

Revocable Trusts: Nebraska

by Jesse D. Sitz and Emily S. Tosoni, Baird Holm LLP, with Practical Law Trusts & Estates

Status: **Law stated as of 27 Nov 2024** | Jurisdiction: **Nebraska, United States**

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A Q&A guide to the laws governing revocable trusts in Nebraska. This Q&A addresses state laws and customs that impact revocable trusts, including the key statutes and rules related to revocable trusts, the requirements for creating a valid revocable trust instrument, common revocable trust provisions, information concerning trustees, information on making changes to revocable trust instruments after execution, and Nebraska's treatment of certain special circumstances for gifts made under a revocable trust instrument and gift recipients. Answers to questions can be compared across a number of jurisdictions (see Revocable Trusts: State Q&A Tool). For similar information relating to irrevocable trusts in Nebraska, see State Q&A, Irrevocable Trusts: Nebraska.

For a Toolkit providing jurisdiction-neutral revocable trust forms that can be used with this Q&A and other resources to help counsel draft revocable trust instruments under Nebraska law, see [State-Specific Revocable Trust Drafting Toolkit](#).

Key Statutes and Rules

1. What are the key statutes and rules that govern revocable trusts in your state and are revocable trusts commonly used as will substitutes in your state?

Key Statutes and Rules Governing Revocable Trusts

The rules and laws pertaining to revocable trusts in Nebraska are found in:

- The Nebraska Uniform Trust Code (Neb. Rev. St. §§ 30-3801 to 30-38,110).
- The Nebraska Uniform Direct Trust Act, which may have applicability for certain revocable trusts (Neb. Rev. St. §§ 30-4301 to 30-4319).
- The Nebraska Uniform Testamentary Additions to Trusts Act (Neb. Rev. St. §§ 30-3601 to 30-3604).

- The Nebraska Uniform Principal and Income Act, which sets out the rules governing management and investment of trust property (Neb. Rev. St. §§ 30-3116 to 30-3149).
- Nebraska case law.

Revocable Trusts as Will Substitutes

Revocable trusts are frequently used to allow a settlor to both:

- Manage their assets during life, including during any time when the settlor is incapacitated, at which point the revocable trust may become irrevocable by its terms or may be functionally irrevocable by the settlor if the settlor does not have capacity to revoke it.
- Dispose of their assets at death, because a revocable trust is generally also used as a will substitute.

Many provisions included in revocable trust instruments are primarily useful only once the revocable trust becomes irrevocable, because

while the trust is revocable the settlor generally has complete control over the trust and its provisions (Neb. Rev. St. §§ 30-3854 and 30-3855).

Use of revocable trusts as a will substitute is common in Nebraska, but wills alone (without the use of a revocable trust) are common as well. Counsel typically consider many factors when deciding whether to recommend a will or a revocable trust-based estate plan in Nebraska, including the client's:

- **Age.** A simple will may be sufficient for younger clients with straightforward family relationships who only have a few basic assets, most of which the individual can dispose of by beneficiary designation, survivorship right, or deed.
- **Wealth.** A revocable trust-based plan often makes more sense for a wealthy client than for a client of limited means who is likely to have a simple probate.
- **Tolerance for complexity.** Funding a revocable trust and continuing to fund it with newly acquired assets on an ongoing basis can be daunting for some clients.
- **Likelihood of becoming incapacitated in the near-term.** If funded, a revocable trust allows a trustee to manage the client's trust assets if the client becomes incapacitated. If there is no revocable trust, a guardianship may be necessary (if the client has not executed financial and health care powers of attorney).
- **Desire for privacy.** Revocable trusts generally afford clients more privacy than wills (see Question 26).
- **Fee tolerance.** Revocable trust-based plans typically cost more during the planning phase than will-based plans.
- **Creditor concerns.** If the client has creditor concerns it may make sense to use the Nebraska probate creditor claims process to potentially use a shortened statute of limitations for creditor claims (see Question 25: Settlor's Debts After Death).

In Nebraska, though the probate process adds additional cost and complication to the administration of a decedent's estate, the probate process is less complex and expensive than in larger states. However, for larger and more complicated estates, most estate planning attorneys favor estate plans that avoid probate, when possible. In these cases, counsel generally recommend the use of an *inter vivos* revocable trust and pour-over will that distributes the assets in the decedent's estate to the revocable trust at the decedent's death.

Who Can Create a Revocable Trust

2. Is there a minimum age requirement to create a revocable trust?

In Nebraska, a settlor must be at least 18 years of age or an emancipated minor to create a trust (Neb. Rev. St. § 30-3828(a)(1)).

3. What is the standard of mental capacity required to create a revocable trust?

In Nebraska, the standard of mental capacity required to create a revocable trust is the same as the capacity required to make a will (Neb. Rev. St. § 30-3853). An individual has capacity to create a will or trust if the individual is both:

- At least 18 years of age or an emancipated minor.
- Of sound mind.

(Neb. Rev. St. §§ 30-2326 and 30-3828(a)(1).)

Being of sound mind generally means that, as with a will, an individual creating a revocable trust needs to have the capacity to know and understand:

- The nature of their act (in this case, creating a revocable trust).
- The extent and character of their property.
- The proposed disposition of their property.
- The natural objects of their bounty (those taking the deceased individual's estate without a trust or will).

(*In re Cain's Estate*, 181 N.W.2d 441, 442-43 (Neb. 1970).)

4. Can any of the following create a revocable trust on behalf of an individual:

- Agent under a power of attorney?
- Guardian or conservator?

Agent Under a Power of Attorney

In Nebraska, language in a power of attorney granting general authority in estates, trusts, and other beneficial interests does not authorize the agent to create a

revocable trust for a settlor (called the principal in the power of attorney) (Neb. Rev. St. § 30-4034).

However, an agent under a power of attorney may create a revocable trust for a settlor if the power of attorney document expressly authorizes the agent to create, amend, revoke, or terminate a trust for the settlor (Neb. Rev. St. § 30-4024(1)(a)). In the Nebraska statutory power of attorney form, this is accomplished by the settlor initialing next to the appropriate section in the Grant of Specific Authority section (Neb. Rev. St. § 30-4041; see [Standard Document, Power of Attorney \(NE\): Drafting Note: Grant of Specific Authority](#)).

Guardian or Conservator

In Nebraska, unless context otherwise requires, the term guardian generally refers collectively to a guardian of the person and a conservator of the person's estate (Neb. Rev. St. § 30-2902(2)).

Nebraska courts can create, directly or through an appointed conservator, revocable trusts for the benefit of an individual under a disability (a protected person) (Neb. Rev. St. § 30-2637(3)). A conservator must consider recommendations by the protected person's parents or guardians of the person related to any appropriate standard of support, education, and benefit of the protected person, in making distributions under the trust (Neb. Rev. St. § 30-2654(a)(1)).

