

# Country Guide

## USA – Nebraska

Prepared by

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# A GUIDE TO DOING BUSINESS IN NEBRASKA 2016



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## **DISCLAIMER**

The information in this guide is intended to provide a general guide to Nebraska state laws on the topics requested that are applicable to doing business in Nebraska and is based on information available as of January 1, 2015. This guide excludes any issues of federal law or under treaties of the United States; should not be relied upon in any specific factual situation; and does not create an attorney-client relationship. It is not intended to provide business advice or to cover all laws or regulations that may be applicable to a specific factual situation. The guide is for general informational purposes only. If you have matters or questions to be resolved for which legal advice may be indicated, you are encouraged to contact a lawyer authorized to practice law in Nebraska before proceeding.

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# INTRODUCTION

## GEOGRAPHY AND RELATED FEATURES

Nebraska is in the center of the country's Great Plains and has an estimated population of 1,881,503 according to the 2014 census. The state contains a total of 49.2 million acres, or 79,872 square miles, with 46 million acres classified as farmland. The farmland is almost equally divided between cropland and pastureland.

### The Principal Cities

Omaha is the largest city in Nebraska and is the nation's 60th largest city with a population of 434,353. Neighboring parts of Iowa are included in the Omaha metropolitan statistical area that has a total population of 904,421. Omaha is located midway on Nebraska's eastern border formed by the Missouri River; the river is navigable and flows south to Saint Louis where it joins the Mississippi River, providing water access for trade traffic between Omaha and the Gulf of Mexico.

Omaha is the headquarters of four Fortune 500 companies – Berkshire Hathaway, Union Pacific Railroad, Mutual of Omaha, and Peter Kiewit Sons'. In recent years the Berkshire Hathaway annual stockholders' meeting in the city draws national attention by the attendance of more than 30,000 of its investors. In 2015, Berkshire Hathaway celebrated its 50<sup>th</sup> Anniversary and attendance was upwards of 40,000 investors at the annual meeting held in Omaha. The Omaha Chamber of Commerce reports that only 23 cities have more Fortune 500 company headquarters and that Omaha ranks 8th among the nation's 50 largest cities in both per-capita billionaires and Fortune 500 companies. Although a much smaller company, one of the state's most unique businesses may be Cockle Printing Company in Omaha that, by a wide margin, is the largest producer of U.S. Supreme Court printed briefs in the United States.

The second largest city in Nebraska is Lincoln, the state capital, located 50 miles southwest of Omaha by interstate highway. The population of Lincoln is 268,738 and its metropolitan statistical area is 318,945. The original main campus of the University of Nebraska is in Lincoln. Both state government and the university are significant employers in the city's economy, along with banking, information technology, insurance, and rail and truck transport industries.

The most distinguishing physical feature of Lincoln is the State Capitol Building. It was designed by noted early 20th-century architect Bertram Grosvenor Goodhue of New York City with construction beginning in 1922 and finally completed in 1932. The structure was the first skyscraper state capitol building in the nation and remains the second tallest today. It has a height of 400 feet and is classical in form with straight, clean lines, and Art Deco accents. The building's exterior is buff-colored Indiana limestone – the same as used on the Empire State Building and other Manhattan skyscrapers. Atop a simple, golden tile dome stands an 11-foot pedestal and a 19-foot bronze statue of "The Sower" representing Nebraska's agricultural heritage. The structure remained the tallest building in Nebraska until 1969. In that year the Woodmen Tower opened in Omaha with a height of 478 feet which, in turn, has been surpassed by the recently completed One First National Center building in Omaha with a height of 634 feet. In Lincoln, local zoning regulations prevent other buildings from approaching the State Capitol Building in height, and it stands as a singular landmark of the capital city for tens of miles away in all directions.

Nebraska's three branches of state government are located in the building. The most unique of these is the state's unicameral Legislature created by amendment of the Nebraska constitution in 1934 when the original senate and house of representatives were abolished. The size of the Legislature is limited to 49 members.



