

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 756**

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 30-2352, 30-2354, and 76-902, Reissue Revised Statutes of  
3 Nebraska; to adopt the Nebraska Uniform Real Property  
4 Transfer on Death Act; to harmonize provisions; to  
5 provide an operative date; and to repeal the original  
6 sections.  
7 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 21 of this act shall be known  
2 and may be cited as the Nebraska Uniform Real Property Transfer on  
3 Death Act.

4           Sec. 2. For purposes of the Nebraska Uniform Real  
5 Property Transfer on Death Act:

6           (1) Beneficiary means a person that receives property  
7 under a transfer on death deed;

8           (2) Designated beneficiary means a person designated to  
9 receive property in a transfer on death deed;

10          (3) Joint owner means an individual who owns property  
11 concurrently with one or more other individuals with a right of  
12 survivorship. The term includes a joint tenant. The term does not  
13 include a tenant in common;

14          (4) Person means an individual, a corporation, a business  
15 trust, an estate, a trust, a partnership, a limited liability  
16 company, an association, a joint venture, a public corporation, a  
17 government or governmental subdivision, agency, or instrumentality,  
18 or any other legal or commercial entity;

19          (5) Property means an interest in real property located  
20 in this state which is transferable on the death of the owner;

21          (6) Transfer on death deed means a deed authorized under  
22 the Nebraska Uniform Real Property Transfer on Death Act; and

23          (7) Transferor means an individual who makes a transfer  
24 on death deed.

25          Sec. 3. The Nebraska Uniform Real Property Transfer on

1 Death Act applies to a transfer on death deed made before, on, or  
2 after the operative date of this act by a transferor dying on or  
3 after the operative date of this act.

4           Sec. 4. The Nebraska Uniform Real Property Transfer on  
5 Death Act does not affect any method of transferring property  
6 otherwise permitted under the law of this state.

7           Sec. 5. An individual may transfer property to one  
8 or more beneficiaries effective at the transferor's death by a  
9 transfer on death deed.

10           Sec. 6. A transfer on death deed is revocable even if the  
11 deed or another instrument contains a contrary provision.

12           Sec. 7. A transfer on death deed is nontestamentary.

13           Sec. 8. The capacity required to make or revoke a  
14 transfer on death deed is the same as the capacity required to make  
15 a will.

16           Sec. 9. A transfer on death deed:

17           (1) Except as otherwise provided in subdivision (2) of  
18 this section, must contain the essential elements and formalities  
19 of a properly recordable inter vivos deed;

20           (2) Must state that the transfer to the designated  
21 beneficiary is to occur at the transferor's death; and

22           (3) Must be recorded before the transferor's death in the  
23 public records in the office of the register of deeds of the county  
24 where the property is located.

25           Sec. 10. A transfer on death deed is effective without:

1           (1) Notice or delivery to or acceptance by the designated  
2 beneficiary during the transferor's life; or

3           (2) Consideration.

4           Sec. 11. (a) Subject to subsection (b) of this section,  
5 an instrument is effective to revoke a recorded transfer on death  
6 deed, or any part of it, only if the instrument:

7           (1) Is one of the following:

8           (A) A transfer on death deed that revokes the deed or  
9 part of the deed expressly or by inconsistency;

10           (B) An instrument of revocation that expressly revokes  
11 the deed or part of the deed; or

12           (C) An inter vivos deed that expressly revokes the  
13 transfer on death deed or part of the deed; and

14           (2) Is acknowledged by the transferor after the  
15 acknowledgement of the deed being revoked and recorded before the  
16 transferor's death in the public records in the office of the  
17 register of deeds of the county where the deed is recorded.

18           (b) If a transfer on death deed is made by more than one  
19 transferor:

20           (1) Revocation by a transferor does not affect the deed  
21 as to the interest of another transferor; and

22           (2) A deed of joint owners is revoked only if it is  
23 revoked by all of the living joint owners.

24           (c) After a transfer on death deed is recorded, it may  
25 not be revoked by a revocatory act on the deed.

1           (d) This section does not limit the effect of an inter  
2 vivos transfer of the property.

