

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1031

Introduced by Lathrop, 12.

Read first time January 16, 2020

Committee: Judiciary

1 A BILL FOR AN ACT relating to decedents' estates; to amend sections
2 30-2414, 30-2416, and 30-2426, Reissue Revised Statutes of Nebraska;
3 to change provisions relating to applications and proof and findings
4 in informal probate or appointment proceedings and petitions in
5 formal testacy or appointment proceedings; and to repeal the
6 original sections.

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

1 Section 1. Section 30-2414, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 30-2414 Applications for informal probate or informal appointment
4 shall be directed to the registrar and verified by the applicant to be
5 accurate and complete to the best of the applicant's ~~his~~ knowledge and
6 belief as to the following information:

7 (1) Every application for informal probate of a will or for informal
8 appointment of a personal representative, other than a special or
9 successor representative, shall contain the following:

10 (i) a statement of the interest of the applicant;

11 (ii) the name and date of death of the decedent, the decedent's ~~his~~
12 age, and the county and state of ~~his~~ domicile at the time of death, and
13 the names and addresses of the spouse, children, heirs and devisees and
14 the ages of any who are minors so far as known or ascertainable with
15 reasonable diligence by the applicant;

16 (iii) if the decedent was not domiciled in the state at the time of
17 ~~his~~ death, a statement showing venue;

18 (iv) a statement identifying and indicating the address of any
19 personal representative of the decedent appointed in this state or
20 elsewhere whose appointment has not been terminated;

21 (v) a statement indicating whether the applicant has received a
22 demand for notice or is aware of any demand for notice of any probate or
23 appointment proceeding concerning the decedent that may have been filed
24 in this state or elsewhere.

25 (2) An application for informal probate of a will shall state the
26 following in addition to the statements required by subdivision (1) of
27 this section:

28 (i) that the original of the decedent's last will or an
29 authenticated copy of a will probated in another jurisdiction:

30 (A) is in the possession of the court; ~~or~~

31 (B) accompanies the application; ~~or~~ ~~that an authenticated copy~~

1 ~~of a will probated in another jurisdiction accompanies the application;~~

2 (C) is in the possession of the applicant, that the applicant will
3 deliver such original or authenticated copy to the court within ten days
4 after the filing of the application, and that a true and accurate copy of
5 such original or authenticated copy accompanies the application;

6 (ii) that the applicant, to the best of the applicant's his
7 knowledge, believes the will to have been validly executed; and

8 (iii) that after the exercise of reasonable diligence the applicant
9 is unaware of any instrument revoking the will, and that the applicant
10 believes that the instrument which is the subject of the application is
11 the decedent's last will.

12 (3) An application for informal appointment of a personal
13 representative to administer an estate under a will shall describe the
14 will by date of execution and state the time and place of probate or the
15 pending application or petition for probate. The application for
16 appointment shall adopt the statements in the application or petition for
17 probate and state the name, address and priority for appointment of the
18 person whose appointment is sought.

19 (4) An application for informal appointment of an administrator in
20 intestacy shall state, in addition to the statements required by
21 subdivision (1) of this section:

22 (i) that after the exercise of reasonable diligence the applicant is
23 unaware of any unrevoked testamentary instrument relating to property
24 having a situs in this state under section 30-2210, or a statement why
25 any such instrument of which the applicant he may be aware is not being
26 probated;

27 (ii) the priority of the person whose appointment is sought and the
28 names of any other persons having a prior or equal right to the
29 appointment under section 30-2412.

30 (5) An application for appointment of a personal representative to
31 succeed a personal representative appointed under a different testacy

1 status shall refer to the order in the most recent testacy proceeding,
2 state the name and address of the person whose appointment is sought and
3 of the person whose appointment will be terminated if the application is
4 granted, and describe the priority of the applicant.

5 (6) An application for appointment of a personal representative to
6 succeed a personal representative who has tendered a resignation as
7 provided in subsection (6) of section 30-2453 ~~section 30-2453(c)~~, or
8 whose appointment has been terminated by death or removal, shall adopt
9 the statements in the application or petition which led to the
10 appointment of the person being succeeded except as specifically changed
11 or corrected, state the name and address of the person who seeks
12 appointment as successor, and describe the priority of the applicant.

