

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 72

FINAL READING

Introduced by Schumacher, 22.

Read first time January 08, 2015

Committee: Judiciary

1 A BILL FOR AN ACT relating to decedents' estates; to amend sections
2 30-3880, 30-3881, 30-3882, and 77-2018.02, Reissue Revised Statutes
3 of Nebraska, and section 68-919, Revised Statutes Cumulative
4 Supplement, 2014; to restrict transfers and distributions by
5 trustees; to provide for waiver of restrictions; to provide for
6 collection of debt due to medicaid reimbursement obligations as
7 prescribed; to require notice of inheritance tax petitions as
8 prescribed; to harmonize provisions; to provide severability; and to
9 repeal the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 30-3880, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 30-3880 (UTC 815) (a) A trustee, without authorization by the court,
4 may exercise:

5 (1) powers conferred by the terms of the trust; and

6 (2) except as limited by the terms of the trust:

7 (A) all powers over the trust property which an unmarried competent
8 owner has over individually owned property;

9 (B) any other powers appropriate to achieve the proper investment,
10 management, and distribution of the trust property; and

11 (C) any other powers conferred by the Nebraska Uniform Trust Code.

12 (b) The exercise of a power is subject to the fiduciary duties
13 prescribed by sections 30-3866 to 30-3882.

14 (c) After the death of the trustor occurring after the effective
15 date of this act, a trustee of a revocable trust which has become
16 irrevocable by reason of the death of the trustor shall not transfer
17 trust property to a beneficiary described in section 77-2004 or 77-2005
18 in relation to the trustor prior to satisfaction of all claims for
19 medicaid reimbursement pursuant to section 68-919 to the extent necessary
20 to discharge any such claim remaining unpaid after application of the
21 assets of the trustor's probate estate. The Department of Health and
22 Human Services may, upon application of a trustee, waive the restriction
23 on transfers established by this subsection in cases in which the
24 department determines that either there is no medicaid reimbursement due
25 or after the proposed transfer is made there will be sufficient assets
26 remaining in the trust or trustor's probate estate to satisfy all such
27 claims for medicaid reimbursement. If there is no medicaid reimbursement
28 due, the department shall waive the restriction within sixty days after
29 receipt of the trustee's request for waiver and the deceased trustor's
30 name and social security number and, if available upon reasonable
31 investigation, the name and social security number of the trustor's

1 spouse if such spouse is deceased. A trustee who is a financial
2 institution as defined in section 77-3801, a trust company chartered
3 pursuant to the Nebraska Trust Company Act, or an attorney licensed to
4 practice in this state may distribute assets from the trust prior to the
5 receipt of the waiver from the department if the trustee signs a recital
6 under oath and mailed by certified mail to the department that states the
7 decedent's name and social security number and, if available upon
8 reasonable investigation, the name and social security number of the
9 decedent's spouse if such spouse is deceased, and that the trustor was
10 not a recipient of medical assistance and no claims for medical
11 assistance exist under section 68-919. A trustee who makes such a recital
12 knowing the recital is false becomes personally liable for medical
13 assistance reimbursement pursuant to section 68-919 to the extent of the
14 assets distributed from the trust necessary to discharge any such claim
15 remaining unpaid after application of the assets of the transferor's
16 probate estate.

17 Sec. 2. Section 30-3881, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 30-3881 (UTC 816) (a) Without limiting the authority conferred by
20 section 30-3880, a trustee may:

21 (1) collect trust property and accept or reject additions to the
22 trust property from a settlor or any other person;

23 (2) acquire or sell property, for cash or on credit, at public or
24 private sale;

25 (3) exchange, partition, or otherwise change the character of trust
26 property;

27 (4) deposit trust money in an account in a regulated financial-
28 service institution;

29 (5) borrow money, including from the trustee, with or without
30 security, and mortgage or pledge trust property for a period within or
31 extending beyond the duration of the trust;

1 (6) with respect to an interest in a proprietorship, partnership,
2 limited liability company, business trust, corporation, or other form of
3 business or enterprise, continue the business or other enterprise and
4 take any action that may be taken by shareholders, members, or property
5 owners, including merging, dissolving, or otherwise changing the form of
6 business organization or contributing additional capital;