3           Sec. 12. During a transferor's life, a transfer on death  
4 deed does not:

5           (1) Affect an interest or right of the transferor or  
6 any other owner, including the right to transfer or encumber the  
7 property;

8           (2) Affect an interest or right of a transferee, even if  
9 the transferee has actual or constructive notice of the deed;

10           (3) Affect an interest or right of a secured or unsecured  
11 creditor or future creditor of the transferor, even if the creditor  
12 has actual or constructive notice of the deed;

13           (4) Affect the transferor's or designated beneficiary's  
14 eligibility for any form of public assistance;

15           (5) Create a legal or equitable interest in favor of the  
16 designated beneficiary; or

17           (6) Subject the property to claims or process of a  
18 creditor of the designated beneficiary.

19           Sec. 13. (a) Except as otherwise provided in the transfer  
20 on death deed, in this section, or in sections 30-2313 to 30-2319  
21 (elective share of surviving spouse), section 30-2354, or the  
22 Uniform Simultaneous Death Act, on the death of the transferor, the  
23 following rules apply to property that is the subject of a transfer  
24 on death deed and owned by the transferor at death:

25           (1) Subject to subdivision (2) of this subsection,

1 the interest in the property is transferred to the designated  
2 beneficiary in accordance with the deed;

3 (2) The interest of a designated beneficiary is  
4 contingent on the designated beneficiary surviving the transferor  
5 by one hundred twenty hours. If the deed provides for a different  
6 survival period, the deed shall determine the survival requirement  
7 for beneficiaries. The interest of a designated beneficiary that  
8 fails to survive the transferor by one hundred twenty hours or as  
9 otherwise provided in the deed lapses;

10 (3) Affect an interest or right of a secured or unsecured  
11 creditor or future creditor of the transferor, even if the creditor  
12 has actual or constructive notice of the deed; and

13 (4) If the transferor has identified two or more  
14 designated beneficiaries to receive concurrent interests in the  
15 property, the share of one which lapses or fails for any reason  
16 is transferred to the other, or to the others in proportion to  
17 the interest of each in the remaining part of the property held  
18 concurrently.

19 (b) Subject to sections 23-1501 to 23-1527, a beneficiary  
20 takes the property subject to all conveyances, encumbrances,  
21 assignments, contracts, mortgages, liens, and other interests to  
22 which the property is subject at the transferor's death. For  
23 purposes of this subsection and sections 23-1501 to 23-1527, the  
24 recording of the transfer on death deed is deemed to have occurred  
25 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  
3 property that is the subject of a transfer on death deed belongs to  
4 the surviving joint owner or owners with right of survivorship; or

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

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

10           (e) If after recording a transfer on death deed the  
11 transferor is divorced or his or her marriage is dissolved  
12 or annulled, the divorce, dissolution, or annulment revokes any  
13 disposition or appointment of property made by the transfer on  
14 death deed to the former spouse unless the transfer on death  
15 deed expressly provides otherwise. Property prevented from passing  
16 to a former spouse under a transfer on death deed because of  
17 revocation by divorce, dissolution, or annulment passes as if the  
18 former spouse failed to survive the transferor. For purposes of  
19 this section, divorce, dissolution, or annulment means any divorce,  
20 dissolution, or annulment which would exclude the spouse as a  
21 surviving spouse within the meaning of section 30-2353. A decree of  
22 separation which does not terminate the status of husband and wife  
23 is not a divorce for purposes of this section.

24           Sec. 14. A beneficiary may disclaim all or part of the  
25 beneficiary's interest as provided by section 30-2352.

1           Sec. 15. (1) If other assets of the estate of the  
2 transferor are insufficient to pay all claims against the  
3 transferor's estate and statutory allowances to the transferor's  
4 surviving spouse and children, a transfer resulting from a  
5 beneficiary designation under the Nebraska Uniform Real Property  
6 Transfer on Death Act is not effective against the estate of a  
7 transferor to the extent needed to pay all claims against the  
8 transferor's estate and statutory allowances to the transferor's  
9 surviving spouse and children.

