

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 536

Introduced by Wightman, 36; Ashford, 20.

Read first time January 18, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to decedents' estates; to amend sections 30-2352,
2 30-2354, 76-238, and 76-902, Reissue Revised Statutes of
3 Nebraska; to adopt the Nebraska Uniform Real Property
4 Transfer on Death Act; to harmonize provisions; to
5 provide an operative date; and to repeal the original
6 sections.

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

1 Section 1. Sections 1 to 22 of this act shall be known
2 and may be cited as the Nebraska Uniform Real Property Transfer on
3 Death Act.

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

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

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

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

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

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

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

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

25 Sec. 3. The Nebraska Uniform Real Property Transfer on

1 Death Act applies to a transfer on death deed made before, on, or
2 after the operative date of this act by a transferor dying on or
3 after the operative date of this act.

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

7 Sec. 5. An individual may transfer property to one or
8 more beneficiaries effective at the transferor's death by a transfer
9 on death deed.

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

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

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

16 Sec. 9. A transfer on death deed:

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

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

22 (3) Must be recorded before the transferor's death in the
23 public records in the office of the register of deeds of the county
24 where the property is located.

25 Sec. 10. A transfer on death deed is effective without:

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

3 (2) Consideration.

4 Sec. 11. (a) Subject to subsection (b) of this section,
5 an instrument is effective to revoke a recorded transfer on death
6 deed, or any part of it, only if the instrument:

7 (1) Is one of the following:

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

10 (B) An instrument of revocation that expressly revokes
11 the deed or part of the deed; or

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

14 (2) Is acknowledged by the transferor after the
15 acknowledgment of the deed being revoked and recorded before the
16 transferor's death in the public records in the office of the
17 register of deeds of the county where the deed is recorded.

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

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

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

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

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

3 Sec. 12. During a transferor's life, a transfer on death
4 deed does not:

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

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

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

13 (4) Affect the transferor's or designated beneficiary's
14 eligibility for any form of public assistance except to the extent
15 provided in section 20 of this act;

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

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

20 Sec. 13. (a) Except as otherwise provided in the transfer
21 on death deed, in this section, or in sections 30-2313 to 30-2319 or
22 section 30-2354, on the death of the transferor, the following rules
23 apply to property that is the subject of a transfer on death deed and
24 owned by the transferor at death:

25 (1) Subject to subdivision (2) of this subsection, the

1 interest in the property is transferred to the designated beneficiary
2 in accordance with the deed;

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

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

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

19 (b) Subject to section 76-238, a beneficiary takes the
20 property subject to all conveyances, encumbrances, assignments,
21 contracts, mortgages, liens, and other interests to which the
22 property is subject at the transferor's death. For purposes of this
23 subsection and section 76-238, the recording of the transfer on death
24 deed is deemed to have occurred at the transferor's death.

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

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

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

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

9 (e) If after recording a transfer on death deed the
10 transferor is divorced or his or her marriage is dissolved or
11 annulled, the divorce, dissolution, or annulment revokes any
12 disposition or appointment of property made by the transfer on death
13 deed to the former spouse unless the transfer on death deed expressly
14 provides otherwise. Property prevented from passing to a former
15 spouse under a transfer on death deed because of revocation by
16 divorce, dissolution, or annulment passes as if the former spouse
17 failed to survive the transferor. A decree of separation which does
18 not terminate the status of husband and wife is not a divorce for
19 purposes of this section.

20 Sec. 14. A beneficiary may disclaim all or part of the
21 beneficiary's interest as provided by section 30-2352.

22 Sec. 15. (a) If other assets of the estate of the
23 transferor are insufficient to pay all claims against the
24 transferor's estate, statutory allowances to the transferor's
25 surviving spouse and children, and the expenses of administration, a

1 transfer under the Nebraska Uniform Real Property Transfer on Death
2 Act subjects the beneficiary to personal liability as provided in
3 this section to the extent needed to pay all claims against the
4 transferor's estate, statutory allowances to the transferor's
5 surviving spouse and children, and the expenses of administration.

6 (b)(1) A beneficiary who receives property through a
7 transfer on death deed upon the death of the transferor is liable to
8 account to the personal representative of the transferor's estate for
9 a proportionate share of the fair market value of the equity in the
10 interest received to the extent necessary to discharge the claims and
11 allowances described in subsection (1) of this section remaining
12 unpaid after application of the transferor's estate. For purposes of
13 this subdivision (a), the fair market value shall be determined as of
14 the date of death of the transferor. For purposes of this subdivision
15 (a), the beneficiary's proportionate share means the proportionate
16 share of all nonprobate transfers recovered by the personal
17 representative for the payment of the claims and allowances under the
18 Nebraska Uniform Real Property Transfer on Death Act and sections
19 30-2726, 30-2743, and 30-3850.