## **The Farmland**

The remainder of the state is farmland dotted with smaller cities and towns serving local areas and with some having strong manufacturing, food processing, and service facilities. Nebraska's cropland soil in the southern and eastern parts of the state is fertile and deep. However, a more advantageous characteristic of agriculture in the state is less apparent.

Underlying almost all of Nebraska is the Ogallala Aquifer, sometimes called the High Plains Aquifer. This geologic formation also is under lesser portions of seven other states in the region, particularly those to the south. The aquifer is a natural layer of rocks and gravel bearing fresh water that was formed many tens of thousands of years ago when the Rocky Mountains uplifted to the west. The water-permeated thickness of the layer varies from a few feet to over 525 feet, and the thicker part of this water layer is in the northern portion of the aquifer where Nebraska is located. The distance from the surface of the ground down to the water varies from 400 feet in parts of the north to 100 to 200 feet in much of the south. While water levels in the aquifer are said to be dropping, particularly in southern parts, they have been generally holding steady or, in some areas, rising in Nebraska.

To illustrate the magnitude of the aquifer, the Nebraska Department of Agriculture reports that, if the water in the formation lying under the state was poured over the surface, the water would have a depth of 37.9 feet. This underground aquifer, together with Nebraska's 24,000 miles of rivers and streams, provides ample water for agriculture, irrigation, and other development in the state. In 2012, 8.3 million acres of land, 44% of the total cropland harvested, were irrigated.

Nebraska's Sandhills, a region of mixed-grass prairie on grass-stabilized sand dunes, comprises half of Nebraska's nearly 22 million acres of pastureland. The Sandhills are located in the north-central to northwesterly part of the state and are the largest sand dune formations in the Western Hemisphere; in places, these hills exceed 330 feet in height. The Sandhills were formed 10,000 years ago after the last ice age and have become covered with natural grasses, wildflowers, and other flora, estimated at over 720 species. Although the Sandhills are relatively low in annual rainfall, the Ogallala Aquifer, underlying the region, provides water to small lakes, natural springs, meadows, and marshlands year-around. Some of the larger cattle ranches in the United States are located in Nebraska's Sandhills, establishing it as one of the most productive cattle ranching areas in the world.

Generally, under a Nebraska constitutional amendment adopted by initiative in 1982, newly-acquired farmland has been owned by individuals, partnerships of individuals, or by family-held corporations. N.E. CONST. art. XII, § 8. Seven other states in the region have similar state constitutional provisions. In December 2005, a federal district court declared these Nebraska state provisions, known as Initiative 300, unconstitutional under the Commerce Clause of the U.S. Constitution. The United States Court of Appeals for the Eighth Circuit affirmed the federal district court's ruling that N.E. CONST. art. XII, § 8 was unconstitutional; the United States Supreme Court denied certiorari.

## **STATE'S ECONOMY**

Nebraska's agricultural economic production is impressive. In February 2015, the state Department of Agriculture reported Nebraska's top national rankings for 2014:

- 1<sup>st</sup>** Commercial red meat production – 7,279,700,000 lbs. (3,302,016,109 kg.)  
Commercial cattle slaughter – 6,689,400 head  
Commercial cattle slaughter live weight – 9,307,111,000 lbs. (4,221,634,195 kg.)  
Great Northern beans production, 2014 – 1,810,000 cwt. (82,100,218 kg.)  
Irrigated land harvested, 2012 – 8,225,973 acres (3,328,933 ha.)
  
- 2<sup>nd</sup>** All cattle and calves, Jan. 1, 2015 – 6,300,000 head  
Pinto beans production – 1,554,000 cwt. (70,488,254 kg.)  
Proso millet production – 3,219,000 bushels (3,219,000 kg.)