10           (2)(a) A beneficiary who receives property through a  
11 transfer on death deed upon the death of the transferor is liable  
12 to account to the personal representative of the transferor's  
13 estate for a proportionate share of the fair market value of  
14 the equity in the interest received to the extent necessary to  
15 discharge the claims and allowances described in subsection (1) of  
16 this section remaining unpaid after application of the transferor's  
17 estate. For purposes of this subdivision (a), the fair market value  
18 shall be determined as of the date of death of the transferor. For  
19 purposes of this subdivision (a), the beneficiary's proportionate  
20 share means the proportionate share of all nonprobate transfers  
21 recovered by the personal representative for the payment of the  
22 claims and allowances under the Nebraska Uniform Real Property  
23 Transfer on Death Act and sections 30-2726, 30-2743, and 30-3850.

24           (b) A proceeding to assert the liability for claims  
25 against the estate and statutory allowances may not be commenced



1 unless the personal representative has received a written demand by  
2 the surviving spouse, a creditor, a child, or a person acting for  
3 a child of the transferor. The proceeding must be commenced within  
4 one year after the death of the transferor.

5 (3) A beneficiary against whom a proceeding to account is  
6 brought may join as a party to the proceeding a surviving party  
7 or beneficiary of any other transfer on death deed for the same  
8 transferor or any other asset of the transferor subject to sections  
9 30-2726, 30-2743, and 30-3850.

10 (4) Assets recovered by the personal representative  
11 pursuant to this section shall be administered as part of the  
12 transferor's estate.

13 (5) Nothing in this section shall be construed to limit  
14 the rights of creditors under other laws of this state.

15 Sec. 16. Real property shall be subject to recovery of  
16 medical assistance paid as provided in section 68-919 even if a  
17 transfer on death deed is recorded. The right to recover applies  
18 to medical assistance provided before, at the same time as, or  
19 after the signing of and the recording of the transfer on death  
20 deed. Upon the death of the transferor, the beneficiary may notify  
21 the Department of Health and Human Services of the death of the  
22 transferor and provide to the department a certified copy of the  
23 death certificate of the transferor. A copy of the notice to the  
24 department and of the certified copy of the death certificate  
25 may be recorded with the register of deeds. The department shall

1 record a statement of the amount of recoverable medical assistance,  
2 and if the amount is zero, the department shall so state, within  
3 sixty days after notice has been sent to the department. If  
4 the department fails to record such a statement during that  
5 sixty-day period, recovery under section 68-919 is waived. If the  
6 department's statement shows that no medical assistance has been  
7 provided, then the department may instead mail the statement to  
8 the beneficiary. The cost of recording the department's statement  
9 shall be added to the medical assistance amount to be recovered. If  
10 the medical assistance amount has not been paid to the department  
11 within one hundred twenty days after the department has recorded  
12 the statement, the department may foreclose upon the property in  
13 the same manner as provided for a mortgage. The amount of the  
14 medical assistance recovery by the department shall be superior to  
15 the title of the beneficiary. If husband and wife are joint owners  
16 of a piece of real property that has a transfer on death deed,  
17 the notification by the beneficiary shall not be made until both  
18 husband and wife have died. If there are joint owners other than  
19 spouses, the notification shall not be made until all joint owners  
20 who signed the transfer on death deed have died.

21           Sec. 17. A contract to make a transfer on death deed,  
22 or not to revoke a transfer on death deed, if executed after the  
23 operative date of this act, can be established only by a writing  
24 signed by the transferor evidencing the contract.

25           Sec. 18. The following form may be used to create a

1 transfer on death deed. The other provisions of the Nebraska  
2 Uniform Real Property Transfer on Death Act govern the effect of  
3 this or any other instrument used to create a transfer on death  
4 deed:

5 (front of form)

6 REVOCABLE TRANSFER ON DEATH DEED

7 NOTICE TO OWNER

8 You should carefully read all information on the other  
9 side of this form. You May Want to Consult a Lawyer Before Using  
10 This Form. If you are married and both spouses do not sign this  
11 deed, the deed may be void.

12 This form must be recorded before your death, or it will  
13 not be effective.

14 IDENTIFYING INFORMATION

15 Owner or Owners Making This Deed:

16 .....

17 .....

18 Printed name .....

19 Mailing address .....

20 Printed name .....

21 Mailing address .....

22 Legal description of the property:

23 .....

24 PRIMARY BENEFICIARY

25 I designate the following beneficiary if the beneficiary

1 survives me.