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

1 (c) A beneficiary against whom a proceeding to account is
2 brought may join as a party to the proceeding a surviving party or
3 beneficiary of any other transfer on death deed for the same
4 transferor or any other asset of the transferor subject to sections
5 30-2726, 30-2743, and 30-3850.

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

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

11 Sec. 16. A beneficiary to whom an interest is transferred
12 by a transfer on death deed shall be personally liable to account for
13 medicaid reimbursement pursuant to section 68-919 and section 15 of
14 this act to the extent necessary to discharge any such claim
15 remaining unpaid after application of the assets of the transferor's
16 estate. Such liability shall be limited to the value of the interest
17 transferred to the beneficiary. The right to recover applies to
18 medical assistance provided before, at the same time as, or after the
19 signing of and the recording of the transfer on death deed.

20 Sec. 17. A contract to make a transfer on death deed, or
21 not to revoke a transfer on death deed, can be established only by a
22 writing evidencing the contract signed by the transferor after the
23 operative date of this act.

24 Sec. 18. The following form may be used to create a
25 transfer on death deed. The other provisions of the Nebraska Uniform

1 Real Property Transfer on Death Act govern the effect of this or any
2 other instrument used to create a transfer on death deed:

3 (front of form)

4 REVOCABLE TRANSFER ON DEATH DEED

5 NOTICE TO OWNER

6 You should carefully read all information on the other
7 side of this form. You May Want to Consult a Lawyer Before Using This
8 Form. If you are married and both spouses do not sign this deed, the
9 deed may be void.

10 WARNING: The property transferred remains subject to
11 inheritance taxation in Nebraska to the same extent as if owned by
12 the transferor at death.

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

21 WARNING: The Department of Health and Human Services may
22 require revocation of this deed in order to qualify for medicaid
23 assistance.

24 This form must be recorded before your death, or it will
25 not be effective.

1 IDENTIFYING INFORMATION

2 Owner or Owners Making This Deed:

3

4

5 Printed name

6 Mailing address

7 Printed name

8 Mailing address

9 Legal description of the property:

10

11 PRIMARY BENEFICIARY

12 I designate the following beneficiary if the beneficiary
13 survives me.

14 Printed name

15 Mailing address, if available

16 ALTERNATE BENEFICIARY - Optional

17 If my primary beneficiary does not survive me, I
18 designate the following alternate beneficiary if that beneficiary
19 survives me.

20 Printed name

21 Mailing address, if available

22 TRANSFER ON DEATH

23 At my death, I transfer my interest in the described
24 property to the beneficiaries as designated above.

25 Before my death, I have the right to revoke this deed.

1 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

2

3 (SEAL)

4 Signature

5 Date

6 (SEAL)

7 Signature

8 Date

9 ACKNOWLEDGMENT

10 (insert acknowledgment for deed here)

11 (back of form)

12 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

13 What does the Transfer on Death (TOD) deed do? When you
14 die, this deed transfers the described property, subject to any liens
15 or mortgages (or other encumbrances) on the property at your death.
16 Probate is not required. The TOD deed has no effect until you die.
17 You can revoke it at any time. You are also free to transfer the
18 property to someone else during your lifetime. If you do not own any
19 interest in the property when you die, this deed will have no effect.

20 How do I make a TOD deed? Complete this form. Have it
21 acknowledged before a notary public or other individual authorized by
22 law to take acknowledgments. Record the form in each county where any
23 part of the property is located. The form has no effect unless it is
24 acknowledged and recorded before your death.

25 Is the "legal description" of the property necessary?

1 Yes.

2 How do I find the "legal description" of the property?
3 This information may be on the deed you received when you became an
4 owner of the property. This information may also be available in the
5 office of the register of deeds for the county where the property is
6 located. If you are not absolutely sure, consult a lawyer.

7 Can I change my mind before I record the TOD deed? Yes.
8 If you have not yet recorded the deed and want to change your mind,
9 simply tear up or otherwise destroy the deed.

10 How do I "record" the TOD deed? Take the completed and
11 acknowledged form to the office of the register of deeds of the
12 county where the property is located. Follow the instructions given
13 by the register of deeds to make the form part of the official
14 property records. If the property is in more than one county, you
15 should record the deed in each county.

