

## LEGISLATIVE BILL 536

Approved by the Governor April 5, 2012

Introduced by Wightman, 36; Ashford, 20.

FOR AN ACT relating to real property; to amend sections 30-2352, 30-2354, 76-201, 76-202, 76-203, 76-214, 76-215, 76-238, 76-246, 76-277, and 76-902, Reissue Revised Statutes of Nebraska; to adopt the Nebraska Uniform Real Property Transfer on Death Act; to provide exemptions from the documentary stamp tax; to harmonize provisions; to provide an operative date; and to repeal the original sections.

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

Section 1. Sections 1 to 23 of this act shall be known and may be cited as the Nebraska Uniform Real Property Transfer on Death Act.

Sec. 2. For purposes of the Nebraska Uniform Real Property Transfer on Death Act:

(1) Beneficiary means a person that receives property under a transfer on death deed;

(2) Designated beneficiary means a person designated to receive property in a transfer on death deed;

(3) Joint owner means an individual who owns property concurrently with one or more other individuals with a right of survivorship. The term includes a joint tenant. The term does not include a tenant in common without a right of survivorship;

(4) Person means an individual, a corporation, an estate, a trustee of a trust, a partnership, a limited liability company, an association, a joint venture, a public corporation, a government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

(5) Property means an interest in real property located in this state which is transferable on the death of the owner;

(6) Transfer on death deed means a deed authorized under the Nebraska Uniform Real Property Transfer on Death Act; and

(7) Transferor means an individual who makes a transfer on death deed.

Sec. 3. The Nebraska Uniform Real Property Transfer on Death Act applies to a transfer on death deed made before, on, or after the operative date of this act by a transferor dying on or after the operative date of this act. A transfer on death deed is subject to the common-law principles of equity except to the extent modified by the Nebraska Uniform Real Property Transfer on Death Act.

Sec. 4. The Nebraska Uniform Real Property Transfer on Death Act does not affect any method of transferring property otherwise permitted under the law of this state.

Sec. 5. An individual may transfer property to one or more beneficiaries effective at the transferor's death by a transfer on death deed. If the property is agricultural land, the transferor may designate in the transfer on death deed the disposition of the transferor's interest in growing crops to the transferor's estate or to one or more of the designated beneficiaries. If the property is agricultural land and the transfer on death deed does not contain a designation of the disposition of the transferor's interest in growing crops, the transferor's interest in the growing crops shall pass to the transferor's estate.

Sec. 6. A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

Sec. 7. A transfer on death deed is nontestamentary.

Sec. 8. The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

Sec. 9. A transfer on death deed shall be signed by the transferor or by some person in his or her presence and by his or her direction and shall be attested in writing by two or more disinterested witnesses, whose signatures along with the transferor's signature shall be made before an officer authorized to administer oaths under the laws of this state or under the laws of the state where execution occurs and evidenced by the officer's certificate, under official seal, in form and content substantially as follows:

I, ..... the transferor, sign my name to this instrument this ..... day of ..... 20 ....., and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this transfer on death deed to transfer my interest in the described real property and that I sign it willingly or willingly direct another to sign for me, that I execute it as my

free and voluntary act for the purposes therein expressed, that I am eighteen years of age or older or am not at this time a minor, and that I am of sound mind and under no constraint or undue influence.

Transferor .....

We, ..... and ....., the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the transferor signs and executes this transfer on death deed to transfer his or her interest in the described real property and that he or she signs it willingly or willingly directs another to sign for him or her, and that he or she executes it as his or her free and voluntary act for the purposes therein expressed, and that each of us, in the presence and hearing of the transferor, hereby signs this deed as witness to the transferor's signing, and that to the best of his or her knowledge the transferor is eighteen years of age or older or is not at this time a minor and the transferor is of sound mind and under no constraint or undue influence.

Witness .....

Witness .....

THE STATE OF .....

COUNTY OF .....

Subscribed, sworn to, and acknowledged before me by ....., the transferor, and subscribed and sworn to before me by ..... and ....., witnesses, this ..... day of ..... 20..... .

(SEAL) (Signed) .....

(Official capacity of officer) .....

