

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1220**

Introduced by Bosn, 25; DeBoer, 10.

Read first time January 16, 2024

Committee: Judiciary

1 A BILL FOR AN ACT relating to property; to amend sections 30-2446,  
2 30-2603, 30-2637, 30-3816, 30-3828, 30-4002, and 43-2707, Reissue  
3 Revised Statutes of Nebraska, and sections 30-24,129 and 30-3402,  
4 Revised Statutes Cumulative Supplement, 2022; to change requirements  
5 relating to bonds for personal representatives and small estate  
6 affidavits; to change provisions relating to certain payments and  
7 transfers to minors; to permit a protected person to retain an  
8 attorney as prescribed; to change a requirement relating to  
9 cotrustees; to change provisions relating to health care powers of  
10 attorney, the Nebraska Uniform Trust Code, and the Nebraska Uniform  
11 Power of Attorney Act; and to repeal the original sections.  
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 30-2446, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 30-2446 (1) A bond shall be required of a personal representative  
4 unless: (a) The will expressly waives the bond, expressly requests that  
5 there be no bond, or waives the requirement of a surety thereon other  
6 than the personal representative; (b) all of the heirs, if no will has  
7 been probated, or all of the devisees under a will which does not provide  
8 for relieving the personal representative of bond in accordance with  
9 subdivision (1)(a) of this section, file with the court a written waiver  
10 of the bond requirement; (c) a duly appointed guardian or conservator  
11 waives bond ~~may waive~~ on behalf of a ~~his~~ ward or protected person unless  
12 the guardian or conservator is the personal representative; (d) a person  
13 eighteen years of age or older waives bond on the person's own behalf;  
14 (e) ~~(e)~~ the personal representative is a national banking association, a  
15 holder of a banking permit under the laws of this state, or a trust  
16 company holding a certificate to engage in trust business from the  
17 Department of Banking and Finance; or (f) ~~(d)~~ the petition for formal or  
18 informal appointment alleges that the probable value of the entire estate  
19 will permit summary procedures under section 30-24,127.

20 (2) In any case when bond is not required under subsection (1) of  
21 this section, the court may, upon petition of any interested person and  
22 upon reasonable proof that the interest of the petitioning person is in  
23 danger of being lost because of the administration of the estate, require  
24 a bond in such amount as the court may direct in order to protect the  
25 interest of the petitioner or of the petitioner and others. An heir or  
26 devisee who initially waived bond may be a petitioner under this  
27 subsection.

28 (3) If a bond is not initially required because the petition for  
29 appointment alleges that the probable value of the entire estate will  
30 permit summary procedures under section 30-24,127, and it later appears  
31 from the inventory and appraisal that the value of the estate will not

1 permit use of such procedures, then the personal representative shall  
2 promptly file a bond unless one is not required for some other reason  
3 under subsection (1) of this section.

4 Sec. 2. Section 30-24,129, Revised Statutes Cumulative Supplement,  
5 2022, is amended to read:

6 30-24,129 (a) Thirty days after the death of a decedent, any person  
7 claiming as successor to the decedent's interest in real property in this  
8 state may file or cause to be filed on his or her behalf, with the  
9 register of deeds office of a county in which the real property of the  
10 decedent that is the subject of the affidavit is located, an affidavit  
11 describing the real property owned by the decedent and the interest of  
12 the decedent in the property. The affidavit shall be signed by all  
13 persons claiming as successors or by parties legally acting on their  
14 behalf and shall be prima facie evidence of the facts stated in the  
15 affidavit. The affidavit shall state:

16 (1) the value of the decedent's interest in all real property in the  
17 decedent's estate located in this state does not exceed one hundred fifty  
18 thousand dollars. The value of the decedent's interest shall be  
19 determined from the value of the property shown on the assessment rolls  
20 for the year in which the decedent died less real estate taxes and  
21 interest thereon if any is due at the time of death;

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

25 (3) no application or petition for the appointment of a personal  
26 representative is pending or has been granted in the State of Nebraska;

