

AMENDMENTS TO LB72

Introduced by Schumacher, 22.

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

3 Section 1. Section 30-3880, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 30-3880 (UTC 815) (a) A trustee, without authorization by the court,
6 may exercise:

7 (1) powers conferred by the terms of the trust; and

8 (2) except as limited by the terms of the trust:

9 (A) all powers over the trust property which an unmarried competent
10 owner has over individually owned property;

11 (B) any other powers appropriate to achieve the proper investment,
12 management, and distribution of the trust property; and

13 (C) any other powers conferred by the Nebraska Uniform Trust Code.

14 (b) The exercise of a power is subject to the fiduciary duties
15 prescribed by sections 30-3866 to 30-3882.

16 (c) After the death of the trustor occurring after the effective
17 date of this act, a trustee of a revocable trust which has become
18 irrevocable by reason of the death of the trustor shall not transfer
19 trust property to a beneficiary described in section 77-2004 or 77-2005
20 in relation to the trustor prior to satisfaction of all claims for
21 medicaid reimbursement pursuant to section 68-919 to the extent necessary
22 to discharge any such claim remaining unpaid after application of the
23 assets of the trustor's probate estate. The Department of Health and
24 Human Services may, upon application of a trustee, waive the restriction
25 on transfers established by this subsection in cases in which the
26 department determines that either there is no medicaid reimbursement due
27 or after the proposed transfer is made there will be sufficient assets

1 remaining in the trust or trustor's probate estate to satisfy all such
2 claims for medicaid reimbursement. If there is no medicaid reimbursement
3 due, the department shall waive the restriction within sixty days after
4 receipt of the trustee's request for waiver and the deceased trustor's
5 name and social security number and, if available upon reasonable
6 investigation, the name and social security number of the trustor's
7 spouse if such spouse is deceased. A trustee who is a financial
8 institution as defined in section 77-3801, a trust company chartered
9 pursuant to the Nebraska Trust Company Act, or an attorney licensed to
10 practice in this state may distribute assets from the trust prior to the
11 receipt of the waiver from the department if the trustee signs a recital
12 under oath and mailed by certified mail to the department that states the
13 decedent's name and social security number and, if available upon
14 reasonable investigation, the name and social security number of the
15 decedent's spouse if such spouse is deceased, and that the trustor was
16 not a recipient of medical assistance and no claims for medical
17 assistance exist under section 68-919. A trustee who makes such a recital
18 knowing the recital is false becomes personally liable for medical
19 assistance reimbursement pursuant to section 68-919 to the extent of the
20 assets distributed from the trust necessary to discharge any such claim
21 remaining unpaid after application of the assets of the transferor's
22 probate estate.

23 Sec. 2. Section 30-3881, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 30-3881 (UTC 816) (a) Without limiting the authority conferred by
26 section 30-3880, a trustee may:

27 (1) collect trust property and accept or reject additions to the
28 trust property from a settlor or any other person;

29 (2) acquire or sell property, for cash or on credit, at public or
30 private sale;

31 (3) exchange, partition, or otherwise change the character of trust

1 property;

2 (4) deposit trust money in an account in a regulated financial-
3 service institution;

4 (5) borrow money, including from the trustee, with or without
5 security, and mortgage or pledge trust property for a period within or
6 extending beyond the duration of the trust;

7 (6) with respect to an interest in a proprietorship, partnership,
8 limited liability company, business trust, corporation, or other form of
9 business or enterprise, continue the business or other enterprise and
10 take any action that may be taken by shareholders, members, or property
11 owners, including merging, dissolving, or otherwise changing the form of
12 business organization or contributing additional capital;

13 (7) with respect to stocks or other securities, exercise the rights
14 of an absolute owner, including the right to:

15 (A) vote, or give proxies to vote, with or without power of
16 substitution, or enter into or continue a voting trust agreement;

17 (B) hold a security in the name of a nominee or in other form
18 without disclosure of the trust so that title may pass by delivery;

19 (C) pay calls, assessments, and other sums chargeable or accruing
20 against the securities, and sell or exercise stock subscription or
21 conversion rights; and