- 3<sup>rd</sup>**    Corn for grain production – 1,602,050,000 bushels  
           All dry edible beans production – 3,800,000 cwt. (172,365,100 kg.)  
           Cash receipts from all farm commodities, 2013 – \$23,569,058,000
- 4<sup>th</sup>**    Cash receipts from all livestock and products, 2013 – \$11,962,766,000  
           Corn Exports, 2013 – \$765,700,000  
           Net farm income, 2013 – \$8,365,727,000  
           Land in farms and ranches, 2013 – 45,300,000 acres (18,332,259 ha.)
- 5<sup>th</sup>**    Agricultural exports, 2013 – \$6,620,300,000  
           Soybean production, 2014 – 288,900,000 bushels  
           Soybean exports, 2013 – \$1,625,200,000

This production resulted in the following levels of economic activity in the state:

- Cash receipts from farm marketing contributed over \$23 billion to Nebraska's economy in 2013 and 5.9 percent of the U.S. total.
- Nebraska's ten leading commodities (in order of value) for 2012 cash receipts (as reported by the Department of Agriculture in February 2015) are cattle and calves, corn, soybeans, hogs, wheat, dairy products, hay, chicken eggs, dry beans, and sugar beets, which represent 98 percent of the state's total cash receipts.
- Every dollar in agricultural exports generates \$1.22 billion in economic activities such as transportation, financing, warehousing, and production. Nebraska's \$6.6 billion in agricultural exports translates into \$8.1 billion in additional economic activity. The top agricultural exports in 2013 were soybeans, beef and veal, feeds and fodder, corn, and other plant products.
- Nebraska had 49,600 farms and ranches during 2013; the average operation consisted of 913 acres (369 ha.); average net income per farm averaged \$112,966 during the 2009-2013 period.
- In 2013, Nebraska ranked second in ethanol production capacity, with 24 operating plants having production capacity of 2.07 billion gallons (783,580,242 dal). Approximately 38% of the state's 2013 corn crop was utilized in ethanol production.
- The Nebraska livestock industry accounted for 48% of the state's total agricultural cash receipts during 2009. Livestock or poultry operations were found on 49% of Nebraska farms.
- In 2011, Nebraska was eighth nationally in certified organic cropland acres (129,858) (52,551 ha.) and eighth in certified organic pasture acres (53,174) (21,518 ha.).

## **CULTURE AND INVESTMENT CLIMATE**

In summary, the following points and information are provided by the Nebraska Department of Economic Development\*:

1. Nebraska offers an array of advantages that make living, working, and doing business here a rich and rewarding experience. Within its borders, you'll discover genuine, hardworking people who are proud of their heritage. Nebraskans are excited about the future and eagerly welcome new industry and development to the state.

2. There's no better place to build, expand, or start your business. And there's no better place for employees to live. Nebraska is a great place to grow up, raise a family, start a career or business, and prosper. It's this high quality of life that has created an environment where the possibilities for prosperity and happiness are truly endless.

3. No matter where you live in Nebraska, you won't have to worry about air pollution, smog, or haze. Nebraska also ranks high in the abundance of underground water. Across the state, wide-open spaces and acres of prairie grass give way to bountiful cropland and picturesque river valleys. Urban areas blend innovative architecture with well-manicured landscapes.

4. Nebraska's overall cost of living ranks well below the national average in all major categories including food, housing, utilities, transportation, and health care. When adjusted for cost of living, Nebraska's wages and salaries compare very favorably with those in other states.

5. Nebraska is a fiscally conservative state that has long operated, by law, with no state debt. The state's unique unicameral—one-house legislature—is a model for efficient, accessible, and results driven government.

6. Nebraskans are proud of a heritage that combines an agricultural background with broad cultural and cosmopolitan experiences. They are well-educated and self-motivated, and a friendly atmosphere of warmth and politeness exists throughout the state. Community respect and an attitude of self-reliance results in safe, clean, and well-developed communities.

