

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1017

Introduced by Slama, 1.

Read first time January 13, 2022

Committee:

- 1 A BILL FOR AN ACT relating to the Nebraska Uniform Trust Code; to amend
- 2 section 30-3850, Reissue Revised Statutes of Nebraska, and section
- 3 30-3881, Revised Statutes Cumulative Supplement, 2020; to change
- 4 provisions relating to creditors' claims against settlors and powers
- 5 of trustees; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 30-3850, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 30-3850 (UTC 505) (a) Whether or not the terms of a trust contain a
4 spendthrift provision, the following rules apply:

5 (1) During the lifetime of the settlor, the property of a revocable
6 trust is subject to claims of the settlor's creditors.

7 (2) With respect to an irrevocable trust:

8 (A) A ~~—~~a creditor or assignee of the settlor may reach the maximum
9 amount that can be distributed to or for the settlor's benefit. If a
10 trust has more than one settlor, the amount the creditor or assignee of a
11 particular settlor may reach may not exceed the settlor's interest in the
12 portion of the trust attributable to that settlor's contribution.

13 (B) A trustee's discretionary authority to pay directly to the
14 taxing authorities or to reimburse the settlor for any tax on trust
15 income or principal, that is payable by the settlor under the law
16 imposing the tax, shall not be considered to be an amount that can be
17 distributed to or for the settlor's benefit, and a creditor or assignee
18 of the settlor shall not be entitled to reach any amount solely by reason
19 of this discretionary authority.

20 (C) Anything in the Nebraska Uniform Trust Code to the contrary
21 notwithstanding, the settlor shall not be considered to be a beneficiary
22 of an irrevocable trust solely by reason of the trustee's authority to
23 pay directly to the taxing authorities or to reimburse the settlor for
24 any tax on trust income or principal that is payable by the settlor under
25 the law imposing the tax, whether such authority arises pursuant to
26 subsection (b) of section 30-3881 or the terms of the trust.

27 (3) After the death of a settlor, and subject to the settlor's right
28 to direct the source from which liabilities will be paid, the property of
29 a trust that was revocable at the settlor's death is subject to claims of
30 the settlor's creditors, costs of administration of the settlor's estate,
31 the expenses of the settlor's funeral and disposal of remains, and

1 statutory allowances to a surviving spouse and children to the extent the
2 settlor's probate estate is inadequate to satisfy those claims, costs,
3 expenses, and allowances. A proceeding to assert the liability for claims
4 against the estate and statutory allowances may not be commenced unless
5 the personal representative has received a written demand by the
6 surviving spouse, a creditor, a child, or a person acting for a child of
7 the decedent. The proceeding must be commenced within one year after the
8 death of the decedent. Sums recovered by the personal representative of
9 the settlor's estate must be administered as part of the decedent's
10 estate. The liability created by this subdivision shall not apply to any
11 assets to the extent that such assets are otherwise exempt under the laws
12 of this state or under federal law.

13 (4) A beneficiary of a trust subject to subdivision (a)(3) of this
14 section who receives one or more distributions from the trust after the
15 death of the settlor against whom a proceeding to account is brought may
16 join as a party to the proceeding any other beneficiary who has received
17 a distribution from that trust or any other trust subject to subdivision
18 (a)(3) of this section, any surviving owner or beneficiary under sections
19 30-2734 to 30-2745 of any other security or securities account of the
20 decedent or proceeds thereof, or a surviving party or beneficiary of any
21 account under sections 30-2716 to 30-2733.

22 (5) Unless a written notice asserting that a decedent's probate
23 estate is insufficient to pay allowed claims and statutory allowances has
24 been received from the decedent's personal representative before the
25 distribution, a trustee is released from liability under this section on
26 any assets distributed to the trust's beneficiaries.

27 (b) For purposes of this section:

28 (1) during the period the power may be exercised, the holder of a
29 power of withdrawal is treated in the same manner as the settlor of a
30 revocable trust to the extent of the property subject to the power; and

31 (2) upon the lapse, release, or waiver of the power, the holder is

1 treated as the settlor of the trust only to the extent the value of the
2 property affected by the lapse, release, or waiver exceeds the greater of
3 the amount specified in section 2041(b)(2), 2503(b), or 2514(e) of the
4 Internal Revenue Code as defined in section 49-801.01.

