

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 517

Introduced by Pansing Brooks, 28.

Read first time January 18, 2017

Committee: Judiciary

1 A BILL FOR AN ACT relating to property; to amend sections 30-2333,
2 30-2353, 30-2715, 30-2715.01, 30-2723, 30-2742, and 30-3854, Reissue
3 Revised Statutes of Nebraska, and section 76-3415, Revised Statutes
4 Cumulative Supplement, 2016; to change provisions relating to
5 transfer of property upon death; to harmonize provisions; and to
6 repeal the original sections.

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

1 Section 1. Section 30-2333, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 30-2333 (a) For purposes of this section:

4 (1) Beneficiary, as it relates to a trust beneficiary, includes a
5 person who has any present or future interest, vested or contingent, and
6 also includes the owner of an interest by assignment or other transfer;
7 as it relates to a charitable trust, includes any person entitled to
8 enforce the trust; and as it relates to a beneficiary of a beneficiary
9 designation, refers to a beneficiary of an insurance or annuity policy,
10 of an account with POD designation as defined in section 30-2716, of a
11 security registered in beneficiary form, of a pension, profit-sharing,
12 retirement, or similar benefit plan, or of any other nonprobate transfer
13 at death;

14 (2) Beneficiary designated in a governing instrument includes a
15 grantee of a deed, a beneficiary of a transfer on death deed, a transfer-
16 on-death beneficiary, a beneficiary of a POD designation, a devisee, a
17 trust beneficiary, a beneficiary of a beneficiary designation, a donee,
18 appointee, or taker in default of a power of appointment, and a person in
19 whose favor a power of attorney or a power held in any individual,
20 fiduciary, or representative capacity is exercised;

21 (3) Disposition or appointment of property includes a transfer of an
22 item of property or any other benefit to a beneficiary designated in a
23 governing instrument;

24 (4) Divorce or annulment means any divorce or annulment, or any
25 dissolution or declaration of invalidity of a marriage, that would
26 exclude the spouse as a surviving spouse within the meaning of section
27 30-2353. A decree of separation that does not terminate the status of
28 husband and wife is not a divorce for purposes of this section;

29 (5) Divorced individual includes an individual whose marriage has
30 been annulled;

31 (6) Governing instrument means a deed, a will, a trust, an insurance

1 or annuity policy, an account with POD designation, a security registered
2 in beneficiary form, a transfer on death deed, a pension, profit-sharing,
3 retirement, or similar benefit plan, an instrument creating or exercising
4 a power of appointment or a power of attorney, or a dispositive,
5 appointive, or nominative instrument of any similar type, which is
6 executed by the divorced individual before the divorce or annulment of
7 his or her marriage to his or her former spouse;

8 (7) Joint tenants with the right of survivorship and community
9 property with the right of survivorship includes co-owners of property
10 held under circumstances that entitle one or more to the whole of the
11 property on the death of the other or others, but excludes forms of co-
12 ownership registration in which the underlying ownership of each party is
13 in proportion to that party's contribution;

14 (8) Payor means a trustee, an insurer, a business entity, an
15 employer, a government, a governmental agency or subdivision, or any
16 other person authorized or obligated by law or a governing instrument to
17 make payments;

18 (9) Relative of the divorced individual's former spouse means an
19 individual who is related to the divorced individual's former spouse by
20 blood, adoption, or affinity and who, after the divorce or annulment, is
21 not related to the divorced individual by blood, adoption, or affinity;
22 and

23 (10) Revocable, with respect to a disposition, appointment,
24 provision, or nomination, means one under which the divorced individual,
25 at the time of the divorce or annulment, was alone empowered, by law or
26 under the governing instrument, to cancel the designation in favor of his
27 or her former spouse or former spouse's relative, whether or not the
28 divorced individual was then empowered to designate himself or herself in
29 place of his or her former spouse or in place of his or her former
30 spouse's relative and whether or not the divorced individual then had the
31 capacity to exercise the power.

1 (b) For purposes of this section, subject to subsection (c) of this
2 section, a person has knowledge of a fact if the person:

3 (1) Has actual knowledge of it;

4 (2) Has received a notice or notification of it; or

5 (3) From all the facts and circumstances known to the person at the
6 time in question, has reason to know it.

