

LEGISLATIVE BILL 83

Approved by the Governor March 5, 2024

Introduced by DeBoer, 10; Wayne, 13.

A BILL FOR AN ACT relating to community property; to amend section 24-517, Revised Statutes Cumulative Supplement, 2022; to adopt the Uniform Community Property Disposition at Death Act; to change provisions relating to court jurisdiction; to provide severability; and to repeal the original section.

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) Record means information:

(A) inscribed on a tangible medium; or

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

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

(A) execute or adopt a tangible symbol; or

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

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

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

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

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

(i) was acquired; or

(ii) after acquisition, became community property;

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

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

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

(A) all or a proportionate part of each item of real property located in this state traceable to community property or acquired with community property under the law of the jurisdiction where the decedent or the surviving community-property spouse was domiciled when the property:

(i) was acquired; or

(ii) after acquisition, became community property; and

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

(b) If community-property spouses acquired community property by complying with the law of a jurisdiction that allows for creation of community property

by transfer of property to a trust, the Uniform Community Property Disposition at Death Act applies to the property only to the extent the property is held in the trust or characterized as community property by the terms of the trust or the law of the jurisdiction under which the trust was created.

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

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

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

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

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

Sec. 5. All property acquired by a community-property spouse when domiciled in a jurisdiction where community property then could be acquired by the community-property spouse by operation of law is presumed to be community property. This presumption may be rebutted by a preponderance of the evidence.

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

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

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

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

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

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

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

(f) If at death a decedent purports to transfer to a third person property that, under this section, belongs to the surviving community-property spouse and transfers other property to the surviving community-property spouse, this section does not limit the authority of the court under other law of this state to require that the community-property spouse elect between retaining the property transferred to the community-property spouse or asserting rights under the Uniform Community Property Disposition at Death Act.

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

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

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

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

(1) shall apply equitable principles; and

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

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

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

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

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

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

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

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

(b) Unless a timely demand is made under subdivision (a)(1)(B) or (a)(2)(A) of this section, the personal representative may distribute the assets of the decedent's estate without personal liability for a community-property

spouse's claim under the Uniform Community Property Disposition at Death Act.

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

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

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

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

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

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

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

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

(1) transacts in good faith and for value:

(A) with a community-property spouse; or

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

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

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

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

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

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

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

Sec. 15. Venue for any proceeding under the Uniform Community Property Disposition at Death Act is in the county in this state where:

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

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

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

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

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

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

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

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

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

(a) When the pleadings or discovery proceedings in a civil action indicate that the amount in controversy is greater than the jurisdictional amount of subdivision (5) of this section, the county court shall, upon the request of any party, certify the proceedings to the district court as provided in section 25-2706. An award of the county court which is greater than the jurisdictional

amount of subdivision (5) of this section is not void or unenforceable because it is greater than such amount, however, if an award of the county court is greater than the jurisdictional amount, the county court shall tax as additional costs the difference between the filing fee in district court and the filing fee in county court.

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

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

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

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

(9) Exclusive original jurisdiction in any action based on violation of a city or village ordinance, except with respect to violations committed by persons under eighteen years of age;

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

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

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

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

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

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

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

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

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

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

~~(20) (19)~~ All other jurisdiction heretofore provided and not specifically repealed by Laws 1972, Legislative Bill 1032, and such other jurisdiction as hereafter provided by law.

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

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