7 (7) with respect to stocks or other securities, exercise the rights
8 of an absolute owner, including the right to:

9 (A) vote, or give proxies to vote, with or without power of
10 substitution, or enter into or continue a voting trust agreement;

11 (B) hold a security in the name of a nominee or in other form
12 without disclosure of the trust so that title may pass by delivery;

13 (C) pay calls, assessments, and other sums chargeable or accruing
14 against the securities, and sell or exercise stock subscription or
15 conversion rights; and

16 (D) deposit the securities with a depository or other regulated
17 financial-service institution;

18 (8) with respect to an interest in real property, construct, or make
19 ordinary or extraordinary repairs to, alterations to, or improvements in,
20 buildings or other structures, demolish improvements, raze existing or
21 erect new party walls or buildings, subdivide or develop land, dedicate
22 land to public use or grant public or private easements, and make or
23 vacate plats and adjust boundaries;

24 (9) enter into a lease for any purpose as lessor or lessee,
25 including a lease or other arrangement for exploration and removal of
26 natural resources, with or without the option to purchase or renew, for a
27 period within or extending beyond the duration of the trust;

28 (10) grant an option involving a sale, lease, or other disposition
29 of trust property or acquire an option for the acquisition of property,
30 including an option exercisable beyond the duration of the trust, and
31 exercise an option so acquired;

1 (11) insure the property of the trust against damage or loss and
2 insure the trustee, the trustee's agents, and beneficiaries against
3 liability arising from the administration of the trust;

4 (12) abandon or decline to administer property of no value or of
5 insufficient value to justify its collection or continued administration;

6 (13) with respect to possible liability for violation of
7 environmental law:

8 (A) inspect or investigate property the trustee holds or has been
9 asked to hold, or property owned or operated by an organization in which
10 the trustee holds or has been asked to hold an interest, for the purpose
11 of determining the application of environmental law with respect to the
12 property;

13 (B) take action to prevent, abate, or otherwise remedy any actual or
14 potential violation of any environmental law affecting property held
15 directly or indirectly by the trustee, whether taken before or after the
16 assertion of a claim or the initiation of governmental enforcement;

17 (C) decline to accept property into trust or disclaim any power with
18 respect to property that is or may be burdened with liability for
19 violation of environmental law;

20 (D) compromise claims against the trust which may be asserted for an
21 alleged violation of environmental law; and

22 (E) pay the expense of any inspection, review, abatement, or
23 remedial action to comply with environmental law;

24 (14) pay or contest any claim, settle a claim by or against the
25 trust, and release, in whole or in part, a claim belonging to the trust;

26 (15) pay taxes, assessments, compensation of the trustee and of
27 employees and agents of the trust, and other expenses incurred in the
28 administration of the trust;

29 (16) exercise elections with respect to federal, state, and local
30 taxes;

31 (17) select a mode of payment under any employee benefit or

1 retirement plan, annuity, or life insurance payable to the trustee,
2 exercise rights thereunder, including exercise of the right to
3 indemnification for expenses and against liabilities, and take
4 appropriate action to collect the proceeds;

5 (18) make loans out of trust property, including loans to a
6 beneficiary on terms and conditions the trustee considers to be fair and
7 reasonable under the circumstances, and the trustee has a lien on future
8 distributions for repayment of those loans;

9 (19) pledge trust property to guarantee loans made by others to the
10 beneficiary;

11 (20) appoint a trustee to act in another jurisdiction with respect
12 to trust property located in the other jurisdiction, confer upon the
13 appointed trustee all of the powers and duties of the appointing trustee,
14 require that the appointed trustee furnish security, and remove any
15 trustee so appointed;

16 (21) pay an amount distributable to a beneficiary who is under a
17 legal disability or who the trustee reasonably believes is incapacitated,
18 by paying it directly to the beneficiary or applying it for the
19 beneficiary's benefit, or by:

20 (A) paying it to the beneficiary's conservator or, if the
21 beneficiary does not have a conservator, the beneficiary's guardian;