In addition, the conservator may distribute funds from an existing trust, or a trust created by the courts for the protected person, or otherwise, only while considering:

- The size of the protected person's estate.
- The probable duration of the conservatorship.
- The protected person's accustomed standard of living.
- Other funds or sources used to support the protected person.

(Neb. Rev. St. § 30-2654(a)(2).)

Trust Requirements

5. What are the requirements for a valid trust in your state?

Methods of Creation

A trust creator (settlor) may create a trust in Nebraska by:

- Transferring property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect on the settlor's death.
- Except as otherwise required by a statute other than the Nebraska Uniform Trust Code (for example, the statute of frauds under Neb. Rev. St. §§ 36-103, 36-202, and 36-404), declaring that the settlor holds identifiable property as trustee (see Question 7).
- Exercising a power of appointment in favor of a trustee.

(Neb. Rev. St. § 30-3827.)

Trust Purposes

A trust may be created only to the extent the purposes of the trust are:

- Lawful.
- Not contrary to public policy.
- Possible to achieve.

A trust and its terms must be for the benefit of its beneficiaries. (Neb. Rev. St. § 30-3830.)

Threshold Requirements

The threshold requirements to create a valid trust are that:

- The settlor has capacity to create a trust (see Question 3).
- The settlor indicates an intention to create the trust.
- There is a definite (ascertainable) beneficiary, unless the trust is:
 - a charitable trust;
 - for the benefit of an animal as provided under Neb. Rev. St. § 30-3834; or
 - a trust for a non-charitable purpose as provided under Neb. Rev. St. § 30-3835.
- A beneficiary is definite if the beneficiary can be ascertained currently or in the future subject to the applicable rule against perpetuities (Neb. Rev. St. §§ 30-3828(b) and 76-2002 to 76-2008). A trustee's power to select a beneficiary from an indefinite class is valid (a named class of

beneficiary can be a definite beneficiary). However, if the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons taking the property if the power was not conferred. (Neb. Rev. St. § 30-3828(b).)

- The trustee has duties to perform. However, in Nebraska, a trust will not fail for lack of a trustee. If a trust does not have a trustee able and willing to serve, a court of equity appoints a competent trustee to administer the trust (*In re Wiese's Estate*, 153 N.W. 556, 557 (Neb. 1915); see Question 13: Filling Vacancies in a Trusteeship).
- The same person is not the sole trustee and sole beneficiary. In the revocable trust context, the settlor is not considered the sole trustee and sole beneficiary, because the settlor names remainder beneficiaries to receive trust assets on the settlor's death. Therefore, even though the settlor of a revocable trust is also frequently the sole trustee and the sole current beneficiary during the settlor's life, a revocable trust still meets this threshold requirement for a valid trust.

(Neb. Rev. St. § 30-3828(a).)

Qualified Beneficiaries

Certain trust actions require action by or notice to the qualified beneficiaries of a trust, as distinguished from mere beneficiaries.

A mere beneficiary of a trust is any person with either:

- A present or future beneficial interest in a trust, vested or contingent.
- In a capacity other than that of trustee, a power of appointment over trust property.

(Neb. Rev. St. § 30-3803(3).)

However, the qualified beneficiary of a trust is, on the date the qualification is determined:

- A current or permissible recipient of trust income or principal.
- A beneficiary who would be a current or permissible recipient of trust income or principal if the interests of the current permissible recipients terminated without causing the trust to terminate.
- A beneficiary who would be a current or permissible recipient of trust income or principal if the trust was terminated according to its terms.

(Neb. Rev. St. § 30-3803(13).)

Effect of Fraud, Duress, Mistake, or Undue Influence

If the creation of a trust is procured by fraud, duress, mistake, or undue influence, the trust (or any part so procured) is void (Neb. Rev. St. § 30-3832).

Trust Property Requirements

In Nebraska, a trust does not have to hold property to be considered a valid trust. After a settlor establishes a revocable trust, the settlor must properly fund the trust to be able to distribute those funded assets under the revocable trust. Funding can be accomplished primarily on a settlor's death by the settlor's pour-over will or by beneficiary designations distributing property to the trust. (Neb. Rev. St. §§ 30-3827 and 30-3828(a); see Question 9.)

Many practitioners declare in the trust instrument that the settlor funds the trust with a nominal amount of cash or property when the settlor executes the trust instrument and more fully funds the trust later. However, funding primarily or exclusively at death likely defeats the primary purposes of a revocable trust-based plan if the settlor's intention is to avoid or minimize probate (unless most assets pass to the trust by beneficiary designation) or to avoid the need for a conservatorship on the settlor's incapacity (see Question 4: Guardian or Conservator).

For jurisdiction-neutral information on funding a revocable trust, see [Practice Note, Funding Revocable Trusts](#).

6. What provisions, if any, must be included for a trust to be deemed revocable?

In Nebraska, an *inter vivos* trust created on or after January 1, 2005, is revocable by the settlor unless the terms of the trust expressly provide that the trust is irrevocable and cannot be amended (Neb. Rev. St. § 30-3854(a)). However, counsel should expressly reserve the settlor's right to amend or revoke the trust in a written trust instrument during the settlor's lifetime to make sure the settlor's intention to create a revocable trust is clear (see Question 7).

Terms of a Trust

The terms of a trust are the manifestation of the settlor's intent about a trust's provisions as either:

- Expressed in the trust instrument.

- Established by other evidence admissible in a judicial proceeding.

(Neb. Rev. St. § 30-3803(19).)

Trust Formalities and Execution Requirements

7. Must a revocable trust instrument be in writing to be valid?

Under Nebraska law, a trust does not need to be in writing to be valid. Oral trusts are generally valid, but their creation and terms may only be established by clear and convincing evidence. (Neb. Rev. St. § 30-3833).

However, a revocable trust must be in writing if it:

- Is to be used with a pour-over will, as is most common in revocable trust-based estate plans (see Question 9: Existence of Revocable Trust Before Execution of Will).
- Disposes of real property, as provided by Nebraska's Statute of Frauds requirements (Neb. Rev. St. §§ 36-103 and 36-404).

Counsel generally should always put a revocable trust in a written instrument:

- To indicate the settlor's intention to create a trust (see Question 5: Threshold Requirements).
- To expressly reserve the settlor's right to amend or revoke the trust (though this is not required, it is recommended) (see Question 6).
- Because it is most commonly created with a pour-over will, which funds the trust with any assets in the settlor's probate estate that the settlor failed to properly transfer to the trust during life.

8. What are the execution requirements for a valid written revocable trust instrument? In particular, please specify requirements for:

- The settlor's signature.
- The trustee's signature.
- Witnesses.
- Notarization.