7. Communities throughout the state have designated spaces for various manufacturing purposes, and many support new companies with special incentives and allowances. Major gas pipelines sourcing directly from producing fields mean low cost gas from a number of efficient suppliers. Electric utilities are publicly owned in Nebraska; the citizens – corporate and private – are the shareholders to whom profits are returned in the form of lower rates. Traditionally, electrical rates in Nebraska are among the lowest in the United States.

8. Nebraska wage rates and productivity rates are in the top half or near the top in the nation, respectively, when measured as the total product manufactured against total labor costs. Other important labor costs such as unemployment insurance, worker's compensation insurance, and absenteeism are very low in comparison to national and even regional averages. Nebraska's unemployment rate for 2015 is 2.7% which is the lowest in the United States.

9. With regard to taxes, Nebraska's progressive tax incentive program has encouraged hundreds of companies, large and small, to take advantage of a system that rewards companies investing in their own future and the future of their employees. During the 2012 Legislative session, additional legislation was passed further enhancing Nebraska's competitive incentives package by creating an additional tiered program providing additional benefits, a 10 year personal property tax exemption, for large data center projects.

## **BUSINESS ENTITIES**

### **CORPORATIONS**

The Nebraska Secretary of State\* regulates corporations and other business entities through its Corporations Division. The Division's website has many forms used by corporations and other business entities.

Website: [http://www.sos.state.ne.us/business/corp\\_serv/](http://www.sos.state.ne.us/business/corp_serv/)

**Mailing Address:**

Secretary of State  
PO Box 94608  
Lincoln, Nebraska 68509-4608  
402-471-4079 phone  
402-471-3666 fax

**Physical Address:**

Secretary of State  
Corporations Division  
State Capitol, Room 1301  
Lincoln, Nebraska 68509

**Governing Law**

Legislative Bill 749, approved by the Governor on March 28, 2014 and effective January 1, 2017, will enact a revised and updated Nebraska Model Business Corporation Act ("NMBCA") and will repeal Nebraska's current Business Corporation Act (NEB. REV. STAT. §§ 21-2001 to 21-20,197). The proposed NMBCA, as well as the current Business Corporation Act, is based on the Model Business Corporation Act as approved and promulgated by the American Bar Association. The NMBCA can be found at NEB. REV. STAT. §§ 21-201 to 21-2,232. This *Guide to Doing Business in Nebraska 2015* will reflect the NMBCA. For information regarding the Business Corporation Act please see the *Guide to Doing Business in Nebraska 2012*.

**Formation**

A Nebraska corporation is formed by submitting an original of the articles of incorporation to the Secretary of State for filing. The articles of incorporation must include at a minimum: (a) the corporate name; (b) the number of shares the corporation is authorized to issue; (c) the number of shares in each class and a statement of the par value of all shares; (d) the street address of the corporation's initial registered office and the name of its initial registered agent; (e) the name and address of each incorporator; and (f) any provisions limiting or eliminating the requirement to hold an annual meeting if the corporation intends to register as an investment company. The corporation's existence begins when the articles of incorporation are filed. The Secretary of State must deliver to the corporation a copy of the document with an acknowledgement of the date and time of filing.

**Bylaws**

The corporation's board of directors or incorporator must adopt bylaws, which may contain any provision that is not inconsistent with Nebraska law or the articles of incorporation.

**Name**

The name of a Nebraska corporation may be reserved by filing the necessary name reservation application with the Secretary of State. Corporate names must, among other things, contain the word "corporation," "company," "incorporated," or "limited," or an abbreviation of any of the foregoing, and may not be the same as, or deceptively similar to, another entity or trade name of any domestic or foreign entity authorized to do business in the state of Nebraska. A corporation may apply to the Secretary of State for authorization to use a name that is deceptively similar.

**Shares**

The articles of incorporation must provide the classes of shares and series of shares within a class, and the number of shares of each class and series that the corporation is authorized to issue. If more than one class or series of shares is authorized, the articles of incorporation must provide a distinguishing designation for each class or series, and prior to the issuance of shares of a class or series, the terms, including the preferences, limitations, and rights of that class or series must be described therein. Generally, all shares of a class or series must have terms, including preferences, limitations, and rights that are identical with those of other shares of the same class or series.