2 Printed name .....

3 Mailing address, if available .....

4 ALTERNATE BENEFICIARY - Optional

5 If my primary beneficiary does not survive me, I

6 designate the following alternate beneficiary if that beneficiary

7 survives me.

8 Printed name .....

9 Mailing address, if available .....

10 TRANSFER ON DEATH

11 At my death, I transfer my interest in the described

12 property to the beneficiaries as designated above.

13 Before my death, I have the right to revoke this deed.

14 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

15 .....

16 (SEAL) .....

17 Signature .....

18 Date .....

19 (SEAL) .....

20 Signature .....

21 Date .....

22 ACKNOWLEDGEMENT

23 (insert acknowledgement for deed here)

24 (back of form)

25 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

1           What does the Transfer on Death (TOD) deed do? When you  
2 die, this deed transfers the described property, subject to any  
3 liens or mortgages (or other encumbrances) on the property at your  
4 death. Probate is not required. The TOD deed has no effect until  
5 you die. You can revoke it at any time. You are also free to  
6 transfer the property to someone else during your lifetime. If you  
7 do not own any interest in the property when you die, this deed  
8 will have no effect.

9           How do I make a TOD deed? Complete this form. Have it  
10 acknowledged before a notary public or other individual authorized  
11 by law to take acknowledgements. Record the form in each county  
12 where any part of the property is located. The form has no effect  
13 unless it is acknowledged and recorded before your death.

14           Is the "legal description" of the property necessary?  
15 Yes.

16           How do I find the "legal description" of the property?  
17 This information may be on the deed you received when you became  
18 an owner of the property. This information may also be available  
19 in the office of the register of deeds for the county where the  
20 property is located. If you are not absolutely sure, consult a  
21 lawyer.

22           Can I change my mind before I record the TOD deed? Yes.  
23 If you have not yet recorded the deed and want to change your mind,  
24 simply tear up or otherwise destroy the deed.

25           How do I "record" the TOD deed? Take the completed and

1 acknowledged form to the office of the register of deeds of the  
2 county where the property is located. Follow the instructions given  
3 by the register of deeds to make the form part of the official  
4 property records. If the property is in more than one county, you  
5 should record the deed in each county.

6 Can I later revoke the TOD deed if I change my mind? Yes.  
7 You can revoke the TOD deed. No one, including the beneficiaries,  
8 can prevent you from revoking the deed.

9 How do I revoke the TOD deed after it is recorded? There  
10 are three ways to revoke a recorded TOD deed: (1) Complete and  
11 acknowledge a revocation form, and record it in each county where  
12 the property is located. (2) Complete and acknowledge a new TOD  
13 deed that disposes of the same property, and record it in each  
14 county where the property is located. (3) Transfer the property to  
15 someone else during your lifetime by a recorded deed that expressly  
16 revokes the TOD deed. You may not revoke the TOD deed by will.

17 I am being pressured to complete this form. What should  
18 I do? Do not complete this form under pressure. Seek help from a  
19 trusted family member, friend, or lawyer.

20 Do I need to tell the beneficiaries about the TOD deed?  
21 No, but it is recommended. Secrecy can cause later complications  
22 and might make it easier for others to commit fraud.

23 I have other questions about this form. What should I do?  
24 This form is designed to fit some but not all situations. If you  
25 have other questions, you are encouraged to consult a lawyer.

1           Sec. 19. The following form may be used to create an  
 2 instrument of revocation under the Nebraska Uniform Real Property  
 3 Transfer on Death Act. The other provisions of the act govern the  
 4 effect of this or any other instrument used to revoke a transfer on  
 5 death deed.

6           (front of form)

7           REVOCATION OF TRANSFER ON DEATH DEED

8           NOTICE TO OWNER

9           This revocation must be recorded before you die or it  
 10 will not be effective. This revocation is effective only as to the  
 11 interests in the property of owners who sign this revocation.

12           IDENTIFYING INFORMATION

13           Owner or Owners of Property Making This Revocation:

14           .....

15           .....

16           Printed name .....

17           Mailing address .....

18           Printed name .....

19           Mailing address .....

20           Legal description of the property:

21           .....

