

E AND R AMENDMENTS TO LB 72

Introduced by Hansen, 26, Chairman Enrollment and Review

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.

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

10 30-3881 (UTC 816) (a) Without limiting the authority conferred by
11 section 30-3880, a trustee may:

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

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

16 (3) exchange, partition, or otherwise change the character of trust
17 property;

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

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

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

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

31 (A) vote, or give proxies to vote, with or without power of

1 substitution, or enter into or continue a voting trust agreement;

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

4 (C) pay calls, assessments, and other sums chargeable or accruing
5 against the securities, and sell or exercise stock subscription or
6 conversion rights; and

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

9 (8) with respect to an interest in real property, construct, or make
10 ordinary or extraordinary repairs to, alterations to, or improvements in,
11 buildings or other structures, demolish improvements, raze existing or
12 erect new party walls or buildings, subdivide or develop land, dedicate
13 land to public use or grant public or private easements, and make or
14 vacate plats and adjust boundaries;

15 (9) enter into a lease for any purpose as lessor or lessee,
16 including a lease or other arrangement for exploration and removal of
17 natural resources, with or without the option to purchase or renew, for a
18 period within or extending beyond the duration of the trust;

19 (10) grant an option involving a sale, lease, or other disposition
20 of trust property or acquire an option for the acquisition of property,
21 including an option exercisable beyond the duration of the trust, and
22 exercise an option so acquired;

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

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

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

30 (A) inspect or investigate property the trustee holds or has been
31 asked to hold, or property owned or operated by an organization in which

1 the trustee holds or has been asked to hold an interest, for the purpose
2 of determining the application of environmental law with respect to the
3 property;

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

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

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

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

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

17 (15) pay taxes, assessments, compensation of the trustee and of
18 employees and agents of the trust, and other expenses incurred in the
19 administration of the trust;

20 (16) exercise elections with respect to federal, state, and local
21 taxes;

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

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

31 (19) pledge trust property to guarantee loans made by others to the

1 beneficiary;

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

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

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

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

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

21 (D) managing it as a separate fund on the beneficiary's behalf,
22 subject to the beneficiary's continuing right to withdraw the
23 distribution;

24 (22) on distribution of trust property or the division or
25 termination of a trust, make distributions in divided or undivided
26 interests, allocate particular assets in proportionate or
27 disproportionate shares, value the trust property for those purposes, and
28 adjust for resulting differences in valuation;

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

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

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

6 (26) on termination of the trust, exercise the powers appropriate to
7 wind up the administration of the trust and distribute the trust property
8 to the persons entitled to it.

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

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

30 30-3882 (UTC 817) (a) ~~Upon~~ Except as limited in subsection (d) of
31 this section, upon termination or partial termination of a trust, the

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

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

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

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

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

1 due, the department shall waive the restriction within sixty days after
2 receipt of the trustee's request for waiver and the deceased trustor's
3 name and social security number and, if available upon reasonable
4 investigation, the name and social security number of the trustor's
5 spouse if such spouse is deceased.

6 Sec. 4. Section 68-919, Revised Statutes Cumulative Supplement,
7 2014, is amended to read:

8 68-919 (1) The recipient of medical assistance under the medical
9 assistance program shall be indebted to the department for the total
10 amount paid for medical assistance on behalf of the recipient if:

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

13 (b) The recipient resided in a medical institution and, at the time
14 of institutionalization or application for medical assistance, whichever
15 is later, the department determines that the recipient could not have
16 reasonably been expected to be discharged and resume living at home. For
17 purposes of this section, medical institution means a nursing facility,
18 an intermediate care facility for persons with developmental
19 disabilities, or an inpatient hospital.

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

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

1 (4) The debt may be recovered from the estate of a medical
2 assistance recipient, including any real property, personal property, or
3 other asset in which the recipient had any legal title or interest at the
4 time of the recipient's death, to the extent of such interests, including
5 interests in trusts.

6 (5 4) In any probate proceedings in which the department has filed a
7 claim under this section, no additional evidence of foundation shall be
8 required for the admission of the department's payment record supporting
9 its claim if the payment record bears the seal of the department, is
10 certified as a true copy, and bears the signature of an authorized
11 representative of the department.

