning, incompetent spouses, was enacted in 1907, rendering obsolete the language of Section 40-104 in this regard. The Nebraska Probate Code, adopted as of 1977, also makes this language unnecessary. Therefore, the amendment proposed

by LB 409 eliminates this language and replaces it with authorization for guardians and conservators, as well as attorneys in fact, to execute homestead deeds on behalf of disabled or protected persons.

**Principal Introducer:**

\_\_\_\_\_ **Senator Mike Flood**