Sec. 10. (a) A transfer on death deed:

(1) Except as otherwise provided in subdivision (2) of this subsection, must contain the essential elements and formalities of a properly recordable inter vivos deed;

(2) Must state that the transfer to the designated beneficiary is to occur at the transferor's death;

(3) Must contain the warnings provided in subsection (b) of this section; and

(4) Must be recorded (i) within thirty days after being executed as required in section 9 of this act, (ii) before the transferor's death, and (iii) in the public records in the office of the register of deeds of the county where the property is located.

(b)(1) A transfer on death deed shall contain the following warnings:

WARNING: The property transferred remains subject to inheritance taxation in Nebraska to the same extent as if owned by the transferor at death. Failure to timely pay inheritance taxes is subject to interest and penalties as provided by law.

WARNING: The designated beneficiary is personally liable, to the extent of the value of the property transferred, to account for medicaid reimbursement to the extent necessary to discharge any such claim remaining after application of the assets of the transferor's estate. The designated beneficiary may also be personally liable, to the extent of the value of the property transferred, for claims against the estate, statutory allowances to the transferor's surviving spouse and children, and the expenses of administration to the extent needed to pay such amounts by the personal representative.

WARNING: The Department of Health and Human Services may require revocation of this deed by a transferor, a transferor's spouse, or both a transferor and the transferor's spouse in order to qualify or remain qualified for medicaid assistance.

(2) No recorded transfer on death deed shall be invalidated because of any defects in the wording of the warnings required by this subsection.

Sec. 11. A transfer on death deed is effective without:

(1) Notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or

(2) Consideration.

Sec. 12. A completed statement as provided in subdivision (2)(a) of section 76-214 must be filed at the time that the conveyance of real estate transferred by a transfer on death deed becomes effective due to the death of the transferor or the death of a surviving joint tenant of the transferor.

Sec. 13. (a) Subject to subsection (b) of this section, an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:

(1) Is one of the following:

(A) A transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;

(B) An instrument of revocation that expressly revokes the deed or

part of the deed and that is executed with the same formalities as required in section 9 of this act; or

(C) An inter vivos deed that expressly or by inconsistency revokes the transfer on death deed or part of the deed; and

(2) Is acknowledged by the transferor after the acknowledgment of the deed being revoked and is recorded (i) within thirty days after being executed, (ii) before the transferor's death, and (iii) in the public records in the office of the register of deeds of the county where the deed is recorded.

(b) If a transfer on death deed is made by more than one transferor:

(1) Revocation by a transferor does not affect the deed as to the interest of another transferor; and

(2) A deed of joint owners is revoked only if it is revoked by all of the living joint owners who were transferors.

(c) After a transfer on death deed is recorded, it may not be revoked by a revocatory act on the deed.

(d) This section does not limit the effect of an inter vivos transfer of the property.

Sec. 14. During a transferor's life, a transfer on death deed does not:

(1) Affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;

(2) Affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the deed;

(3) Affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;

(4) Affect the transferor's or designated beneficiary's eligibility for any form of public assistance except to the extent provided in section 21 of this act;

(5) Create a legal or equitable interest in favor of the designated beneficiary; or

(6) Subject the property to claims or process of a creditor of the designated beneficiary.

Sec. 15. (a) Except as otherwise provided in the transfer on death deed, in this section, or in sections 30-2313 to 30-2319 or section 30-2354, on the death of the transferor, the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death:

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

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

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

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

(b) A beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the transferor's death.

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

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

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

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

(e) If after recording a transfer on death deed the transferor is divorced or his or her marriage is dissolved or annulled, the divorce, dissolution, or annulment revokes any disposition or appointment of property made by the transfer on death deed to the former spouse unless the transfer on death deed expressly provides otherwise. Property prevented from passing to a

former spouse under a transfer on death deed because of revocation by divorce, dissolution, or annulment passes as if the former spouse failed to survive the transferor. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

Sec. 16. A beneficiary may disclaim all or part of the beneficiary's interest as provided by section 30-2352.

