

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 517

FINAL READING

Introduced by Pansing Brooks, 28.

Read first time January 18, 2017

Committee: Judiciary

1 A BILL FOR AN ACT relating to property; to amend sections 30-2333,
2 30-2353, 30-2715, 30-2715.01, 30-2742, and 30-3854, Reissue Revised
3 Statutes of Nebraska, and section 76-3415, Revised Statutes
4 Cumulative Supplement, 2016; to define terms; to change provisions
5 relating to transfer of property upon death; to harmonize
6 provisions; and to repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 30-2333, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 30-2333 (a) For purposes of this section:

4 (1) Beneficiary, as it relates to a trust beneficiary, includes a
5 person who has any present or future interest, vested or contingent, and
6 also includes the owner of an interest by assignment or other transfer;
7 as it relates to a charitable trust, includes any person entitled to
8 enforce the trust; and as it relates to a beneficiary of a beneficiary
9 designation, refers to a beneficiary of an insurance or annuity policy,
10 of an account with POD designation as defined in section 30-2716, of a
11 security registered in beneficiary form, of a pension, profit-sharing,
12 retirement, or similar benefit plan, or of any other nonprobate transfer
13 at death;

14 (2) Beneficiary designated in a governing instrument includes a
15 grantee of a deed, a beneficiary of a transfer on death deed, a transfer-
16 on-death beneficiary, a beneficiary of a POD designation, a devisee, a
17 trust beneficiary, a beneficiary of a beneficiary designation, a donee,
18 appointee, or taker in default of a power of appointment, and a person in
19 whose favor a power of attorney or a power held in any individual,
20 fiduciary, or representative capacity is exercised;

21 (3) Disposition or appointment of property includes a transfer of an
22 item of property or any other benefit to a beneficiary designated in a
23 governing instrument;

24 (4) Divorce or annulment means any divorce or annulment, or any
25 dissolution or declaration of invalidity of a marriage, that would
26 exclude the spouse as a surviving spouse within the meaning of section
27 30-2353. A decree of separation that does not terminate the status of
28 husband and wife is not a divorce for purposes of this section;

29 (5) Divorced individual includes an individual whose marriage has
30 been annulled;

31 (6) Governing instrument means a deed, a will, a trust, an insurance

1 or annuity policy, an account with POD designation, a security registered
2 in beneficiary form, a transfer on death deed, a pension, profit-sharing,
3 retirement, or similar benefit plan, an instrument creating or exercising
4 a power of appointment or a power of attorney, or a dispositive,
5 appointive, or nominative instrument of any similar type, which is
6 executed by the divorced individual before the divorce or annulment of
7 his or her marriage to his or her former spouse;

8 (7) Joint tenants with the right of survivorship and community
9 property with the right of survivorship includes co-owners of property
10 held under circumstances that entitle one or more to the whole of the
11 property on the death of the other or others, but excludes forms of co-
12 ownership registration in which the underlying ownership of each party is
13 in proportion to that party's contribution;

14 (8) Payor means a trustee, an insurer, a business entity, an
15 employer, a government, a governmental agency or subdivision, or any
16 other person authorized or obligated by law or a governing instrument to
17 make payments;

18 (9) Relative of the divorced individual's former spouse means an
19 individual who is related to the divorced individual's former spouse by
20 blood, adoption, or affinity and who, after the divorce or annulment, is
21 not related to the divorced individual by blood, adoption, or affinity;
22 and

23 (10) Revocable, with respect to a disposition, appointment,
24 provision, or nomination, means one under which the divorced individual,
25 at the time of the divorce or annulment, was alone empowered, by law or
26 under the governing instrument, to cancel the designation in favor of his
27 or her former spouse or former spouse's relative, whether or not the
28 divorced individual was then empowered to designate himself or herself in
29 place of his or her former spouse or in place of his or her former
30 spouse's relative and whether or not the divorced individual then had the
31 capacity to exercise the power.

1 (b) For purposes of this section, subject to subsection (c) of this
2 section, a person has knowledge of a fact if the person:

3 (1) Has actual knowledge of it;

4 (2) Has received a notice or notification of it; or

5 (3) From all the facts and circumstances known to the person at the
6 time in question, has reason to know it.