22           REVOCATION

23           I revoke all my previous transfers of this property by  
 24 transfer on death deed.

25           SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

1 .....  
.....

2 (SEAL) .....

3 Signature .....

4 Date .....

5 (SEAL) .....

6 Signature .....

7 Date .....

8 ACKNOWLEDGEMENT

9 (insert acknowledgement here)

10 (back of form)

11 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

12 How do I use this form to revoke a Transfer on  
13 Death (TOD) deed? Complete this form. Have it acknowledged  
14 before a notary public or other individual authorized to take  
15 acknowledgements. Record the form in the public records in the  
16 office of the register of deeds of each county where the property  
17 is located. The form must be acknowledged and recorded before your  
18 death or it has no effect.

19 How do I find the "legal description" of the property?  
20 This information may be on the TOD deed. It may also be available  
21 in the office of the register of deeds for the county where the  
22 property is located. If you are not absolutely sure, consult a  
23 lawyer.

24 How do I "record" the form? Take the completed and  
25 acknowledged form to the office of the register of deeds of the



1 county where the property is located. Follow the instructions given  
2 by the register of deeds to make the form part of the official  
3 property records. If the property is located in more than one  
4 county, you should record the form in each of those counties.

5 I am being pressured to complete this form. What should  
6 I do? Do not complete this form under pressure. Seek help from a  
7 trusted family member, friend, or lawyer.

8 I have other questions about this form. What should I do?  
9 This form is designed to fit some but not all situations. If you  
10 have other questions, consult a lawyer.

11 Sec. 20. In applying and construing the Nebraska Uniform  
12 Real Property Transfer on Death Act, consideration must be given  
13 to the need to promote uniformity of the law with respect to its  
14 subject matter among the states that enact it.

15 Sec. 21. The Nebraska Uniform Real Property Transfer on  
16 Death Act modifies, limits, and supersedes the federal Electronic  
17 Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et  
18 seq., but does not modify, limit, or supersede section 101(c) of  
19 that act, 15 U.S.C. 7001(c), or authorize electronic delivery of  
20 any of the notices described in section 103(b) of that act, 15  
21 U.S.C. 7003(b).

22 Sec. 22. Section 30-2352, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24 30-2352 (a)(1) A person (or the representative of a  
25 deceased, incapacitated, or protected person) who is an heir,

1 devisee, person succeeding to a renounced interest, donee,  
2 beneficiary under a testamentary or nontestamentary instrument,  
3 donee of a power of appointment, grantee, surviving joint owner  
4 or surviving joint tenant, beneficiary, or owner of an insurance  
5 contract or any incident of ownership therein, beneficiary or  
6 person designated to take pursuant to a power of appointment  
7 exercised by a testamentary or nontestamentary instrument, person  
8 who has a statutory entitlement to or election with respect  
9 to property pursuant to the Nebraska Probate Code, designated  
10 beneficiary of a transfer on death deed, or recipient of any  
11 beneficial interest under any testamentary or nontestamentary  
12 instrument, may renounce in whole or in part, or with reference  
13 to specific parts, fractional shares, undivided portions or assets  
14 thereof, by filing a written instrument of renunciation within the  
15 time and at the place hereinafter provided.

16 (2) The instrument shall (i) describe the property or  
17 part thereof or the interest therein renounced, (ii) be signed  
18 and acknowledged by the person renouncing in the manner provided  
19 for in the execution of deeds of real estate, (iii) declare the  
20 renunciation and the extent thereof, and (iv) declare that the  
21 renunciation is an irrevocable and unqualified refusal to accept  
22 the renounced interest.

23 (3) The appropriate court in a proceeding under section  
24 30-3812, may direct or permit a trustee under a testamentary  
25 or nontestamentary instrument to renounce any restriction on or

1 power of administration, management, or allocation of benefit upon  
2 finding that such restrictions on the exercise of such power may  
3 defeat or impair the accomplishment of the purposes of the trust  
4 whether by the imposition of tax or the allocation of beneficial  
5 interest inconsistent with such purposes or by other reason. Such  
6 authority shall be exercised after hearing and upon notice to  
7 qualified beneficiaries as defined in section 30-3803, in the  
8 manner directed by the court.

