

ONE HUNDRED EIGHTH LEGISLATURE - FIRST SESSION - 2023
COMMITTEE STATEMENT
LB83

Hearing Date: Thursday February 02, 2023
Committee On: Judiciary
Introducer: DeBoer
One Liner: Adopt the Uniform Community Property Disposition at Death Act and change provisions relating to court jurisdiction

Roll Call Vote - Final Committee Action:

Advanced to General File

Vote Results:

Aye: 8 Senators Blood, DeBoer, DeKay, Geist, Holdcroft, Ibach, McKinney, Wayne
Nay:
Absent:
Present Not Voting:

Testimony:

Proponents:

Senator Wendy DeBoer
Steven Willborn
William J. Lindsay Jr.

Representing:

District 10
Nebraska Uniform Law Commission
Nebraska State Bar Association

Opponents:

Representing:

Neutral:

Representing:

* ADA Accomodation Written Testimony

Summary of purpose and/or changes:

Overview: LB83 seeks to adopt the Uniform Community Property at Death Act which provides guidelines and processes to address situations where a spouse acquired community property while living in a community property state but either died while living in Nebraska or had property in Nebraska at the time of death while living in another location. The bill provides for a variety of situations involving the spouse, heirs, and devisees. The bill provides timeframes, venue, and jurisdiction details on resolving claims on community property held by the decedent.

Section 1: Sections 1-15 shall be known as the Uniform Community Property Disposition at Death Act.

Section 2: Defines the following terms: "community-property spouse," "electronic," "jurisdiction," "partition," "person," "personal representative," "property," "reclassify," "record," "sign," and "estate."

Section 3: The Act applies to the property of a community-property spouse (hereinafter, "spouse") regardless of how

the property is titled. The Act applies when the decedent lived in Nebraska and the property was community property when the decedent and spouse were living in a community property state. Regardless of whether the decedent lived in Nebraska, the Act applies to real property located in Nebraska traceable to community property acquired in a community property state. Also includes property transferred to a trust if characterized as community property by terms of the trust. Does not include property partitioned or reclassified

Section 4: Permits spouses to partition or reclassify property subject to this Act, but must be in a record signed by both spouses. Additionally, a spouse living in Nebraska may waive a right granted by this Act pursuant to Nebraska laws.

Section 5: Property acquired by spouse domiciled in a community property state is presumed to be community property but can be rebutted.

Section 6: Half of the property subject to this Act belongs to the surviving spouse and the other half belongs to the decedent. The property belonging to the decedent is subject to disposition by the decedent at death. This generally does not apply to property transferred under right of survivorship, revocable trust or other non-probate transfer. If the decedent transfers community property to third party but also transfers other property to surviving spouse, a court is permitted to require surviving spouse to either retain property or exercise rights under the Act.

This section does not limit the right of the surviving spouse to the allowances found at Sections 30-2322, 30-2323, and 30-2324.

Section 7: A decedent's spouse, personal representative, heir, or non-probate transferee is allowed to assert a right based on an act of the surviving spouse or decedent during their relationship or of the decedent alone that takes effect upon death. A court shall apply equitable principles when determining an asserted right. A court may consider the community property law of the jurisdiction where the decedent or surviving spouse lived when the property was acquired.

Section 8: Establishes timeframes for a surviving spouse asserting claim under the Act. For property claims, within one year after death the surviving spouse must commence action against the heir, devisee or non-probate transferee in possession of property or within six months after appointment of personal representative, surviving spouse must send demand record. For other claims, if a personal representative appointed, a demand record within six months. If not appointed, must file an action within one year after death.

Section 9: Establishes timeframes for an heir, devisee, or transferee asserting claim under the Act. For property claims, within one year after death for claim against surviving spouse in possession or property or within six months after appointment of personal representative to send demand record. For other claims, if a personal representative appointed, a demand record within six months. If not appointed, must file an action within one year after death.

Section 10: A person is not liable under the Act with respect to property covered by the Act, if a transaction is conducted in good faith for value with a spouse or, if after death, with a spouse, personal representative, heir or devisee and does not know or have reason to know that the other party is exceeding or improperly exercising their authority. Good faith does not require the person to inquire into the propriety of the transaction.

Section 11: Provides that law and equity principles supplement the Act.

Section 12: Provides that the court shall consider uniformity among jurisdictions when applying or construing the Act.

Section 13: Provides a transition where if a right to property is acquired, extinguished or barred prior to the effective date of the Act, the previous statute continues to apply even if repealed or superseded.

Section 14: The act applies to proceedings commenced after the effective date of the Act, regardless of the date of death.

Section 15: Venue is in the county where the decedent was domiciled or where the property located if not domiciled in the state.

Section 16: Amends Section 24-517, regarding judicial jurisdiction, by adding a new subsection (19) which provides concurrent original jurisdiction with the District court for matters under the Act.

Section 17: Severability clause

Section 18: Repeals original section.

Justin Wayne, Chairperson