5 Sec. 2. Section 30-3881, Revised Statutes Cumulative Supplement,
6 2020, is amended to read:

7 30-3881 (UTC 816) (a) Without limiting the authority conferred by
8 section 30-3880, a trustee may:

9 (1) collect trust property and accept or reject additions to the
10 trust property from a settlor or any other person;

11 (2) acquire or sell property, for cash or on credit, at public or
12 private sale;

13 (3) exchange, partition, or otherwise change the character of trust
14 property;

15 (4) deposit trust money in an account in a regulated financial-
16 service institution;

17 (5) borrow money, including from the trustee, with or without
18 security, and mortgage or pledge trust property for a period within or
19 extending beyond the duration of the trust;

20 (6) with respect to an interest in a proprietorship, partnership,
21 limited liability company, business trust, corporation, or other form of
22 business or enterprise, continue the business or other enterprise and
23 take any action that may be taken by shareholders, members, or property
24 owners, including merging, dissolving, or otherwise changing the form of
25 business organization or contributing additional capital;

26 (7) with respect to stocks or other securities, exercise the rights
27 of an absolute owner, including the right to:

28 (A) vote, or give proxies to vote, with or without power of
29 substitution, or enter into or continue a voting trust agreement;

30 (B) hold a security in the name of a nominee or in other form
31 without disclosure of the trust so that title may pass by delivery;

1 (C) pay calls, assessments, and other sums chargeable or accruing
2 against the securities, and sell or exercise stock subscription or
3 conversion rights; and

4 (D) deposit the securities with a depository or other regulated
5 financial-service institution;

6 (8) with respect to an interest in real property, construct, or make
7 ordinary or extraordinary repairs to, alterations to, or improvements in,
8 buildings or other structures, demolish improvements, raze existing or
9 erect new party walls or buildings, subdivide or develop land, dedicate
10 land to public use or grant public or private easements, and make or
11 vacate plats and adjust boundaries;

12 (9) enter into a lease for any purpose as lessor or lessee,
13 including a lease or other arrangement for exploration and removal of
14 natural resources, with or without the option to purchase or renew, for a
15 period within or extending beyond the duration of the trust;

16 (10) grant an option involving a sale, lease, or other disposition
17 of trust property or acquire an option for the acquisition of property,
18 including an option exercisable beyond the duration of the trust, and
19 exercise an option so acquired;

20 (11) insure the property of the trust against damage or loss and
21 insure the trustee, the trustee's agents, and beneficiaries against
22 liability arising from the administration of the trust;

23 (12) abandon or decline to administer property of no value or of
24 insufficient value to justify its collection or continued administration;

25 (13) with respect to possible liability for violation of
26 environmental law:

27 (A) inspect or investigate property the trustee holds or has been
28 asked to hold, or property owned or operated by an organization in which
29 the trustee holds or has been asked to hold an interest, for the purpose
30 of determining the application of environmental law with respect to the
31 property;

1 (B) take action to prevent, abate, or otherwise remedy any actual or
2 potential violation of any environmental law affecting property held
3 directly or indirectly by the trustee, whether taken before or after the
4 assertion of a claim or the initiation of governmental enforcement;

5 (C) decline to accept property into trust or disclaim any power with
6 respect to property that is or may be burdened with liability for
7 violation of environmental law;

8 (D) compromise claims against the trust which may be asserted for an
9 alleged violation of environmental law; and

10 (E) pay the expense of any inspection, review, abatement, or
11 remedial action to comply with environmental law;

12 (14) pay or contest any claim, settle a claim by or against the
13 trust, and release, in whole or in part, a claim belonging to the trust;

14 (15) pay taxes, assessments, compensation of the trustee and of
15 employees and agents of the trust, and other expenses incurred in the
16 administration of the trust;