## **Meetings of Shareholders and Directors**

A Nebraska corporation must hold annual meetings of shareholders at a time stated in or fixed in accordance with its bylaws, unless directors are elected by written consent in lieu of an annual meeting; directors may not be elected by less than unanimous consent.

## **Authority of Shareholders, Directors, and Officers**

Generally, each outstanding share of a corporation is entitled to one vote on each matter voted on at a shareholders' meeting. Holders of at least 10% of all votes entitled to be cast on a matter proposed for consideration may demand that a corporation hold a special meeting of shareholders, except that the articles of incorporation may fix a lower percentage or higher percentage not exceeding 25% of all the votes entitled to be cast on any matter proposed to be considered. NEB. REV. STAT. § 21-254. At any shareholders' meeting each shareholder may vote its shares in person or by proxy.

The corporation is managed by a board of directors, which must consist of one or more individuals. The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws. The articles of incorporation may provide for staggering the terms of the members of the board of directors. The board of directors may create one or more committees and appoint one or more board members to serve on any such committee. A director's duties must be performed in good faith, with the care of an ordinary person in similar circumstances, and in a manner he or she believes to be in the best interests of the corporation.

Each officer must perform the duties set forth in the bylaws or at the direction of the board of directors. An officer's duties must be performed with the same standard of care as that required of a director. An officer is also obligated to inform a superior officer of material information and material violations of the corporation.

## **Limited Liability**

Unless a corporation's articles of incorporation provide otherwise, shareholders are not personally liable for the acts or debts of the corporation.

## **Preemptive Rights**

Unless the corporation's articles of incorporation provide otherwise, shareholders do not have a preemptive right to acquire the corporation's unissued shares.

## **Annual Reports**

Nebraska corporations and foreign corporations authorized to transact business in Nebraska must file biennial reports with the Secretary of State.

## **Merger/Consolidation**

A corporation may merge into another domestic or foreign corporation if the plan of merger is adopted by the board of directors. The board of directors must submit the plan to the shareholders for their approval. Unless otherwise required by the articles of incorporation or the board of directors, the plan of merger must be approved by the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists. Upon obtaining the required approval, the articles of merger (including the names of the parties to the merger) must be filed with the Secretary of State as required by the Act.

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## **PARTNERSHIPS**

### **General Partnerships**

Nebraska has adopted the Uniform Partnership Act of 1998. See NEB. REV. STAT. §§ 67-401 to 67-467.

#### Formation

A partnership consists of two or more persons who are co-owners of a business for profit, whether or not the persons intended to form a partnership. Formal documents are not required to form a general partnership. A partnership is a separate legal entity distinct from its partners. Neither common ownership of property nor the sharing of gross returns alone is sufficient to establish a partnership. A person who receives a share of the profits of a business is presumed to be a partner in the business unless the profits were received in payment of a debt, of rent, of an annuity, of interest, for services, or for a sale.

#### Management

Each partner is an agent of the partnership for purposes of its business. An act of a partner in the ordinary course of business binds the partnership unless the partner had no authority to act for the partnership in the particular matter and the other person with whom the partner was dealing knew that the partner lacked such authority. An act of a partner not in the ordinary course of business only binds the partnership if the act was authorized by the other partners. A partnership may file a statement of partnership authority to designate partners or other agents to act on behalf of the partnership. Unless otherwise provided for in an agreement or the statement of partnership authority, each partner has equal rights in the management and conduct of the partnership business. A majority of the partners may decide a difference that arises as to a matter in the ordinary course of business.

#### Liability

The partnership is liable for the acts or omissions of partners acting in the ordinary course of business of the partnership or with the authority of the partnership. All partners are jointly and severally liable for all obligations of the partnership. A partner is not personally liable for any partnership obligation incurred before the person's admission as a partner. A partnership may sue and be sued, and a judgment against a partnership is not by itself a judgment against a partner unless there is also a personal judgment against the partner.