22 (D) deposit the securities with a depository or other regulated
23 financial-service institution;

24 (8) with respect to an interest in real property, construct, or make
25 ordinary or extraordinary repairs to, alterations to, or improvements in,
26 buildings or other structures, demolish improvements, raze existing or
27 erect new party walls or buildings, subdivide or develop land, dedicate
28 land to public use or grant public or private easements, and make or
29 vacate plats and adjust boundaries;

30 (9) enter into a lease for any purpose as lessor or lessee,
31 including a lease or other arrangement for exploration and removal of

1 natural resources, with or without the option to purchase or renew, for a
2 period within or extending beyond the duration of the trust;

3 (10) grant an option involving a sale, lease, or other disposition
4 of trust property or acquire an option for the acquisition of property,
5 including an option exercisable beyond the duration of the trust, and
6 exercise an option so acquired;

7 (11) insure the property of the trust against damage or loss and
8 insure the trustee, the trustee's agents, and beneficiaries against
9 liability arising from the administration of the trust;

10 (12) abandon or decline to administer property of no value or of
11 insufficient value to justify its collection or continued administration;

12 (13) with respect to possible liability for violation of
13 environmental law:

14 (A) inspect or investigate property the trustee holds or has been
15 asked to hold, or property owned or operated by an organization in which
16 the trustee holds or has been asked to hold an interest, for the purpose
17 of determining the application of environmental law with respect to the
18 property;

19 (B) take action to prevent, abate, or otherwise remedy any actual or
20 potential violation of any environmental law affecting property held
21 directly or indirectly by the trustee, whether taken before or after the
22 assertion of a claim or the initiation of governmental enforcement;

23 (C) decline to accept property into trust or disclaim any power with
24 respect to property that is or may be burdened with liability for
25 violation of environmental law;

26 (D) compromise claims against the trust which may be asserted for an
27 alleged violation of environmental law; and

28 (E) pay the expense of any inspection, review, abatement, or
29 remedial action to comply with environmental law;

30 (14) pay or contest any claim, settle a claim by or against the
31 trust, and release, in whole or in part, a claim belonging to the trust;

1 (15) pay taxes, assessments, compensation of the trustee and of
2 employees and agents of the trust, and other expenses incurred in the
3 administration of the trust;

4 (16) exercise elections with respect to federal, state, and local
5 taxes;

6 (17) select a mode of payment under any employee benefit or
7 retirement plan, annuity, or life insurance payable to the trustee,
8 exercise rights thereunder, including exercise of the right to
9 indemnification for expenses and against liabilities, and take
10 appropriate action to collect the proceeds;

11 (18) make loans out of trust property, including loans to a
12 beneficiary on terms and conditions the trustee considers to be fair and
13 reasonable under the circumstances, and the trustee has a lien on future
14 distributions for repayment of those loans;

15 (19) pledge trust property to guarantee loans made by others to the
16 beneficiary;

17 (20) appoint a trustee to act in another jurisdiction with respect
18 to trust property located in the other jurisdiction, confer upon the
19 appointed trustee all of the powers and duties of the appointing trustee,
20 require that the appointed trustee furnish security, and remove any
21 trustee so appointed;

22 (21) pay an amount distributable to a beneficiary who is under a
23 legal disability or who the trustee reasonably believes is incapacitated,
24 by paying it directly to the beneficiary or applying it for the
25 beneficiary's benefit, or by:

26 (A) paying it to the beneficiary's conservator or, if the
27 beneficiary does not have a conservator, the beneficiary's guardian;

28 (B) paying it to the beneficiary's custodian under the Nebraska
29 Uniform Transfers to Minors Act or custodial trustee under the Nebraska
30 Uniform Custodial Trust Act, and, for that purpose, creating a
31 custodianship or custodial trust;

1 (C) if the trustee does not know of a conservator, guardian,
2 custodian, or custodial trustee, paying it to an adult relative or other
3 person having legal or physical care or custody of the beneficiary, to be
4 expended on the beneficiary's behalf; or