7 (c) An organization that conducts activities through employees has
8 notice or knowledge of a fact only from the time the information was
9 received by an employee having responsibility to act for the
10 organization, or would have been brought to the employee's attention if
11 the organization had exercised reasonable diligence. An organization
12 exercises reasonable diligence if it maintains reasonable routines for
13 communicating significant information to the employee having
14 responsibility to act for the organization and there is reasonable
15 compliance with the routines. Reasonable diligence does not require an
16 employee of the organization to communicate information unless the
17 communication is part of the individual's regular duties or the
18 individual knows a matter involving the organization would be materially
19 affected by the information.

20 (d) Except as provided by the express terms of a governing
21 instrument, a court order, or a contract relating to the division of the
22 marital estate made between the divorced individuals before or after the
23 marriage, divorce, or annulment, the divorce or annulment of a marriage:

24 (1) Revokes any revocable

25 (A) disposition or appointment of property made by a divorced
26 individual to his or her former spouse in a governing instrument and any
27 disposition or appointment created by law or in a governing instrument to
28 a relative of the divorced individual's former spouse;

29 (B) provision in a governing instrument conferring a general or
30 nongeneral power of appointment on the divorced individual's former
31 spouse or on a relative of the divorced individual's former spouse; and

1 (C) nomination in a governing instrument, nominating a divorced
2 individual's former spouse or a relative of the divorced individual's
3 former spouse to serve in any fiduciary or representative capacity,
4 including a personal representative, executor, trustee, conservator,
5 agent, or guardian; and

6 (2) Severs the interests of the former spouses in property held by
7 them at the time of the divorce or annulment as joint tenants with the
8 right of survivorship, transforming the interests of the former spouses
9 into equal tenancies in common.

10 (e) A severance under subdivision (d)(2) of this section does not
11 affect any third-party interest in property acquired for value and in
12 good faith reliance on an apparent title by survivorship in the survivor
13 of the former spouses unless a writing declaring the severance has been
14 noted, registered, filed, or recorded in records appropriate to the kind
15 and location of the property which are relied upon, in the ordinary
16 course of transactions involving such property, as evidence of ownership.

17 (f) Provisions of a governing instrument are given effect as if the
18 former spouse and relatives of the former spouse disclaimed all
19 provisions revoked by this section or, in the case of a revoked
20 nomination in a fiduciary or representative capacity, as if the former
21 spouse and relatives of the divorced individual's former spouse died
22 immediately before the divorce or annulment.

23 (g) Provisions revoked solely by this section are revived by the
24 divorced individual's remarriage to the former spouse or by a
25 nullification of the divorce or annulment.

26 (h) No change of circumstances other than as described in this
27 section and section 30-2354 effects a revocation.

28 (i)(1)(A) Except as provided in subdivision (i)(1)(B) of this
29 section, a payor or other third party is not liable for having made a
30 payment or transferred an item of property or any other benefit to a
31 beneficiary designated in a governing instrument affected by a divorce,

1 annulment, or remarriage, or for having taken any other action in good
2 faith reliance on the validity of the governing instrument, before the
3 payor or other third party received written notice of or has knowledge of
4 the divorce, annulment, or remarriage.

5 (B) Liability of a payor or other third party which is a financial
6 institution making payment on a jointly owned account or to a beneficiary
7 pursuant to the terms of a governing instrument on an account with a POD
8 designation shall be governed by section 30-2732.

9 (C) A payor or other third party is liable for a payment made or
10 other action taken after the payor or other third party received written
11 notice of a claimed forfeiture, severance, or revocation under this
12 section.

13 (2) Written notice of the divorce, annulment, or remarriage under
14 subdivision (i)(1)(A) of this section must be mailed to the payor's or
15 other third party's main office or home, be personally delivered to the
16 payor or other third party, or, in the case of written notice to a person
17 other than a financial institution, be delivered by such other means
18 which establish that the person has knowledge of the divorce, annulment,
19 or remarriage. Written notice to a financial institution with respect to
20 a jointly owned account or an account with a POD designation shall be
21 governed by section 30-2732.

22 (3) Upon receipt of written notice of the divorce, annulment, or
23 remarriage, a payor or other third party may pay any amount owed or
24 transfer or deposit any item of property held by it to or with the court
25 that has jurisdiction of the probate proceedings relating to the
26 decedent's estate or, if no proceedings have been commenced, to or with
27 the court that has jurisdiction of probate proceedings relating to
28 decedents' estates located in the county of the decedent's residence. The
29 court shall hold the funds or item of property and, upon its
30 determination under this section, shall order disbursement or transfer in
31 accordance with the determination. Payments, transfers, or deposits made

1 to or with the court discharge the payor or other third party from all
2 claims for the value of amounts paid to or items of property transferred
3 to or deposited with the court.