### **Limited Partnerships**

Nebraska limited partnerships are governed by the Nebraska Uniform Limited Partnership Act. See NEB. REV. STAT. §§ 67-233 to 67-2,100.

## Formation

A limited partnership provides limited liability for some of the partners. To form a limited partnership, all of the general partners must execute and file a certificate of limited partnership with the Secretary of State, which includes the name of the limited partnership, its address, the name and address of an agent for service of process, and the names and addresses of each general partner.

A general partnership may be converted to a limited partnership, if approved by the partners, when the partnership files a certificate of limited partnership. The certificate must include a statement that the partnership was converted to a limited partnership from a partnership, its former name, and a statement of the votes cast by the partners for and against the conversion.

## Management

A limited partnership agreement may provide for separate classes of limited partners and for future classes. The agreement can also establish the partners' voting rights and meeting times. Unless otherwise provided in the Act or in the partnership agreement, the general partners of a limited partnership have the rights and powers and are subject to the restrictions placed upon partners in a general partnership.

The rights and powers of a limited partner may be provided only by the certificate of limited partnership, the partnership agreement, or the Nebraska Uniform Limited Partnership Act. Limited partners also have the right to true and full information regarding the status of the business and financial condition of the limited partnership, a copy of the limited partnership's tax returns, an address of each partner, a copy of the agreement and certificate of limited partnership and all amendments, and true and full information regarding the amount of cash and value of property or services contributed by each partner and future contributions.

## Liability

Except as provided in the partnership agreement or under the Nebraska Uniform Limited Partnership Act, a general partner of a limited partnership has the liabilities of a partner in a general partnership. A general partner who becomes a limited partner is still liable as a general partner for the obligations of the partnership before its conversion to a limited partnership. The partnership agreement may provide how the profits and losses of the limited partnership should be allocated among the partners.

A limited partner is not liable for the obligations of a limited partnership unless he or she is also a general partner, or he or she participates in the control of the business and a third party reasonably believes he or she is a general partner. Limited partners may exercise only certain powers without compromising limited liability.

## **Limited Liability Partnership**

The Uniform Partnership Act of 1998 governs all Nebraska limited liability partnerships. See NEB. REV. STAT. §§ 67-401 to 67-467.

## Formation

A limited liability partnership ("LLP") is a general partnership that has elected to become an LLP. A general partnership may become an LLP after an affirmative vote by the partners and by filing a statement of qualification with the Secretary of State. The statement of qualification must include the name of the partnership, the address of the partnership's chief executive office (if different, the address of office in Nebraska, or an agent's name and address for service of process if there is no office in Nebraska), a statement that the partnership elects to be a limited liability partnership, and a deferred effective date, if any. An LLP must file an annual report with the Secretary of State. An LLP engaged in the practice of law in Nebraska must file with its annual report a current certificate of authority issued by the Nebraska Supreme Court.

## Management

In general, the management and operation of an LLP is parallel to that of a general partnership.

## Liability

A partner is not personally liable for an obligation of an LLP "solely by reason of being or so acting as a partner." The LLP protects partners from the acts or omissions of other partners, but the partnership is still liable as an entity. Individual partners are personally liable for their own acts or omissions or the acts or omissions of those under their direction.

## **LIMITED LIABILITY COMPANIES**

On April 1, 2010, Nebraska adopted the Nebraska Uniform Limited Liability Company Act (the "Uniform Act"), which is based on the Revised Uniform Limited Liability Company Act. The Uniform Act was effective as of January 1, 2011 and can be found at NEB. REV. STAT. §§ 21-101 to 21-197. The Uniform Act provided a two-year grace period so that limited liability companies ("LLCs") existing prior to that date would not be subject to the Uniform Act until January 1, 2013, unless they opted in earlier. All LLCs are now governed by the Uniform Act.

