

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 83

FINAL READING

Introduced by DeBoer, 10.

Read first time January 05, 2023

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to community property; to amend section
- 2 24-517, Revised Statutes Cumulative Supplement, 2022; to adopt the
- 3 Uniform Community Property Disposition at Death Act; to change
- 4 provisions relating to court jurisdiction; to provide severability;
- 5 and to repeal the original section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 15 of this act shall be known and may be
2 cited as the Uniform Community Property Disposition at Death Act.

3 Sec. 2. For purposes of the Uniform Community Property Disposition
4 at Death Act:

5 (1) Community-property spouse means an individual in a marriage or
6 other relationship:

7 (A) under which community property could be acquired during the
8 existence of the relationship; and

9 (B) that remains in existence at the time of death of either party
10 to the relationship.

11 (2) Electronic means relating to technology having electrical,
12 digital, magnetic, wireless, optical, electromagnetic, or similar
13 capabilities.

14 (3) Jurisdiction means the United States, a state, a foreign
15 country, or a political subdivision of a foreign country.

16 (4) Partition means voluntarily divide property to which the Uniform
17 Community Property Disposition at Death Act otherwise would apply.

18 (5) Person means an individual, estate, business or nonprofit
19 entity, public corporation, government or governmental subdivision,
20 agency, or instrumentality, or other legal entity.

21 (6) Personal representative includes an executor, administrator,
22 successor personal representative, special administrator, and other
23 person that performs substantially the same function.

24 (7) Property means anything that may be the subject of ownership,
25 whether real or personal, tangible or intangible, legal or equitable, or
26 any interest therein.

27 (8) Reclassify means change the characterization or treatment of
28 community property to property owned separately by community-property
29 spouses.

30 (9) Record means information:

31 (A) inscribed on a tangible medium; or

1 (B) stored in an electronic or other medium and retrievable in
2 perceivable form.

3 (10) Sign means, with present intent to authenticate or adopt a
4 record:

5 (A) execute or adopt a tangible symbol; or

6 (B) attach to or logically associate with the record an electronic
7 symbol, sound, or process.

8 (11) State means a state of the United States, the District of
9 Columbia, Puerto Rico, the United States Virgin Islands, or any other
10 territory or possession subject to the jurisdiction of the United States.
11 The term includes a federally recognized Indian tribe.

12 Sec. 3. (a) Subject to subsection (b) of this section, the Uniform
13 Community Property Disposition at Death Act applies to the following
14 property of a community-property spouse, without regard to how the
15 property is titled or held:

16 (1) if a decedent was domiciled in this state at the time of death:

17 (A) all or a proportionate part of each item of personal property,
18 wherever located, that was community property under the law of the
19 jurisdiction where the decedent or the surviving community-property
20 spouse was domiciled when the property:

21 (i) was acquired; or

22 (ii) after acquisition, became community property;

23 (B) income, rent, profit, appreciation, or other increase derived
24 from or traceable to property described in subdivision (1)(A) of this
25 subsection; and

26 (C) personal property traceable to property described in subdivision
27 (1)(A) or (1)(B) of this subsection; and

28 (2) regardless whether a decedent was domiciled in this state at the
29 time of death:

30 (A) all or a proportionate part of each item of real property
31 located in this state traceable to community property or acquired with

1 community property under the law of the jurisdiction where the decedent
2 or the surviving community-property spouse was domiciled when the
3 property:

4 (i) was acquired; or

5 (ii) after acquisition, became community property; and

6 (B) income, rent, profit, appreciation, or other increase, derived
7 from or traceable to property described in subdivision (2)(A) of this
8 subsection.

9 (b) If community-property spouses acquired community property by
10 complying with the law of a jurisdiction that allows for creation of
11 community property by transfer of property to a trust, the Uniform
12 Community Property Disposition at Death Act applies to the property only
13 to the extent the property is held in the trust or characterized as
14 community property by the terms of the trust or the law of the
15 jurisdiction under which the trust was created.

16 (c) The Uniform Community Property Disposition at Death Act does not
17 apply to property that:

18 (1) community-property spouses have partitioned or reclassified; or

19 (2) is the subject of a waiver of rights granted by the Uniform
20 Community Property Disposition at Death Act.