4 (j)(1) A person who purchases property from a former spouse, a
5 relative of a former spouse, or any other person for value and without
6 notice, or who receives from a former spouse, a relative of a former
7 spouse, or any other person a payment or other item of property in
8 partial or full satisfaction of a legally enforceable obligation, is
9 neither obligated under this section to return the payment, item of
10 property, or benefit nor is liable under this section for the amount of
11 the payment or the value of the item of property or benefit. But a former
12 spouse, relative of a former spouse, or other person who, not for value,
13 received a payment, an item of property, or any other benefit to which
14 that person is not entitled under this section is obligated to return the
15 payment, item of property, or benefit, or is personally liable for the
16 amount of the payment or the value of the item of property or benefit, to
17 the person who is entitled to it under this section.

18 (2) If this section or any part of this section is preempted by
19 federal law with respect to a payment, an item of property, or any other
20 benefit covered by this section, a former spouse, a relative of a former
21 spouse, or any other person who, not for value, received a payment, an
22 item of property, or any other benefit to which that person is not
23 entitled under this section is obligated to return that payment, item of
24 property, or benefit, or is personally liable for the amount of the
25 payment or the value of the item of property or benefit, to the person
26 who would have been entitled to it were this section or part of this
27 section not preempted.

28 (k) If a former spouse has notice of the fact that he or she is a
29 former spouse, then any receipt of property or money to which this
30 section applies is received by the former spouse as a trustee for the
31 person or persons who would be entitled to that property under this

1 section.

2 ~~If after executing a will the testator is divorced or his marriage~~
3 ~~dissolved or annulled, the divorce, dissolution, or annulment revokes any~~
4 ~~disposition or appointment of property made by the will to the former~~
5 ~~spouse, any provision conferring a general or special power of~~
6 ~~appointment on the former spouse, and any nomination of the former spouse~~
7 ~~as executor, trustee, conservator, or guardian, unless the will expressly~~
8 ~~provides otherwise. Property prevented from passing to a former spouse~~
9 ~~because of revocation by divorce, dissolution, or annulment passes as if~~
10 ~~the former spouse failed to survive the decedent, and other provisions~~
11 ~~conferring some power or office on the former spouse are interpreted as~~
12 ~~if the spouse failed to survive the decedent. If provisions are revoked~~
13 ~~solely by this section, they are revived by testator's remarriage to the~~
14 ~~former spouse. For purposes of this section, divorce, dissolution, or~~
15 ~~annulment means any divorce, dissolution, or annulment which would~~
16 ~~exclude the spouse as a surviving spouse within the meaning of section~~
17 ~~30-2353. A decree of separation which does not terminate the status of~~
18 ~~husband and wife is not a divorce for purposes of this section. No change~~
19 ~~of circumstances other than as described in this section revokes a will.~~

20 Sec. 2. Section 30-2353, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 30-2353 (a) An individual who is divorced from the decedent or whose
23 marriage to the decedent has been dissolved or annulled by a decree that
24 has become final is not a surviving spouse unless, by virtue of a
25 subsequent marriage, he or she is married to the decedent at the time of
26 death. A decree of separation which does not terminate the status of
27 husband and wife is not a divorce for purposes of this section.

28 (b) For purposes of parts 1, 2, 3, and 4 of this article and of
29 section 30-2412, a surviving spouse does not include:

30 (1) an individual who obtains or consents to a final decree or
31 judgment of divorce from the decedent or an annulment or dissolution of

1 their marriage, which decree or judgment is not recognized as valid in
2 this state, unless they subsequently participate in a marriage ceremony
3 purporting to marry each to the other, or subsequently live together as
4 man and wife;

5 (2) an individual who, following an invalid a decree or judgment of
6 divorce or annulment or dissolution of marriage obtained by the decedent,
7 participates in a marriage ceremony with a third individual; or

8 (3) an individual who was a party to a valid proceeding concluded by
9 an order purporting to terminate all marital property rights against the
10 decedent.