12 (6 5) The department may waive or compromise its claim, in whole or
13 in part, if the department determines that enforcement of the claim would
14 not be in the best interests of the state or would result in undue
15 hardship as provided in rules and regulations of the department.

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

18 77-2018.02 (1) In the absence of any proceeding brought under
19 Chapter 30, article 24 or 25, in this state, proceedings for the
20 determination of the tax may be instituted in the county court of the
21 county where the property or any part thereof which might be subject to
22 tax is situated.

23 (2) Upon the filing of the petition referred to in subsection (1) of
24 this section, the county court shall order the petition set for hearing,
25 not less than two nor more than four weeks after the date of filing the
26 petition, and shall cause notice thereof to be given to all persons
27 interested in the estate of the deceased and the property described in
28 the petition, except as provided in subsections (4) and (5) of this
29 section, in the manner provided for in subsection (3) of this section.

30 (3) The notice, provided for by subsection (2) of this section,
31 shall be given by one publication in a legal newspaper of the county or,

1 in the absence of such legal newspaper, then in a legal newspaper of some
2 adjoining county of general circulation in the county. In addition to
3 such publication of notice, personal service of notice of the said
4 hearing shall be had upon the county attorney of each county in which the
5 property described in the petition is located, at least one week prior to
6 the hearing. If the decedent was fifty-five years of age or older or
7 resided in a medical institution as defined in subsection (1) of section
8 68-919, the notice shall also be mailed to the Department of Health and
9 Human Services with the decedent's social security number and, if
10 available upon reasonable investigation, the name and social security
11 number of the decedent's spouse if such spouse is deceased. Notice to the
12 department shall not be dispensed with pursuant to subsection (4) or (5)
13 of this section.

14 (4) If it appears to the county court, upon the filing of the
15 petition, by any person other than the county attorney, that no
16 assessment of inheritance tax could result, it shall forthwith enter
17 thereon an order directing the county attorney to show cause, within one
18 week from the service thereof, why determination should not be made that
19 no inheritance tax is due on account of the property described in the
20 petition and the potential lien thereof on such property extinguished.
21 Upon service of such order to show cause and failure of such showing by
22 the county attorney, notice of such hearing by publication shall be
23 dispensed with, and the petitioner shall be entitled without delay to a
24 determination of no tax due on account of the property described in the
25 petition, and any potential lien shall be extinguished.

26 (5) If it appears shall appear to the county court that (a) the
27 county attorney of each county in which the property described in the
28 petition is located has executed a waiver of notice upon him or her to
29 show cause, or of the time and place of hearing, and has entered a
30 voluntary appearance in such proceeding in behalf of the county and the
31 State of Nebraska, and (b) either (i) all persons against whom an

1 inheritance tax may be assessed are either a petitioner or have executed
2 a waiver of notice upon them to show cause, or of the time and place of
3 hearing, and have entered a voluntary appearance, or (ii) a party to the
4 proceeding has agreed to pay to the proper counties the full inheritance
5 tax so determined, the court may dispense with the notice provided for in
6 subsections (2) and (3) of this section, other than notice to the
7 department, and proceed without delay to make a determination of
8 inheritance tax, if any, due on account of the property described in the
9 petition.

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

13 Sec. 7. Original sections 30-3880, 30-3881, 30-3882, and
14 77-2018.02, Reissue Revised Statutes of Nebraska, and section 68-919,
15 Revised Statutes Cumulative Supplement, 2014, are repealed.

16 2. On page 1, strike beginning with "medicaid" in line 1 through
17 line 8 and insert "decedents' estates; to amend sections 30-3880,
18 30-3881, 30-3882, and 77-2018.02, Reissue Revised Statutes of Nebraska,
19 and section 68-919, Revised Statutes Cumulative Supplement, 2014; to
20 restrict transfers and distributions by trustees; to provide for waiver
21 of restrictions; to provide for collection of debt due to medicaid
22 reimbursement obligations as prescribed; to require notice of inheritance
23 tax petitions as prescribed; to harmonize provisions; to provide
24 severability; and to repeal the original sections."