

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 55

FINAL READING

Introduced by Lowe, 37; Pansing Brooks, 28.

Read first time January 10, 2019

Committee: Judiciary

1 A BILL FOR AN ACT relating to property; to amend sections 30-2478,
2 30-2723, and 30-3859, Reissue Revised Statutes of Nebraska, and
3 section 43-2101, Revised Statutes Cumulative Supplement, 2018; to
4 change powers of copersonal representatives, cotrustees,
5 coguardians, and coconservators; to change provisions relating to
6 accounts with POD designations; to authorize persons eighteen years
7 of age to acquire or convey title to real property and to enter into
8 and execute related legal documents; to harmonize provisions; and to
9 repeal the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 30-2478, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 30-2478 If two or more persons are appointed corepresentatives and
4 unless the will provides otherwise, the concurrence of all is required on
5 all acts connected with the administration and distribution of the
6 estate. This restriction does not apply when any corepresentative
7 receives and receipts for property due the estate, when the concurrence
8 of all cannot readily be obtained in the time reasonably available for
9 emergency action necessary to preserve the estate, ~~or~~ when a
10 corepresentative has been delegated to act for the others, or as provided
11 in section 2 of this act. Persons dealing with a corepresentative, if
12 actually unaware that another has been appointed to serve with him or her
13 or if advised by the personal representative with whom they deal that he
14 or she has authority to act alone for any of the reasons mentioned
15 herein, are as fully protected as if the person with whom they dealt had
16 been the sole personal representative.

17 Sec. 2. On and after January 1, 2020, in any case in which
18 copersonal representatives, cotrustees, coguardians, or coconservators
19 have been appointed, unless specifically restricted in a will, a trust,
20 or an order of appointment, such copersonal representatives, cotrustees,
21 coguardians, or coconservators shall have the authority to act
22 independently with respect to, and shall not be required to act in
23 concert with respect to, banking transactions involving trust or estate
24 assets.

25 Sec. 3. Section 30-2723, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 30-2723 (a) Except as otherwise provided in sections 30-2716 to
28 30-2733, on death of a party sums on deposit in a multiple-party account
29 belong to the surviving party or parties. If two or more parties survive
30 and one is the surviving spouse of the decedent, the amount to which the
31 decedent, immediately before death, was beneficially entitled under

1 section 30-2722 belongs to the surviving spouse. If two or more parties
2 survive and none is the surviving spouse of the decedent, the amount to
3 which the decedent, immediately before death, was beneficially entitled
4 under such section belongs to the surviving parties in equal shares, and
5 augments the proportion to which each survivor, immediately before the
6 decedent's death, was beneficially entitled under section 30-2722, and
7 the right of survivorship continues between the surviving parties.

8 (b) In an account with a POD designation:

9 (1) On death of one of two or more parties, the rights in sums on
10 deposit are governed by subsection (a) of this section.

11 (2)(A) ~~(2)~~ On death of the sole party or the last survivor of two or
12 more parties, sums on deposit belong to the surviving beneficiary or
13 beneficiaries. If two or more beneficiaries survive, sums on deposit
14 belong to them in such proportions as specified in the POD designation
15 or, if the POD designation does not specify different proportions, in
16 equal and undivided shares, and there is no right of survivorship in the
17 event of death of a beneficiary thereafter. If no beneficiary survives,
18 sums on deposit belong to the estate of the last surviving party.

19 (B) Except as otherwise specified in the POD designation, if there
20 are two or more beneficiaries, and if any beneficiary fails to survive
21 the sole party or the last survivor of two or more parties, sums on
22 deposit belong to the surviving beneficiaries in proportion to their
23 respective interests as beneficiaries under subdivision (2)(A) of this
24 subsection.

25 (c) Sums on deposit in a single-party account without a POD
26 designation, or in a multiple-party account that, by the terms of the
27 account, is without right of survivorship, are not affected by death of a
28 party, but the amount to which the decedent, immediately before death,
29 was beneficially entitled under section 30-2722 is transferred as part of
30 the decedent's estate. A POD designation in a multiple-party account
31 without right of survivorship is ineffective. For purposes of this

1 section, designation of an account as a tenancy in common establishes
2 that the account is without right of survivorship.