11 Sec. 3. Section 30-2715, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 30-2715 (a) Subject to sections 30-2333 and 30-2354, a A provision
14 for a nonprobate transfer on death in an insurance policy, contract of
15 employment, bond, mortgage, promissory note, certificated or
16 uncertificated security, account agreement, custodial agreement, deposit
17 agreement, compensation plan, pension plan, individual retirement plan,
18 employee benefit plan, trust, marital property agreement, certificate of
19 title, or other written instrument of a similar nature is
20 nontestamentary. This subsection includes a written provision that:

21 (1) money or other benefits due to, controlled by, or owned by a
22 decedent before death must be paid after the decedent's death to a person
23 whom the decedent designates either in the instrument or in a separate
24 writing, including a will, executed either before or at the same time as
25 the instrument, or later;

26 (2) money due or to become due under the instrument ceases to be
27 payable in the event of death of the promisee or the promisor before
28 payment or demand; or

29 (3) any property controlled by or owned by the decedent before death
30 which is the subject of the instrument passes to a person the decedent
31 designates either in the instrument or in a separate writing, including a

1 will, executed either before or at the same time as the instrument, or
2 later.

3 (b) This section does not limit rights of creditors under other laws
4 of this state.

5 Sec. 4. Section 30-2715.01, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 30-2715.01 (1) Subject to section 30-2333, a A person who owns a
8 motor vehicle may provide for the transfer of such vehicle upon his or
9 her death or the death of the last survivor of a joint tenancy with right
10 of survivorship by including in the certificate of title a designation of
11 beneficiary or beneficiaries to whom the vehicle will be transferred on
12 the death of the owner or the last survivor, subject to the rights of all
13 lienholders, whether created before, simultaneously with, or after the
14 creation of the transfer-on-death interest. A trust may be the
15 beneficiary of a transfer-on-death certificate of title. The certificate
16 of title shall include the name of the owner, the name of any tenant-in-
17 common owner or the name of any joint-tenant-with-right-of-survivorship
18 owner, followed in substance by the words transfer on death to (name of
19 beneficiary or beneficiaries or name of trustee if a trust is to be the
20 beneficiary). The abbreviation TOD may be used instead of the words
21 transfer on death to.

22 (2) A transfer-on-death beneficiary shall have no interest in the
23 motor vehicle until the death of the owner or the last survivor of the
24 joint-tenant-with-right-of-survivorship owners. A beneficiary designation
25 may be changed at any time by the owner or by the joint-tenant-with-
26 right-of-survivorship owners then surviving without the consent of any
27 beneficiary by filing an application for a subsequent certificate of
28 title.

29 (3) Ownership of a motor vehicle which has a designation of
30 beneficiary as provided in subsection (1) of this section and for which
31 an application for a subsequent certificate of title has not been filed

1 shall vest in the designated beneficiary or beneficiaries on the death of
2 the owner or the last of the joint-tenant-with-right-of-survivorship
3 owners, subject to the rights of all lienholders.

4 Sec. 5. Section 30-2742, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 30-2742 (a) Subject to section 30-2333, a A transfer on death
7 resulting from a registration in beneficiary form is effective by reason
8 of the contract regarding the registration between the owner and the
9 registering entity and sections 30-2734 to 30-2745 and is not
10 testamentary.

11 (b) Sections 30-2734 to 30-2745 do not limit the rights of creditors
12 of security owners against beneficiaries and other transferees under
13 other laws of this state.

14 Sec. 6. Section 30-3854, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 30-3854 (UTC 602) (a) Unless the terms of a trust expressly provide
17 that the trust is irrevocable, the settlor may revoke or amend the trust.
18 This subsection does not apply to a trust created under an instrument
19 executed before January 1, 2005.

20 (b) If a revocable trust is created or funded by more than one
21 settlor:

22 (1) to the extent the trust consists of community property, the
23 trust may be revoked by either spouse acting alone but may be amended
24 only by joint action of both spouses;

25 (2) to the extent the trust consists of property other than
26 community property, each settlor may revoke or amend the trust with
27 regard to the portion of the trust property attributable to that
28 settlor's contribution; and

29 (3) upon the revocation or amendment of the trust by fewer than all
30 of the settlors, the trustee shall promptly notify the other settlors of
31 the revocation or amendment.