Sec. 17. (a) If other assets of the estate of the transferor are insufficient to pay all claims against the transferor's estate, statutory allowances to the transferor's surviving spouse and children, and the expenses of administration, a transfer under the Nebraska Uniform Real Property Transfer on Death Act subjects the beneficiary to personal liability as provided in this section to the extent needed to pay all claims against the transferor's estate, statutory allowances to the transferor's surviving spouse and children, and the expenses of administration.

(b)(1) A beneficiary who receives property through a transfer on death deed upon the death of the transferor is liable to account to the personal representative of the transferor's estate for a proportionate share of the fair market value of the equity in the interest received to the extent necessary to discharge the claims and allowances described in subsection (a) of this section remaining unpaid after application of the transferor's estate. For purposes of this subdivision (b)(1), the fair market value shall be determined as of the date of death of the transferor. For purposes of this subdivision (b)(1), the beneficiary's proportionate share means the proportionate share of all nonprobate transfers recovered by the personal representative for the payment of the claims and allowances under the Nebraska Uniform Real Property Transfer on Death Act and sections 30-2726, 30-2743, and 30-3850.

(2) A proceeding to assert the liability for claims against the estate and statutory allowances may not be commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a child of the transferor. The proceeding must be commenced within one year after the death of the transferor.

(c) A beneficiary against whom a proceeding to account is brought may join as a party to the proceeding a surviving party or beneficiary of any other transfer on death deed for the same transferor or any other asset of the transferor subject to sections 30-2726, 30-2743, and 30-3850.

(d) Assets recovered by the personal representative pursuant to this section shall be administered as part of the transferor's estate.

(e) Nothing in this section shall be construed to limit the rights of creditors under other laws of this state.

Sec. 18. A beneficiary to whom an interest is transferred by a transfer on death deed shall be personally liable to account for medicaid reimbursement pursuant to section 68-919 and section 17 of this act to the extent necessary to discharge any such claim remaining unpaid after application of the assets of the transferor's estate. Such liability shall be limited to the value of the interest transferred to the beneficiary. The right to recover applies to medical assistance provided before, at the same time as, or after the signing of and the recording of the transfer on death deed.

Sec. 19. A contract to make a transfer on death deed, or not to revoke a transfer on death deed, can be established only by a writing evidencing the contract signed by the transferor after the operative date of this act.

Sec. 20. (a) Except as otherwise provided in subsection (b) of this section, if property or any interest therein transferred to a beneficiary by a transfer on death deed is acquired by a purchaser or lender for value from a beneficiary of a transfer on death deed, the purchaser or lender takes title free of any claims of the estate, personal representative, surviving spouse, creditors, and any other person claiming by or through the transferor of the transfer on death deed and the purchaser or lender shall not incur any personal liability to the estate, personal representative, surviving spouse, creditors, or any other person claiming by or through the transferor of the transfer on death deed, whether or not the conveyance by the transferor on death deed was proper. Except as otherwise provided in subsection (b) of this section, to be protected under this section, a purchaser or lender need not inquire whether a transferor or beneficiary of the transfer on death deed acted properly in making the conveyance to the beneficiary by the transfer on death deed.

(b) A purchaser or lender for value from a beneficiary of a transfer on death deed does not take title free of any lien for inheritance tax under section 77-2003.

Sec. 21. The Department of Health and Human Services may require

revocation of a transfer on death deed by a transferor, a transferor's spouse, or both a transferor and the transferor's spouse in order for the transferor to qualify or remain qualified for medicaid assistance.

Sec. 22. In applying and construing the Nebraska Uniform Real Property Transfer on Death Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

Sec. 23. The Nebraska Uniform Real Property Transfer on Death Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Sec. 24. Section 30-2352, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

(3) The appropriate court in a proceeding under section 30-3812, may direct or permit a trustee under a testamentary or nontestamentary instrument to renounce any restriction on or power of administration, management, or allocation of benefit upon finding that such restrictions on the exercise of such power may defeat or impair the accomplishment of the purposes of the trust whether by the imposition of tax or the allocation of beneficial interest inconsistent with such purposes or by other reason. Such authority shall be exercised after hearing and upon notice to qualified beneficiaries as defined in section 30-3803, in the manner directed by the court.