Signature and Witness Requirements

Revocable trusts disposing of real property are subject to Nebraska's Statute of Frauds requirements, meaning that the trust must be signed by the conveying party (the settlor) (Neb. Rev. St. § 36-103). For revocable trusts that do not dispose of real property, Nebraska law does not explicitly state whether the settlor's signature is required. The Nebraska Uniform Trust Code specifies only that a settlor must indicate an intention to create a trust. (Neb. Rev. St. § 30-3828.)

To determine the settlor's intention through the terms of the trust, Nebraska considers only manifestations of intent either:

- As expressed in the trust instrument, if any.
- That can be established through other evidence admissible as proof in a judicial proceeding.

(Neb. Rev. St. § 30-3803(19).) A signature on a trust instrument likely suffices to express the settlor's intent to create the trust. Settlers should generally sign written revocable trust instruments to indicate the settlor's intention to create the revocable trust and the terms of that trust.

Nebraska law does not require that a trustee sign a written revocable trust instrument for it to be valid. However, it is common for the trustee to sign the trust instrument to formally accept the trusteeship. This is important especially when the initial trustee or an initial co-trustee is not the settlor.

Nebraska law does not require that a revocable trust be witnessed for the trust to be valid, and it is not common for revocable trusts to be witnessed in Nebraska.

Notary Requirements

Nebraska law does not require that a written revocable trust instrument be notarized to be valid. However, the settlor's signature on a revocable trust instrument is often notarized even though it is not mandatory, because having the signature notarized provides evidence to third parties with whom the trustee may be dealing that the settlor's signature is genuine was not procured by undue influence.

Relationship to Pour-Over Will

9. How is a revocable trust instrument used with a pour-over will in your state? In particular please specify:

- Whether the revocable trust must exist before the pour-over will can be signed.
- Whether the terms of the revocable trust instrument can be incorporated by reference into the pour-over will.

Existence of Revocable Trust Before Execution of Will

In Nebraska, a will can dispose of property to a trust if the trust is:

- Executed before, with, or after the will, which means the trust must be a written trust instrument (see Question 7).
- Identified in a will.
- In existence at the testator's death.

The disposition by will to trust is valid even if:

- The trust is amendable or revocable.
- The trust was amended after the execution of the will or the testator's death.

(Neb. Rev. St. § 30-3602.)

Counsel should:

- Have the settlor execute the revocable trust before executing the will to show the settlor intended to distribute the settlor's probate assets to the trustee of the revocable trust in existence when the settlor executed the settlor's will.
- Specify the date of the revocable trust instrument and trustee when drafting a pour-over will to clearly indicate the revocable trust the testator intended for the testator's assets.

For a jurisdiction-neutral example of a pour-over will, see [Standard Document, Pour-Over Will](#).

Incorporation by Reference

Wills in Nebraska do not typically incorporate revocable trusts by reference. However, a will (including a pour-over will) can refer to the terms and provisions of a revocable trust instrument and direct that those terms and provisions apply if the

trust is not in existence when the testator dies. To incorporate an existing trust instrument by reference:

- The trust must exist when the will is executed.
- The language of the will must manifest an intent to incorporate the terms of the trust instrument.
- The will must describe the trust instrument sufficiently to permit its identification.

(Neb. Rev. St. § 30-2335.)

Rights of Surviving Spouse

10. How are the elective share rights affected by funding a revocable trust?

If a decedent was domiciled in Nebraska at death, the decedent's surviving spouse generally has an elective share right of up to one-half of the decedent's augmented estate (Neb. Rev. St. § 30-2313). However, under Nebraska law, a surviving spouse may waive the right to an elective share by executing a written contract or agreement (for example, a prenuptial agreement) (Neb. Rev. St. § 30-2316).

Property in a trust created by the decedent in which the surviving spouse has a beneficial interest is generally included in the augmented estate (Neb. Rev. St. §§ 30-2209(12) and 30-2313 to 30-2314.) The property is applied first to satisfy the elective share (Neb. Rev. St. § 30-2319(a); *In re Estate of Myers*, 594 N.W.2d 563 (Neb. 1999)).

However, property transferred to the trustee of a revocable trust before marriage is not included in the augmented estate (*In re Estate of Chrisp*, 759 N.W.2d 87 (Neb. 2009)).

11. Does the transfer of property to a revocable trust change the characterization of ownership between spouses? Specifically, please discuss:

- Community property.
- Property owned as tenants by the entirety.

Community Property

Nebraska is not a community property state. Nebraska adopted the Uniform Community Property Disposition at Death Act July 19, 2024, which ensures that community property acquired by spouses in a

community property state retains that status if the spouses move to Nebraska (Neb. Rev. St. §§ 30-4701 to 30-4715). This includes property transferred to a trust if it is characterized as community property in the terms of the trust or by the law of the jurisdiction in which the trust was created (Neb. Rev. St. § 30-4703(b)). Nebraska case law does not address the issue of community property in revocable trusts.

Spouses moving to Nebraska with community property assets may want to consider a post-marital agreement to clarify their intent about, and address any special dispositions of, these assets.

Tenants by the Entirety

Nebraska law does not recognize tenancy by entirety. Nebraska case law does not address the issue of property owned as tenants by the entirety in revocable trusts.

Common Revocable Trust Provisions

12. Discuss specific provisions commonly found in a revocable trust instrument and the rules that apply to these provisions in your state. In particular, please discuss the following provisions and their effect:

- No-contest clause.
- Incorporation by reference of trustee powers.
- Virtual representation.
- Rule against perpetuities.
- Sample rule against perpetuities clause.
- Governing law.
- Transfer of assets to trust by schedule.

No Contest Clause

Nebraska permits no contest clauses (penalty clauses for challenging a provision in a will). However, a no contest clause in a will is unenforceable if probable cause exists for contesting the will. (Neb. Rev. St. § 30-24,103.) Whether probable cause exists depends on whether a reasonable person in the contestant's position has reasonable grounds to believe that the actions giving rise to the will contest

were committed (*In re Estate of Barger*, 931 N.W.2d 660, 673 (Neb. 2019)).

No specific case law exists as precedent for no-contest clauses in trust documents, and no specific statutory provision exists in the Nebraska Uniform Trust Code permitting or providing a standard for no contest clauses. Some attorneys include these clauses in revocable trusts out of an abundance of caution, though the extent of their enforceability is uncertain.

For additional information about no contest clauses, see [State No Contest Clause Laws Chart](#) and [Standard Clause, No Contest Clause for Will or Trust](#).

Incorporation by Reference of Trustee Powers

A settlor may incorporate by reference into a revocable trust, in whole or in part, the fiduciary powers specified under:

- Neb. Rev. St. § 30-3880, which specifies the trustee's general powers.
- Neb. Rev. St. § 30-3881, which specifies the trustee's specific powers.
- Neb. Rev. St. § 30-3888, which specifies certain investment and management functions delegated by the trustee.