27 (4) the claiming successor is entitled to the real property either  
28 by reason of the homestead allowance, exempt property allowance, or  
29 family allowance, by intestate succession, or by devise under the will of  
30 the decedent. If claiming by devise under the will of the decedent, a  
31 copy of such will shall be attached to the affidavit;

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

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

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

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

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

15 Sec. 3. Section 30-2603, Reissue Revised Statutes of Nebraska, is  
16 amended to read:

17 30-2603 Any person under a duty to pay or deliver money or personal  
18 property to a minor may perform this duty, in amounts not exceeding forty  
19 ~~twenty-five~~ thousand dollars per annum, by paying or delivering the money  
20 or property to:

21 (1) The minor, if he or she has attained the age of eighteen years  
22 or is married;

23 (2) Any person having the care and custody of the minor with whom  
24 the minor resides;

25 (3) A guardian of the minor; or

26 (4) A financial institution incident to a deposit in a federally  
27 insured savings account in the sole name of the minor and giving notice  
28 of the deposit to the minor.

29 This section does not apply if the person making payment or delivery  
30 has actual knowledge that a conservator has been appointed or proceedings  
31 for appointment of a conservator of the estate of the minor are pending.

1 The persons, other than the minor or any financial institution under  
2 subdivision (4) of this section, receiving money or property for a minor  
3 are obligated to apply the money to the support and education of the  
4 minor but may not pay themselves except by way of reimbursement for out-  
5 of-pocket expenses for goods and services necessary for the minor's  
6 support. Any excess sums shall be preserved for future support of the  
7 minor, and any balance not so used and any property received for the  
8 minor must be turned over to the minor when he or she attains majority.  
9 Persons who pay or deliver in accordance with provisions of this section  
10 are not responsible for the proper application thereof.

11 Sec. 4. Section 30-2637, Reissue Revised Statutes of Nebraska, is  
12 amended to read:

13 30-2637 The court has the following powers which may be exercised  
14 directly or through a conservator with respect to the estate and affairs  
15 of protected persons:

16 (1) While a petition for appointment of a conservator or other  
17 protective order is pending and after preliminary hearing and without  
18 notice to others, the court has power to preserve and apply the property  
19 of the person to be protected as may be required for his or her benefit  
20 or the benefit of his or her dependents.

21 (2) After hearing and upon determining that a basis for an  
22 appointment or other protective order exists with respect to a minor  
23 without other disability, the court has all those powers over the estate  
24 and affairs of the minor which are or might be necessary for the best  
25 interests of the minor, the minor's family, and members of the minor's  
26 household.

27 (3) After hearing and upon determining by clear and convincing  
28 evidence that a basis for an appointment or other protective order exists  
29 with respect to a person for reasons other than minority, the court has,  
30 for the benefit of the person and members of his or her household, all  
31 the powers over his or her estate and affairs which he or she could

1 exercise if present and not under disability except the power to make a  
2 will. These powers include, but are not limited to, power to make gifts,  
3 to convey or release his or her contingent and expectant interests in  
4 property including marital property rights and any right of survivorship  
5 incident to joint tenancy or tenancy by the entirety, to exercise or  
6 release his or her powers as trustee, personal representative, custodian  
7 for minors, conservator, or donee of a power of appointment, to enter  
8 into contracts, to create revocable or irrevocable trusts of property of  
9 the estate which may extend beyond his or her disability or life, to  
10 exercise or release his or her powers as settlor of a revocable trust as  
11 provided in subsection (f) of section 30-3854, to exercise options of the  
12 disabled person to purchase securities or other property, to exercise his  
13 or her rights to elect options and change beneficiaries under insurance  
14 and annuity policies and to surrender the policies for their cash value,  
15 to exercise his or her right to an elective share in the estate of his or  
16 her deceased spouse, and to renounce any interest by testate or intestate  
17 succession or by inter vivos transfer.

18 (4) The court may exercise or direct the exercise of its authority  
19 to exercise or release powers of appointment of which the protected  
20 person is donee, to renounce interests, to make gifts in trust or  
21 otherwise exceeding twenty percent of any year's income of the estate, or  
22 to change beneficiaries under insurance and annuity policies, only if  
23 satisfied, after notice and hearing, that it is in the best interests of  
24 the protected person, and that he or she either is incapable of  
25 consenting or has consented to the proposed exercise of power.