7 (c) An organization that conducts activities through employees has
8 notice or knowledge of a fact only from the time the information was
9 received by an employee having responsibility to act for the
10 organization, or would have been brought to the employee's attention if
11 the organization had exercised reasonable diligence. An organization
12 exercises reasonable diligence if it maintains reasonable routines for
13 communicating significant information to the employee having
14 responsibility to act for the organization and there is reasonable
15 compliance with the routines. Reasonable diligence does not require an
16 employee of the organization to communicate information unless the
17 communication is part of the individual's regular duties or the
18 individual knows a matter involving the organization would be materially
19 affected by the information.

20 (d) Except as provided by the express terms of a governing
21 instrument, a court order, or a contract relating to the division of the
22 marital estate made between the divorced individuals before or after the
23 marriage, divorce, or annulment, the divorce or annulment of a marriage:

24 (1) Revokes any revocable

25 (A) disposition or appointment of property made by a divorced
26 individual to his or her former spouse in a governing instrument and any
27 disposition or appointment created by law or in a governing instrument to
28 a relative of the divorced individual's former spouse;

29 (B) provision in a governing instrument conferring a general or
30 nongeneral power of appointment on the divorced individual's former
31 spouse or on a relative of the divorced individual's former spouse; and

1 (C) nomination in a governing instrument, nominating a divorced
2 individual's former spouse or a relative of the divorced individual's
3 former spouse to serve in any fiduciary or representative capacity,
4 including a personal representative, executor, trustee, conservator,
5 agent, or guardian; and

6 (2) Severs the interests of the former spouses in property held by
7 them at the time of the divorce or annulment as joint tenants with the
8 right of survivorship, transforming the interests of the former spouses
9 into equal tenancies in common.

10 (e) A severance under subdivision (d)(2) of this section does not
11 affect any third-party interest in property acquired for value and in
12 good faith reliance on an apparent title by survivorship in the survivor
13 of the former spouses unless a writing declaring the severance has been
14 noted, registered, filed, or recorded in records appropriate to the kind
15 and location of the property which are relied upon, in the ordinary
16 course of transactions involving such property, as evidence of ownership.

17 (f) Provisions of a governing instrument are given effect as if the
18 former spouse and relatives of the former spouse disclaimed all
19 provisions revoked by this section or, in the case of a revoked
20 nomination in a fiduciary or representative capacity, as if the former
21 spouse and relatives of the divorced individual's former spouse died
22 immediately before the divorce or annulment.

23 (g) Provisions revoked solely by this section are revived by the
24 divorced individual's remarriage to the former spouse or by a
25 nullification of the divorce or annulment.

26 (h) No change of circumstances other than as described in this
27 section and section 30-2354 effects a revocation.

28 (i)(1) A payor or other third party is not liable for having made a
29 payment or transferred an item of property or any other benefit to a
30 beneficiary designated in a governing instrument affected by a divorce,
31 annulment, or remarriage, or for having taken any other action in good

1 faith reliance on the validity of the governing instrument, before the
2 payor or other third party received written notice of or has knowledge of
3 the divorce, annulment, or remarriage. A payor or other third party is
4 liable for a payment made or other action taken after the payor or other
5 third party received written notice of a claimed forfeiture or revocation
6 under this section.

7 (2) Written notice of the divorce, annulment, or remarriage under
8 subdivision (i)(1) of this section must be mailed to the payor's or other
9 third party's main office or home, be personally delivered to the payor
10 or other third party, or be delivered by such other means which establish
11 that the person has knowledge of the divorce, annulment, or remarriage.

12 (3) Upon receipt of written notice of the divorce, annulment, or
13 remarriage, a payor or other third party may pay any amount owed or
14 transfer or deposit any item of property held by it to or with the court
15 that has jurisdiction of the probate proceedings relating to the
16 decedent's estate or, if no proceedings have been commenced, to or with
17 the court that has jurisdiction of probate proceedings relating to
18 decedents' estates located in the county of the decedent's residence. The
19 court shall hold the funds or item of property and, upon its
20 determination under this section, shall order disbursement or transfer in
21 accordance with the determination. Payments, transfers, or deposits made
22 to or with the court discharge the payor or other third party from all
23 claims for the value of amounts paid to or items of property transferred
24 to or deposited with the court.

25 (j)(1) A person who purchases property from a former spouse, a
26 relative of a former spouse, or any other person for value and without
27 notice, or who receives from a former spouse, a relative of a former
28 spouse, or any other person a payment or other item of property in
29 partial or full satisfaction of a legally enforceable obligation, is
30 neither obligated under this section to return the payment, item of
31 property, or benefit nor is liable under this section for the amount of

1 the payment or the value of the item of property or benefit. But a former
2 spouse, relative of a former spouse, or other person who, not for value,
3 received a payment, an item of property, or any other benefit to which
4 that person is not entitled under this section is obligated to return the
5 payment, item of property, or benefit, or is personally liable for the
6 amount of the payment or the value of the item of property or benefit, to
7 the person who is entitled to it under this section.