Nebraska trust instruments typically grant to the trustee all the powers and authorities that a prudent individual could exercise over an individual's own property. While this is effective to give the trustee the statutory powers, trust instruments also typically expressly list some or all the powers afforded by law. Restating the trustee's powers in the trust instrument can:

- Help provide the trustee with guidance in particular circumstances.
- Convince individuals and financial institutions with whom the trustee is dealing that the trustee has the powers necessary to act.

Direct Representation

The Nebraska Uniform Trust Code generally provides that, to the extent there is no conflict of interest between the representative and the person represented about the particular question or dispute:

- A conservator of a ward's property may represent and bind the estate that the conservator controls.

A guardian (guardian of the person) may represent and bind the ward's estate if a conservator of the ward's estate was not appointed.

- An agent with authority to act in a particular question or dispute may bind the principal. For example, an agent with the express authority to amend, revoke, or terminate a trust, may bind the settlor to their decision.
- A trustee may represent and bind the beneficiaries of the trust.
- A personal representative of a decedent's estate may represent and bind persons interested in the estate.
- A parent may represent and bind the parent's minor or unborn child if a conservator or guardian for the child was not appointed.

(Neb. Rev. St. § 30-3824.) Despite a conflict of interest in a particular question or dispute, the holder of a power of appointment may represent and bind persons with interests subject to the power (Neb. Rev. St. § 30-3823).

These types of representation provisions allow for an interest holder to be directly represented in a proceeding by a fiduciary, parent, or other representative.

Virtual Representation

In Nebraska, unless otherwise represented, the following categories of individuals may be represented by and bound by another person or entity that has a substantially identical interest in a question or dispute:

- A minor.
- An individual who is incapacitated.
- An unborn individual.
- A person whose identity or location is unknown and not reasonably ascertainable.

However, these individuals may be represented and bound by another only to the extent that:

- The individual is not otherwise represented directly (see Question 12: Direct Representation).
- The representative has a substantially identical interest in the particular question or dispute.
- There is no conflict of interest between the representative and the person represented.

(Neb. Rev. St. § 30-3825.)

If the court finds that the direct or virtual representation would be inadequate, the court may appoint a representative to represent the beneficiary (Neb. Rev. St. § 30-3826).

The Nebraska statutory representation rules apply whether a trust instrument specifically incorporates them or not, but it is common for Nebraska trust instruments to include a virtual representation clause.

For jurisdiction-neutral information in direct and virtual representation and a sample virtual representation clause, see [Standard Clause, Virtual Representation Clause for Will or Trust](#).

Rule Against Perpetuities

Under Nebraska's Uniform Statutory Rule Against Perpetuities (Neb. Rev. St. §§ 76-2001 to 76-2008), the statutory rule against perpetuities period does not apply to a trust instrument where the instrument:

- States that the rule against perpetuities does not apply to the trust.
- Provides the trustee with the power to sell, lease, or mortgage property for any period of time beyond the time otherwise required by for the interest under the trust to vest.

(Neb. Rev. St. § 76-2005(9).)

To the extent the trust instrument does not include the above language (or the Nebraska's Uniform Statutory Rule Against Perpetuities otherwise applies), trust provisions for a nonvested property are invalid unless either:

- When the interest is created, it is certain to vest or terminate no later than twenty-one years after the death of an individual then alive.
- The interest vests or terminates within ninety years after its creation.

(Neb. Rev. St. § 76-2002.)

Rule Against Perpetuities Sample Clause for Revocable Trust Instrument

"Notwithstanding anything herein to the contrary, no trust created hereunder shall be construed to extend beyond the period permitted by applicable law. If applicable law requires the termination of any trust within a period of time which is shorter than that contemplated herein, the trust so affected shall terminate on the last day on which the trust could

exist under such applicable law. Upon termination, if any part of any trust remains undistributed, the same immediately shall vest in, and be distributed to, the persons then living to whom, and in the proportions in which, distribution would have been made had the date for final distribution thereof arrived. To the extent permitted by applicable law, the rule against perpetuities shall not apply to any trust created hereunder.”

Governing Law

In Nebraska, the meaning and effect of a trust’s terms are determined by the law of the jurisdiction either:

- Designated in the trust instrument, unless that jurisdiction’s law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter.
- In the absence of a controlling designation in the trust terms, with the most significant relationship to the matter.

(Neb. Rev. St. § 30-3807.)

The settlor typically includes a provision in the trust instrument specifying that it is made or delivered in Nebraska and is governed by Nebraska law, while giving a trustee or other third party the power to change the governing law applicable to the trust.

Transfer of Assets to Trust by Schedule

A revocable trust can be funded both during the settlor’s life and when the settlor dies by transfers on the settlor’s death (Neb. Rev. St. § 30-3827(1)). There is no law in Nebraska requiring the transfer of assets to a trust by a schedule attached to a trust instrument.

However, some practitioners include with a revocable trust instrument a Schedule listing the property initially transferred to the trust at its execution by separate document or action. However, many revocable trust instruments recite only a nominal amount on this Schedule (for example, ten dollars (\$10)). The rest of the funding occurs after the trust is created as the settlor transfers assets to the trust.

Listing specific assets on a Schedule rather than a nominal amount can be problematic. If the schedule is not constantly updated as assets are sold or acquired, disputes may arise later about what assets are actually held by the trust. Simply listing assets

intended to be owned by the trust on a Schedule is also insufficient to actually transfer title of the property to the trust. As a result, it may be best for this Schedule to show only a nominal amount rather than a comprehensive list of assets.

For an example of a jurisdiction-neutral:

- Assignment to trust, see [Standard Document, Assignment of Property to Revocable Trust](#).
- Letter transferring accounts to a revocable trust, see [Standard Document, Letter to Financial Institution: Transfer of Accounts to Revocable Trust](#).

For jurisdiction-neutral information on funding a revocable trust, see [Practice Note, Funding Revocable Trusts](#).

Trustee Appointment

13. What are the rules regarding appointment of trustees in your state? In particular, please discuss:

- Who is eligible to act as trustee.
- Priority rules for filling vacancies in a trusteeship if the named trustees fail to qualify or stop acting.

Eligibility to Act as Trustee

There are no statutory requirements for an individual to be eligible to act as a trustee in Nebraska. However, presumably an individual trustee should be at least 18 years old, or an emancipated minor, and with capacity to be able to effectively administer and manage the trust assets.

In Nebraska, trust companies must generally have a majority of the members of the board of directors be residents of Nebraska, with reasonable efforts made to acquire members from the county in which the particular trust company is located. Directors of trust companies must be persons of good moral character and known integrity, business experience, and responsibility. (Neb. Rev. St. § 8-204(5).)