13 Sec. 2. Section 30-2416, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 30-2416 (a) In an informal proceeding for original probate of a
16 will, the registrar shall determine whether:

17 (1) the application is complete;

18 (2) the applicant has made oath or affirmation that the statements
19 contained in the application are true to the best of the applicant's ~~his~~
20 knowledge and belief;

21 (3) the applicant appears from the application to be an interested
22 person as defined in subdivision (21) of section 30-2209 ~~section~~
23 30-2209(21);

24 (4) on the basis of the statements in the application, venue is
25 proper;

26 (5) either:

27 (i) an original, duly executed, and apparently unrevoked will is in
28 the registrar's possession; or ~~and~~

29 (ii) The applicant has represented that an original, duly executed,
30 and apparently unrevoked will is in the applicant's possession, the
31 applicant has provided a true and accurate copy of such original will

1 with the application, and the applicant has represented that the
2 original, duly executed, and apparently unrevoked will will be delivered
3 to the court within ten days after the filing of the application; and

4 (6) any notice required by section 30-2413 has been given and that
5 the application is not within section 30-2417.

6 (b) The application shall be denied if it indicates that a personal
7 representative has been appointed in another county of this state or,
8 except as provided in subsection (d) of this section below, if it appears
9 that this or another will of the decedent has been the subject of a
10 previous probate order.

11 (c) A will which appears to have the required signatures and which
12 contains an attestation clause showing that requirements of execution
13 under section 30-2327, 30-2328, or 30-2331 have been met shall be
14 probated without further proof. In other cases, the registrar may assume
15 execution if the will appears to have been properly executed, or the
16 registrar ~~he~~ may accept a sworn statement or affidavit of any person
17 having knowledge of the circumstances of execution, whether or not the
18 person was a witness to the will.

19 (d) Informal probate of a will which has been previously probated
20 elsewhere may be granted at any time upon written application by any
21 interested person, together with deposit of an authenticated copy of the
22 will and of the statement probating it from the office or court where it
23 was first probated.

24 (e) A will from a place which does not provide for probate of a will
25 after death and which is not eligible for probate under subsection (a) of
26 this section above may be probated in this state upon receipt by the
27 registrar of a duly authenticated copy of the will and a duly
28 authenticated certificate of its legal custodian that the copy filed is a
29 true copy and that the will has become operative under the law of the
30 other place.

31 Sec. 3. Section 30-2426, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 30-2426 (a) Petitions for formal probate of a will, or for
3 adjudication of intestacy with or without request for appointment of a
4 personal representative, must be directed to the court, request a
5 judicial order after notice and hearing and contain further statements as
6 indicated in this section. A petition for formal probate of a will

7 (1) requests an order as to the testacy of the decedent in relation
8 to a particular instrument which may or may not have been informally
9 probated and determining the heirs,

10 (2) contains the statements required for informal applications as
11 stated in subdivisions (1)(i) through (v) of section 30-2414 ~~the five~~
12 ~~subparagraphs under section 30-2414(1),~~ the statements required by
13 subdivisions (2)(ii) subparagraphs (ii) and (iii) of section 30-2414
14 ~~30-2414(2),~~ and

15 (3) states whether the original of the last will of the decedent is
16 in the possession of the court, ~~or~~ accompanies the petition, or has been
17 filed electronically and will be delivered to the court within ten days
18 after the filing of the application.

19 ~~The~~ If the original will is neither in the possession of the court
20 ~~nor accompanies the petition and no authenticated copy of a will probated~~
21 ~~in another jurisdiction accompanies the petition,~~ the petition also must
22 state the contents of the will and indicate that it is lost, destroyed,
23 or otherwise unavailable if the original will or an authenticated copy of
24 the will probated in another jurisdiction: -

25 (i) is not in the possession of the court;

26 (ii) did not accompany the application; and

27 (iii) has not been filed electronically, subject to delivery within
28 ten days after the filing of the application.

29 (b) A petition for adjudication of intestacy and appointment of an
30 administrator in intestacy must request a judicial finding and order that
31 the decedent left no will and determining the heirs, contain the

1 statements required by subdivisions (1) and (4) of section 30-2414 and
2 indicate whether supervised administration is sought. A petition may
3 request an order determining intestacy and heirs without requesting the
4 appointment of an administrator, in which case the statements required by
5 subdivision (4)(ii) subparagraph (ii) of section 30-2414 ~~30-2414(4)~~ above
6 may be omitted.

7 Sec. 4. Original sections 30-2414, 30-2416, and 30-2426, Reissue
8 Revised Statutes of Nebraska, are repealed.