22 (B) paying it to the beneficiary's custodian under the Nebraska
23 Uniform Transfers to Minors Act or custodial trustee under the Nebraska
24 Uniform Custodial Trust Act, and, for that purpose, creating a
25 custodianship or custodial trust;

26 (C) if the trustee does not know of a conservator, guardian,
27 custodian, or custodial trustee, paying it to an adult relative or other
28 person having legal or physical care or custody of the beneficiary, to be
29 expended on the beneficiary's behalf; or

30 (D) managing it as a separate fund on the beneficiary's behalf,
31 subject to the beneficiary's continuing right to withdraw the

1 distribution;

2 (22) on distribution of trust property or the division or
3 termination of a trust, make distributions in divided or undivided
4 interests, allocate particular assets in proportionate or
5 disproportionate shares, value the trust property for those purposes, and
6 adjust for resulting differences in valuation;

7 (23) resolve a dispute concerning the interpretation of the trust or
8 its administration by mediation, arbitration, or other procedure for
9 alternative dispute resolution;

10 (24) prosecute or defend an action, claim, or judicial proceeding in
11 any jurisdiction to protect trust property and the trustee in the
12 performance of the trustee's duties;

13 (25) sign and deliver contracts and other instruments that are
14 useful to achieve or facilitate the exercise of the trustee's powers; and

15 (26) on termination of the trust, exercise the powers appropriate to
16 wind up the administration of the trust and distribute the trust property
17 to the persons entitled to it.

18 (b) After the death of the trustor occurring after the effective
19 date of this act, a trustee of a revocable trust which has become
20 irrevocable by reason of the death of the trustor shall not transfer
21 trust property to a beneficiary described in section 77-2004 or 77-2005
22 in relation to the trustor prior to satisfaction of all claims for
23 medicaid reimbursement pursuant to section 68-919 to the extent necessary
24 to discharge any such claim remaining unpaid after application of the
25 assets of the trustor's probate estate. The Department of Health and
26 Human Services may, upon application of a trustee, waive the restriction
27 on transfers established by this subsection in cases in which the
28 department determines that either there is no medicaid reimbursement due
29 or after the proposed transfer is made there will be sufficient assets
30 remaining in the trust or trustor's probate estate to satisfy all such
31 claims for medicaid reimbursement. If there is no medicaid reimbursement

1 due, the department shall waive the restriction within sixty days after
2 receipt of the trustee's request for waiver and the deceased trustor's
3 name and social security number and, if available upon reasonable
4 investigation, the name and social security number of the trustor's
5 spouse if such spouse is deceased. A trustee who is a financial
6 institution as defined in section 77-3801, a trust company chartered
7 pursuant to the Nebraska Trust Company Act, or an attorney licensed to
8 practice in this state may distribute assets from the trust prior to the
9 receipt of the waiver from the department if the trustee signs a recital
10 under oath and mailed by certified mail to the department that states the
11 decedent's name and social security number and, if available upon
12 reasonable investigation, the name and social security number of the
13 decedent's spouse if such spouse is deceased, and that the trustor was
14 not a recipient of medical assistance and no claims for medical
15 assistance exist under section 68-919. A trustee who makes such a recital
16 knowing the recital is false becomes personally liable for medical
17 assistance reimbursement pursuant to section 68-919 to the extent of the
18 assets distributed from the trust necessary to discharge any such claim
19 remaining unpaid after application of the assets of the transferor's
20 probate estate.

21 Sec. 3. Section 30-3882, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 30-3882 (UTC 817) (a) ~~Upon~~ Except as limited in subsection (d) of
24 this section, upon termination or partial termination of a trust, the
25 trustee may send to the beneficiaries a proposal for distribution. The
26 right of any beneficiary to object to the proposed distribution
27 terminates if the beneficiary does not notify the trustee of an objection
28 within thirty days after the proposal was sent but only if the proposal
29 informed the beneficiary of the right to object and of the time allowed
30 for objection.

31 (b) ~~Upon~~ Except as limited in subsection (d) of this section, upon

1 the occurrence of an event terminating or partially terminating a trust,
2 the trustee shall proceed expeditiously to distribute the trust property
3 to the persons entitled to it, subject to the right of the trustee to
4 retain a reasonable reserve for the payment of debts, expenses, and
5 taxes.