Drafting Attorney as Trustee

Naming the attorney preparing a revocable trust instrument as trustee of one or more trusts created under the trust instrument is common and permissible if certain conditions are met

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(Neb. Ct. R. of Prof. Cond. § 3-501.8 and cmts.). However, if an attorney prepares a document appointing the attorney or a person related to the attorney to a fiduciary office:

- The client must be properly informed and, except where the client is settlor's relative, should consult with another attorney (should have the detached advice another lawyer can provide).
- The appointment must not violate Neb. Ct. R. of Prof. Cond. § 3-501.7 for material limitation conflicts (generally, must not be considered a material conflict of interest under Nebraska attorney ethics rules).
- The appointment must not be the product of undue influence or improper solicitation by the attorney.
- The client must give informed consent, which should be confirmed in writing. When obtaining informed consent, the attorney should advise the client about:
 - the nature and extent of the lawyer's financial interest in the appointment; and
 - the availability of alternative candidates for the position.

(Neb. Ct. R. of Prof. Cond. § 3-501.8(c) and cmt. Gifts to Lawyers.)

For jurisdiction-neutral information about the ethics rules that apply to estate planning attorneys, see [Ethics in Estate Planning: Key Issues Checklist](#).

Filling Vacancies in a Trusteeship

Under Nebraska law, a vacancy in trusteeship occurs if:

- The person designated as trustee rejects (declines) the trusteeship (see Question 15).
- The person designated as trustee cannot be identified or does not exist.
- The trustee resigns (see Question 19).
- The trustee is disqualified or removed (see Question 18).
- The trustee dies.
- A guardian or conservator is appointed for an individual serving as the trustee.

(Neb. Rev. St. § 30-3860(a).)

Unless the trust instrument provides otherwise, a vacancy in a trusteeship does not need to be filled if

at least one co-trustee remains in office (Neb. Rev. St. § 30-3860(b)).

While a trust is revocable, a settlor generally can appoint a new trustee at any time. Once the revocable trust becomes irrevocable, a vacancy in a trusteeship is filled in the following order of priority:

- The person designated in the terms of the trust to act as successor trustee.
- A person appointed by unanimous agreement of the qualified beneficiaries.
- A person appointed by the court.

(Neb. Rev. St. § 30-3860(c); see Question 4: Qualified Beneficiaries.)

For jurisdiction-neutral information about appointing successor trustees and a form for appointing a successor trustee for a revocable trust when the settlor is:

- The outgoing trustee, see [Standard Document, Appointment of Successor Trustee for Revocable Trust: Settlor is Outgoing Trustee](#).
- Not the outgoing trustee, see [Standard Document, Appointment of Successor Trustee for Revocable Trust: Settlor is Not Outgoing Trustee](#).

14. Please describe how a nominated trustee accepts the trusteeship.

In Nebraska, a trustee of a revocable trust often signs the revocable trust instrument to formally accept the trusteeship. However, Nebraska law requires that a trustee accept the designation only by:

- Substantially complying with a method of acceptance provided in the terms of the trust.
- If the trust terms do not provide a method or the method provided in the trust terms is not expressly made exclusive:
 - accepting delivery of the trust property;
 - exercising powers or performing duties as trustee; or
 - otherwise indicating acceptance of the trusteeship.
- Registering the trust according to established statutory proceedings.

(Neb. Rev. St. § 30-3857(a); see Question 6: Terms of a Trust.)

Without accepting the trusteeship, a nominated trustee may:

- Inspect or investigate trust property either:
 - to determine potential liability; or
 - for any other purpose.
- Act to preserve the trust property if, within a reasonable time after doing so, the nominated trustee sends a written statement declining the trusteeship to a qualified beneficiary of the trust.

(Neb. Rev. St. § 30-3857(c).)

A nominated trustee should always accept a trusteeship in writing to make their intention to accept clear.

For a form for accepting an appointment as trustee, see [Standard Document, Acceptance of Trusteeship](#).

15. Please describe how a nominated trustee declines the trusteeship.

In Nebraska, a nominated trustee who has not accepted the trusteeship may decline their appointment as trustee. Nebraska law does not specify any formality for a nominated trustee to reject the trusteeship. However, a designated trustee not accepting the trusteeship within a reasonable time after learning of the designation is deemed to have rejected the trusteeship (Neb. Rev. St. § 30-3857(b)). Without accepting the trusteeship, a nominated trustee may:

- Inspect or investigate trust property either:
 - to determine potential liability; or
 - for any other purpose.
- Act to preserve the trust property if, within a reasonable time after doing so, the nominated trustee sends a written statement declining the trusteeship to a qualified beneficiary of the trust.

(Neb. Rev. St. § 30-3857(c).)

To make their intention to decline the trusteeship clear, a nominated trustee wanting to reject the trusteeship typically either:

- Sends a written document to the settlor, current trustee, or beneficiaries.
- Refuses delivery of trust property.

For a jurisdiction-neutral form for declining an appointment as trustee, see [Standard Document, Declination of Trusteeship](#).

Trustee Compensation

16. What are the rules, if any, regarding trustee compensation in your state?

In Nebraska, if the terms of the trust instrument do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances (Neb. Rev. St. § 30-3864(a)).

If the terms of a trust instrument specify the trustee's compensation, a court may allow more or less compensation if either:

- The trustee's duties are substantially different from those contemplated when the trust was created.
- The compensation specified by the terms of the trust would be unreasonably low or high.

(Neb. Rev. St. § 30-3864(b); see Question 6: Terms of a Trust.)

Corporate trustees typically take compensation according to their fee schedule and may request that their fee schedule be incorporated into the terms of the trust.

The trust instrument may also provide that some or all the named trustees are not entitled to compensation. However, this is generally not common, even if the trust names family members as trustee. Trustees may refuse compensation.

Trustees are entitled to be reimbursed out of the trust property, with interest as appropriate for:

- Expenses properly incurred in the trust administration.
- To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(Neb. Rev. St. § 30-3865(a).)

Compensation of Attorney as Trustee

Nebraska does not have statutory language treating attorneys rendering legal services for a trust and acting as trustee differently from other types of trustees. However, these attorneys must take care to abide by the Nebraska professional responsibility rules if acting in both capacities (see Question 13: Drafting Attorney as Trustee).

Multiple Trustees

17. Who has authority to act when there are multiple trustees?

In Nebraska, unless the terms of the trust provides otherwise, co-trustees unable to reach a unanimous decision may act by majority decision (Neb. Rev. St. §§ 30-3805 and 30-3859(a)).

