

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 988

Introduced by Schumacher, 22.

Read first time January 21, 2014

Committee:

A BILL

1 FOR AN ACT relating to decedents' estates; to amend section 30-2201,
2 Revised Statutes Cumulative Supplement, 2012; to provide
3 for certain access to a decedent's safe deposit box; to
4 harmonize provisions; to provide a duty for the Revisor
5 of Statutes; and to repeal the original section.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 30-2201, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 30-2201 Sections 30-2201 to 30-2902, 30-3901 to 30-3923,
4 and 30-4001 to 30-4045 and section 2 of this act shall be known and
5 may be cited as the Nebraska Probate Code.

6 Sec. 2. (1) For purposes of this section:

7 (a) Custodian means a bank, savings and loan association,
8 credit union, or other institution acting as a lessor of a safe
9 deposit box; and

10 (b) Representative of a custodian means an authorized
11 officer or employee of a custodian.

12 (2)(a) If a decedent at the time of his or her death was
13 a sole or last surviving joint lessee of a safe deposit box, the
14 custodian shall, prior to notice that a personal representative or
15 special administrator has been appointed for such decedent's estate,
16 allow access to the safe deposit box to determine whether the safe
17 deposit box contains an instrument that appears to be an original
18 will of the decedent, a deed to a burial plot, or burial
19 instructions. The following persons may have such access:

20 (i) A person who presents an affidavit described in
21 subsection (4) of this section that affiant reasonably believes that
22 he or she is either (A) an heir at law of the decedent, (B) a devisee
23 of the decedent or a person nominated as a personal representative as
24 shown in a photocopy of a will which is attached to such affidavit,
25 or (C) the agent or attorney specifically authorized in writing by a

1 person described in subdivision (2)(a)(i)(A) or (B) of this section;

2 or

3 (ii) A person who, under the terms of the safe deposit
4 box lease or a power of attorney at the time of the decedent's death,
5 was legally permitted to enter the safe deposit box, unless otherwise
6 provided by the lease or the power of attorney.

7 (b) If a person described in subdivision (2)(a) of this
8 section desires access to a safe deposit box but does not possess a
9 key to the box, the custodian may open the safe deposit box by any
10 means necessary at the person's request and expense or the custodian
11 may require the person to obtain a court order for the custodian to
12 open the safe deposit box at the requesting person's expense. The
13 custodian shall retain, in a secure location at such person's
14 expense, the contents of the box other than a purported will, deed to
15 a burial plot, and burial instructions. A custodian shall deliver a
16 purported will as described in subdivision (5)(b) of this section. A
17 person described in subdivision (2)(a)(i) of this section may remove
18 a deed to a burial plot and burial instructions that are not part of
19 a purported will pursuant to subdivision (5)(d) of this section, and
20 the custodian shall not prevent the removal. Expenses incurred by a
21 custodian or by the person seeking the documents pursuant to this
22 section shall be considered an estate administration expense.

23 (3) A representative of the custodian shall be present
24 during the entry of a safe deposit box pursuant to this section.

25 (4) The affidavit referred to in subdivision (2)(a)(i) of

1 this section shall state:

2 (a) That the sole or last surviving lessor of a safe
3 deposit box has died and the date of his or her death, and a copy of
4 the death certificate shall be attached;

5 (b) If the person submitting the affidavit is an attorney
6 or agent of the affiant, that such appointment is for the purpose of
7 accompanying the opening of the safe deposit box. In lieu of this
8 statement, the appointment shall accompany the affidavit; and

9 (c) That the affiant:

10 (i)(A) Is an heir at law of the deceased lessor and a
11 description of such person's relationship to the deceased lessor;

12 (B) Is reasonably thought to be a devisee of the decedent
13 based on the provisions of a will, a photocopy of which is submitted
14 with the affidavit; or

15 (C) Is reasonably thought to be nominated as personal
16 representative pursuant to the terms of a will, a photocopy of which
17 is submitted with the affidavit;

18 (ii) Swears or affirms that all statements in the
19 affidavit are true and material and further acknowledges that any
20 false statement may subject the person to penalties relating to
21 perjury under section 28-915; and

22 (iii) Has no knowledge of an application or petition for
23 the appointment of a personal representative pending or granted in
24 any jurisdiction.

25 (5)(a) If an instrument purporting to be a will is found

1 in a safe deposit box as the result of an entry pursuant to
2 subsection (2) of this section, the representative of the custodian
3 shall remove the purported will.

4 (b) The custodian shall mail the purported will by
5 registered or certified mail or deliver the purported will in person
6 to the clerk of the county court of the county in which the decedent
7 was a resident. If the custodian is unable to determine the county of
8 residence of the decedent, the custodian shall mail the purported
9 will by registered or certified mail or deliver the purported will in
10 person to the office of the clerk of the county court of the county
11 in which the safe deposit box is located.

12 (c) At the request of the person or persons authorized to
13 have access to the safe deposit box under subsection (2) of this
14 section, the representative of the custodian shall copy each
15 purported will of the decedent, at the expense of the requesting
16 person, and shall deliver the copy of each purported will to the
17 person, or if directed by the person, to the person's agent or
18 attorney. In copying any purported will, the representative of the
19 custodian shall not remove any staples or other fastening devices or
20 disassemble the purported will in any way.

21 (d) If the safe deposit box contains a deed to a burial
22 plot or burial instructions that are not a part of a purported will,
23 the person or persons authorized to have access to the safe deposit
24 box under subsection (2) of this section may remove these instruments
25 or request that the representative of the custodian copy the deed to

1 the burial plot or burial instructions at the expense of the
2 requesting person.

3 (6) This section does not limit the right of a personal
4 representative or a special administrator for the decedent, or a
5 successor of the decedent pursuant to section 30-24,125, to have
6 access to the safe deposit box as otherwise provided by law.

7 (7) Unless limited by the safe deposit box lease, a
8 surviving co-lessee of the safe deposit box may continue to enter the
9 safe deposit box notwithstanding the death of the decedent.

10 (8) A custodian shall not be liable to a person for an
11 action taken pursuant to this section or for a failure to act in
12 accordance with the requirements of this section unless the action or
13 failure to act is shown to have resulted from the custodian's bad
14 faith, gross negligence, or intentional misconduct.

15 Sec. 3. The Revisor of Statutes shall assign section 2 of
16 this act within Chapter 30, article 24, part 1.

17 Sec. 4. Original section 30-2201, Revised Statutes
18 Cumulative Supplement, 2012, is repealed.