21 Sec. 4. (a) Community-property spouses domiciled in this state may
22 partition or reclassify property to which the Uniform Community Property
23 Disposition at Death Act otherwise would apply. The partition or
24 reclassification must be in a record signed by both community-property
25 spouses.

26 (b) A community-property spouse domiciled in this state may waive a
27 right granted by the Uniform Community Property Disposition at Death Act
28 only by complying with the law of this state, including this state's
29 choice-of-law rules, applicable to waiver of a spousal property right.

30 Sec. 5. All property acquired by a community-property spouse when
31 domiciled in a jurisdiction where community property then could be

1 acquired by the community-property spouse by operation of law is presumed
2 to be community property. This presumption may be rebutted by a
3 preponderance of the evidence.

4 Sec. 6. (a) One-half of the property to which the Uniform Community
5 Property Disposition at Death Act applies belongs to the surviving
6 community-property spouse of a decedent and is not subject to disposition
7 by the decedent at death.

8 (b) One-half of the property to which the Uniform Community Property
9 Disposition at Death Act applies belongs to the decedent and is subject
10 to disposition by the decedent at death.

11 (c) For the purpose of calculating the augmented estate of the
12 decedent and the elective-share right of the surviving community-property
13 spouse:

14 (1) property under subsection (a) of this section is deemed to be
15 property of the surviving community-property spouse; and

16 (2) property under subsection (b) of this section is deemed to be
17 property of the decedent.

18 (d) Except for the purpose of calculating the augmented estate of
19 the decedent and the elective-share right of the surviving community-
20 property spouse, this section does not apply to property transferred by
21 right of survivorship or under a revocable trust or other nonprobate
22 transfer.

23 (e) This section does not limit the right of a surviving community-
24 property spouse to the homestead allowance under section 30-2322, exempt
25 property allowance under section 30-2323, and family allowance under
26 section 30-2324.

27 (f) If at death a decedent purports to transfer to a third person
28 property that, under this section, belongs to the surviving community-
29 property spouse and transfers other property to the surviving community-
30 property spouse, this section does not limit the authority of the court
31 under other law of this state to require that the community-property

1 spouse elect between retaining the property transferred to the community-
2 property spouse or asserting rights under the Uniform Community Property
3 Disposition at Death Act.

4 Sec. 7. (a) At the death of a community-property spouse, the
5 surviving community-property spouse or a personal representative, heir,
6 or nonprobate transferee of the decedent may assert a right based on an
7 act of:

8 (1) the surviving community-property spouse or decedent during the
9 marriage or other relationship under which community property then could
10 be acquired; or

11 (2) the decedent that takes effect at the death of the decedent.

12 (b) In determining a right under subsection (a) of this section and
13 corresponding remedy, the court:

14 (1) shall apply equitable principles; and

15 (2) may consider the community property law of the jurisdiction
16 where the decedent or surviving community-property spouse was domiciled
17 when property was acquired or enhanced.

18 Sec. 8. (a) The surviving community-property spouse of the decedent
19 may assert a claim for relief with respect to a right under the Uniform
20 Community Property Disposition at Death Act in accordance with the
21 following rules:

22 (1) In an action asserting a right in or to property, the surviving
23 community-property spouse must:

24 (A) not later than one year after the death of the decedent,
25 commence an action against an heir, devisee, or nonprobate transferee of
26 the decedent that is in possession of the property; or

27 (B) not later than six months after appointment of the personal
28 representative of the decedent, send a demand in a record to the personal
29 representative.

30 (2) In an action other than an action under subdivision (1) of this
31 subsection, the surviving community-property spouse must:

1 (A) not later than six months after appointment of the personal
2 representative of the decedent, send a demand in a record to the personal
3 representative; or

4 (B) if a personal representative is not appointed, commence the
5 action not later than one year after the death of the decedent.

6 (b) Unless a timely demand is made under subdivision (a)(1)(B) or
7 (a)(2)(A) of this section, the personal representative may distribute the
8 assets of the decedent's estate without personal liability for a
9 community-property spouse's claim under the Uniform Community Property
10 Disposition at Death Act.