16 Can I later revoke the TOD deed if I change my mind? Yes.
17 You can revoke the TOD deed. No one, including the beneficiaries, can
18 prevent you from revoking the deed.

19 How do I revoke the TOD deed after it is recorded? There
20 are three ways to revoke a recorded TOD deed: (1) Complete and
21 acknowledge a revocation form, and record it in each county where the
22 property is located. (2) Complete and acknowledge a new TOD deed that
23 disposes of the same property, and record it in each county where the
24 property is located. (3) Transfer the property to someone else during
25 your lifetime by a recorded deed that expressly revokes the TOD deed.

1 You may not revoke the TOD deed by will.

2 I am being pressured to complete this form. What should I
3 do? Do not complete this form under pressure. Seek help from a
4 trusted family member, friend, or lawyer.

5 Do I need to tell the beneficiaries about the TOD deed?
6 No, but it is recommended. Secrecy can cause later complications and
7 might make it easier for others to commit fraud.

8 I have other questions about this form. What should I do?
9 This form is designed to fit some but not all situations. If you have
10 other questions, you are encouraged to consult a lawyer.

11 Sec. 19. The following form may be used to create an
12 instrument of revocation under the Nebraska Uniform Real Property
13 Transfer on Death Act. The other provisions of the act govern the
14 effect of this or any other instrument used to revoke a transfer on
15 death deed.

16 (front of form)

17 REVOCATION OF TRANSFER ON DEATH DEED

18 NOTICE TO OWNER

19 This revocation must be recorded before you die or it
20 will not be effective. This revocation is effective only as to the
21 interests in the property of owners who sign this revocation.

22 IDENTIFYING INFORMATION

23 Owner or Owners of Property Making This Revocation:

24
25

1 Printed name

2 Mailing address

3 Printed name

4 Mailing address

5 Legal description of the property:
6

7 REVOCATION

8 I revoke all my previous transfers of this property by
9 transfer on death deed.

10 SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION
11

12 (SEAL)

13 Signature

14 Date

15 (SEAL)

16 Signature

17 Date

18 ACKNOWLEDGMENT

19 (insert acknowledgment here)

20 (back of form)

21 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

22 How do I use this form to revoke a Transfer on Death
23 (TOD) deed? Complete this form. Have it acknowledged before a notary
24 public or other individual authorized to take acknowledgments. Record
25 the form in the public records in the office of the register of deeds

1 of each county where the property is located. The form must be
2 acknowledged and recorded before your death or it has no effect.

3 How do I find the "legal description" of the property?
4 This information may be on the TOD deed. It may also be available in
5 the office of the register of deeds for the county where the property
6 is located. If you are not absolutely sure, consult a lawyer.

7 How do I "record" the form? Take the completed and
8 acknowledged form to the office of the register of deeds of the
9 county where the property is located. Follow the instructions given
10 by the register of deeds to make the form part of the official
11 property records. If the property is located in more than one county,
12 you should record the form in each of those counties.

13 I am being pressured to complete this form. What should I
14 do? Do not complete this form under pressure. Seek help from a
15 trusted family member, friend, or lawyer.

16 I have other questions about this form. What should I do?
17 This form is designed to fit some but not all situations. If you have
18 other questions, consult a lawyer.

19 Sec. 20. The Department of Health and Human Services may
20 require revocation of a transfer on death deed by a transferor in
21 order for the transferor to qualify for medicaid assistance.

22 Sec. 21. In applying and construing the Nebraska Uniform
23 Real Property Transfer on Death Act, consideration must be given to
24 the need to promote uniformity of the law with respect to its subject
25 matter among the states that enact it.

1 Sec. 22. The Nebraska Uniform Real Property Transfer on
2 Death Act modifies, limits, and supersedes the federal Electronic
3 Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et
4 seq., but does not modify, limit, or supersede section 101(c) of that
5 act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of
6 the notices described in section 103(b) of that act, 15 U.S.C.
7 7003(b).

8 Sec. 23. Section 30-2352, Reissue Revised Statutes of
9 Nebraska, is amended to read:

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

1 provided.

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

8 (3) The appropriate court in a proceeding under section
9 30-3812, may direct or permit a trustee under a testamentary or
10 nontestamentary instrument to renounce any restriction on or power of
11 administration, management, or allocation of benefit upon finding
12 that such restrictions on the exercise of such power may defeat or
13 impair the accomplishment of the purposes of the trust whether by the
14 imposition of tax or the allocation of beneficial interest
15 inconsistent with such purposes or by other reason. Such authority
16 shall be exercised after hearing and upon notice to qualified
17 beneficiaries as defined in section 30-3803, in the manner directed
18 by the court.