6 (c) A release by a beneficiary of a trustee from liability for
7 breach of trust is invalid to the extent:

8 (1) it was induced by improper conduct of the trustee; or

9 (2) the beneficiary, at the time of the release, did not know of the
10 beneficiary's rights or of the material facts relating to the breach.

11 (d) After the death of the trustor occurring after the effective
12 date of this act, a trustee of a revocable trust which has become
13 irrevocable by reason of the death of the trustor shall not transfer
14 trust property to a beneficiary described in section 77-2004 or 77-2005
15 in relation to the trustor prior to satisfaction of all claims for
16 medicaid reimbursement pursuant to section 68-919 to the extent necessary
17 to discharge any such claim remaining unpaid after application of the
18 assets of the trustor's probate estate. The Department of Health and
19 Human Services may, upon application of a trustee, waive the restriction
20 on transfers established by this subsection in cases in which the
21 department determines that either there is no medicaid reimbursement due
22 or after the proposed transfer is made there will be sufficient assets
23 remaining in the trust or trustor's probate estate to satisfy all such
24 claims for medicaid reimbursement. If there is no medicaid reimbursement
25 due, the department shall waive the restriction within sixty days after
26 receipt of the trustee's request for waiver and the deceased trustor's
27 name and social security number and, if available upon reasonable
28 investigation, the name and social security number of the trustor's
29 spouse if such spouse is deceased. A trustee who is a financial
30 institution as defined in section 77-3801, a trust company chartered
31 pursuant to the Nebraska Trust Company Act, or an attorney licensed to

1 practice in this state may distribute assets from the trust prior to the
2 receipt of the waiver from the department if the trustee signs a recital
3 under oath and mailed by certified mail to the department that states the
4 decedent's name and social security number and, if available upon
5 reasonable investigation, the name and social security number of the
6 decedent's spouse if such spouse is deceased, and that the trustor was
7 not a recipient of medical assistance and no claims for medical
8 assistance exist under section 68-919. A trustee who makes such a recital
9 knowing the recital is false becomes personally liable for medical
10 assistance reimbursement pursuant to section 68-919 to the extent of the
11 assets distributed from the trust necessary to discharge any such claim
12 remaining unpaid after application of the assets of the transferor's
13 probate estate.

14 Sec. 4. Section 68-919, Revised Statutes Cumulative Supplement,
15 2014, is amended to read:

16 68-919 (1) The recipient of medical assistance under the medical
17 assistance program shall be indebted to the department for the total
18 amount paid for medical assistance on behalf of the recipient if:

19 (a) The recipient was fifty-five years of age or older at the time
20 the medical assistance was provided; or

21 (b) The recipient resided in a medical institution and, at the time
22 of institutionalization or application for medical assistance, whichever
23 is later, the department determines that the recipient could not have
24 reasonably been expected to be discharged and resume living at home. For
25 purposes of this section, medical institution means a nursing facility,
26 an intermediate care facility for persons with developmental
27 disabilities, or an inpatient hospital.

28 (2) The debt accruing under subsection (1) of this section arises
29 during the life of the recipient but shall be held in abeyance until the
30 death of the recipient. Any such debt to the department that exists when
31 the recipient dies shall be recovered only after the death of the

1 recipient's spouse, if any, and only when the recipient is not survived
2 by a child who either is under twenty-one years of age or is blind or
3 totally and permanently disabled as defined by the Supplemental Security
4 Income criteria.

5 (3) The debt shall include the total amount of medical assistance
6 provided when the recipient was fifty-five years of age or older or
7 during a period of institutionalization as described in subsection (1) of
8 this section and shall not include interest.

9 (4) The debt may be recovered from the estate of a recipient of
10 medical assistance, including any real property, personal property, or
11 other asset in which the recipient had any legal title or interest at the
12 time of the recipient's death, to the extent of such interests. In
13 furtherance and not in limitation of the foregoing, for purposes of this
14 section, the estate of the recipient of medical assistance also includes
15 assets to be transferred to a beneficiary described in section 77-2004 or
16 77-2005 in relation to the recipient through a revocable trust or other
17 similar arrangement which has become irrevocable by reason of the
18 recipient's death.