A co-trustee must participate in performing an action on behalf of the trust unless the co-trustee either:

- Cannot do so because the co-trustee is absent, ill, disqualified, or has another temporary incapacity.
- Properly delegated the task to another trustee. However, a trustee may not delegate to a co-trustee the performance of any function the settlor reasonably expected the trustees to perform jointly (Neb. Rev. St. § 30-3859(e)).

(Neb. Rev. St. § 30-3859(c).)

The remaining co-trustee or a majority of the remaining co-trustees may act for the trust if:

- A co-trustee cannot perform duties because of absence, illness, disqualification, or temporary incapacity.
- Prompt action is necessary to achieve the trust's purposes or to avoid injury to the trust property.

(Neb. Rev. St. § 30-3859(d).)

Unless the trust instrument provides otherwise, if a vacancy occurs, the remaining co-trustees may act for the trust (Neb. Rev. St. § 30-3859(b)).

Removal and Resignation of Trustees

18. Can a trustee be removed from office, and if so, how?

In Nebraska, a trustee may be removed from office either:

- Under the terms of a trust instrument.
- By a request from the settlor, a co-trustee, or a beneficiary to the court.
- By the court acting on its own initiative.

(Neb. Rev. St. § 30-3862(a).)

A court may remove a trustee if:

- The trustee committed a serious breach of trust. Nebraska does not define what constitutes a serious breach of trust.
- A lack of cooperation among co-trustees substantially impairs the trust administration.
- The trustee is unfit, unwilling, or persistently fails to administer the trust effectively, and the court determines that removing the trustee best serves the beneficiaries' interests.
- There was substantial change in circumstances or removal is requested by all the qualified beneficiaries, and the court finds that:
 - removing the trustee best serves the interests of all the beneficiaries and is not inconsistent with a material purpose of the trust; and
 - there is a suitable co-trustee or successor trustee available.

(Neb. Rev. St. § 30-3862(b); see Question 4: Qualified Beneficiaries.)

A settlor may always remove the trustee of a revocable trust during the settlor's life, unless the settlor is incapacitated, because a revocable trust is by its terms fully revocable and amendable by the settlor. Even if the settlor does not include a removal provision in the trust instrument, the settlor can amend the trust instrument to include a removal provision or revoke the trust instrument in its entirety if it is necessary or desirable to remove a trustee.

However, the trust instrument should generally include a trustee removal provision specifying who has authority to remove trustees and the method for doing so. This becomes particularly important following the settlor's incapacity or death when the settlor generally can no longer revoke or amend the trust instrument.

For additional jurisdiction-neutral information on removal of trustees, see [Standard Clause, Removal of Trustee Clause for Will or Trust: Incapacity of Trustee](#).

19. What rights does a trustee have to resign from office?

In Nebraska, a trustee may resign:

- Under the terms of the trust.

- Unless the terms of the trust provide for resignation and make its resignation provisions exclusive, after providing at least 30 days' notice to:
 - the qualified beneficiaries (see Question 4: Qualified Beneficiaries);
 - the settlor if living; and
 - all co-trustees.
 - With the court's approval.
- (Neb. Rev. St. §§ 30-3805 and 30-3861; see Question 6: Terms of a Trust.)
- For a jurisdiction-neutral form to resign as trustee using this method of resignation, see [Standard Document, Resignation of Trustee](#).

Trustee Liability

20. What is the standard of care applicable to the trustee?

In Nebraska, the trustee owes a general duty of care, good faith, and loyalty to the trust beneficiaries. Under these duties, the trustee must, among other things:

- Administer the trust in good faith according to the trust's terms and purposes, the beneficiaries' interests, and the Nebraska Uniform Trust Code (Neb. Rev. St. § 30-3866).
- Administer the trust solely in the trust beneficiaries' interests (Neb. Rev. St. § 30-3867(a)).
- If a trust has two or more beneficiaries, act impartially in investing, managing, and distributing the trust property (Neb. Rev. St. § 30-3868).
- Administer the trust as a prudent person would, with reasonable care, skill, and caution, by considering the purposes, terms, distributional requirements, and other circumstances of the trust (Neb. Rev. St. § 30-3869).
- Incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee (Neb. Rev. St. § 30-3870).
- Use any special skills or expertise, if the trustee has special skills or expertise, or is named trustee because the trustee claimed to have special skill or expertise (Neb. Rev. St. § 30-3871).
- Control and protect trust property (Neb. Rev. St. § 30-3874).

- Keep adequate records of the trust administration and not commingle trust property with the trustee's own property or that of another trust (Neb. Rev. St. § 30-3875).
- Take reasonable steps to:
 - enforce claims of the trust and to defend claims against the trust (Neb. Rev. St. § 30-3876); and
 - compel a former trustee or other person to deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have been committed by a former trustee (Neb. Rev. St. § 30-3877).
- Keep the beneficiaries reasonably informed about the trust administration and of the material facts necessary for them to protect their interests (Neb. Rev. St. § 30-3878(a); see Question 28).

However, during the time a trust is revocable, the trustee's duties are owed exclusively to the settlor (Neb. Rev. St. § 30-3855(b)).

During the trust administration, the trustee must ensure that enough trust assets are held in reserve to pay all estate taxes, income taxes, and trust expenses for all years that the trust remains in existence. Since the estate tax exclusion remains high, in most cases no estate tax will be due (see [Federal Estate, Gift, and GST Tax Figures Chart](#) and [Federal Estate, Gift, and GST Tax Terminology Chart](#)).

21. Under what circumstances is a successor trustee liable for the acts of a prior trustee?

In Nebraska, a trustee must take reasonable steps to enforce claims of the trust (Neb. Rev. St. § 30-3876). While not typically responsible for acts of a former trustee, a trustee must take reasonable steps to redress a breach of trust or duty that the trustee knows a former trustee committed (Neb. Rev. St. § 30-3877).

22. Under what circumstances is a trustee liable for the acts of a co-trustee?

In Nebraska, a trustee not joining in an action of a co-trustee is generally not liable for the co-trustee's action (Neb. Rev. St. § 30-3859(f)). However, each trustee must exercise reasonable care both to:

- Prevent a co-trustee from committing a serious breach of trust.

- Compel a co-trustee to redress a serious breach of trust.

(Neb. Rev. St. § 30-3859(g).)

A dissenting trustee joining in an action at the direction of a majority of the co-trustees is not liable for the action if both:

- The dissenting trustee notified any co-trustee of the dissent at or before the action.
- The action was not a serious breach of trust.

(Neb. Rev. St. § 30-3859(h).)

For additional information about directed trusts, see State Q&A, Irrevocable Trusts: Nebraska: Question 16 and [State Directed Trust Laws Chart](#).