11 Sec. 9. An heir, devisee, or nonprobate transferee of a deceased
12 community-property spouse may assert a claim for relief with respect to a
13 right under the Uniform Community Property Disposition at Death Act in
14 accordance with the following rules:

15 (1) In an action asserting a right in or to property, the heir,
16 devisee, or nonprobate transferee shall:

17 (A) not later than one year after the death of the decedent,
18 commence an action against the surviving community-property spouse of the
19 decedent who is in possession of the property; or

20 (B) not later than six months after appointment of the personal
21 representative of the decedent, send a demand in a record to the personal
22 representative.

23 (2) In an action other than an action under subdivision (1) of this
24 section, the heir, devisee, or nonprobate transferee must:

25 (A) not later than six months after the appointment of the personal
26 representative of the decedent, send a demand in a record to the personal
27 representative; or

28 (B) if a personal representative is not appointed, commence the
29 action not later than one year after the death of the decedent.

30 Sec. 10. (a) With respect to property to which the Uniform
31 Community Property Disposition at Death Act applies, a person is not

1 liable under the Uniform Community Property Disposition at Death Act to
2 the extent the person:

3 (1) transacts in good faith and for value:

4 (A) with a community-property spouse; or

5 (B) after the death of the decedent, with a surviving community-
6 property spouse, personal representative, heir, devisee, or nonprobate
7 transferee of the decedent; and

8 (2) does not know or have reason to know that the other party to the
9 transaction is exceeding or improperly exercising the party's authority.

10 (b) Good faith under subdivision (a)(1) of this section does not
11 require the person to inquire into the extent or propriety of the
12 exercise of authority by the other party to the transaction.

13 Sec. 11. The principles of law and equity supplement the Uniform
14 Community Property Disposition at Death Act except to the extent
15 inconsistent with the act.

16 Sec. 12. In applying and construing the Uniform Community Property
17 Disposition at Death Act, a court shall consider the promotion of
18 uniformity of the law among jurisdictions that enact it.

19 Sec. 13. If a right with respect to property to which the Uniform
20 Community Property Disposition at Death Act applies is acquired,
21 extinguished, or barred on the expiration of a limitation period that
22 began to run under another statute before the effective date of this act,
23 that statute continues to apply to the right even if the statute has been
24 repealed or superseded by the Uniform Community Property Disposition at
25 Death Act.

26 Sec. 14. Except as provided in section 13 of this act, the Uniform
27 Community Property Disposition at Death Act applies to a judicial
28 proceeding with respect to property to which the act applies commenced on
29 or after the effective date of this act, regardless of the date of death
30 of the decedent.

31 Sec. 15. Venue for any proceeding under the Uniform Community

1 Property Disposition at Death Act is in the county in this state where:

2 (1) The decedent was domiciled at the time of death; or

3 (2) The decedent's property was located at the time of death if the
4 decedent was not domiciled in Nebraska at the time of death.

5 Sec. 16. Section 24-517, Revised Statutes Cumulative Supplement,
6 2022, is amended to read:

7 24-517 Each county court shall have the following jurisdiction:

8 (1) Exclusive original jurisdiction of all matters relating to
9 decedents' estates, including the probate of wills and the construction
10 thereof, except as provided in subsection (c) of section 30-2464 and
11 section 30-2486;

12 (2) Exclusive original jurisdiction in all matters relating to the
13 guardianship of a person, except if a separate juvenile court already has
14 jurisdiction over a child in need of a guardian, concurrent original
15 jurisdiction with the separate juvenile court in such guardianship;

16 (3) Exclusive original jurisdiction of all matters relating to
17 conservatorship of any person, including (a) original jurisdiction to
18 consent to and authorize a voluntary selection, partition, and setoff of
19 a ward's interest in real estate owned in common with others and to
20 exercise any right of the ward in connection therewith which the ward
21 could exercise if competent and (b) original jurisdiction to license the
22 sale of such real estate for cash or on such terms of credit as shall
23 seem best calculated to produce the highest price subject only to the
24 requirements set forth in section 30-3201;

25 (4) Concurrent jurisdiction with the district court to involuntarily
26 partition a ward's interest in real estate owned in common with others;

27 (5) Concurrent original jurisdiction with the district court in all
28 civil actions of any type when the amount in controversy is forty-five
29 thousand dollars or less through June 30, 2005, and as set by the Supreme
30 Court pursuant to subdivision (b) of this subdivision on and after July
31 1, 2005.