19 (b) The instrument specified in (a)(1) and (a)(2) must be
20 received by the transferor of the interest, his or her legal
21 representative, the personal representative of a deceased transferor,
22 the trustee of any trust in which the interest being renounced
23 exists, or the holder of the legal title to the property to which the
24 interest relates. To be effective for purposes of determining
25 inheritance and estate taxes under articles 20 and 21 of Chapter 77,

1 the instrument must be received not later than the date which is nine
2 months after the later of (i) the date on which the transfer creating
3 the interest in such person is made, or (ii) the date on which such
4 person attains age twenty-one. If the circumstances which establish
5 the right of a person to renounce an interest arise as a result of
6 the death of an individual, the instrument shall also be filed in the
7 court of the county where proceedings concerning the decedent's
8 estate are pending, or where they would be pending if commenced. If
9 an interest in real estate is renounced, a copy of the instrument
10 shall also be recorded in the office of the register of deeds in the
11 county in which the real estate lies. No person entitled to a copy of
12 the instrument shall be liable for any proper distribution or
13 disposition made without actual notice of the renunciation and no
14 such person making a proper distribution or disposition in reliance
15 upon the renunciation shall be liable for any such distribution or
16 disposition in the absence of actual notice that an action has been
17 instituted contesting the validity of the renunciation.

18 (c) Unless the transferor of the interest has otherwise
19 indicated in the instrument creating the interest, the interest
20 renounced, and any future interest which is to take effect in
21 possession or enjoyment at or after the termination of the interest
22 renounced, passes as if the person renouncing had predeceased the
23 decedent or had died prior to the date on which the transfer creating
24 the interest in such person is made, as the case may be, if the
25 renunciation is within the time periods set forth in subsection (b)

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

20 (d) Any (1) assignment, conveyance, encumbrance, pledge,
21 or transfer of property therein or any contract therefor, (2) written
22 waiver of the right to renounce or any acceptance of property or
23 benefits therefrom or an interest therein by an heir, devisee, person
24 succeeding to a renounced interest, donee, beneficiary under a
25 testamentary or nontestamentary instrument, donee of a power of

1 appointment, grantee, surviving joint owner or surviving joint
2 tenant, beneficiary or owner of an insurance contract or any incident
3 of ownership therein, beneficiary or person designated to take
4 pursuant to a power of appointment exercised by a testamentary or
5 nontestamentary instrument, person who has a statutory entitlement to
6 or election with respect to property pursuant to the Nebraska Probate
7 Code, or recipient of any beneficial interest under any testamentary
8 or nontestamentary instrument, or (3) sale or other disposition of
9 property pursuant to judicial process, made within the time periods
10 set forth in subsection (b) shall not bar the right to renounce, but
11 shall make a subsequent renunciation within the time period set forth
12 in subsection (b) of this section ineffective for purposes of
13 determination of inheritance ~~and estate taxes under articles 20 and~~
14 21-article 20 of Chapter 77 and to the extent that any part of the
15 property has been assigned, conveyed, encumbered, pledged, or
16 transferred.

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

1 interest such recipient shall receive as a result of the
2 renunciation.

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

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

20 (h) Any interest in property which exists on July 19,
21 1980, may be renounced after July 19, 1980, as provided herein. An
22 interest which has arisen prior to July 19, 1980, in any person other
23 than the person renouncing is not destroyed or diminished by any
24 action of the person renouncing taken under this section.

25 Sec. 24. Section 30-2354, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 30-2354 (a) A surviving spouse, heir or devisee who
3 feloniously and intentionally kills or aids and abets the killing of
4 the decedent is not entitled to any benefits under the will or under
5 this article, and the estate of the decedent passes as if such
6 spouse, heir, or devisee had predeceased the decedent. Property
7 appointed by the will of the decedent to or for the benefit of such
8 devisee passes as if the devisee had predeceased the decedent.

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

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

25 (d) Real property specified for a designated beneficiary

1 of a transfer on death deed who feloniously and intentionally kills
2 or aids and abets the killing of the transferor who signed the
3 transfer on death deed or any other owner of the real property shall
4 pass as if the designated beneficiary had predeceased the transferor.

