

LEGISLATIVE BILL 62

Approved by the Governor February 10, 1999

Introduced by Landis, 46

AN ACT relating to trusts; to amend sections 30-3503, 30-3508, 30-3518, and 30-3519, Revised Statutes Supplement, 1998; to change provisions relating to the Nebraska Uniform Custodial Trust Act; to require compliance with the Nebraska Uniform Prudent Investor Act; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 30-3503, Revised Statutes Supplement, 1998, is amended to read:

30-3503. (a) A person may create a custodial trust of property by a written transfer of the property to another person, evidenced by registration ~~under sections 30-2801 to 30-2805~~ or by other instrument of transfer, executed in any lawful manner, naming as beneficiary, an individual who may be the transferor, in which the transferee is designated, in substance, as the custodial trustee under the Nebraska Uniform Custodial Trust Act.

(b) A person may create a custodial trust of property by a written declaration, evidenced by registration of the property or by other instrument of declaration, executed in any lawful manner, describing the property and naming as beneficiary an individual other than the declarant, in which the declarant as titleholder is designated, in substance, as custodial trustee under the act. A registration or other declaration of trust in which the declarant is designated as custodial trustee for the sole benefit of the declarant is not a custodial trust under the act.

(c) Title to custodial trust property is in the custodial trustee and the beneficial interest is in the beneficiary.

(d) Except as provided in subsection (e) of this section, a transferor may not terminate a custodial trust.

(e) The beneficiary, if not incapacitated, or the conservator of an incapacitated beneficiary, may terminate a custodial trust by delivering to the custodial trustee a writing signed by the beneficiary or conservator declaring the termination. If not previously terminated, the custodial trust terminates on the death of the beneficiary.

(f) Any person may augment existing custodial trust property by the addition of other property pursuant to the act.

(g) The transferor may designate, or authorize the designation of, a successor custodial trustee in the trust instrument.

(h) The act does not displace or restrict other means of creating trusts. A trust whose terms do not conform to the act may be enforceable according to its terms under other law.

Sec. 2. Section 30-3508, Revised Statutes Supplement, 1998, is amended to read:

30-3508. (a) If appropriate, a custodial trustee shall register or record the instrument vesting title to custodial trust property.

~~(b)~~ (b)(1) If the beneficiary is not incapacitated, a custodial trustee shall follow the directions of the beneficiary in the management, control, investment, or retention of the custodial trust property. ~~It~~

(2)(i) Prior to the effective date of this act, in the absence of effective contrary direction by the beneficiary while not incapacitated, the custodial trustee shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other law restricting investments by fiduciaries. However, a custodial trustee, in the custodial trustee's discretion, may retain any custodial trust property received from the transferor. If a custodial trustee has a special skill or expertise or is named custodial trustee on the basis of representation of a special skill or expertise, the custodial trustee shall use that skill or expertise.

(ii) On and after the effective date of this act, in the absence of effective contrary direction by the beneficiary while not incapacitated, the custodial trustee shall comply with the Nebraska Uniform Prudent Investor Act and is not limited by any other law restricting investments by fiduciaries. However, a custodial trustee, in the custodial trustee's discretion, may retain any custodial trust property received from the transferor.

(c) Subject to subsection (b) of this section, a custodial trustee shall take control of and collect, hold, manage, invest, and reinvest custodial trust property.

(d) A custodial trustee at all times shall keep custodial trust property of which the custodial trustee has control, separate from all other property in a manner sufficient to identify it clearly as custodial trust property of the beneficiary. Custodial trust property, the title to which is subject to recordation, is so identified if an appropriate instrument so identifying the property is recorded, and custodial trust property subject to registration is so identified if it is registered, or held in an account in the name of the custodial trustee, designated in substance: "as custodial trustee for (name of beneficiary) under the Nebraska Uniform Custodial Trust Act".

(e) A custodial trustee shall keep records of all transactions with respect to custodial trust property, including information necessary for the preparation of tax returns, and shall make the records and information available at reasonable times to the beneficiary or legal representative of the beneficiary.

Sec. 3. Section 30-3518, Revised Statutes Supplement, 1998, is amended to read:

30-3518. (a) Upon termination of a custodial trust, the custodial trustee shall transfer the unexpended custodial trust property:

- (1) To the beneficiary, if not incapacitated or deceased;
- (2) To the holder of the beneficiary's power of attorney;
- (3) To the conservator or other recipient designated by the court for an incapacitated beneficiary; or

(4) Upon the beneficiary's death, in the following order:

(i) As last directed in a writing signed by the deceased beneficiary while not incapacitated and received by the custodial trustee during the life of the deceased beneficiary;

(ii) To the survivor of multiple beneficiaries if survivorship is provided for pursuant to section 30-3507;

(iii) As designated in the instrument creating the custodial trust;

or

(iv) To the estate of the deceased beneficiary.

(b) If, when the custodial trust would otherwise terminate, the distributee is incapacitated, the custodial trust continues for the use and benefit of the distributee as beneficiary until the incapacity is removed or the custodial trust is otherwise terminated.

(c) Death of a beneficiary does not terminate the power of the custodial trustee to discharge obligations of the custodial trustee or beneficiary incurred before the termination of the custodial trust.

