

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 428

Introduced by Quandahl, 31

Read first time January 15, 2003

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the Nebraska Probate Code; to amend sections
2 30-2352 and 30-24,101, Reissue Revised Statutes of
3 Nebraska; to change provisions relating to renunciation
4 of succession and the right of retainer; and to repeal
5 the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 30-2352, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 30-2352. (a) (1) A person (or the representative of a
4 deceased, incapacitated, or protected person) who is an heir,
5 devisee, person succeeding to a renounced interest, donee,
6 beneficiary under a testamentary or nontestamentary instrument,
7 donee of a power of appointment, grantee, surviving joint owner or
8 surviving joint tenant, beneficiary, or owner of an insurance
9 contract or any incident of ownership therein, beneficiary or
10 person designated to take pursuant to a power of appointment
11 exercised by a testamentary or nontestamentary instrument, person
12 who has a statutory entitlement to or election with respect to
13 property pursuant to the Nebraska Probate Code, or recipient of any
14 beneficial interest under any testamentary or nontestamentary
15 instrument, may renounce in whole or in part, or with reference to
16 specific parts, fractional shares, undivided portions or assets
17 thereof, by filing a written instrument of renunciation within the
18 time and at the place hereinafter provided.

19 (2) The instrument shall (i) describe the property or
20 part thereof or the interest therein renounced, (ii) be signed and
21 acknowledged by the person renouncing in the manner provided for in
22 the execution of deeds of real estate, (iii) declare the
23 renunciation and the extent thereof, and (iv) declare that the
24 renunciation is an irrevocable and unqualified refusal to accept
25 the renounced interest.

26 (3) The appropriate court in a proceeding under section
27 30-2806, may direct or permit a trustee under a testamentary or
28 nontestamentary instrument to renounce, modify, amend, or otherwise

1 deviate from any restriction on or power of administration,
2 management or allocation of benefit upon finding that such
3 restrictions on the exercise of such power may defeat or impair the
4 accomplishment of the purposes of the trust whether by the
5 imposition of tax or the allocation of beneficial interest
6 inconsistent with such purposes or by other reason. Such authority
7 shall be exercised after hearing and upon notice to all known
8 persons beneficially interested in such trust, in the manner
9 directed by said court.

10 (b) The instrument specified in subdivisions (a)(1) and
11 (a)(2) must be received by the transferor of the interest, his or
12 her legal representative, the personal representative of a deceased
13 transferor, the trustee of any trust in which the interest being
14 renounced exists, or the holder of the legal title to the property
15 to which the interest relates. To be effective for purposes of
16 determining inheritance and estate taxes under articles 20 and 21
17 of Chapter 77, the instrument must be received not later than the
18 date which is nine months after the later of (i) the date on which
19 the transfer creating the interest in such person is made, or (ii)
20 the date on which such person attains age twenty-one. If the
21 circumstances which establish the right of a person to renounce an
22 interest arise as a result of the death of an individual, the
23 instrument shall also be filed in the court of the county where
24 proceedings concerning the decedent's estate are pending, or where
25 they would be pending if commenced. If an interest in real estate
26 is renounced, a copy of the instrument shall also be recorded in
27 the office of the register of deeds in the county in which said
28 real estate lies. No person entitled to a copy of the instrument

1 shall be liable for any proper distribution or disposition made
2 without actual notice of the renunciation and no such person making
3 a proper distribution or disposition in reliance upon the
4 renunciation shall be liable for any such distribution or
5 disposition in the absence of actual notice that an action has been
6 instituted contesting the validity of the renunciation.

7 (c) Unless the transferor of the interest has otherwise
8 indicated in the instrument creating the interest, the interest
9 renounced, and any future interest which is to take effect in
10 possession or enjoyment at or after the termination of the interest
11 renounced, passes as if the person renouncing had predeceased the
12 decedent or had died prior to the date on which the transfer
13 creating the interest in such person is made, as the case may be,
14 if the renunciation is within the time periods set forth in
15 subsection (b) and if not within such time periods the interest
16 renounced, and any future interest which is to take effect in
17 possession or enjoyment at or after the termination of the interest
18 renounced, passes as if the person renouncing had died on the date
19 the interest was renounced. The person renouncing shall have no
20 power to direct how the interest being renounced shall pass, except
21 that the renunciation of an interest for which the right to
22 renounce was established by the death of an individual shall, in
23 the case of the spouse of the decedent, relate only to that
24 statutory provision or that provision of the instrument creating
25 the interest being renounced and shall not preclude the spouse from
26 receiving the benefits of the renounced interest which may be
27 derived as a result of the renounced interest passing pursuant to
28 other statutory provisions or pursuant to other provisions of the

1 instrument creating the interest unless such further benefits are
2 also renounced. In every case when the renunciation is within the
3 time periods set forth in subsection (b) the renunciation relates
4 back for all purposes to the date of death of the decedent or the
5 date on which the transfer creating the interest in such person is
6 made, as the case may be.