26 (5) An order made pursuant to this section determining by clear and  
27 convincing evidence that a basis for appointment of a conservator or  
28 other protective order exists has no effect on the capacity of the  
29 protected person to make a will.

30 (6) After appointment, the protected person may retain an attorney  
31 for the sole purpose of challenging the conservatorship, the terms of the

1 conservatorship, or the actions of the conservator on behalf of the  
2 protected person.

3 Sec. 5. Section 30-3402, Revised Statutes Cumulative Supplement,  
4 2022, is amended to read:

5 30-3402 For purposes of sections 30-3401 to 30-3432:

6 (1) Adult shall mean any person who is eighteen ~~nineteen~~ years of  
7 age or older or ~~who is not a minor or has been married;~~

8 (2) Attending physician shall mean the physician, selected by or  
9 assigned to a principal, who has primary responsibility for the care and  
10 treatment of such principal;

11 (3) Attorney in fact shall mean an adult properly designated and  
12 authorized under sections 30-3401 to 30-3432 to make health care  
13 decisions for a principal pursuant to a power of attorney for health care  
14 and shall include a successor attorney in fact;

15 (4) Health care shall mean any treatment, procedure, or intervention  
16 to diagnose, cure, care for, or treat the effects of disease, injury, and  
17 degenerative conditions. Health care shall include mental health care;

18 (5) Health care decision shall include consent, refusal of consent,  
19 or withdrawal of consent to health care. Health care decision shall not  
20 include (a) the withdrawal or withholding of routine care necessary to  
21 maintain patient comfort, (b) the withdrawal or withholding of the usual  
22 and typical provision of nutrition and hydration, or (c) the withdrawal  
23 or withholding of life-sustaining procedures or of artificially  
24 administered nutrition or hydration, except as provided by sections  
25 30-3401 to 30-3432;

26 (6) Health care provider shall mean an individual or facility  
27 licensed, certified, or otherwise authorized or permitted by law to  
28 administer health care in the ordinary course of business or professional  
29 practice and shall include all facilities defined in the Health Care  
30 Facility Licensure Act;

31 (7) Except as otherwise provided in section 30-4404 for an advance

1 mental health care directive, incapable shall mean the inability to  
2 understand and appreciate the nature and consequences of health care  
3 decisions, including the benefits of, risks of, and alternatives to any  
4 proposed health care or the inability to communicate in any manner an  
5 informed health care decision;

6 (8) Life-sustaining procedure shall mean any medical procedure,  
7 treatment, or intervention that (a) uses mechanical or other artificial  
8 means to sustain, restore, or supplant a spontaneous vital function and  
9 (b) when applied to a person suffering from a terminal condition or who  
10 is in a persistent vegetative state, serves only to prolong the dying  
11 process. Life-sustaining procedure shall not include routine care  
12 necessary to maintain patient comfort or the usual and typical provision  
13 of nutrition and hydration;

14 (9) Mental health care shall include, but not be limited to, mental  
15 health care and treatment expressly provided for in the Advance Mental  
16 Health Care Directives Act;

17 (10) Persistent vegetative state shall mean a medical condition  
18 that, to a reasonable degree of medical certainty as determined in  
19 accordance with currently accepted medical standards, is characterized by  
20 a total and irreversible loss of consciousness and capacity for cognitive  
21 interaction with the environment and no reasonable hope of improvement;

22 (11) Power of attorney for health care shall mean a power of  
23 attorney executed in accordance with sections 30-3401 to 30-3432 which  
24 authorizes a designated attorney in fact to make health care decisions  
25 for the principal when the principal is incapable;

26 (12) Principal shall mean an adult who, when competent, confers upon  
27 another adult a power of attorney for health care;

28 (13) Reasonably available shall mean that a person can be contacted  
29 with reasonable efforts by an attending physician or another person  
30 acting on behalf of the attending physician;

31 (14) Terminal condition shall mean an incurable and irreversible



1 medical condition caused by injury, disease, or physical illness which,  
2 to a reasonable degree of medical certainty, will result in death  
3 regardless of the continued application of medical treatment including  
4 life-sustaining procedures; and

5 (15) Usual and typical provision of nutrition and hydration shall  
6 mean delivery of food and fluids orally, including by cup, eating  
7 utensil, bottle, or drinking straw.

