

LEGISLATIVE BILL 55

Approved by the Governor March 07, 2019

Introduced by Lowe, 37; Pansing Brooks, 28.

A BILL FOR AN ACT relating to property; to amend sections 30-2478, 30-2723, and 30-3859, Reissue Revised Statutes of Nebraska, and section 43-2101, Revised Statutes Cumulative Supplement, 2018; to change powers of copersonal representatives, cotrustees, coguardians, and coconservators; to change provisions relating to accounts with POD designations; to authorize persons eighteen years of age to acquire or convey title to real property and to enter into and execute related legal documents; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 30-2478, Reissue Revised Statutes of Nebraska, is amended to read:

30-2478 If two or more persons are appointed corepresentatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any corepresentative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, ~~or~~ when a corepresentative has been delegated to act for the others, or as provided in section 2 of this act. Persons dealing with a corepresentative, if actually unaware that another has been appointed to serve with him or her or if advised by the personal representative with whom they deal that he or she has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.

Sec. 2. On and after January 1, 2020, in any case in which copersonal representatives, cotrustees, coguardians, or coconservators have been appointed, unless specifically restricted in a will, a trust, or an order of appointment, such copersonal representatives, cotrustees, coguardians, or coconservators shall have the authority to act independently with respect to, and shall not be required to act in concert with respect to, banking transactions involving trust or estate assets.

Sec. 3. Section 30-2723, Reissue Revised Statutes of Nebraska, is amended to read:

30-2723 (a) Except as otherwise provided in sections 30-2716 to 30-2733, on death of a party sums on deposit in a multiple-party account belong to the surviving party or parties. If two or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under section 30-2722 belongs to the surviving spouse. If two or more parties survive and none is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under such section belongs to the surviving parties in equal shares, and augments the proportion to which each survivor, immediately before the decedent's death, was beneficially entitled under section 30-2722, and the right of survivorship continues between the surviving parties.

(b) In an account with a POD designation:

(1) On death of one of two or more parties, the rights in sums on deposit are governed by subsection (a) of this section.

(2)(A) (2) On death of the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries. If two or more beneficiaries survive, sums on deposit belong to them in such proportions as specified in the POD designation or, if the POD designation does not specify different proportions, in equal and undivided shares, and there is no right of survivorship in the event of death of a beneficiary thereafter. If no beneficiary survives, sums on deposit belong to the estate of the last surviving party.

(B) Except as otherwise specified in the POD designation, if there are two or more beneficiaries, and if any beneficiary fails to survive the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiaries in proportion to their respective interests as beneficiaries under subdivision (2)(A) of this subsection.

(c) Sums on deposit in a single-party account without a POD designation, or in a multiple-party account that, by the terms of the account, is without right of survivorship, are not affected by death of a party, but the amount to which the decedent, immediately before death, was beneficially entitled under section 30-2722 is transferred as part of the decedent's estate. A POD designation in a multiple-party account without right of survivorship is ineffective. For purposes of this section, designation of an account as a tenancy in common establishes that the account is without right of survivorship.

(d) The ownership right of a surviving party or beneficiary, or of the decedent's estate, in sums on deposit is subject to requests for payment made

by a party before the party's death, whether paid by the financial institution before or after death, or unpaid. The surviving party or beneficiary, or the decedent's estate, is liable to the payee of an unpaid request for payment. The liability is limited to a proportionate share of the amount transferred under this section, to the extent necessary to discharge the request for payment.

Sec. 4. Section 30-3859, Reissue Revised Statutes of Nebraska, is amended to read:

30-3859 (UTC 703) (a) Cotrustees who are unable to reach a unanimous decision may act by majority decision, except that any cotrustee may act independently as provided in section 2 of this act.

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

(c) A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may not delegate to a cotrustee the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

(f) Except as otherwise provided in subsection (g) of this section, a trustee who does not join in an action of another trustee is not liable for the action.

(g) Each trustee shall exercise reasonable care to:

(1) prevent a cotrustee from committing a serious breach of trust; and

(2) compel a cotrustee to redress a serious breach of trust.

(h) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

Sec. 5. Section 43-2101, Revised Statutes Cumulative Supplement, 2018, is amended to read:

43-2101 (1) All persons under nineteen years of age are declared to be minors, but in case any person marries under the age of nineteen years, his or her minority ends.

(2) Upon becoming the age of majority, a person is considered an adult and acquires all rights and responsibilities granted or imposed by statute or common law, except that a person:

(a) Eighteen ~~(1) eighteen~~ years of age or older and who is not a ward of the state may:

(i) Enter ~~enter~~ into a binding contract or lease of whatever kind or nature and shall be legally responsible for such contract or lease, including legal responsibility to third parties;

(ii) Execute, sign, authorize, or otherwise authenticate (A) an effective financing statement, (B) a promissory note or other instrument evidencing an obligation to repay, or (C) a mortgage, trust deed, security agreement, financing statement, or other security instrument to grant a lien or security interest in real or personal property or fixtures, and shall be legally responsible for such document, including legal responsibility to third parties; and

(iii) Acquire or convey title to real property and shall have legal responsibility for such acquisition or conveyance, including legal responsibility to third parties; be legally responsible therefor and

(b) Eighteen ~~(2) eighteen~~ years of age or older may consent to mental health services for himself or herself without the consent of his or her parent or guardian.

Sec. 6. Original sections 30-2478, 30-2723, and 30-3859, Reissue Revised Statutes of Nebraska, and section 43-2101, Revised Statutes Cumulative Supplement, 2018, are repealed.