

AMENDMENTS TO LB788

Introduced by Schumacher

1 1. Strike the original sections and insert the following
2 new sections:

3 Section 1. Section 30-2201, Revised Statutes Cumulative
4 Supplement, 2012, is amended to read:

5 30-2201 Sections 30-2201 to 30-2902, 30-3901 to 30-3923,
6 and 30-4001 to 30-4045 and section 2 of this act shall be known and
7 may be cited as the Nebraska Probate Code.

8 Sec. 2. (1) For purposes of this section:

9 (a) Custodian means a bank, savings and loan association,
10 credit union, or other institution acting as a lessor of a safe
11 deposit box; and

12 (b) Representative of a custodian means an authorized
13 officer or employee of a custodian.

14 (2) (a) If a decedent at the time of his or her death
15 was a sole or last surviving joint lessee of a safe deposit box,
16 the custodian shall, prior to notice that a personal representative
17 or special administrator has been appointed for such decedent's
18 estate, allow access to the safe deposit box to determine whether
19 the safe deposit box contains an instrument that appears to be an
20 original will of the decedent, a deed to a burial plot, or burial
21 instructions. The following persons may have such access:

22 (i) A person who presents an affidavit described in
23 subsection (4) of this section that affiant reasonably believes

1 that he or she is either (A) an heir at law of the decedent,
2 (B) a devisee of the decedent or a person nominated as a personal
3 representative as shown in a photocopy of a will which is attached
4 to such affidavit, or (C) the agent or attorney specifically
5 authorized in writing by a person described in subdivision
6 (2) (a) (i) (A) or (B) of this section; or

7 (ii) A person who, under the terms of the safe deposit
8 box lease or a power of attorney at the time of the decedent's
9 death, was legally permitted to enter the safe deposit box, unless
10 otherwise provided by the lease or the power of attorney.

11 (b) If a person described in subdivision (2) (a) of this
12 section desires access to a safe deposit box but does not possess
13 a key to the box, the custodian may open the safe deposit box
14 by any means necessary at the person's request and expense or the
15 custodian may require the person to obtain a court order for the
16 custodian to open the safe deposit box at the requesting person's
17 expense. The custodian shall retain, in a secure location at such
18 person's expense, the contents of the box other than a purported
19 will, deed to a burial plot, and burial instructions. A custodian
20 shall deliver a purported will as described in subdivision (5) (b)
21 of this section. A person described in subdivision (2) (a) (i) of
22 this section may remove a deed to a burial plot and burial
23 instructions that are not part of a purported will pursuant to
24 subdivision (5) (d) of this section, and the custodian shall not
25 prevent the removal. Expenses incurred by a custodian or by the
26 person seeking the documents pursuant to this section shall be
27 considered an estate administration expense.

1 (3) A representative of the custodian shall be present
2 during the entry of a safe deposit box pursuant to this section.

3 (4) The affidavit referred to in subdivision (2) (a) (i) of
4 this section shall state:

5 (a) That the sole or last surviving lessor of a safe
6 deposit box has died and the date of his or her death, and a copy
7 of the death certificate shall be attached;

8 (b) If the person submitting the affidavit is an attorney
9 or agent of the affiant, that such appointment is for the purpose
10 of accompanying the opening of the safe deposit box. In lieu of
11 this statement, the appointment shall accompany the affidavit; and

12 (c) That the affiant:

13 (i) (A) Is an heir at law of the deceased lessor and a
14 description of such person's relationship to the deceased lessor;

15 (B) Is reasonably thought to be a devisee of the decedent
16 based on the provisions of a will, a photocopy of which is
17 submitted with the affidavit; or

18 (C) Is reasonably thought to be nominated as personal
19 representative pursuant to the terms of a will, a photocopy of
20 which is submitted with the affidavit;

21 (ii) Swears or affirms that all statements in the
22 affidavit are true and material and further acknowledges that
23 any false statement may subject the person to penalties relating to
24 perjury under section 28-915; and

25 (iii) Has no knowledge of an application or petition for
26 the appointment of a personal representative pending or granted in
27 any jurisdiction.

1 (5) (a) If an instrument purporting to be a will is found
2 in a safe deposit box as the result of an entry pursuant to
3 subsection (2) of this section, the representative of the custodian
4 shall remove the purported will.

5 (b) The custodian shall mail the purported will by
6 registered or certified mail or deliver the purported will in
7 person to the clerk of the county court of the county in which the
8 decedent was a resident. If the custodian is unable to determine
9 the county of residence of the decedent, the custodian shall mail
10 the purported will by registered or certified mail or deliver the
11 purported will in person to the office of the clerk of the county
12 court of the county in which the safe deposit box is located.

13 (c) At the request of the person or persons authorized
14 to have access to the safe deposit box under subsection (2) of
15 this section, the representative of the custodian shall copy each
16 purported will of the decedent, at the expense of the requesting
17 person, and shall deliver the copy of each purported will to the
18 person, or if directed by the person, to the person's agent or
19 attorney. In copying any purported will, the representative of the
20 custodian shall not remove any staples or other fastening devices
21 or disassemble the purported will in any way.

22 (d) If the safe deposit box contains a deed to a burial
23 plot or burial instructions that are not a part of a purported
24 will, the person or persons authorized to have access to the safe
25 deposit box under subsection (2) of this section may remove these
26 instruments or request that the representative of the custodian
27 copy the deed to the burial plot or burial instructions at the

1 expense of the requesting person.

2 (6) This section does not limit the right of a personal
3 representative or a special administrator for the decedent, or a
4 successor of the decedent pursuant to section 30-24,125, to have
5 access to the safe deposit box as otherwise provided by law.

6 (7) Unless limited by the safe deposit box lease, a
7 surviving co-lessee of the safe deposit box may continue to enter
8 the safe deposit box notwithstanding the death of the decedent.

9 (8) A custodian shall not be liable to a person for an
10 action taken pursuant to this section or for a failure to act in
11 accordance with the requirements of this section unless the action
12 or failure to act is shown to have resulted from the custodian's
13 bad faith, gross negligence, or intentional misconduct.

14 Sec. 3. The Revisor of Statutes shall assign section 2 of
15 this act within Chapter 30, article 24, part 1.

16 Sec. 4. Original section 30-2201, Revised Statutes
17 Cumulative Supplement, 2012, is repealed.