8 Sec. 6. Section 30-3816, Reissue Revised Statutes of Nebraska, is  
9 amended to read:

10 30-3816 (1) The trustee of a trust having its principal place of  
11 administration in this state may register the trust in the county court  
12 of this state at the principal place of administration. Unless otherwise  
13 designated in the trust instrument, the principal place of administration  
14 of a trust is the trustee's usual place of business where the records  
15 pertaining to the trust are kept, or at the trustee's residence if he or  
16 she has no such place of business.

17 (2) In the case of cotrustees, the principal place of  
18 administration, if not otherwise designated in the trust instrument, is  
19 (a) (1) the usual place of business of the corporate trustee if there is  
20 ~~but~~ one corporate cotrustee, (b) or (2) the usual place of business or  
21 residence of the individual trustee who is a professional fiduciary if  
22 there is ~~but~~ one such person and no corporate cotrustee, and (c)  
23 ~~otherwise (3)~~ the usual place of business or residence of any of the  
24 cotrustees as agreed upon by such cotrustees ~~them~~.

25 (3) If there is more than one trustee, any trustee may register the  
26 trust in the county in which the principal place of administration is  
27 located under subsection (2). If the principal place of administration is  
28 determined under subdivision (2)(c) and the cotrustees cannot agree on  
29 the principal place of administration, a proceeding may be filed under  
30 section 30-3812 by any interested person to determine the principal place  
31 of administration.

1       (4) The right to register under sections 30-3816 to 30-3820 does not  
2 apply to the trustee of a trust if registration would be inconsistent  
3 with the retained jurisdiction of a foreign court from which the trustee  
4 cannot obtain release.

5       (5) No one other than a trustee shall register a trust. Registration  
6 of a trust is not required in order for a court to exercise jurisdiction  
7 over a trust, a trustee, or the beneficiaries.

8       Sec. 7. Section 30-3828, Reissue Revised Statutes of Nebraska, is  
9 amended to read:

10       30-3828 (UTC 402) (a) A trust is created only if:

11       (1) the settlor has capacity to create a trust and meets one of the  
12 following requirements: ÷

13       (A) the settlor is eighteen years of age or older; or

14       (B) the settlor is not a minor;

15       (2) the settlor indicates an intention to create the trust;

16       (3) the trust has a definite beneficiary or is:

17       (A) a charitable trust;

18       (B) a trust for the care of an animal, as provided in section  
19 30-3834; or

20       (C) a trust for a noncharitable purpose, as provided in section  
21 30-3835;

22       (4) the trustee has duties to perform; and

23       (5) the same person is not the sole trustee and sole beneficiary.

24       (b) A beneficiary is definite if the beneficiary can be ascertained  
25 now or in the future, subject to any applicable rule against  
26 perpetuities.

27       (c) A power in a trustee to select a beneficiary from an indefinite  
28 class is valid. If the power is not exercised within a reasonable time,  
29 the power fails and the property subject to the power passes to the  
30 persons who would have taken the property had the power not been  
31 conferred.

1           Sec. 8. Section 30-4002, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3           30-4002 For purposes of the Nebraska Uniform Power of Attorney Act:

4           (1) Agent means a person granted authority to act for a principal  
5 under a power of attorney, whether denominated an agent, attorney in  
6 fact, or otherwise. The term includes an original agent, coagent,  
7 successor agent, and a person to which an agent's authority is delegated;

8           (2) Business day means any day other than a Saturday, Sunday, or  
9 state or nationally observed legal holiday;

10          (3) Durable, with respect to a power of attorney, means not  
11 terminated by the principal's incapacity;

12          (4) Electronic means relating to technology having electrical,  
13 digital, magnetic, wireless, optical, electromagnetic, or similar  
14 capabilities;

15          (5) Good faith means honesty in fact;