23. To what extent can the trust instrument waive trustee liability?

In Nebraska a trustee acting in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable for a breach of the trust to the extent the breach resulted from the reliance (Neb. Rev. St. § 30-3895 see Question 6: Terms of a Trust). A trust may include an exculpatory clause waiving trustee liability. However, an exculpatory clause in a trust is void if it either:

- Relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries.
- Appears in the trust instrument because of the trustee's abuse of a confidential relationship with the settlor. An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that:
 - the exculpatory term is fair under the circumstances; and
 - its existence and contents were adequately communicated to the settlor.

(Neb. Rev. St. § 30-3897.)

The provisions in a trust instrument may also alter the trustee's obligations under the prudent investor rule. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust. (Neb. Rev. St. § 30-3883(b).)

Special Circumstances Regarding Gifts or Recipients

24. Please describe what happens if:

- A beneficiary does not survive the settlor.
- A gift is not owned by the settlor or the revocable trust at the settlor's death.
- There are not enough assets passing through the revocable trust, or after payment of taxes and debts, to satisfy all the gifts.
- The gifted property is encumbered.
- The settlor and a beneficiary or fiduciary to whom the settlor was married when the revocable trust was created are no longer married when the settlor dies.
- The settlor and a beneficiary die at the same time.

Beneficiary Does Not Survive (Lapse)

In Nebraska, if a beneficiary named in a trust instrument does not survive the settlor, the gift to that beneficiary generally fails (or lapses), and the assets instead pass as provided in the trust instrument. However, the Nebraska Uniform Trust Code does not contain provisions about lapse. Further, the Nebraska Uniform Trust Code did not incorporate Uniform Trust Code Section 112, which incorporates will doctrines and rules, which typically include provisions about lapse.

The Nebraska Uniform Trust Code instead provides that the common law of trusts and principles of equity supplement the Uniform Trust Code, except as modified by statute. (Neb. Rev. St. § 30-3806). To construe the terms of the trust (and resolve questions about lapse of a bequest), the court looks to the language of the trust instrument, as well as to the facts and circumstances, to determine the settlor's intent in the matter (See *Conway v. Adams Cnty.*, 107 N.W.2d 418, 420, *decision clarified on denial of reh'g*, 108 N.W.2d 637 (1961)). Therefore, the settlor should expressly include provisions in the trust instrument for what happens to a bequest if the beneficiary does not survive the settlor.

Gift Not Owned by Settlor at Death (Ademption)

In certain jurisdictions, a gift of specific property may adeem if the property is disposed of before the settlor's death or is not properly transferred into the trust. This means that, in certain circumstances, if the settlor gives property away or otherwise disposes of it during life, the beneficiary receives neither the gift nor its equivalent value.

However, the Nebraska Uniform Trust Code does not include provisions about ademption. Further, the Nebraska Uniform Trust Code did not incorporate Uniform Trust Code Section 112, which incorporates will doctrines and rules, which typically include provisions about ademption. In addition, Nebraska courts determined ademption statutes in wills do not apply to trusts (*In re Estate of Radford*, 933 N.W.2d 595, 598-99 (Neb. 2019)). Therefore, to minimize the chance of conflict with ademption issues, the settlor should make sure:

- The property which is the subject of specific gifts in the trust is properly transferred to the trust.
- To amend the trust instrument when any property specifically gifted in the trust is disposed of before the settlor's death.

Insufficient Assets (Abatement)

The Nebraska Uniform Trust Code does not contain provisions about the allocation of trust assets if there are insufficient assets in the trust to satisfy all gifts in, and liabilities of, the trust (which assets abate, or are used, first to pay liabilities and gifts). Further, the Nebraska Uniform Trust Code did not incorporate Uniform Trust Code Section 112, which incorporates will doctrines and rules, which typically include provisions about abatement.

The settlor should include custom priority provisions in a trust instrument if the settlor prefers that certain dispositions be cancelled or reduced if the assets are insufficient to satisfy all distributions under the trust instrument.

Gifted Property Encumbered

The Nebraska Uniform Trust Code does not contain provisions about whether a beneficiary takes a gift subject to or free of any encumbrance on the property. Further, the Nebraska Uniform Trust Code did not incorporate Uniform Trust Code Section 112,

which incorporates will doctrines and rules, which typically include provisions for gifts of encumbered property. Therefore, trust instruments should clarify for each separate gift of an encumbered item whether the beneficiary takes subject to or free of the encumbrance.

Effect of Divorce

Unless the trust instrument, a court order, or a valid marital agreement expressly provides otherwise, if a married settlor with a revocable trust divorces or the marriage is annulled, any revocable disposition, appointment of property, power of appointment, or nomination to serve in a fiduciary or representative capacity to or in favor of the settlor's former spouse or a relative of the settlor's former spouse is revoked.

Revoked provisions are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions in the trust instrument. Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment. (Neb. Rev. St. § 30-2333.)

Simultaneous Death

Unless the trust instrument provides otherwise, if the title of property depends on the priority of death, and there is no evidence the persons died other than simultaneously, Nebraska disposes the property of each person as if that person survived the other (Neb. Rev. St. § 30-121 and 30-126).

Creditor Protection

25. What, if any, creditor protection does a revocable trust provide in your state. In particular, please specify:

- Any protection provided regarding the settlor's debts during life.
- Any protection provided regarding the settlor's debts after the settlor's death.
- Any protection provided regarding the debts of the trust beneficiaries after the settlor's death.
- Whether revocable trust assets are considered available resources in determining Medicaid eligibility.

Settlor's Debts During Life

In Nebraska, revocable trusts generally do not prevent the settlor's creditors from reaching the trust assets. Revocable trust property is subject to the claims of the settlor's creditors during the settlor's lifetime to the same extent as property owned directly by the settlor. (Neb. Rev. St. § 30-3850(a)(1).)

Settlor's Debts After Death

In Nebraska, after a settlor's death, trust assets are available to the extent necessary to pay valid claims of the settlor's creditors. If, after the settlor dies, the settlor's probate estate has insufficient assets to pay all creditors, subject to the settlor's right to direct the source from where liabilities are to be paid, the property of a trust that was revocable at the settlor's death is subject to:

- The claims of the settlor's creditors.
- The costs of administering the settlor's estate.
- The costs relating to settlor's funeral and disposal of remains.
- Statutory allowances to a surviving spouse and children.

(Neb. Rev. St. § 30-3850(a)(3).)

Debts of Trust Beneficiaries After Settlor's Death

In Nebraska, spendthrift provisions are generally enforceable for non-grantor beneficiaries of a trust not holding an *inter vivos* general power of appointment over trust assets (Neb. Rev. St. § 30-3846 to 30-3848). A spendthrift provision is valid only if it limits both voluntary and involuntary transfers a beneficiary's interest (Neb. Rev. St. § 30-3847(a)).