9 (b) The instrument specified in (a)(1) and (a)(2) must  
10 be received by the transferor of the interest, his or her  
11 legal representative, the personal representative of a deceased  
12 transferor, the trustee of any trust in which the interest being  
13 renounced exists, or the holder of the legal title to the property  
14 to which the interest relates. To be effective for purposes of  
15 determining inheritance and estate taxes under articles 20 and 21  
16 of Chapter 77, the instrument must be received not later than the  
17 date which is nine months after the later of (i) the date on  
18 which the transfer creating the interest in such person is made,  
19 or (ii) the date on which such person attains age twenty-one. If  
20 the circumstances which establish the right of a person to renounce  
21 an interest arise as a result of the death of an individual,  
22 the instrument shall also be filed in the court of the county  
23 where proceedings concerning the decedent's estate are pending,  
24 or where they would be pending if commenced. If an interest in  
25 real estate is renounced, a copy of the instrument shall also be

1 recorded in the office of the register of deeds in the county  
2 in which the real estate lies. No person entitled to a copy of  
3 the instrument shall be liable for any proper distribution or  
4 disposition made without actual notice of the renunciation and no  
5 such person making a proper distribution or disposition in reliance  
6 upon the renunciation shall be liable for any such distribution or  
7 disposition in the absence of actual notice that an action has been  
8 instituted contesting the validity of the renunciation.

9 (c) Unless the transferor of the interest has otherwise  
10 indicated in the instrument creating the interest, the interest  
11 renounced, and any future interest which is to take effect in  
12 possession or enjoyment at or after the termination of the interest  
13 renounced, passes as if the person renouncing had predeceased the  
14 decedent or had died prior to the date on which the transfer  
15 creating the interest in such person is made, as the case may  
16 be, if the renunciation is within the time periods set forth in  
17 subsection (b) and if not within such time periods the interest  
18 renounced, and any future interest which is to take effect in  
19 possession or enjoyment at or after the termination of the interest  
20 renounced, passes as if the person renouncing had died on the  
21 date the interest was renounced. The person renouncing shall have  
22 no power to direct how the interest being renounced shall pass,  
23 except that the renunciation of an interest for which the right  
24 to renounce was established by the death of an individual shall,  
25 in the case of the spouse of the decedent, relate only to that

1 statutory provision or that provision of the instrument creating  
2 the interest being renounced and shall not preclude the spouse  
3 from receiving the benefits of the renounced interest which may be  
4 derived as a result of the renounced interest passing pursuant to  
5 other statutory provisions or pursuant to other provisions of the  
6 instrument creating the interest unless such further benefits are  
7 also renounced. In every case when the renunciation is within the  
8 time periods set forth in subsection (b) the renunciation relates  
9 back for all purposes to the date of death of the decedent or the  
10 date on which the transfer creating the interest in such person is  
11 made, as the case may be.

12 (d) Any (1) assignment, conveyance, encumbrance, pledge,  
13 or transfer of property therein or any contract therefor, (2)  
14 written waiver of the right to renounce or any acceptance of  
15 property or benefits therefrom or an interest therein by an  
16 heir, devisee, person succeeding to a renounced interest, donee,  
17 beneficiary under a testamentary or nontestamentary instrument,  
18 donee of a power of appointment, grantee, surviving joint owner  
19 or surviving joint tenant, beneficiary or owner of an insurance  
20 contract or any incident of ownership therein, beneficiary or  
21 person designated to take pursuant to a power of appointment  
22 exercised by a testamentary or nontestamentary instrument, person  
23 who has a statutory entitlement to or election with respect to  
24 property pursuant to the Nebraska Probate Code, or recipient of  
25 any beneficial interest under any testamentary or nontestamentary

1 instrument, or (3) sale or other disposition of property pursuant  
2 to judicial process, made within the time periods set forth in  
3 subsection (b) shall not bar the right to renounce, but shall  
4 make a subsequent renunciation within the time period set forth  
5 in subsection (b) of this section ineffective for purposes of  
6 determination of inheritance and estate taxes under articles 20 and  
7 21 of Chapter 77.