(b) The instrument specified in (a)(1) and (a)(2) must be received by the transferor of the interest, his or her legal representative, the personal representative of a deceased transferor, the trustee of any trust in which the interest being renounced exists, or the holder of the legal title to the property to which the interest relates. To be effective for purposes of determining inheritance and estate taxes under articles 20 and 21 of Chapter 77, the instrument must be received not later than the date which is nine months after the later of (i) the date on which the transfer creating the interest in such person is made, or (ii) the date on which such person attains age twenty-one. If the circumstances which establish the right of a person to renounce an interest arise as a result of the death of an individual, the instrument shall also be filed in the court of the county where proceedings concerning the decedent's estate are pending, or where they would be pending if commenced. If an interest in real estate is renounced, a copy of the instrument shall also be recorded in the office of the register of deeds in the county in which the real estate lies. No person entitled to a copy of the instrument shall be liable for any proper distribution or disposition made without actual notice of the renunciation and no such person making a proper distribution or disposition in reliance upon the renunciation shall be liable for any such distribution or disposition in the absence of actual notice that an action has been instituted contesting the validity of the renunciation.

(c) Unless the transferor of the interest has otherwise indicated in the instrument creating the interest, the interest renounced, and any future interest which is to take effect in possession or enjoyment at or after the termination of the interest renounced, passes as if the person renouncing had predeceased the decedent or had died prior to the date on which the transfer creating the interest in such person is made, as the case may be, if the

renunciation is within the time periods set forth in subsection (b) and if not within such time periods the interest renounced, and any future interest which is to take effect in possession or enjoyment at or after the termination of the interest renounced, passes as if the person renouncing had died on the date the interest was renounced. The person renouncing shall have no power to direct how the interest being renounced shall pass, except that the renunciation of an interest for which the right to renounce was established by the death of an individual shall, in the case of the spouse of the decedent, relate only to that statutory provision or that provision of the instrument creating the interest being renounced and shall not preclude the spouse from receiving the benefits of the renounced interest which may be derived as a result of the renounced interest passing pursuant to other statutory provisions or pursuant to other provisions of the instrument creating the interest unless such further benefits are also renounced. In every case when the renunciation is within the time periods set forth in subsection (b) the renunciation relates back for all purposes to the date of death of the decedent or the date on which the transfer creating the interest in such person is made, as the case may be.

(d) Any (1) assignment, conveyance, encumbrance, pledge, or transfer of property therein or any contract therefor, (2) written waiver of the right to renounce or any acceptance of property or benefits therefrom or an interest therein by an heir, devisee, person succeeding to a renounced interest, donee, beneficiary under a testamentary or nontestamentary instrument, donee of a power of appointment, grantee, surviving joint owner or surviving joint tenant, beneficiary or owner of an insurance contract or any incident of ownership therein, beneficiary or person designated to take pursuant to a power of appointment exercised by a testamentary or nontestamentary instrument, person who has a statutory entitlement to or election with respect to property pursuant to the Nebraska Probate Code, or recipient of any beneficial interest under any testamentary or nontestamentary instrument, or (3) sale or other disposition of property pursuant to judicial process, made within the time periods set forth in subsection (b) shall not bar the right to renounce, but shall make a subsequent renunciation within the time period set forth in subsection (b) of this section ineffective for purposes of determination of inheritance and estate taxes under articles 20 and 21 article 20 of Chapter 77. Any renunciation made after any part of the property has been assigned, conveyed, encumbered, pledged, or transferred is ineffective for the portion of the property which has previously been assigned, conveyed, encumbered, pledged, or transferred.

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

(f) The right to renounce granted by this section exists irrespective of any limitation on the interest of the person renouncing in the nature of a spendthrift provision or similar restriction. A trust beneficiary whose interest is subject to any limitation in the nature of a spendthrift provision or similar restriction may assign, sell, or otherwise convey such interest or any part thereof upon a finding by a court in a proceeding under section 30-3812 that the rights of other beneficiaries would not be impaired and that such assignment, sale, or other conveyance would not result in any substantial benefit to nonbeneficiaries of the trust at the expense of the trust or trust beneficiaries. Such finding may be made after hearing and upon notice to all known persons beneficially interested in such trust, in the manner directed by the court.