A trust term providing that a beneficiary's interest is held subject to a spendthrift trust (or words of similar effect) is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest (Neb. Rev. St. § 30-3847(b)). This means, for example:

- A beneficiary cannot assign or transfer the beneficiary's future interest.
- A beneficiary's creditors, with certain exceptions, cannot attach the trust assets before the trustee distributes the assets to the beneficiary.

Even if a trust contains a spendthrift provision, the following parties may obtain a court order attaching present or future distributions to or for the beneficiary's benefit:

- A beneficiary's child with a judgment or court order against the beneficiary for support or maintenance.
- A judgment creditor who provided services for the protection of a beneficiary's interest in the trust.
- The state of Nebraska or the United States, to the extent a statute of the state or federal law allows.

(Neb. Rev. St. § 30-3848.)

To the extent a beneficiary's interest is not subject to a spendthrift provision, a court may authorize a creditor to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. Courts can limit the awards as appropriate under the circumstances. (Neb. Rev. St. § 30-3846). Spendthrift provisions are commonly included in Nebraska trust instruments, regardless of whether a beneficiary has a history of debt or poor spending habits.

Medicaid Eligibility

The Nebraska Uniform Trust Code does not explicitly state that a beneficiary's interest in a revocable trust negatively affects the beneficiary's eligibility for Medicaid. However, Medicaid's rules evaluate whether trusts are countable assets for Medicaid eligibility based on the nature of the trust, its manner of establishment, the source of funding, the named beneficiaries, and the trustee.

The assets titled in a revocable trust where the settlor is also the sole beneficiary (a self-settled trust) are available for determining the settlor's Medicaid eligibility (42 U.S.C. § 1396p(d)(3)(A)).

In Nebraska, if an individual is a beneficiary of a trust established by a third party from the third party's own assets, the trust assets or income are not considered for Medicaid eligibility if the beneficiary has no enforceable right to any distributions from the third-party settled trust. (477 Neb. Admin. Code. § 21-003.05(A)(vi)(2)(g)(v)). Any beneficiary seeking to apply for Medicaid should:

- Make sure the trust document gives the trustee sole and absolute discretion in making distributions.

- Further clarify that the trustee cannot distribute, nor can the beneficiary demand, a distribution of income or principal for any purpose that supplants, impairs, or diminishes any governmental or public institutional benefits for which the beneficiary may be receiving under the terms of the trust. In addition, if an individual or an individual's spouse settles a revocable trust, the entire principal is treated as an available resource along with payments from the trust made to the individual for less than fair market value.

(477 Neb. Admin. Code. § 21-003.05(A)(vi)(2)(g)(v), (vi).)

If Nebraska or federal law requires a beneficiary to reimburse the state or agency for public assistance, claims are enforceable against spendthrift provisions in a trust. A court can issue an order attaching present or future distributions to a beneficiary. (Neb. Rev. St. § 30-3848.)

Court Supervision and Privacy

26. Is a revocable trust court supervised on the death of the settlor?

In Nebraska, trusts and trustees are normally not subject to court supervision. However, the court may intervene in the administration of a trust to the extent both:

- An interested person invokes its jurisdiction or as provided by law.
- The court orders continuing supervision.

(Neb. Rev. St. § 30-3812(a), (b).)

A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights (Neb. Rev. St. § 30-3812(c)).

In addition, a person may file a claim to contest the validity of a trust that was revocable at the settlor's death within the earlier of either:

- One year after the settlor's death.
- 120 days after the trustee sent the person a copy of:
 - the trust instrument; and
 - a notice informing the person of the trust's existence, the trustee's name and address, and the time allowed to file a claim.

(Neb. Rev. St. § 30-3856(a).)

27. Does an estate plan that includes a revocable trust afford a settlor more privacy than a will-based estate plan?

In Nebraska, an estate plan that includes a revocable trust instrument provides a settlor more privacy than a will-based estate plan. A will and the information provided to the court in a probate proceeding is generally available to the public (Neb. Rev. St. §§ 30-2425 to 30-2438; Neb Ct. R. §§ 1-801 to 1-810).

A revocable trust is generally administered without a public proceeding (Neb. Rev. St. § 30-3812; see Question 26). However, the trust beneficiaries are entitled to information about the trust when the settlor dies, or the trust otherwise becomes irrevocable (see Question 28).

28. Are the beneficiaries of a revocable trust entitled to notice of its existence, or any other information, during the settlor's life or when the settlor dies?

In Nebraska, the trustee has several duties to provide information to beneficiaries at various times after the settlor's death. A trustee must keep the qualified beneficiaries of the trust reasonably informed about the trust administration and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee must promptly respond to a beneficiary's request (not just qualified beneficiaries) for information related to the trust administration. (Neb. Rev. St. § 30-3878(a).)

In addition, the trustee has a duty to provide beneficiaries with:

- **A copy of the trust instrument.** On reasonable request, the trustee must provide a beneficiary with a complete copy of the trust instrument (Neb. Rev. St. § 30-3878(b)(1)).
- **Notice of acceptance of trusteeship.** Within 60 days after the trustee's acceptance of the trust, the trustee must give notice to the qualified beneficiaries of:
 - the trustee's acceptance of the trust; and
 - the trustee's name, address, and telephone number.

(Neb. Rev. St. § 30-3878(b)(2); see Question 4: Qualified Beneficiaries.)

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- **Notice of trust becoming irrevocable.** Within 60 days after the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, the trustee must give notice to the qualified beneficiaries of:
 - the trust’s existence;
 - the settlor’s identity;
 - their right to request a copy of the trust instrument; and
 - their right to a trust report.(Neb. Rev. St. § 30-3878(b)(3).)
- **A trust report.** Once the trust becomes irrevocable, the trustee must provide a trust report containing certain required information to the beneficiaries or permissible beneficiaries of trust income or principal, and to other qualified or nonqualified beneficiaries requesting it, at least annually and on termination of the trust or on a change of the trustee (Neb. Rev. St. § 30-3878(c)).
- **Notice of change in trustee compensation.** The trustee must notify the qualified beneficiaries in

advance of any change in the method or rate of the trustee’s compensation (Neb. Rev. St. § 30-3878(b)(4)).

A beneficiary can waive any of the above rights to information and, for future reports and other information, may withdraw a waiver previously given (Neb. Rev. St. § 30-3878(d)).

The trustee’s duties to account and provide information does not extend to the trust beneficiaries of a revocable trust while the settlor is living (Neb. Rev. St. § 30-3855(b)).

Designated Representative

Under Nebraska law, certain individuals are authorized to represent certain interested persons in the trust instrument (see Question 12: Direct Representation and Virtual Representation). This representation means that these representatives can receive information about the trust administration, which the beneficiary has a right to receive, on the represented beneficiary’s behalf (Neb. Rev. St. 30-3822(a)).

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