1 (c) The settlor may revoke or amend a written revocable trust:

2 (1) by substantial compliance with a method provided in the terms of
3 the trust; or

4 (2) if the terms of the trust do not provide a method or the method
5 provided in the terms is not expressly made exclusive, by:

6 (A) a later will or codicil that expressly refers to the trust or
7 specifically devises property that would otherwise have passed according
8 to the terms of the trust; or

9 (B) an instrument evidencing an intent to amend or revoke the trust
10 signed by the settlor, or in the settlor's name by some other individual
11 in the presence of and by the direction of the settlor. The instrument
12 must have an indication of the date of the writing or signing and, in the
13 absence of such indication of the date, be the only such writing or
14 contain no inconsistency with any other like writing or permit
15 determination of such date of writing or signing from the content of such
16 writing, from extrinsic circumstances, or from any other evidence.

17 (d) Upon revocation of a revocable trust, the trustee shall deliver
18 the trust property as the settlor directs.

19 (e) A settlor's powers with respect to revocation, amendment, or
20 distribution of trust property may be exercised by an agent under a power
21 of attorney only to the extent expressly authorized by the terms of the
22 trust or the power.

23 (f) A conservator of the settlor or, if no conservator has been
24 appointed, a guardian of the settlor may exercise a settlor's powers with
25 respect to revocation, amendment, or distribution of trust property only
26 with the approval of the court supervising the conservatorship or
27 guardianship.

28 (g) A trustee who does not know that a trust has been revoked or
29 amended is not liable to the settlor or settlor's successors in interest
30 for distributions made and other actions taken in reliance on the terms
31 of the trust.

1 (h) The revocation, amendment, and distribution of trust property of
2 a trust pursuant to this section is subject to section 30-2333.

3 Sec. 7. Section 76-3415, Revised Statutes Cumulative Supplement,
4 2016, is amended to read:

5 76-3415 (a) Except as otherwise provided in the transfer on death
6 deed, in this section, or in sections 30-2313 to 30-2319 or section
7 30-2354, on the death of the transferor, the following rules apply to
8 property that is the subject of a transfer on death deed and owned by the
9 transferor at death:

10 (1) Subject to subdivision (2) of this subsection, the interest in
11 the property is transferred to the designated beneficiary in accordance
12 with the deed;

13 (2) The interest of a designated beneficiary is contingent on the
14 designated beneficiary surviving the transferor by one hundred twenty
15 hours. If the deed provides for a different survival period, the deed
16 shall determine the survival requirement for designated beneficiaries.
17 The interest of a designated beneficiary that fails to survive the
18 transferor by one hundred twenty hours or as otherwise provided in the
19 deed shall be treated as if the designated beneficiary predeceased the
20 transferor;

21 (3) Subject to subdivision (4) of this subsection, concurrent
22 interests are transferred to the beneficiaries in equal and undivided
23 shares with no right of survivorship; and

24 (4) If the transferor has identified two or more designated
25 beneficiaries to receive concurrent interests in the property, the share
26 of one which fails for any reason is transferred to the other, or to the
27 others in proportion to the interest of each in the remaining part of the
28 property held concurrently.

29 (b) A beneficiary takes the property subject to all conveyances,
30 encumbrances, assignments, contracts, mortgages, liens, and other
31 interests to which the property is subject at the transferor's death.

1 (c) If a transferor is a joint owner and is:

2 (1) Survived by one or more other joint owners, the property that is
3 the subject of a transfer on death deed belongs to the surviving joint
4 owner or owners with right of survivorship; or

5 (2) The last surviving joint owner, the transfer on death deed of
6 the last surviving joint owner transferor is effective.

7 (d) A transfer on death deed transfers property without covenant or
8 warranty of title even if the deed contains a contrary provision.

9 (e) If after recording a transfer on death deed the transferor is
10 divorced or his or her marriage is dissolved or annulled, the divorce,
11 dissolution, or annulment revokes any disposition or appointment of
12 property made by the transfer on death deed as provided in section
13 30-2333 ~~to the former spouse unless the transfer on death deed expressly~~
14 ~~provides otherwise. Property prevented from passing to a former spouse~~
15 ~~under a transfer on death deed because of revocation by divorce,~~
16 ~~dissolution, or annulment passes as if the former spouse failed to~~
17 ~~survive the transferor. A decree of separation which does not terminate~~
18 ~~the status of husband and wife is not a divorce for purposes of this~~
19 ~~section.~~

20 Sec. 8. Original sections 30-2333, 30-2353, 30-2715, 30-2715.01,
21 30-2742, and 30-3854, Reissue Revised Statutes of Nebraska, and section
22 76-3415, Revised Statutes Cumulative Supplement, 2016, are repealed.