5 (D) managing it as a separate fund on the beneficiary's behalf,
6 subject to the beneficiary's continuing right to withdraw the
7 distribution;

8 (22) on distribution of trust property or the division or
9 termination of a trust, make distributions in divided or undivided
10 interests, allocate particular assets in proportionate or
11 disproportionate shares, value the trust property for those purposes, and
12 adjust for resulting differences in valuation;

13 (23) resolve a dispute concerning the interpretation of the trust or
14 its administration by mediation, arbitration, or other procedure for
15 alternative dispute resolution;

16 (24) prosecute or defend an action, claim, or judicial proceeding in
17 any jurisdiction to protect trust property and the trustee in the
18 performance of the trustee's duties;

19 (25) sign and deliver contracts and other instruments that are
20 useful to achieve or facilitate the exercise of the trustee's powers; and

21 (26) on termination of the trust, exercise the powers appropriate to
22 wind up the administration of the trust and distribute the trust property
23 to the persons entitled to it.

24 (b) After the death of the trustor occurring after the effective
25 date of this act, a trustee of a revocable trust which has become
26 irrevocable by reason of the death of the trustor shall not transfer
27 trust property to a beneficiary described in section 77-2004 or 77-2005
28 in relation to the trustor prior to satisfaction of all claims for
29 medicaid reimbursement pursuant to section 68-919 to the extent necessary
30 to discharge any such claim remaining unpaid after application of the
31 assets of the trustor's probate estate. The Department of Health and

1 Human Services may, upon application of a trustee, waive the restriction
2 on transfers established by this subsection in cases in which the
3 department determines that either there is no medicaid reimbursement due
4 or after the proposed transfer is made there will be sufficient assets
5 remaining in the trust or trustor's probate estate to satisfy all such
6 claims for medicaid reimbursement. If there is no medicaid reimbursement
7 due, the department shall waive the restriction within sixty days after
8 receipt of the trustee's request for waiver and the deceased trustor's
9 name and social security number and, if available upon reasonable
10 investigation, the name and social security number of the trustor's
11 spouse if such spouse is deceased. A trustee who is a financial
12 institution as defined in section 77-3801, a trust company chartered
13 pursuant to the Nebraska Trust Company Act, or an attorney licensed to
14 practice in this state may distribute assets from the trust prior to the
15 receipt of the waiver from the department if the trustee signs a recital
16 under oath and mailed by certified mail to the department that states the
17 decedent's name and social security number and, if available upon
18 reasonable investigation, the name and social security number of the
19 decedent's spouse if such spouse is deceased, and that the trustor was
20 not a recipient of medical assistance and no claims for medical
21 assistance exist under section 68-919. A trustee who makes such a recital
22 knowing the recital is false becomes personally liable for medical
23 assistance reimbursement pursuant to section 68-919 to the extent of the
24 assets distributed from the trust necessary to discharge any such claim
25 remaining unpaid after application of the assets of the transferor's
26 probate estate.

27 Sec. 3. Section 30-3882, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 30-3882 (UTC 817) (a) ~~Upon~~ Except as limited in subsection (d) of
30 this section, upon termination or partial termination of a trust, the
31 trustee may send to the beneficiaries a proposal for distribution. The

1 right of any beneficiary to object to the proposed distribution
2 terminates if the beneficiary does not notify the trustee of an objection
3 within thirty days after the proposal was sent but only if the proposal
4 informed the beneficiary of the right to object and of the time allowed
5 for objection.

6 (b) ~~Upon~~ Except as limited in subsection (d) of this section, upon
7 the occurrence of an event terminating or partially terminating a trust,
8 the trustee shall proceed expeditiously to distribute the trust property
9 to the persons entitled to it, subject to the right of the trustee to
10 retain a reasonable reserve for the payment of debts, expenses, and
11 taxes.

12 (c) A release by a beneficiary of a trustee from liability for
13 breach of trust is invalid to the extent:

- 14 (1) it was induced by improper conduct of the trustee; or
15 (2) the beneficiary, at the time of the release, did not know of the
16 beneficiary's rights or of the material facts relating to the breach.