8 (e) Within thirty days of receipt of a written instrument  
9 of renunciation by the transferor of the interest, his or her legal  
10 representative, the personal representative of the decedent, the  
11 trustee of any trust in which the interest being renounced exists,  
12 or the holder of the legal title to the property to which the  
13 interest relates, as the case may be, such person shall attempt  
14 to notify in writing those persons who are known or ascertainable  
15 with reasonable diligence who shall be recipients or potential  
16 recipients of the renounced interest of the renunciation and the  
17 interest or potential interest such recipient shall receive as a  
18 result of the renunciation.

19 (f) The right to renounce granted by this section exists  
20 irrespective of any limitation on the interest of the person  
21 renouncing in the nature of a spendthrift provision or similar  
22 restriction. A trust beneficiary whose interest is subject to any  
23 limitation in the nature of a spendthrift provision or similar  
24 restriction may assign, sell, or otherwise convey such interest or  
25 any part thereof upon a finding by a court in a proceeding under

1 section 30-3812 that the rights of other beneficiaries would not  
2 be impaired and that such assignment, sale, or other conveyance  
3 would not result in any substantial benefit to nonbeneficiaries  
4 of the trust at the expense of the trust or trust beneficiaries.  
5 Such finding may be made after hearing and upon notice to all  
6 known persons beneficially interested in such trust, in the manner  
7 directed by the court.

8 (g) This section does not abridge the right of any person  
9 to assign, convey, release, or renounce any property arising under  
10 any other section of this code or other statute.

11 (h) Any interest in property which exists on July 19,  
12 1980, may be renounced after July 19, 1980, as provided herein. An  
13 interest which has arisen prior to July 19, 1980, in any person  
14 other than the person renouncing is not destroyed or diminished by  
15 any action of the person renouncing taken under this section.

16 Sec. 23. Section 30-2354, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18 30-2354 (a) A surviving spouse, heir or devisee who  
19 feloniously and intentionally kills or aids and abets the killing  
20 of the decedent is not entitled to any benefits under the will  
21 or under this article, and the estate of the decedent passes as  
22 if such spouse, heir, or devisee had predeceased the decedent.  
23 Property appointed by the will of the decedent to or for the  
24 benefit of such devisee passes as if the devisee had predeceased  
25 the decedent.

1           (b) Any joint tenant who feloniously and intentionally  
2 kills or aids and abets the killing of another joint tenant thereby  
3 effects a severance of the interest of the decedent so that the  
4 share of the decedent passes as his property and such joint tenant  
5 has no rights by survivorship. This provision applies to joint  
6 tenancies and tenancies by the entirety in real and personal  
7 property, joint accounts in banks, savings and loan associations,  
8 credit unions and other institutions, and any other form of  
9 co-ownership with survivorship incidents.

10           (c) A named beneficiary of a bond, life insurance policy,  
11 or other contractual arrangement who feloniously and intentionally  
12 kills or aids and abets the killing of the principal obligee  
13 or the individual upon whose life the policy is issued is not  
14 entitled to any benefit under the bond, policy or other contractual  
15 arrangement, and it becomes payable as though such beneficiary has  
16 predeceased the decedent.

17           (d) Real property conveyed to a beneficiary of a transfer  
18 on death deed who feloniously and intentionally kills or aids and  
19 abets the killing of the transferor who signed the transfer on  
20 death deed or any other owner of the real property shall pass as if  
21 the beneficiary had predeceased the transferor.

22           ~~(d)~~ (e) Any other acquisition of property or interest by  
23 the killer or by one who aids and abets the killer is treated in  
24 accordance with the principles of this section.

25           ~~(e)~~ (f) A final judgment of conviction of felonious and



1 intentional killing or aiding and abetting therein is conclusive  
2 for purposes of this section. In the absence of a conviction of  
3 felonious and intentional killing or aiding and abetting therein,  
4 the court may determine by a preponderance of evidence whether  
5 the killing or aiding and abetting therein was felonious and  
6 intentional for purposes of this section.

7           ~~(f)~~ (g) This section does not affect the rights of any  
8 person who, before rights under this section have been adjudicated,  
9 purchases, from the killer or aider and abettor for value and  
10 without notice, property which the killer or aider and abettor  
11 would have acquired except for this section, but the killer or  
12 aider and abettor is liable for the amount of the proceeds or  
13 the value of the property. Any insurance company, bank, or other  
14 obligor making payment according to the terms of its policy or  
15 obligation is not liable by reason of this section unless prior to  
16 payment it has received at its home office or principal address  
17 written notice of a claim under this section.