8 (2) If this section or any part of this section is preempted by
9 federal law with respect to a payment, an item of property, or any other
10 benefit covered by this section, a former spouse, a relative of a former
11 spouse, or any other person who, not for value, received a payment, an
12 item of property, or any other benefit to which that person is not
13 entitled under this section is obligated to return that payment, item of
14 property, or benefit, or is personally liable for the amount of the
15 payment or the value of the item of property or benefit, to the person
16 who would have been entitled to it were this section or part of this
17 section not preempted.

18 (k) If a former spouse has notice of the fact that he or she is a
19 former spouse, then any receipt of property or money to which this
20 section applies is received by the former spouse as a trustee for the
21 person or persons who would be entitled to that property under this
22 section.

23 ~~If after executing a will the testator is divorced or his marriage~~
24 ~~dissolved or annulled, the divorce, dissolution, or annulment revokes any~~
25 ~~disposition or appointment of property made by the will to the former~~
26 ~~spouse, any provision conferring a general or special power of~~
27 ~~appointment on the former spouse, and any nomination of the former spouse~~
28 ~~as executor, trustee, conservator, or guardian, unless the will expressly~~
29 ~~provides otherwise. Property prevented from passing to a former spouse~~
30 ~~because of revocation by divorce, dissolution, or annulment passes as if~~
31 ~~the former spouse failed to survive the decedent, and other provisions~~

~~1 conferring some power or office on the former spouse are interpreted as
2 if the spouse failed to survive the decedent. If provisions are revoked
3 solely by this section, they are revived by testator's remarriage to the
4 former spouse. For purposes of this section, divorce, dissolution, or
5 annulment means any divorce, dissolution, or annulment which would
6 exclude the spouse as a surviving spouse within the meaning of section
7 30-2353. A decree of separation which does not terminate the status of
8 husband and wife is not a divorce for purposes of this section. No change
9 of circumstances other than as described in this section revokes a will.~~

10 Sec. 2. Section 30-2353, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 30-2353 (a) An individual who is divorced from the decedent or whose
13 marriage to the decedent has been dissolved or annulled by a decree that
14 has become final is not a surviving spouse unless, by virtue of a
15 subsequent marriage, he or she is married to the decedent at the time of
16 death. A decree of separation which does not terminate the status of
17 husband and wife is not a divorce for purposes of this section.

18 (b) For purposes of parts 1, 2, 3, and 4 of this article and of
19 section 30-2412, a surviving spouse does not include:

20 (1) an individual who obtains or consents to a final decree or
21 judgment of divorce from the decedent or an annulment or dissolution of
22 their marriage, which decree or judgment is not recognized as valid in
23 this state, unless they subsequently participate in a marriage ceremony
24 purporting to marry each to the other, or subsequently live together as
25 man and wife;

26 (2) an individual who, following an invalid a decree or judgment of
27 divorce or annulment or dissolution of marriage obtained by the decedent,
28 participates in a marriage ceremony with a third individual; or

29 (3) an individual who was a party to a valid proceeding concluded by
30 an order purporting to terminate all marital property rights against the
31 decedent.

1 Sec. 3. Section 30-2715, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 30-2715 (a) Subject to sections 30-2333 and 30-2354, a A provision
4 for a nonprobate transfer on death in an insurance policy, contract of
5 employment, bond, mortgage, promissory note, certificated or
6 uncertificated security, account agreement, custodial agreement, deposit
7 agreement, compensation plan, pension plan, individual retirement plan,
8 employee benefit plan, trust, marital property agreement, certificate of
9 title, or other written instrument of a similar nature is
10 nontestamentary. This subsection includes a written provision that:

11 (1) money or other benefits due to, controlled by, or owned by a
12 decedent before death must be paid after the decedent's death to a person
13 whom the decedent designates either in the instrument or in a separate
14 writing, including a will, executed either before or at the same time as
15 the instrument, or later;

16 (2) money due or to become due under the instrument ceases to be
17 payable in the event of death of the promisee or the promisor before
18 payment or demand; or

19 (3) any property controlled by or owned by the decedent before death
20 which is the subject of the instrument passes to a person the decedent
21 designates either in the instrument or in a separate writing, including a
22 will, executed either before or at the same time as the instrument, or
23 later.