## **Formation**

One or more persons may form an LLC by executing and delivering a certificate of organization to the Secretary of State. The certificate of organization must set forth: the name of the LLC, the street and mailing address of its initial designated office, the name and address of the registered agent for service of process, and the professional service to be offered (if applicable).

## **Operating Agreement**

An operating agreement may be oral, in a record, implied, or in any combination thereof. The Uniform Act also permits oral amendments to the operating agreement, although written amendments are preferable. The operating agreement should contain provisions that guide the conduct of the LLC's business. Items not addressed in the operating agreement are controlled by the Uniform Act. However, the Uniform Act restricts what an operating agreement may and may not do. For a list of what the operating agreement may not do, see NEB. REV. STAT. § 21-110(b).

## **Members and Management**

Unless the operating agreement provides to the contrary, an LLC is member-managed; the management and conduct of the company are vested equally in each member. If the operating agreement provides for a manager-managed LLC, then the manager must be elected by the members. Each elected manager has equal rights in the management and conduct of the company.

## **Limited Liability**

The members and managers of an LLC are not personally liable for the debts, obligations, or other liabilities of the LLC. Failure of the LLC to observe any particular formalities relating to the exercise of its powers or management of its activities is not a ground for imposing liability on the members or managers.

## **Transferable Interest**

The interest of a member in an LLC constitutes the personal property of the member and may be transferred in whole or in part. Unless otherwise provided in the operating agreement, additional members may be admitted upon the consent of all of the current members of the LLC. The Uniform Act provides for charging orders for satisfaction of a judgment based on receipt of a member's



transferable interest. The court may foreclose on the lien on the transferable interest by ordering a sale of the interest.

### **Fiduciary Duties**

The Uniform Act imposes the duty of loyalty and the duty of care to the members. The Uniform Act provides that fiduciary duties may be modified by the operating agreement if such changes are not “manifestly unreasonable,” a standard to be measured by the courts. See NEB. REV. STAT. § 21-110.

### **Statement of Authority**

Under the Uniform Act, an LLC may deliver to the Secretary of State for filing a statement of authority. It may indicate the authority, or limitations on the authority, of all persons holding a specific position or of a specific person to: (a) execute an instrument transferring real property held in the name of the company; or (b) enter into other transactions on behalf of, or otherwise act for or bind, the company.

## **SOLE PROPRIETORSHIPS**

A sole proprietorship is a form of business in which an individual owns the business with no other owners. Sole proprietorships are not required to file or document their creation because they are not recognized as separate legal entities under Nebraska law. The owner has complete control over the business except to the extent that he or she delegates his or her authority to employees or agents. The owner of a sole proprietorship is personally liable for all of the business’s debts and obligations.

## **JOINT VENTURES**

Joint ventures are governed by partnership law. See NEB. REV. STAT. §§ 67-401 to 67-467. Joint ventures are included in the definition of a person under the Uniform Partnership Act of 1998. Joint ventures are also included in the definition of a company under Nebraska tax statutes and are treated as partnerships for tax purposes.

## **NONPROFIT CORPORATIONS**

Nonprofit corporations in Nebraska are governed by the Nebraska Nonprofit Corporation Act. See NEB. REV. STAT. §§ 21-1901 to 21-19,177. An organization must file its articles of incorporation with the Secretary of State to become incorporated under the Act. The articles of incorporation must include: the corporation’s name, a statement that declares that the corporation is a public benefit, mutual benefit, or religious corporation, its street address and name of the registered agent at that address, whether or not the corporation will have members, and provisions regarding the distribution of assets on dissolution. Once incorporated, the incorporators or board of directors must adopt bylaws for the corporation. Members are not personally liable for the acts, debts, liabilities, or obligations of the corporation.

