

## LEGISLATIVE BILL 100

Approved by the Governor March 24, 1999

Introduced by D. Pederson, 42; Engel, 17; Matzke, 47; Schrock, 38

AN ACT relating to the Nebraska Probate Code; to amend sections 30-2201 and 30-24,125, Revised Statutes Supplement, 1998; to provide for and change provisions relating to transfer of real and personal property; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 30-2201, Revised Statutes Supplement, 1998, is amended to read:

30-2201. Sections 30-2201 to 30-2902 and sections 2 and 3 of this act shall be known and may be cited as the Nebraska Probate Code.

Sec. 2. (a) Thirty days after the death of a decedent, any person claiming as successor to the decedent's interest in real property in this state may file or cause to be filed on his or her behalf, with the register of deeds office of a county in which the real property of the decedent that is the subject of the affidavit is located, an affidavit describing the real property owned by the decedent and the interest of the decedent in the property. The affidavit shall be signed by all persons claiming as successors or by parties legally acting on their behalf and shall be prima facie evidence of the facts stated in the affidavit. The affidavit shall state:

(1) the value of the decedent's interest in all real property in the decedent's estate located in this state does not exceed twenty-five thousand dollars. The value of the decedent's interest shall be determined from the value of the property as shown on the assessment rolls for the year in which the decedent died;

(2) thirty days have elapsed since the death of the decedent as shown in a certified or authenticated copy of the decedent's death certificate attached to the affidavit;

(3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;

(4) the claiming successor is entitled to the real property by reason of the homestead allowance, exempt property allowance, or family allowance, by intestate succession, or by devise under the will of the decedent;

(5) the claiming successor has made an investigation and has been unable to determine any subsequent will;

(6) no other person has a right to the interest of the decedent in the described property;

(7) the claiming successor's relationship to the decedent and the value of the entire estate of the decedent; and

(8) the person or persons claiming as successors under the affidavit swear or affirm that all statements in the affidavit are true and material and further acknowledge that any false statement may subject the person or persons to penalties relating to perjury under section 28-915.

(b) The recorded affidavit and certified or authenticated copy of the decedent's death certificate shall also be recorded by the claiming successor in any other county in this state in which the real property of the decedent that is the subject of the affidavit is located.

Sec. 3. (a) A successor named in an affidavit under section 2 of this act shall have the same protection as a distributee who has received a deed of distribution from a personal representative as provided in section 30-24,106.

(b) A purchaser of real property from or lender to a person named as a successor in an affidavit under section 2 of this act shall have the same protection as a person purchasing from or lending to a distributee who has received a deed of distribution from a personal representative as provided in section 30-24,108.

(c) Nothing in this section affects or prevents any proceeding to enforce any mortgage, pledge, or other lien upon the real property described in the affidavit.

Sec. 4. Section 30-24,125, Revised Statutes Supplement, 1998, is amended to read:

30-24,125. (a) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in

action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating: ~~that:~~

(1) the value of ~~the entire~~ all of the personal property in the decedent's estate, wherever located, less liens and encumbrances, does not exceed twenty-five thousand dollars;

(2) thirty days have elapsed since the death of the decedent as shown in a certified or authenticated copy of the decedent's death certificate attached to the affidavit;

(3) the claiming successor's relationship to the decedent or, if there is no relationship, the basis of the successor's claim to the personal property;

(4) the person or persons claiming as successors under the affidavit swear or affirm that all statements in the affidavit are true and material and further acknowledge that any false statement may subject the person or persons to penalties relating to perjury under section 28-915;

~~(3)~~ (5) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

~~(4)~~ (6) the claiming successor is entitled to payment or delivery of the property.

(b) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (a).

(c) In addition to compliance with the requirements of subsection (a), a person seeking a transfer of a certificate of title to a motor vehicle shall be required to furnish to the Department of Motor Vehicles a statement of the value of any motor vehicle intended to be transferred under this section made by the county assessor of the county of the residence of the decedent. The affidavit and statement showing applicability of this section and compliance with the requirements of this section shall be sufficient proof under section 60-111, to authorize the department to issue a new certificate of title.

Sec. 5. Original sections 30-2201 and 30-24,125, Revised Statutes Supplement, 1998, are repealed.