19 (5 4) In any probate proceedings in which the department has filed a
20 claim under this section, no additional evidence of foundation shall be
21 required for the admission of the department's payment record supporting
22 its claim if the payment record bears the seal of the department, is
23 certified as a true copy, and bears the signature of an authorized
24 representative of the department.

25 (6 5) The department may waive or compromise its claim, in whole or
26 in part, if the department determines that enforcement of the claim would
27 not be in the best interests of the state or would result in undue
28 hardship as provided in rules and regulations of the department.

29 Sec. 5. Section 77-2018.02, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 77-2018.02 (1) In the absence of any proceeding brought under

1 Chapter 30, article 24 or 25, in this state, proceedings for the
2 determination of the tax may be instituted in the county court of the
3 county where the property or any part thereof which might be subject to
4 tax is situated.

5 (2) Upon the filing of the petition referred to in subsection (1) of
6 this section, the county court shall order the petition set for hearing,
7 not less than two nor more than four weeks after the date of filing the
8 petition, and shall cause notice thereof to be given to all persons
9 interested in the estate of the deceased and the property described in
10 the petition, except as provided in subsections (4) and (5) of this
11 section, in the manner provided for in subsection (3) of this section.

12 (3) The notice, provided for by subsection (2) of this section,
13 shall be given by one publication in a legal newspaper of the county or,
14 in the absence of such legal newspaper, then in a legal newspaper of some
15 adjoining county of general circulation in the county. In addition to
16 such publication of notice, personal service of notice of the said
17 hearing shall be had upon the county attorney of each county in which the
18 property described in the petition is located, at least one week prior to
19 the hearing.

20 (4) If it appears to the county court, upon the filing of the
21 petition, by any person other than the county attorney, that no
22 assessment of inheritance tax could result, it shall forthwith enter
23 thereon an order directing the county attorney to show cause, within one
24 week from the service thereof, why determination should not be made that
25 no inheritance tax is due on account of the property described in the
26 petition and the potential lien thereof on such property extinguished.
27 Upon service of such order to show cause and failure of such showing by
28 the county attorney, notice of such hearing by publication shall be
29 dispensed with, and the petitioner shall be entitled without delay to a
30 determination of no tax due on account of the property described in the
31 petition, and any potential lien shall be extinguished.

1 (5) If it appears ~~shall appear~~ to the county court that (a) the
2 county attorney of each county in which the property described in the
3 petition is located has executed a waiver of notice upon him or her to
4 show cause, or of the time and place of hearing, and has entered a
5 voluntary appearance in such proceeding in behalf of the county and the
6 State of Nebraska, and (b) either (i) all persons against whom an
7 inheritance tax may be assessed are either a petitioner or have executed
8 a waiver of notice upon them to show cause, or of the time and place of
9 hearing, and have entered a voluntary appearance, or (ii) a party to the
10 proceeding has agreed to pay to the proper counties the full inheritance
11 tax so determined, the court may dispense with the notice provided for in
12 subsections (2) and (3) of this section and proceed without delay to make
13 a determination of inheritance tax, if any, due on account of the
14 property described in the petition.

15 (6) If the decedent was fifty-five years of age or older or resided
16 in a medical institution as defined in subsection (1) of section 68-919,
17 a notice of the filing of the petition referred to in subsection (1) of
18 this section shall be mailed to the Department of Health and Human
19 Services with the decedent's social security number and, if available
20 upon reasonable investigation, the name and social security number of the
21 decedent's spouse if such spouse is deceased. A certificate of the
22 mailing of the notice to the department shall be filed in the inheritance
23 tax proceedings by an attorney for the petitioner or, if there is no
24 attorney, by the petitioner, prior to the entry of an order pursuant to
25 this section.

26 Sec. 6. If any section in this act or any part of any section is
27 declared invalid or unconstitutional, the declaration shall not affect
28 the validity or constitutionality of the remaining portions.

29 Sec. 7. Original sections 30-3880, 30-3881, 30-3882, and
30 77-2018.02, Reissue Revised Statutes of Nebraska, and section 68-919,
31 Revised Statutes Cumulative Supplement, 2014, are repealed.