17 (d) After the death of the trustor occurring after the effective
18 date of this act, a trustee of a revocable trust which has become
19 irrevocable by reason of the death of the trustor shall not transfer
20 trust property to a beneficiary described in section 77-2004 or 77-2005
21 in relation to the trustor prior to satisfaction of all claims for
22 medicaid reimbursement pursuant to section 68-919 to the extent necessary
23 to discharge any such claim remaining unpaid after application of the
24 assets of the trustor's probate estate. The Department of Health and
25 Human Services may, upon application of a trustee, waive the restriction
26 on transfers established by this subsection in cases in which the
27 department determines that either there is no medicaid reimbursement due
28 or after the proposed transfer is made there will be sufficient assets
29 remaining in the trust or trustor's probate estate to satisfy all such
30 claims for medicaid reimbursement. If there is no medicaid reimbursement
31 due, the department shall waive the restriction within sixty days after

1 receipt of the trustee's request for waiver and the deceased trustor's
2 name and social security number and, if available upon reasonable
3 investigation, the name and social security number of the trustor's
4 spouse if such spouse is deceased. A trustee who is a financial
5 institution as defined in section 77-3801, a trust company chartered
6 pursuant to the Nebraska Trust Company Act, or an attorney licensed to
7 practice in this state may distribute assets from the trust prior to the
8 receipt of the waiver from the department if the trustee signs a recital
9 under oath and mailed by certified mail to the department that states the
10 decedent's name and social security number and, if available upon
11 reasonable investigation, the name and social security number of the
12 decedent's spouse if such spouse is deceased, and that the trustor was
13 not a recipient of medical assistance and no claims for medical
14 assistance exist under section 68-919. A trustee who makes such a recital
15 knowing the recital is false becomes personally liable for medical
16 assistance reimbursement pursuant to section 68-919 to the extent of the
17 assets distributed from the trust necessary to discharge any such claim
18 remaining unpaid after application of the assets of the transferor's
19 probate estate.

20 Sec. 4. Section 68-919, Revised Statutes Cumulative Supplement,
21 2014, is amended to read:

22 68-919 (1) The recipient of medical assistance under the medical
23 assistance program shall be indebted to the department for the total
24 amount paid for medical assistance on behalf of the recipient if:

25 (a) The recipient was fifty-five years of age or older at the time
26 the medical assistance was provided; or

27 (b) The recipient resided in a medical institution and, at the time
28 of institutionalization or application for medical assistance, whichever
29 is later, the department determines that the recipient could not have
30 reasonably been expected to be discharged and resume living at home. For
31 purposes of this section, medical institution means a nursing facility,

1 an intermediate care facility for persons with developmental
2 disabilities, or an inpatient hospital.

3 (2) The debt accruing under subsection (1) of this section arises
4 during the life of the recipient but shall be held in abeyance until the
5 death of the recipient. Any such debt to the department that exists when
6 the recipient dies shall be recovered only after the death of the
7 recipient's spouse, if any, and only when the recipient is not survived
8 by a child who either is under twenty-one years of age or is blind or
9 totally and permanently disabled as defined by the Supplemental Security
10 Income criteria.

11 (3) The debt shall include the total amount of medical assistance
12 provided when the recipient was fifty-five years of age or older or
13 during a period of institutionalization as described in subsection (1) of
14 this section and shall not include interest.

15 (4) The debt may be recovered from the estate of a recipient of
16 medical assistance, including any real property, personal property, or
17 other asset in which the recipient had any legal title or interest at the
18 time of the recipient's death, to the extent of such interests. In
19 furtherance and not in limitation of the foregoing, for purposes of this
20 section, the estate of the recipient of medical assistance also includes
21 assets to be transferred to a beneficiary described in section 77-2004 or
22 77-2005 in relation to the recipient through a revocable trust or other
23 similar arrangement which has become irrevocable by reason of the
24 recipient's death.