7 (d) Any (1) assignment, conveyance, encumbrance, pledge
8 or transfer of property therein or any contract therefor, (2)
9 written waiver of the right to renounce or any acceptance of
10 property or benefits therefrom or an interest therein by an heir,
11 devisee, person succeeding to a renounced interest, donee,
12 beneficiary under a testamentary or nontestamentary instrument,
13 donee of a power of appointment, grantee, surviving joint owner or
14 surviving joint tenant, beneficiary or owner of an insurance
15 contract or any incident of ownership therein, beneficiary or
16 person designated to take pursuant to a power of appointment
17 exercised by a testamentary or nontestamentary instrument, person
18 who has a statutory entitlement to or election with respect to
19 property pursuant to the Nebraska Probate Code, or recipient of any
20 beneficial interest under any testamentary or nontestamentary
21 instrument, or (3) sale or other disposition of property pursuant
22 to judicial process, made within the time periods set forth in
23 subsection (b) shall not bar the right to renounce, but shall make
24 a subsequent renunciation within the time period set forth in
25 subsection (b) of this section ineffective for purposes of
26 determination of inheritance and estate taxes under articles 20 and
27 21 of Chapter 77. A person who is a transferor of an interest,
28 such transferor's legal representative, the personal representative

1 of a deceased transferor, the trustee of any trust in which an
2 interest exists that is subject to transfer, the holder of legal
3 title to the property to which the interest relates, or a person
4 who is insolvent as defined in section 36-703 may not exercise the
5 right to renounce under this section if an action is pending to
6 have a judgment or lien satisfied out of such person's distributive
7 share of the assets of the estate or such an action was pending
8 prior to the renunciation.

9 (e) Within thirty days of receipt of a written instrument
10 of renunciation by the transferor of the interest, his or her legal
11 representative, the personal representative of the decedent, the
12 trustee of any trust in which the interest being renounced exists,
13 or the holder of the legal title to the property to which the
14 interest relates, as the case may be, such person shall attempt to
15 notify in writing those persons who are known or ascertainable with
16 reasonable diligence who shall be recipients or potential
17 recipients of the renounced interest of the renunciation and the
18 interest or potential interest such recipient shall receive as a
19 result of the renunciation.

20 (f) The right to renounce granted by this section exists
21 irrespective of any limitation on the interest of the person
22 renouncing in the nature of a spendthrift provision or similar
23 restriction. A trust beneficiary whose interest is subject to any
24 limitation in the nature of a spendthrift provision or similar
25 restriction may assign, sell, or otherwise convey such interest or
26 any part thereof upon a finding by a court in a proceeding under
27 section 30-2806, that the rights of other beneficiaries would not
28 be impaired and that such assignment, sale, or other conveyance

1 would not result in any substantial benefit to nonbeneficiaries of
2 the trust at the expense of the trust or trust beneficiaries. Such
3 finding may be made after hearing and upon notice to all known
4 persons beneficially interested in such trust, in the manner
5 directed by the court.

6 (g) This section does not abridge the right of any person
7 to assign, convey, release, or renounce any property arising under
8 any other section of this code or other statute.

9 (h) Any interest in property which exists on July 19,
10 1980, may be renounced after July 19, 1980, as provided herein. An
11 interest which has arisen prior to July 19, 1980, in any person
12 other than the person renouncing is not destroyed or diminished by
13 any action of the person renouncing taken under this section.

14 (i) Any renunciation under this section is a transfer as
15 defined in subdivision (12) of section 36-702.

16 Sec. 2. Section 30-24,101, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 30-24,101. Unless a different intention is indicated by
19 the will, the amount of a noncontingent indebtedness of a successor
20 to the estate if due, or its present value if not due, shall be
21 offset against the successor's interest. ~~, but the successor has~~
22 ~~the benefit of any defense which would be available to him in a~~
23 ~~direct proceeding for recovery of the debt.~~

24 Sec. 3. Original sections 30-2352 and 30-24,101, Reissue
25 Revised Statutes of Nebraska, are repealed.