17 (16) exercise elections with respect to federal, state, and local
18 taxes;

19 (17) select a mode of payment under any employee benefit or
20 retirement plan, annuity, or life insurance payable to the trustee,
21 exercise rights thereunder, including exercise of the right to
22 indemnification for expenses and against liabilities, and take
23 appropriate action to collect the proceeds;

24 (18) make loans out of trust property, including loans to a
25 beneficiary on terms and conditions the trustee considers to be fair and
26 reasonable under the circumstances, and the trustee has a lien on future
27 distributions for repayment of those loans;

28 (19) pledge trust property to guarantee loans made by others to the
29 beneficiary;

30 (20) appoint a trustee to act in another jurisdiction with respect
31 to trust property located in the other jurisdiction, confer upon the

1 appointed trustee all of the powers and duties of the appointing trustee,
2 require that the appointed trustee furnish security, and remove any
3 trustee so appointed;

4 (21) pay an amount distributable to a beneficiary who is under a
5 legal disability or who the trustee reasonably believes is incapacitated,
6 by paying it directly to the beneficiary or applying it for the
7 beneficiary's benefit, or by:

8 (A) paying it to the beneficiary's conservator or, if the
9 beneficiary does not have a conservator, the beneficiary's guardian;

10 (B) paying it to the beneficiary's custodian under the Nebraska
11 Uniform Transfers to Minors Act or custodial trustee under the Nebraska
12 Uniform Custodial Trust Act, and, for that purpose, creating a
13 custodianship or custodial trust;

14 (C) if the trustee does not know of a conservator, guardian,
15 custodian, or custodial trustee, paying it to an adult relative or other
16 person having legal or physical care or custody of the beneficiary, to be
17 expended on the beneficiary's behalf; or

18 (D) managing it as a separate fund on the beneficiary's behalf,
19 subject to the beneficiary's continuing right to withdraw the
20 distribution;

21 (22) on distribution of trust property or the division or
22 termination of a trust, make distributions in divided or undivided
23 interests, allocate particular assets in proportionate or
24 disproportionate shares, value the trust property for those purposes, and
25 adjust for resulting differences in valuation;

26 (23) resolve a dispute concerning the interpretation of the trust or
27 its administration by mediation, arbitration, or other procedure for
28 alternative dispute resolution;

29 (24) prosecute or defend an action, claim, or judicial proceeding in
30 any jurisdiction to protect trust property and the trustee in the
31 performance of the trustee's duties;

1 (25) sign and deliver contracts and other instruments that are
2 useful to achieve or facilitate the exercise of the trustee's powers; and

3 (26) on termination of the trust, exercise the powers appropriate to
4 wind up the administration of the trust and distribute the trust property
5 to the persons entitled to it.

6 (b) Except as otherwise provided under the terms of the trust, a
7 trustee, other than a trustee who is a related or subordinate party with
8 respect to the settlor within the meaning of section 672(c) of the
9 Internal Revenue Code as defined in section 49-801.01, may, from time to
10 time, in the trustee's absolute discretion, pay directly to the taxing
11 authorities or reimburse the settlor for any tax on trust income or
12 principal that is payable by the settlor for the portion of the settlor's
13 income tax liability attributable to the trust under sections 671 to 678
14 of the Internal Revenue Code as defined in section 49-801.01 or any
15 similar tax law. A trustee shall not exercise or participate in the
16 exercise of discretion pursuant to this subsection in a manner that (1)
17 would cause the inclusion of the trust assets in the settlor's gross
18 taxable estate for federal estate tax purposes at the time of exercise or
19 (2) is inconsistent with the qualification of all or any portion of the
20 trust for the federal gift or estate tax marital deduction, to the extent
21 the trust is intended to qualify for such deduction.

22 (c) {b} The changes made to this section by Laws 2019, LB593, shall
23 apply retroactively to August 30, 2015.

24 Sec. 3. Original section 30-3850, Reissue Revised Statutes of
25 Nebraska, and section 30-3881, Revised Statutes Cumulative Supplement,
26 2020, are repealed.