25 (5 4) In any probate proceedings in which the department has filed a
26 claim under this section, no additional evidence of foundation shall be
27 required for the admission of the department's payment record supporting
28 its claim if the payment record bears the seal of the department, is
29 certified as a true copy, and bears the signature of an authorized
30 representative of the department.

31 (6 5) The department may waive or compromise its claim, in whole or

1 in part, if the department determines that enforcement of the claim would
2 not be in the best interests of the state or would result in undue
3 hardship as provided in rules and regulations of the department.

4 Sec. 5. Section 77-2018.02, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 77-2018.02 (1) In the absence of any proceeding brought under
7 Chapter 30, article 24 or 25, in this state, proceedings for the
8 determination of the tax may be instituted in the county court of the
9 county where the property or any part thereof which might be subject to
10 tax is situated.

11 (2) Upon the filing of the petition referred to in subsection (1) of
12 this section, the county court shall order the petition set for hearing,
13 not less than two nor more than four weeks after the date of filing the
14 petition, and shall cause notice thereof to be given to all persons
15 interested in the estate of the deceased and the property described in
16 the petition, except as provided in subsections (4) and (5) of this
17 section, in the manner provided for in subsection (3) of this section.

18 (3) The notice, provided for by subsection (2) of this section,
19 shall be given by one publication in a legal newspaper of the county or,
20 in the absence of such legal newspaper, then in a legal newspaper of some
21 adjoining county of general circulation in the county. In addition to
22 such publication of notice, personal service of notice of the said
23 hearing shall be had upon the county attorney of each county in which the
24 property described in the petition is located, at least one week prior to
25 the hearing.

26 (4) If it appears to the county court, upon the filing of the
27 petition, by any person other than the county attorney, that no
28 assessment of inheritance tax could result, it shall forthwith enter
29 thereon an order directing the county attorney to show cause, within one
30 week from the service thereof, why determination should not be made that
31 no inheritance tax is due on account of the property described in the

1 petition and the potential lien thereof on such property extinguished.
2 Upon service of such order to show cause and failure of such showing by
3 the county attorney, notice of such hearing by publication shall be
4 dispensed with, and the petitioner shall be entitled without delay to a
5 determination of no tax due on account of the property described in the
6 petition, and any potential lien shall be extinguished.

7 (5) If it appears ~~shall appear~~ to the county court that (a) the
8 county attorney of each county in which the property described in the
9 petition is located has executed a waiver of notice upon him or her to
10 show cause, or of the time and place of hearing, and has entered a
11 voluntary appearance in such proceeding in behalf of the county and the
12 State of Nebraska, and (b) either (i) all persons against whom an
13 inheritance tax may be assessed are either a petitioner or have executed
14 a waiver of notice upon them to show cause, or of the time and place of
15 hearing, and have entered a voluntary appearance, or (ii) a party to the
16 proceeding has agreed to pay to the proper counties the full inheritance
17 tax so determined, the court may dispense with the notice provided for in
18 subsections (2) and (3) of this section and proceed without delay to make
19 a determination of inheritance tax, if any, due on account of the
20 property described in the petition.

21 (6) If the decedent was fifty-five years of age or older or resided
22 in a medical institution as defined in subsection (1) of section 68-919,
23 a notice of the filing of the petition referred to in subsection (1) of
24 this section shall be mailed to the Department of Health and Human
25 Services with the decedent's social security number and, if available
26 upon reasonable investigation, the name and social security number of the
27 decedent's spouse if such spouse is deceased. A certificate of the
28 mailing of the notice to the department shall be filed in the inheritance
29 tax proceedings by an attorney for the petitioner or, if there is no
30 attorney, by the petitioner, prior to the entry of an order pursuant to
31 this section.

1 Sec. 6. If any section in this act or any part of any section is
2 declared invalid or unconstitutional, the declaration shall not affect
3 the validity or constitutionality of the remaining portions.

4 Sec. 7. Original sections 30-3880, 30-3881, 30-3882, and
5 77-2018.02, Reissue Revised Statutes of Nebraska, and section 68-919,
6 Revised Statutes Cumulative Supplement, 2014, are repealed.