

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 758**

FINAL READING

Introduced by Wightman, 36.

Read first time January 06, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to decedents' estates; to amend sections  
2 30-2201, 30-2476, and 30-3839, Reissue Revised Statutes  
3 of Nebraska; to provide for and change provisions  
4 relating to the doctrines of cy pres and deviation;  
5 to change provisions relating to the powers of personal  
6 representatives; to harmonize provisions; and to repeal  
7 the original sections.

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

1           Section 1. Section 30-2201, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           30-2201 Sections 30-2201 to 30-2902 and section 2 of this  
4 act shall be known and may be cited as the Nebraska Probate Code.

5           Sec. 2. (a) Except as otherwise provided in subsection  
6 (d) of this section, no gift, devise, or endowment for religious,  
7 educational, charitable, or benevolent purposes, which in other  
8 respects is valid under the laws of this state, shall be invalid  
9 or fail by reason of the indefiniteness or uncertainty of the  
10 recipient of the gift, devise, or endowment or by reason that it  
11 is or has become unlawful, impracticable, impossible to achieve, or  
12 wasteful.

13           (b) The court, on application of any interested person  
14 or the Attorney General may determine and order an administration  
15 or distribution of the gift, devise, or endowment in a manner as  
16 consistent as possible with the intent expressed in the document  
17 creating the gift, devise, or endowment. This section shall not be  
18 deemed to limit application of the common law doctrines of cy pres  
19 and deviation or of section 58-615.

20           (c) In an application for relief under this section which  
21 is not brought by the Attorney General, notice of the proceeding  
22 shall be given to the Attorney General as a representative for the  
23 charitable interests involved.

24           (d) Subsection (a) of this section shall not apply if  
25 the document creating the gift, devise, or endowment expressly

1 provides for an alternate disposition of the gift, devise, or  
2 endowment in the event the gift, devise, or endowment has become  
3 unlawful, impracticable, impossible to achieve, or wasteful. A  
4 general residuary devise by will shall not be considered an express  
5 provision for an alternate disposition.

6 (e) Any gift, devise, or endowment to a trust with  
7 charitable purposes as described in section 30-3831 shall be  
8 governed by section 30-3839.

9 Sec. 3. Section 30-2476, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11 30-2476 Except as restricted or otherwise provided by  
12 the will or by an order in a formal proceeding, without limiting  
13 the authority conferred by section 30-2472, and subject to the  
14 priorities stated in section 30-24,100, a personal representative,  
15 acting reasonably for the benefit of the interested persons, may  
16 properly:

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

21 (2) receive assets from fiduciaries or other sources;

22 (3) perform, compromise, or refuse performance of the  
23 decedent's contracts that continue as obligations of the estate,  
24 as he or she may determine under the circumstances. In performing  
25 enforceable contracts by the decedent to convey or lease land, the

1 personal representative, among other possible courses of action,  
2 may:

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

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

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

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

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

1 character of, or abandon an estate asset;

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

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

10 (9) enter for any purpose into a lease as lessor or  
11 lessee, with or without option to purchase or renew, for a term  
12 within or extending beyond the period of administration;

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

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

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

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

24 (14) hold a security in the name of a nominee or in  
25 other form without disclosure of the interest of the estate but the

1 personal representative is liable for any act of the nominee in  
2 connection with the security so held;

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

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

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

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

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

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

25 (21) employ persons, including attorneys, auditors,

1 investment advisors, or agents, even if they are associated  
2 with the personal representative, to advise or assist the  
3 personal representative in the performance of his or her  
4 administrative duties; act without independent investigation upon  
5 their recommendations; and instead of acting personally, employ one  
6 or more agents to perform any act of administration, whether or  
7 not discretionary;

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

11 (23) sell, mortgage, or lease any real or personal  
12 property of the estate or any interest therein for cash, for  
13 credit, or for part cash and part credit, and with or without  
14 security for unpaid balances;

15 (24) continue any unincorporated business or venture in  
16 which the decedent was engaged at the time of death; ~~(i) in the~~  
17 ~~same business form for a period of not more than four months from~~  
18 ~~the date of appointment of a general personal representative if~~  
19 ~~continuation is a reasonable means of preserving the value of the~~  
20 ~~business including goodwill,~~ (ii) in the same business form for  
21 any additional period of time that may be approved by order of  
22 the court in a formal proceeding to which the persons interested  
23 in the estate are parties, or (iii) throughout the period of  
24 administration if the business is incorporated by the personal  
25 representative and if none of the probable distributees of the

1 ~~business who are competent adults object to its incorporation and~~  
2 ~~retention in the estate;~~

3 (25) incorporate form a business entity that has limited  
4 liability, including a limited partnership, limited liability  
5 partnership, limited liability company, or corporation, for any  
6 business or venture in which the decedent was engaged at the time  
7 of death;

8 (26) provide for exoneration of the personal  
9 representative from personal liability in any contract entered into  
10 on behalf of the estate;

11 (27) satisfy and settle claims and distribute the estate  
12 as provided in the Nebraska Probate Code.

13 Sec. 4. Section 30-3839, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15 30-3839 (UTC 413) (a) Except as otherwise provided  
16 in subsection (b) of this section, if a particular charitable  
17 purpose becomes unlawful, impracticable, impossible to achieve, or  
18 wasteful:

19 (1) the trust does not fail, in whole or in part;

20 (2) the trust property does not revert to the settlor or  
21 the settlor's successors in interest; and

22 (3) the court may apply cy pres to modify or terminate  
23 the trust by directing that the trust property be applied or  
24 distributed, in whole or in part, in a manner consistent with the  
25 settlor's charitable purposes.

1           ~~(b) A provision in the terms of a charitable trust~~  
2           ~~that would result in distribution of the trust property to a~~  
3           ~~noncharitable beneficiary prevails over the power of the court~~  
4           ~~under subsection (a) of this section to apply cy pres to modify or~~  
5           ~~terminate the trust only if, when the provision takes effect:~~

6           ~~(1) the trust property is to revert to the settlor and~~  
7           ~~the settlor is still living; or~~

8           ~~(2) fewer than twenty-one years have elapsed since the~~  
9           ~~date of the trust's creation.~~

10           (b) Subsection (a) of this section does not apply if the  
11           document creating the charitable interest expressly provides for  
12           an alternate disposition of the charitable interest in the event  
13           the charitable purpose becomes unlawful, impracticable, impossible  
14           to achieve, or wasteful. A general residuary disposition by trust  
15           shall not be considered an express provision for an alternate  
16           disposition.

17           (c) This section shall not be deemed to limit application  
18           of the common law doctrines of cy pres and deviation or section  
19           58-615.

20           Sec. 5. Original sections 30-2201, 30-2476, and 30-3839,  
21           Reissue Revised Statutes of Nebraska, are repealed.