24 (b) This section does not limit rights of creditors under other laws
25 of this state.

26 Sec. 4. Section 30-2715.01, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 30-2715.01 (1) Subject to section 30-2333, a A person who owns a
29 motor vehicle may provide for the transfer of such vehicle upon his or
30 her death or the death of the last survivor of a joint tenancy with right
31 of survivorship by including in the certificate of title a designation of

1 beneficiary or beneficiaries to whom the vehicle will be transferred on
2 the death of the owner or the last survivor, subject to the rights of all
3 lienholders, whether created before, simultaneously with, or after the
4 creation of the transfer-on-death interest. A trust may be the
5 beneficiary of a transfer-on-death certificate of title. The certificate
6 of title shall include the name of the owner, the name of any tenant-in-
7 common owner or the name of any joint-tenant-with-right-of-survivorship
8 owner, followed in substance by the words transfer on death to (name of
9 beneficiary or beneficiaries or name of trustee if a trust is to be the
10 beneficiary). The abbreviation TOD may be used instead of the words
11 transfer on death to.

12 (2) A transfer-on-death beneficiary shall have no interest in the
13 motor vehicle until the death of the owner or the last survivor of the
14 joint-tenant-with-right-of-survivorship owners. A beneficiary designation
15 may be changed at any time by the owner or by the joint-tenant-with-
16 right-of-survivorship owners then surviving without the consent of any
17 beneficiary by filing an application for a subsequent certificate of
18 title.

19 (3) Ownership of a motor vehicle which has a designation of
20 beneficiary as provided in subsection (1) of this section and for which
21 an application for a subsequent certificate of title has not been filed
22 shall vest in the designated beneficiary or beneficiaries on the death of
23 the owner or the last of the joint-tenant-with-right-of-survivorship
24 owners, subject to the rights of all lienholders.

25 Sec. 5. 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 subject to section 30-2333. If
30 two or more parties survive and one is the surviving spouse of the
31 decedent, the amount to which the decedent, immediately before death, was

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

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

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

12 (2) On death of the sole party or the last survivor of two or more
13 parties, sums on deposit belong to the surviving beneficiary or
14 beneficiaries. If two or more beneficiaries survive, sums on deposit
15 belong to them in equal and undivided shares, and there is no right of
16 survivorship in the event of death of a beneficiary thereafter. If no
17 beneficiary survives, sums on deposit belong to the estate of the last
18 surviving party.

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

28 (d) The ownership right of a surviving party or beneficiary, or of
29 the decedent's estate, in sums on deposit is subject to requests for
30 payment made by a party before the party's death, whether paid by the
31 financial institution before or after death, or unpaid. The surviving

1 party or beneficiary, or the decedent's estate, is liable to the payee of
2 an unpaid request for payment. The liability is limited to a
3 proportionate share of the amount transferred under this section, to the
4 extent necessary to discharge the request for payment.

5 Sec. 6. Section 30-2742, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 30-2742 (a) Subject to section 30-2333, a A transfer on death
8 resulting from a registration in beneficiary form is effective by reason
9 of the contract regarding the registration between the owner and the
10 registering entity and sections 30-2734 to 30-2745 and is not
11 testamentary.

12 (b) Sections 30-2734 to 30-2745 do not limit the rights of creditors
13 of security owners against beneficiaries and other transferees under
14 other laws of this state.

15 Sec. 7. Section 30-3854, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 30-3854 (UTC 602) (a) Unless the terms of a trust expressly provide
18 that the trust is irrevocable, the settlor may revoke or amend the trust.
19 This subsection does not apply to a trust created under an instrument
20 executed before January 1, 2005.

21 (b) If a revocable trust is created or funded by more than one
22 settlor:

23 (1) to the extent the trust consists of community property, the
24 trust may be revoked by either spouse acting alone but may be amended
25 only by joint action of both spouses;

26 (2) to the extent the trust consists of property other than
27 community property, each settlor may revoke or amend the trust with
28 regard to the portion of the trust property attributable to that
29 settlor's contribution; and

30 (3) upon the revocation or amendment of the trust by fewer than all
31 of the settlors, the trustee shall promptly notify the other settlors of

1 the revocation or amendment.