1 (a) When the pleadings or discovery proceedings in a civil action
2 indicate that the amount in controversy is greater than the
3 jurisdictional amount of subdivision (5) of this section, the county
4 court shall, upon the request of any party, certify the proceedings to
5 the district court as provided in section 25-2706. An award of the county
6 court which is greater than the jurisdictional amount of subdivision (5)
7 of this section is not void or unenforceable because it is greater than
8 such amount, however, if an award of the county court is greater than the
9 jurisdictional amount, the county court shall tax as additional costs the
10 difference between the filing fee in district court and the filing fee in
11 county court.

12 (b) The Supreme Court shall adjust the jurisdictional amount for the
13 county court every fifth year commencing July 1, 2005. The adjusted
14 jurisdictional amount shall be equal to the then current jurisdictional
15 amount adjusted by the average percentage change in the unadjusted
16 Consumer Price Index for All Urban Consumers published by the Federal
17 Bureau of Labor Statistics for the five-year period preceding the
18 adjustment date. The jurisdictional amount shall be rounded to the
19 nearest one-thousand-dollar amount;

20 (6) Concurrent original jurisdiction with the district court in any
21 criminal matter classified as a misdemeanor or for any infraction. The
22 district court shall have concurrent original jurisdiction in any
23 criminal matter classified as a misdemeanor that arises from the same
24 incident as a charged felony;

25 (7) Concurrent original jurisdiction with the district court in
26 domestic relations matters as defined in section 25-2740 and with the
27 district court and separate juvenile court in paternity or custody
28 determinations as provided in section 25-2740;

29 (8) Concurrent original jurisdiction with the district court in
30 matters arising under the Nebraska Uniform Trust Code;

31 (9) Exclusive original jurisdiction in any action based on violation

1 of a city or village ordinance, except with respect to violations
2 committed by persons under eighteen years of age;

3 (10) The jurisdiction of a juvenile court as provided in the
4 Nebraska Juvenile Code when sitting as a juvenile court in counties which
5 have not established separate juvenile courts;

6 (11) Exclusive original jurisdiction in matters of adoption, except
7 if a separate juvenile court already has jurisdiction over the child to
8 be adopted, concurrent original jurisdiction with the separate juvenile
9 court;

10 (12) Exclusive original jurisdiction in matters arising under the
11 Nebraska Uniform Custodial Trust Act;

12 (13) Concurrent original jurisdiction with the district court in any
13 matter relating to a power of attorney and the action or inaction of any
14 agent acting under a power of attorney;

15 (14) Exclusive original jurisdiction in any action arising under
16 sections 30-3401 to 30-3432;

17 (15) Exclusive original jurisdiction in matters arising under the
18 Nebraska Uniform Transfers to Minors Act;

19 (16) Concurrent original jurisdiction with the district court in
20 matters arising under the Uniform Principal and Income Act;

21 (17) Concurrent original jurisdiction with the district court in
22 matters arising under the Uniform Testamentary Additions to Trusts Act
23 (1991) except as otherwise provided in subdivision (1) of this section;

24 (18) Concurrent original jurisdiction with the district court to
25 determine contribution rights under section 68-919; ~~and~~

26 (19) Concurrent original jurisdiction with the district court in
27 matters arising under the Uniform Community Property Disposition at Death
28 Act except for all matters relating to decedents' estates for which the
29 county court has exclusive original jurisdiction under subdivision (1) of
30 this section; and

31 (20) (19) All other jurisdiction heretofore provided and not

1 specifically repealed by Laws 1972, Legislative Bill 1032, and such other
2 jurisdiction as hereafter provided by law.

3 Sec. 17. If any section in this act or any part of any section is
4 declared invalid or unconstitutional, the declaration shall not affect
5 the validity or constitutionality of the remaining portions.

6 Sec. 18. Original section 24-517, Revised Statutes Cumulative
7 Supplement, 2022, is repealed.