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

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

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

1 Sec. 25. Section 76-238, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 76-238 (1) All deeds, mortgages, and other instruments of
4 writing which are required to be or which under the laws of this
5 state may be recorded, shall take effect and be in force from and
6 after the time of delivering such instruments to the register of
7 deeds for recording, and not before, as to all creditors and
8 subsequent purchasers in good faith without notice. All such
9 instruments are void as to all creditors and subsequent purchasers
10 without notice whose deeds, mortgages, or other instruments are
11 recorded prior to such instruments. However, such instruments are
12 valid between the parties to the instrument.

13 (2) For purposes of this section, the recording of a
14 transfer on death deed under the Nebraska Uniform Real Property
15 Transfer on Death Act shall be deemed to have occurred at the
16 transferor's death.

17 ~~(2)~~(3) For purposes of this section, possession of
18 agricultural real estate or residential real estate by a party
19 related to the owner of record of the real estate within the third
20 degree of consanguinity or affinity shall not serve as notice to a
21 creditor or subsequent purchaser in any case in which such party is
22 claiming rights in such real estate pursuant to a lease (a) entered
23 into on or after July 16, 2004; (b) purporting to extend beyond a
24 term of one year; and (c) which has not satisfied the requirements of
25 section 76-211, unless the creditor or subsequent purchaser, in

1 advance of recording a deed, mortgage, or other instrument, has
2 received a written copy of such lease.

3 ~~(3)~~(4) For purposes of this section:

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

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

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

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

24 Sec. 26. Section 76-902, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 76-902 The tax imposed by section 76-901 shall not apply

2 to:

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

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

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

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

12 (5)(a) Deeds between husband and wife, or parent and
13 child, without actual consideration therefor, and (b) deeds to or
14 from a family corporation, partnership, or limited liability company
15 when all the shares of stock of the corporation or interest in the
16 partnership or limited liability company are owned by members of a
17 family, or a trust created for the benefit of a member of that
18 family, related to one another within the fourth degree of kindred
19 according to the rules of civil law, and their spouses, for no
20 consideration other than the issuance of stock of the corporation or
21 interest in the partnership or limited liability company to such
22 family members or the return of the stock to the corporation in
23 partial or complete liquidation of the corporation or deeds in
24 dissolution of the interest in the partnership or limited liability
25 company. In order to qualify for the exemption for family

1 corporations, partnerships, or limited liability companies, the
2 property shall be transferred in the name of the corporation or
3 partnership and not in the name of the individual shareholders,
4 partners, or members;

5 (6) Tax deeds;

6 (7) Deeds of partition;

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

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

15 (10) Cemetery deeds;

16 (11) Mineral deeds;

17 (12) Deeds executed pursuant to court decrees;

18 (13) Land contracts;

19 (14) Deeds which release a reversionary interest, a
20 condition subsequent or precedent, a restriction, or any other
21 contingent interest;

22 (15) Deeds of distribution executed by a personal
23 representative conveying to devisees or heirs property passing by
24 testate or intestate succession;

25 (16) Transfer on death deeds or revocations of transfer

1 on death deeds;

2 ~~(16)~~(17) Deeds transferring property located within the
3 boundaries of an Indian reservation if the grantor or grantee is a
4 reservation Indian;

5 ~~(17)~~(18) Deeds transferring property into a trust if the
6 transfer of the same property would be exempt if the transfer was
7 made directly from the grantor to the beneficiary or beneficiaries
8 under the trust. No such exemption shall be granted unless the
9 register of deeds is presented with a signed statement certifying
10 that the transfer of the property is made under such circumstances as
11 to come within one of the exemptions specified in this section and
12 that evidence supporting the exemption is maintained by the person
13 signing the statement and is available for inspection by the
14 Department of Revenue;

15 ~~(18)~~(19) Deeds transferring property from a trustee to a
16 beneficiary of a trust;

17 ~~(19)~~(20) Deeds which convey property held in the name of
18 any partnership or limited liability company not subject to
19 subdivision (5) of this section to any partner in the partnership or
20 member of the limited liability company or to his or her spouse;

21 ~~(20)~~(21) Leases;

22 ~~(21)~~(22) Easements; or

23 ~~(22)~~(23) Deeds which transfer title from a trustee to a
24 beneficiary pursuant to a power of sale exercised by a trustee under
25 a trust deed.

1 Sec. 27. This act becomes operative on January 1, 2012.

2 Sec. 28. Original sections 30-2352, 30-2354, 76-238, and

3 76-902, Reissue Revised Statutes of Nebraska, are repealed.