

## LEGISLATIVE BILL 758

Approved by the Governor April 12, 2010

Introduced by Wightman, 36.

FOR AN ACT relating to decedents' estates; to amend sections 30-2201, 30-2476, and 30-3839, Reissue Revised Statutes of Nebraska; to provide for and change provisions relating to the doctrines of cy pres and deviation; to change provisions relating to the powers of personal representatives; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 30-2201, Reissue Revised Statutes of Nebraska, is amended to read:

30-2201 Sections 30-2201 to 30-2902 and section 2 of this act shall be known and may be cited as the Nebraska Probate Code.

Sec. 2. (a) Except as otherwise provided in subsection (d) of this section, no gift, devise, or endowment for religious, educational, charitable, or benevolent purposes, which in other respects is valid under the laws of this state, shall be invalid or fail by reason of the indefiniteness or uncertainty of the recipient of the gift, devise, or endowment or by reason that it is or has become unlawful, impracticable, impossible to achieve, or wasteful.

(b) The court, on application of any interested person or the Attorney General may determine and order an administration or distribution of the gift, devise, or endowment in a manner as consistent as possible with the intent expressed in the document creating the gift, devise, or endowment. This section shall not be deemed to limit application of the common law doctrines of cy pres and deviation or of section 58-615.

(c) In an application for relief under this section which is not brought by the Attorney General, notice of the proceeding shall be given to the Attorney General as a representative for the charitable interests involved.

(d) Subsection (a) of this section shall not apply if the document creating the gift, devise, or endowment expressly provides for an alternate disposition of the gift, devise, or endowment in the event the gift, devise, or endowment has become unlawful, impracticable, impossible to achieve, or wasteful. A general residuary devise by will shall not be considered an express provision for an alternate disposition.

(e) Any gift, devise, or endowment to a trust with charitable purposes as described in section 30-3831 shall be governed by section 30-3839.

Sec. 3. Section 30-2476, Reissue Revised Statutes of Nebraska, is amended to read:

30-2476 Except as restricted or otherwise provided by the will or by an order in a formal proceeding, without limiting the authority conferred by section 30-2472, and subject to the priorities stated in section 30-24,100, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries or other sources;

(3) perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as he or she may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(i) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(ii) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets

of the estate, including money received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments which would be reasonable for use by trustees generally;

(6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings;

(8) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; or adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by general or limited proxy;

(13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) insure the assets of the estate against damage, loss, and liability and himself or herself against liability as to third persons;

(16) borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;

(17) effect a fair and reasonable compromise with any debtor or obligor, or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, he or she may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;

(18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(19) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his or her administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his or her duties;

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, for credit, or for part cash and part credit, and with or without security for unpaid balances;

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of death; ~~(i) in the same business form for a period of not more than four months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including goodwill, (ii) in the same business form for any additional period of time that may be approved by order~~

of the court in a formal proceeding to which the persons interested in the estate are parties, or (iii) throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;

(25) incorporate form a business entity that has limited liability, including a limited partnership, limited liability partnership, limited liability company, or corporation, for any business or venture in which the decedent was engaged at the time of death;

(26) provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate;

(27) satisfy and settle claims and distribute the estate as provided in the Nebraska Probate Code.

Sec. 4. Section 30-3839, Reissue Revised Statutes of Nebraska, is amended to read:

30-3839 (UTC 413) (a) Except as otherwise provided in subsection (b) of this section, if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

(1) the trust does not fail, in whole or in part;

(2) the trust property does not revert to the settlor or the settlor's successors in interest; and

(3) the court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

~~(b) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection (a) of this section to apply cy pres to modify or terminate the trust only if, when the provision takes effect:~~

~~(1) the trust property is to revert to the settlor and the settlor is still living; or~~

~~(2) fewer than twenty-one years have elapsed since the date of the trust's creation.~~

(b) Subsection (a) of this section does not apply if the document creating the charitable interest expressly provides for an alternate disposition of the charitable interest in the event the charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful. A general residuary disposition by trust shall not be considered an express provision for an alternate disposition.

(c) This section shall not be deemed to limit application of the common law doctrines of cy pres and deviation or section 58-615.

Sec. 5. Original sections 30-2201, 30-2476, and 30-3839, Reissue Revised Statutes of Nebraska, are repealed.