18           Sec. 24. Section 76-902, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20           76-902 The tax imposed by section 76-901 shall not apply  
21 to:

22           (1) Deeds recorded prior to November 18, 1965;

23           (2) Deeds to property transferred by or to the United  
24 States of America, the State of Nebraska, or any of their agencies  
25 or political subdivisions;

1           (3) Deeds which secure or release a debt or other  
2 obligation;

3           (4) Deeds which, without additional consideration,  
4 confirm, correct, modify, or supplement a deed previously recorded  
5 but which do not extend or limit existing title or interest;

6           (5) (a) Deeds between husband and wife, or parent and  
7 child, without actual consideration therefor, and (b) deeds to  
8 or from a family corporation, partnership, or limited liability  
9 company when all the shares of stock of the corporation or interest  
10 in the partnership or limited liability company are owned by  
11 members of a family, or a trust created for the benefit of a  
12 member of that family, related to one another within the fourth  
13 degree of kindred according to the rules of civil law, and their  
14 spouses, for no consideration other than the issuance of stock  
15 of the corporation or interest in the partnership or limited  
16 liability company to such family members or the return of the  
17 stock to the corporation in partial or complete liquidation of  
18 the corporation or deeds in dissolution of the interest in the  
19 partnership or limited liability company. In order to qualify for  
20 the exemption for family corporations, partnerships, or limited  
21 liability companies, the property shall be transferred in the name  
22 of the corporation or partnership and not in the name of the  
23 individual shareholders, partners, or members;

24           (6) Tax deeds;

25           (7) Deeds of partition;

1           (8) Deeds made pursuant to mergers, consolidations,  
2 sales, or transfers of the assets of corporations pursuant to  
3 plans of merger or consolidation filed with the office of Secretary  
4 of State. A copy of such plan filed with the Secretary of State  
5 shall be presented to the register of deeds before such exemption  
6 is granted;

7           (9) Deeds made by a subsidiary corporation to its parent  
8 corporation for no consideration other than the cancellation or  
9 surrender of the subsidiary's stock;

10           (10) Cemetery deeds;

11           (11) Mineral deeds;

12           (12) Deeds executed pursuant to court decrees;

13           (13) Land contracts;

14           (14) Deeds which release a reversionary interest, a  
15 condition subsequent or precedent, a restriction, or any other  
16 contingent interest;

17           (15) Deeds of distribution executed by a personal  
18 representative conveying to devisees or heirs property passing by  
19 testate or intestate succession;

20           (16) Transfer on death deeds;

21           ~~(16)~~ (17) Deeds transferring property located within the  
22 boundaries of an Indian reservation if the grantor or grantee is a  
23 reservation Indian;

24           ~~(17)~~ (18) Deeds transferring property into a trust if the  
25 transfer of the same property would be exempt if the transfer was

1 made directly from the grantor to the beneficiary or beneficiaries  
2 under the trust. No such exemption shall be granted unless the  
3 register of deeds is presented with a signed statement certifying  
4 that the transfer of the property is made under such circumstances  
5 as to come within one of the exemptions specified in this section  
6 and that evidence supporting the exemption is maintained by the  
7 person signing the statement and is available for inspection by the  
8 Department of Revenue;

9 ~~(18)~~ (19) Deeds transferring property from a trustee to a  
10 beneficiary of a trust;

11 ~~(19)~~ (20) Deeds which convey property held in the name  
12 of any partnership or limited liability company not subject to  
13 subdivision (5) of this section to any partner in the partnership  
14 or member of the limited liability company or to his or her spouse;

15 ~~(20)~~ (21) Leases;

16 ~~(21)~~ (22) Easements; or

17 ~~(22)~~ (23) Deeds which transfer title from a trustee to  
18 a beneficiary pursuant to a power of sale exercised by a trustee  
19 under a trust deed.

20 Sec. 25. This act becomes operative on January 1, 2011.

21 Sec. 26. Original sections 30-2352, 30-2354, and 76-902,  
22 Reissue Revised Statutes of Nebraska, are repealed.