~~(d) The writing described in subdivision (a)(4)(i) of this section or the instrument described in subdivision (a)(4)(iii) of this section must also be signed by at least two witnesses, neither of whom is the custodial trustee or a beneficiary of the custodial trust property, and be acknowledged by the beneficiary or transferor before a notary public. Failure to comply with the witness or acknowledgment requirement shall not affect the validity of the custodial trust during the life of the beneficiary but shall invalidate only the direction or designation of the beneficiary on termination of the custodial trust under subdivision (a)(4)(i) of this section or subdivision (a)(4)(iii) of this section, and upon termination of the custodial trust the custodial trustee shall transfer the unexpended custodial trust property according to the remaining provisions of this section.~~

Sec. 4. Section 30-3519, Revised Statutes Supplement, 1998, is amended to read:

30-3519. (a) If a transaction, including a declaration with respect to or a transfer of specific property, otherwise satisfies applicable law, the criteria of section 30-3503 are satisfied by:

(1) The execution and either delivery to the custodial trustee or recording of an instrument in substantially the following form:

TRANSFER UNDER THE NEBRASKA
UNIFORM CUSTODIAL TRUST ACT

I, (name of transferor or name and representative capacity if a fiduciary), transfer to (name of trustee other than transferor), as custodial trustee for (name of beneficiary) as beneficiary and as distributee on termination of the trust in absence of direction by the beneficiary under the Nebraska Uniform Custodial Trust Act, the following: (Insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated:

.....

(Signature); or

.....

Witness

.....

Witness

ACKNOWLEDGMENT

STATE OF)
) ss.
COUNTY OF)

On this day of 19.... or 20...., before me, a duly authorized notary public in and for the State of County of personally appeared (name of transferor or name and representative capacity if a fiduciary), known to me to be the identical person described in and who executed the above and foregoing transfer of specific property in the presence of two witnesses, and he or she acknowledged same to be his or her voluntary act and deed for the purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunder set my hand and official seal the day and year last above written.

.....
Notary Public, or

(2) The execution and the recording or giving notice of its execution to the beneficiary of an instrument in substantially the following form:

DECLARATION OF TRUST UNDER THE NEBRASKA UNIFORM CUSTODIAL TRUST ACT

I, (name of owner of property), declare that henceforth I hold as custodial trustee for (name of beneficiary other than transferor) as beneficiary and as distributee on termination of the trust in absence of direction by the beneficiary under the Nebraska Uniform Custodial Trust Act, the following: (Insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated:
.....
(Signature)

.....
Witness

.....
Witness

ACKNOWLEDGMENT

STATE OF)
) ss.
COUNTY OF)

On this day of 19.... or 20...., before me, a duly authorized notary public in and for the State of County of personally appeared (name of owner of property), known to me to be the identical person described in and who executed the above and foregoing transfer of specific property in the presence of two witnesses, and he or she acknowledged same to be his or her voluntary act and deed for the purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunder set my hand and official seal the day and year last above written.

.....
Notary Public

(b) Customary methods of transferring or evidencing ownership of property may be used to create a custodial trust, including any of the following:

(1) Registration of a security in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for (name of beneficiary) under the Nebraska Uniform Custodial Trust Act";

(2) Delivery of a certificated security, or a document necessary for the transfer of an uncertificated security, together with any necessary endorsement, to an adult other than the transferor or to a trust company as custodial trustee, accompanied by an instrument in substantially the form prescribed in subdivision (a)(1) of this section;

(3) Payment of money or transfer of a security held in the name of a broker or a financial institution or its nominee to a broker or financial institution for credit to an account in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for (name of beneficiary) under the Nebraska Uniform Custodial Trust Act";

(4) Registration of ownership of a life or endowment insurance policy or annuity contract with the issuer in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for

..... (name of beneficiary) under the Nebraska Uniform Custodial Trust Act";

(5) Delivery of a written assignment to an adult other than the transferor or to a trust company whose name in the assignment is designated in substance by the words: "as custodial trustee for (name of beneficiary) under the Nebraska Uniform Custodial Trust Act";

(6) Irrevocable exercise of a power of appointment, pursuant to its terms, in favor of a trust company, an adult other than the donee of the power, or the donee who holds the power if the beneficiary is other than the donee, whose name in the appointment is designated in substance: "as custodial trustee for (name of beneficiary) under the Nebraska Uniform Custodial Trust Act";

(7) Delivery of a written notification or assignment of a right to future payment under a contract to an obligor which transfers the right under the contract to a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, whose name in the notification or assignment is designated in substance: "as custodial trustee for (name of beneficiary) under the Nebraska Uniform Custodial Trust Act";

(8) Execution, delivery, and recordation of a conveyance of an interest in real property in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for (name of beneficiary) under the Nebraska Uniform Custodial Trust Act";

(9) Issuance of a certificate of title by an agency of a state or of the United States which evidences title to tangible personal property:

(i) Issued in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for (name of beneficiary) under the Nebraska Uniform Custodial Trust Act"; or

(ii) Delivered to a trust company or an adult other than the transferor or endorsed by the transferor to that person, designated in substance: "as custodial trustee for (name of beneficiary) under the Nebraska Uniform Custodial Trust Act"; or

(10) Execution and delivery of an instrument of gift to a trust company or an adult other than the transferor, designated in substance: "as custodial trustee for (name of beneficiary) under the Nebraska Uniform Custodial Trust Act".

Sec. 5. Original sections 30-3503, 30-3508, 30-3518, and 30-3519, Revised Statutes Supplement, 1998, are repealed.

Sec. 6. Since an emergency exists, this act takes effect when passed and approved according to law.