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

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

Sec. 25. Section 30-2354, Reissue Revised Statutes of Nebraska, is amended to read:

30-2354 (a) A surviving spouse, heir or devisee who feloniously and

intentionally kills or aids and abets the killing of the decedent is not entitled to any benefits under the will or under this article, and the estate of the decedent passes as if such spouse, heir, or devisee had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of such devisee passes as if the devisee had predeceased the decedent.

(b) Any joint tenant who feloniously and intentionally kills or aids and abets the killing of another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and such joint tenant has no rights by survivorship. This provision applies to joint tenancies and tenancies by the entirety in real and personal property, joint accounts in banks, savings and loan associations, credit unions and other institutions, and any other form of co-ownership with survivorship incidents.

(c) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills or aids and abets the killing of the principal obligee or the individual upon whose life the policy is issued is not entitled to any benefit under the bond, policy or other contractual arrangement, and it becomes payable as though such beneficiary has predeceased the decedent.

(d) Real property specified for a designated beneficiary of a transfer on death deed who feloniously and intentionally kills or aids and abets the killing of the transferor who signed the transfer on death deed or any other owner of the real property shall pass as if the designated beneficiary had predeceased the transferor.

~~(d)~~ (e) Any other acquisition of property or interest by the killer or by one who aids and abets the killer is treated in accordance with the principles of this section.

~~(e)~~ (f) A final judgment of conviction of felonious and intentional killing or aiding and abetting therein is conclusive for purposes of this section. In the absence of a conviction of felonious and intentional killing or aiding and abetting therein, the court may determine by a preponderance of evidence whether the killing or aiding and abetting therein was felonious and intentional for purposes of this section.

~~(f)~~ (g) This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases, from the killer or aider and abettor for value and without notice, property which the killer or aider and abettor would have acquired except for this section, but the killer or aider and abettor is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.

Sec. 26. Section 76-201, Reissue Revised Statutes of Nebraska, is amended to read:

76-201 ~~The term real estate,~~ as used in For purposes of sections 76-201 to 76-281 and section 31 of this act, the term real estate shall be construed as coextensive in meaning with lands, tenements, and hereditaments, and as embracing all chattels real, except leases for a term not exceeding one year.

Sec. 27. Section 76-202, Reissue Revised Statutes of Nebraska, is amended to read:

76-202 The term purchaser, as used in sections 76-201 to 76-281 and section 31 of this act, shall be construed to embrace every person to whom any real estate or interest therein shall be conveyed for valuable consideration, and also any assignee of mortgage or lease, or other conditional estate.

Sec. 28. Section 76-203, Reissue Revised Statutes of Nebraska, is amended to read:

76-203 The term deed, as used in sections 76-201 to 76-281 and section 31 of this act, shall be construed to embrace every instrument in writing by which any real estate or interest therein is created, aliened, mortgaged, or assigned, or by which the title to any real estate may be affected in law or equity, except last wills and leases for one year or for a less time.

Sec. 29. Section 76-214, Reissue Revised Statutes of Nebraska, is amended to read:

76-214 (1) Every grantee who has a deed to real estate recorded and every purchaser of real estate who has a memorandum of contract or land contract recorded shall, at the time such deed, memorandum of contract, or land contract is presented for recording, file with the register of deeds a completed statement as prescribed by the Tax Commissioner. For all deeds and all memoranda of contract and land contracts recorded on and

after January 1, 2001, the statement shall not require the social security number of the grantee or purchaser or the federal employer identification number of the grantee or purchaser. This statement may require the recitation of any information contained in the deed, memorandum of contract, or land contract, the total consideration paid, the amount of the total consideration attributable to factors other than the purchase of the real estate itself, and other factors which may influence the transaction. If a death certificate is recorded as provided in subsection (2) of this section, this statement may require a date of death, the name of the decedent, and whether the title is affected as a result of a transfer on death deed, a joint tenancy deed, or the expiration of a life estate or by any other means. This statement shall be signed and filed by the grantee, the purchaser, or his or her authorized agent. The register of deeds shall forward the statement to the county assessor. If the grantee or purchaser fails to furnish the prescribed statement, the register of deeds shall not record the deed, memorandum of contract, or land contract. The register of deeds shall indicate on the statement the book and page or computer system reference where the deed, memorandum of contract, or land contract is recorded and shall immediately forward the statement to the county assessor. The county assessor shall process the statement according to the instructions of the Property Tax Administrator and shall, pursuant to the rules and regulations of the Tax Commissioner, forward the statement to the Tax Commissioner.