2 (c) The settlor may revoke or amend a written revocable trust:

3 (1) by substantial compliance with a method provided in the terms of
4 the trust; or

5 (2) if the terms of the trust do not provide a method or the method
6 provided in the terms is not expressly made exclusive, by:

7 (A) a later will or codicil that expressly refers to the trust or
8 specifically devises property that would otherwise have passed according
9 to the terms of the trust; or

10 (B) an instrument evidencing an intent to amend or revoke the trust
11 signed by the settlor, or in the settlor's name by some other individual
12 in the presence of and by the direction of the settlor. The instrument
13 must have an indication of the date of the writing or signing and, in the
14 absence of such indication of the date, be the only such writing or
15 contain no inconsistency with any other like writing or permit
16 determination of such date of writing or signing from the content of such
17 writing, from extrinsic circumstances, or from any other evidence.

18 (d) Upon revocation of a revocable trust, the trustee shall deliver
19 the trust property as the settlor directs.

20 (e) A settlor's powers with respect to revocation, amendment, or
21 distribution of trust property may be exercised by an agent under a power
22 of attorney only to the extent expressly authorized by the terms of the
23 trust or the power.

24 (f) A conservator of the settlor or, if no conservator has been
25 appointed, a guardian of the settlor may exercise a settlor's powers with
26 respect to revocation, amendment, or distribution of trust property only
27 with the approval of the court supervising the conservatorship or
28 guardianship.

29 (g) A trustee who does not know that a trust has been revoked or
30 amended is not liable to the settlor or settlor's successors in interest
31 for distributions made and other actions taken in reliance on the terms

1 of the trust.

2 (h) The revocation, amendment, and distribution of trust property of
3 a trust pursuant to this section is subject to section 30-2333.

4 Sec. 8. Section 76-3415, Revised Statutes Cumulative Supplement,
5 2016, is amended to read:

6 76-3415 (a) Except as otherwise provided in the transfer on death
7 deed, in this section, or in sections 30-2313 to 30-2319 or section
8 30-2354, on the death of the transferor, the following rules apply to
9 property that is the subject of a transfer on death deed and owned by the
10 transferor at death:

11 (1) Subject to subdivision (2) of this subsection, the interest in
12 the property is transferred to the designated beneficiary in accordance
13 with the deed;

14 (2) The interest of a designated beneficiary is contingent on the
15 designated beneficiary surviving the transferor by one hundred twenty
16 hours. If the deed provides for a different survival period, the deed
17 shall determine the survival requirement for designated beneficiaries.
18 The interest of a designated beneficiary that fails to survive the
19 transferor by one hundred twenty hours or as otherwise provided in the
20 deed shall be treated as if the designated beneficiary predeceased the
21 transferor;

22 (3) Subject to subdivision (4) of this subsection, concurrent
23 interests are transferred to the beneficiaries in equal and undivided
24 shares with no right of survivorship; and

25 (4) If the transferor has identified two or more designated
26 beneficiaries to receive concurrent interests in the property, the share
27 of one which fails for any reason is transferred to the other, or to the
28 others in proportion to the interest of each in the remaining part of the
29 property held concurrently.

30 (b) A beneficiary takes the property subject to all conveyances,
31 encumbrances, assignments, contracts, mortgages, liens, and other

1 interests to which the property is subject at the transferor's death.

2 (c) If a transferor is a joint owner and is:

3 (1) Survived by one or more other joint owners, the property that is
4 the subject of a transfer on death deed belongs to the surviving joint
5 owner or owners with right of survivorship; or

6 (2) The last surviving joint owner, the transfer on death deed of
7 the last surviving joint owner transferor is effective.

8 (d) A transfer on death deed transfers property without covenant or
9 warranty of title even if the deed contains a contrary provision.

10 (e) If after recording a transfer on death deed the transferor is
11 divorced or his or her marriage is dissolved or annulled, the divorce,
12 dissolution, or annulment revokes any disposition or appointment of
13 property made by the transfer on death deed as provided in section
14 30-2333 ~~to the former spouse unless the transfer on death deed expressly~~
15 ~~provides otherwise. Property prevented from passing to a former spouse~~
16 ~~under a transfer on death deed because of revocation by divorce,~~
17 ~~dissolution, or annulment passes as if the former spouse failed to~~
18 ~~survive the transferor. A decree of separation which does not terminate~~
19 ~~the status of husband and wife is not a divorce for purposes of this~~
20 ~~section.~~

21 Sec. 9. Original sections 30-2333, 30-2353, 30-2715, 30-2715.01,
22 30-2723, 30-2742, and 30-3854, Reissue Revised Statutes of Nebraska, and
23 section 76-3415, Revised Statutes Cumulative Supplement, 2016, are
24 repealed.