

NEBRASKA SMALL ESTATE AFFIDAVIT PROCEDURES FOR PERSONAL PROPERTY ("Checks Payable to the Estate of")

I. INTRODUCTION

Nebraska state law authorizes a procedure for disposing assets of "small estates" consisting of personal property owned by a decedent. **Neb.Rev.Stat.** §30-24,125 allows personal property of a decedent's estate not in excess of \$100,000 to be paid and delivered pursuant to the execution and presentment of an affidavit by, or on behalf of, a successor of the decedent.

A. *Background*

Financial institutions have accepted these "small estate affidavits" for payment and delivery of personal property. A sample affidavit that may be used for obtaining personal property of a decedent in cases where the *personal property of the decedent's estate does not exceed \$100,000*, can be found by going to <https://supremecourt.nebraska.gov> and searching for "Affidavit for Transfer of Personal Property without Probate." The provisions of **Neb.Rev.Stat.** §30-24,125 require: (1) the value of all of the personal property in the decedent's estate, wherever located, less liens and encumbrances, does not exceed \$100,000; (2) a certified or authenticated copy of the decedent's death certificate be attached to the affidavit; (3) 30 days have elapsed since the date of the decedent as shown in a certified or authenticated copy of the decedent's death certificate attached to the affidavit; (4) the claiming successor must state his or her relationship to the decedent or, if there is no relationship, the basis of the successor's claim to the personal property; (5) under the affidavit to swear or affirm that all statements in the affidavit are true and material and to further acknowledge that any false statement may subject him or her to penalties relating to perjury under Neb.Rev.Stat. § 28-915; (6) a statement that no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and (7) that the claiming successor is entitled to payment or delivery of the property.

B. *Checks Made Payable "to the estate of"*

The provisions of **Neb.Rev.Stat.** §30-24,125 relating to the "small estate affidavit" procedure for payment and delivery of personal property were amended in 2023 (LB 157) to authorize a financial institution, upon the presentation of an affidavit, to accept and negotiate a check, draft, or other negotiable instrument made payable to the decedent or the decedent's estate and presented for deposit even though the financial institution is not indebted to the decedent.

As amended, the provisions of **Neb.Rev.Stat.** §30-24,125 allow a claiming successor to present an affidavit for payment and delivery of personal property and endorse or negotiate any instrument evidencing a debt belonging to the decedent that is a check, draft, or other negotiable instrument that is payable to the decedent or the decedent's estate. Upon presentation of such an affidavit for payment and delivery of personal property, a financial institution may accept a check, draft, or other negotiable instrument evidencing a debt belonging to a decedent and payable to the decedent or the decedent's estate, to be endorsed or negotiated by the claiming successor identified in the affidavit. A financial institution accepting such a check, draft, or other negotiable instrument presented for deposit in such manner is discharged from all claims for the amount accepted.

The foregoing Compliance Update is for informational purposes only, and does not constitute legal advice. As a reminder, the NBA general counsel is the attorney for the Nebraska Bankers Association, not its member banks. The general counsel is available to assist members with finding resources to help answer their questions. However, for specific legal advice about specific situations, members must consult and retain their own attorney.