(2) (a) The statement described in subsection (1) of this section shall be filed at the time that a certified or authenticated copy of the grantor's death certificate is filed if such death certificate is required to be filed under section 31 of this act.

(b) The statement described in subsection (1) of this section shall not be required to be filed at the time that a transfer on death deed is filed or at the time that an instrument of revocation of a transfer on death deed as described in subdivision (a) (1) (B) of section 13 of this act is filed.

~~(2)~~ (3) Any person shall have access to the statements at the office of the Tax Commissioner, county assessor, or register of deeds if the statements are available and have not been disposed of pursuant to the records retention and disposition schedule as approved by the State Records Administrator.

Sec. 30. Section 76-215, Reissue Revised Statutes of Nebraska, is amended to read:

76-215 Any person who fails to obey the provisions of subsection (1) of section 76-214 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten dollars nor exceeding five hundred dollars.

Sec. 31. If a conveyance of real estate was pursuant to (1) a transfer on death deed due to the death of the transferor or the death of a surviving joint tenant of the transferor, (2) a joint tenancy deed due to the death of a joint tenant, or (3) the expiration of a life estate, then a death certificate shall be filed with the register of deeds to document the transfer of title to the beneficiary of the transfer on death deed, to the surviving joint tenant or joint tenants, or to the holder of an interest in real estate which receives that interest as a result of the death of a life tenant.

Sec. 32. Section 76-238, Reissue Revised Statutes of Nebraska, is amended to read:

76-238 (1) All Except as otherwise provided in sections 13, 14, and 15 of this act, all deeds, mortgages, and other instruments of writing which are required to be or which under the laws of this state may be recorded, shall take effect and be in force from and after the time of delivering such instruments to the register of deeds for recording, and not before, as to all creditors and subsequent purchasers in good faith without notice. All such instruments are void as to all creditors and subsequent purchasers without notice whose deeds, mortgages, or other instruments are recorded prior to such instruments. However, such instruments are valid between the parties to the instrument.

(2) For purposes of this section, possession of agricultural real estate or residential real estate by a party related to the owner of record of the real estate within the third degree of consanguinity or affinity shall not serve as notice to a creditor or subsequent purchaser in any case in which such party is claiming rights in such real estate pursuant to a lease (a) entered into on or after July 16, 2004; (b) purporting to extend beyond a term of one year; and (c) which has not satisfied the requirements of section 76-211, unless the creditor or subsequent purchaser, in advance of recording a deed, mortgage, or other instrument, has received a written copy of such lease.

(3) For purposes of this section:



(a) Agricultural products includes grain and feed crops; forages and sod crops; and animal production, including breeding, feeding, or grazing of cattle, horses, swine, sheep, goats, bees, or poultry;

(b) Agricultural real estate means land which is primarily used for the production of agricultural products, including waste land lying in or adjacent to and in common ownership with land used for the production of agricultural products;

(c) Related within the third degree of consanguinity or affinity includes parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, brothers, sisters, uncles, aunts, nephews, nieces, and spouses of the same and any partnership, limited liability company, or corporation in which all of the partners, members, or shareholders are related within the third degree of consanguinity or affinity; and

(d) Residential real estate means real estate containing not more than four units designed for use for residential purposes. A condominium unit that is otherwise residential real estate remains so even though the condominium development contains more than four dwelling units or units for nonresidential purposes.

Sec. 33. Section 76-246, Reissue Revised Statutes of Nebraska, is amended to read:

76-246 No instrument containing a power to convey, or in any manner to affect real estate, executed, acknowledged or proved, and certified and recorded in conformity with the requirements of sections 76-211 to 76-245 and section 31 of this act, can be revoked by any act of the party or parties thereto until the instrument of revocation is executed, acknowledged or proved, and certified and filed for record with the register of deeds of the county in which the power is recorded.