3 (d) The ownership right of a surviving party or beneficiary, or of
4 the decedent's estate, in sums on deposit is subject to requests for
5 payment made by a party before the party's death, whether paid by the
6 financial institution before or after death, or unpaid. The surviving
7 party or beneficiary, or the decedent's estate, is liable to the payee of
8 an unpaid request for payment. The liability is limited to a
9 proportionate share of the amount transferred under this section, to the
10 extent necessary to discharge the request for payment.

11 Sec. 4. Section 30-3859, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 30-3859 (UTC 703) (a) Cotrustees who are unable to reach a unanimous
14 decision may act by majority decision, except that any cotrustee may act
15 independently as provided in section 2 of this act.

16 (b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees
17 may act for the trust.

18 (c) A cotrustee must participate in the performance of a trustee's
19 function unless the cotrustee is unavailable to perform the function
20 because of absence, illness, disqualification under other law, or other
21 temporary incapacity or the cotrustee has properly delegated the
22 performance of the function to another trustee.

23 (d) If a cotrustee is unavailable to perform duties because of
24 absence, illness, disqualification under other law, or other temporary
25 incapacity, and prompt action is necessary to achieve the purposes of the
26 trust or to avoid injury to the trust property, the remaining cotrustee
27 or a majority of the remaining cotrustees may act for the trust.

28 (e) A trustee may not delegate to a cotrustee the performance of a
29 function the settlor reasonably expected the trustees to perform jointly.
30 Unless a delegation was irrevocable, a trustee may revoke a delegation
31 previously made.

1 (f) Except as otherwise provided in subsection (g) of this section,
2 a trustee who does not join in an action of another trustee is not liable
3 for the action.

4 (g) Each trustee shall exercise reasonable care to:

5 (1) prevent a cotrustee from committing a serious breach of trust;
6 and

7 (2) compel a cotrustee to redress a serious breach of trust.

8 (h) A dissenting trustee who joins in an action at the direction of
9 the majority of the trustees and who notified any cotrustee of the
10 dissent at or before the time of the action is not liable for the action
11 unless the action is a serious breach of trust.

12 Sec. 5. Section 43-2101, Revised Statutes Cumulative Supplement,
13 2018, is amended to read:

14 43-2101 (1) All persons under nineteen years of age are declared to
15 be minors, but in case any person marries under the age of nineteen
16 years, his or her minority ends.

17 (2) Upon becoming the age of majority, a person is considered an
18 adult and acquires all rights and responsibilities granted or imposed by
19 statute or common law, except that a person:

20 (a) Eighteen ~~(1) eighteen~~ years of age or older and who is not a
21 ward of the state may:

22 (i) Enter enter into a binding contract or lease of whatever kind or
23 nature and shall be legally responsible for such contract or lease,
24 including legal responsibility to third parties;

25 (ii) Execute, sign, authorize, or otherwise authenticate (A) an
26 effective financing statement, (B) a promissory note or other instrument
27 evidencing an obligation to repay, or (C) a mortgage, trust deed,
28 security agreement, financing statement, or other security instrument to
29 grant a lien or security interest in real or personal property or
30 fixtures, and shall be legally responsible for such document, including
31 legal responsibility to third parties; and

1 (iii) Acquire or convey title to real property and shall have legal
2 responsibility for such acquisition or conveyance, including legal
3 responsibility to third parties; be legally responsible therefor and

4 (b) Eighteen ~~(2) eighteen~~ years of age or older may consent to
5 mental health services for himself or herself without the consent of his
6 or her parent or guardian.

7 Sec. 6. Original sections 30-2478, 30-2723, and 30-3859, Reissue
8 Revised Statutes of Nebraska, and section 43-2101, Revised Statutes
9 Cumulative Supplement, 2018, are repealed.