16          (6) Incapacity means inability of an individual to manage property  
17 or property affairs effectively because the individual:

18           (a) Has an impairment in the ability to receive and evaluate  
19 information or make or communicate responsible decisions even with the  
20 use of technological assistance for reasons such as mental illness,  
21 mental deficiency, physical illness or disability, chronic use of drugs,  
22 chronic intoxication, or lack of discretion in managing benefits received  
23 from public funds; or

24           (b) Is:

25           (i) Missing;

26           (ii) Detained, including incarcerated in a penal system; or

27           (iii) Outside the United States and unable to return;

28          (7) Person means an individual, corporation, business trust, estate,  
29 trust, partnership, limited liability company, association, joint  
30 venture, public corporation, government or governmental subdivision,  
31 agency, or instrumentality, or any other legal or commercial entity;

1 (8) Power of attorney means a writing or other record that grants  
2 authority to an agent to act in the place of the principal, whether or  
3 not the term power of attorney is used;

4 (9) Presently exercisable general power of appointment, with respect  
5 to property or a property interest subject to a power of appointment,  
6 means power exercisable at the time in question to vest absolute  
7 ownership in the principal individually, the principal's estate, the  
8 principal's creditors, or the creditors of the principal's estate. The  
9 term includes a power of appointment not exercisable until the occurrence  
10 of a specified event, the satisfaction of an ascertainable standard, or  
11 the passage of a specified period only after the occurrence of the  
12 specified event, the satisfaction of the ascertainable standard, or the  
13 passage of the specified period. The term does not include a power  
14 exercisable in a fiduciary capacity or only by will;

15 (10) Principal means an individual, who is eighteen years of age or  
16 older or is not a minor, who grants authority to an agent in a power of  
17 attorney;

18 (11) Property means anything that may be the subject of ownership,  
19 whether real or personal, legal or equitable, or any interest or right  
20 therein;

21 (12) Record means information that is inscribed on a tangible medium  
22 or that is stored in an electronic or other medium and is retrievable in  
23 perceivable form;

24 (13) Sign means, with present intent to authenticate or adopt a  
25 record:

26 (a) To execute or adopt a tangible symbol; or

27 (b) To attach to or logically associate with the record an  
28 electronic sound, symbol, or process;

29 (14) State means a state of the United States, the District of  
30 Columbia, Puerto Rico, the United States Virgin Islands, or any territory  
31 or insular possession subject to the jurisdiction of the United States;

1 and

2 (15) Stocks and bonds means stocks, bonds, mutual funds, and all  
3 other types of securities and financial instruments, whether held  
4 directly, indirectly, or in any other manner. The term does not include  
5 commodity futures contracts and call or put options on stocks or stock  
6 indexes.

7 Sec. 9. Section 43-2707, Reissue Revised Statutes of Nebraska, is  
8 amended to read:

9 43-2707 (1) Subject to subsection (3) of this section, a personal  
10 representative or trustee may make an irrevocable transfer to another  
11 adult or trust company as custodian for the benefit of a minor pursuant  
12 to section 43-2710, in the absence of a will or under a will or trust  
13 that does not contain an authorization to do so.

14 (2) Subject to subsection (3) of this section, a conservator may  
15 make an irrevocable transfer to another adult or trust company as  
16 custodian for the benefit of the minor pursuant to section 43-2710.

17 (3) A transfer under subsection (1) or (2) of this section may be  
18 made only if (a) the personal representative, trustee, or conservator  
19 considers the transfer to be in the best interest of the minor, (b) the  
20 transfer is not prohibited by or inconsistent with provisions of the  
21 applicable will, trust agreement, or other governing instrument, and (c)  
22 the transfer is authorized by the court if it exceeds forty ~~ten~~ thousand  
23 dollars in value.

24 Sec. 10. Original sections 30-2446, 30-2603, 30-2637, 30-3816,  
25 30-3828, 30-4002, and 43-2707, Reissue Revised Statutes of Nebraska, and  
26 sections 30-24,129 and 30-3402, Revised Statutes Cumulative Supplement,  
27 2022, are repealed.