Sec. 34. Section 76-277, Reissue Revised Statutes of Nebraska, is amended to read:

76-277 The provisions of sections Sections 76-201 to 76-281 shall and section 31 of this act apply to the conveyance of all claims and improvements upon the public lands.

Sec. 35. Section 76-902, Reissue Revised Statutes of Nebraska, is amended to read:

76-902 The tax imposed by section 76-901 shall not apply to:

(1) Deeds recorded prior to November 18, 1965;

(2) Deeds to property transferred by or to the United States of America, the State of Nebraska, or any of their agencies or political subdivisions;

(3) Deeds which secure or release a debt or other obligation;

(4) Deeds which, without additional consideration, confirm, correct, modify, or supplement a deed previously recorded but which do not extend or limit existing title or interest;

(5) (a) Deeds between husband and wife, or spouses, between ex-spouses for the purpose of conveying any rights to property acquired or held during the marriage, or between parent and child, without actual consideration therefor, and (b) deeds to or from a family corporation, partnership, or limited liability company when all the shares of stock of the corporation or interest in the partnership or limited liability company are owned by members of a family, or a trust created for the benefit of a member of that family, related to one another within the fourth degree of kindred according to the rules of civil law, and their spouses, for no consideration other than the issuance of stock of the corporation or interest in the partnership or limited liability company to such family members or the return of the stock to the corporation in partial or complete liquidation of the corporation or deeds in dissolution of the interest in the partnership or limited liability company. In order to qualify for the exemption for family corporations, partnerships, or limited liability companies, the property shall be transferred in the name of the corporation or partnership and not in the name of the individual shareholders, partners, or members;

(6) Tax deeds;

(7) Deeds of partition;

(8) Deeds made pursuant to mergers, consolidations, sales, or transfers of the assets of corporations pursuant to plans of merger or consolidation filed with the office of Secretary of State. A copy of such plan filed with the Secretary of State shall be presented to the register of deeds before such exemption is granted;

(9) Deeds made by a subsidiary corporation to its parent corporation for no consideration other than the cancellation or surrender of the subsidiary's stock;

(10) Cemetery deeds;

(11) Mineral deeds;

- (12) Deeds executed pursuant to court decrees;
- (13) Land contracts;
- (14) Deeds which release a reversionary interest, a condition subsequent or precedent, a restriction, or any other contingent interest;
- (15) Deeds of distribution executed by a personal representative conveying to devisees or heirs property passing by testate or intestate succession;
- (16) Transfer on death deeds or revocations of transfer on death deeds;
- (17) Certified or authenticated death certificates pertaining to transfer on death deeds;
- ~~(16)~~ (18) Deeds transferring property located within the boundaries of an Indian reservation if the grantor or grantee is a reservation Indian;
- ~~(17)~~ (19) Deeds transferring property into a trust if the transfer of the same property would be exempt if the transfer was made directly from the grantor to the beneficiary or beneficiaries under the trust. No such exemption shall be granted unless the register of deeds is presented with a signed statement certifying that the transfer of the property is made under such circumstances as to come within one of the exemptions specified in this section and that evidence supporting the exemption is maintained by the person signing the statement and is available for inspection by the Department of Revenue;
- ~~(18)~~ (20) Deeds transferring property from a trustee to a beneficiary of a trust;
- ~~(19)~~ (21) Deeds which convey property held in the name of any partnership or limited liability company not subject to subdivision (5) of this section to any partner in the partnership or member of the limited liability company or to his or her spouse;
- ~~(20)~~ (22) Leases;
- ~~(21)~~ (23) Easements; or
- ~~(22)~~ (24) Deeds which transfer title from a trustee to a beneficiary pursuant to a power of sale exercised by a trustee under a trust deed.
- Sec. 36. This act becomes operative on January 1, 2013.
- Sec. 37. Original sections 30-2352, 30-2354, 76-201, 76-202, 76-203, 76-214, 76-215, 76-238, 76-246, 76-277, and 76-902, Reissue Revised Statutes of Nebraska, are repealed.