## **FOREIGN ENTITIES**

Foreign corporations may apply for a certificate of authority to transact business in Nebraska by delivering an application with the Secretary of State for filing. The application for a certificate of authority must include: the name of the corporation, name of the state or country of incorporation, the date of incorporation and duration, the address of its principal office, the address of its registered office and registered agent in Nebraska, and the names and addresses of its current directors and officers. See NEB. REV. STAT. § 21-2,205.

Foreign limited partnerships are governed by the laws of the state or foreign country under which they were formed. Before transacting business in Nebraska, a foreign limited partnership

must register with the Secretary of State. The registration must include: the name of the partnership, the state or country and date of its formation, the name and address of an agent for service of process in Nebraska, a statement that the Secretary of State is its agent for service of process if no other agent is appointed, the address of its office, and the name and address of each of its general partners. See NEB. REV. STAT. § 67-281.

Foreign limited liability partnerships are governed by the law under which they were formed. Before transacting business in Nebraska, a foreign limited liability partnership must file a statement of foreign qualification. The statement must include: the name, the address of the chief executive office (and, if different, an office in Nebraska, or an agent's name and address for service of process if there is no office in Nebraska), and the deferred effective date, if any. A foreign limited liability partnership may engage only in such business permitted of Nebraska limited liability partnerships, and has only those powers afforded Nebraska limited liability partnership. A foreign limited liability partnership may not maintain an action in Nebraska unless it has a statement of foreign qualification in effect. See NEB. REV. STAT. § 67-458.

A foreign nonprofit corporation may apply for a certificate of authority to transact business in Nebraska by submitting an application to the Secretary of State. The application for a certificate of authority must include: the name of the corporation, the name of the state or country of incorporation, the date of incorporation and duration, the address of its principal office, the address of its registered office and registered agent in Nebraska, the names and addresses of its current directors and officers, whether or not it has members, and whether it would be a public benefit, mutual benefit, or religious corporation if it had been incorporated in Nebraska. See NEB. REV. STAT. § 21-19,148.

## TRADE REGULATION

### ANTITRUST LAWS

Nebraska antitrust law contains a number of prohibitions similar to those of federal antitrust law. Monopolies, contracts, combinations, or conspiracies in restraint of trade are illegal in Nebraska. See *generally* NEB. REV. STAT. §§ 59-801 to 59-831. When provisions of Nebraska antitrust law mirror federal statutes, Nebraska courts must follow the construction given to the federal law by the federal courts. NEB. REV. STAT. § 59-829.

Nebraska's Attorney General is responsible for instituting and prosecuting antitrust laws and violations that occur within Nebraska. NEB. REV. STAT. § 59-828. Violators of Nebraska's antitrust laws may be banned from doing business in Nebraska, subjected to various civil penalties, and may be charged with a Class IV felony. In certain cases, company officers may be personally liable for the violations of Nebraska's antitrust laws. NEB. REV. STAT. § 59-816.

### FRANCHISE REGULATION

Nebraska does not have a franchise registration or disclosure statute. However, the Nebraska Franchise Practices Act contains several provisions governing the franchisor-franchisee relationship, and the Act regulates the termination, cancellation, non-renewal, and assignment of franchises. See NEB. REV. STAT. §§ 87-401 to 87-410. This Act defines a "franchise" as: (a) a written arrangement for a definite or indefinite period, in which a person grants to another person for a franchise fee; a license to use a trade name, trademark, service mark, or related characteristics and in which there is a *community of interest* in the marketing of goods or services at wholesale or retail, or by lease, agreement (excluding petroleum products); or (b) any arrangement, agreement, or contract, either expressed or implied, for the sale, distribution, or marketing of nonalcoholic beverages at wholesale, retail, or otherwise. "Franchise fee" is defined as any payment made by the franchisee to the franchisor other than a payment for the purchase of goods or services, for surety bond, for a surety deposit, or for security for payment of debts due. NEB. REV. STAT. § 87-402(5). The Act contains

no definition of “community of interest”. The Nebraska Franchise Practices Act applies only to a franchise that: (1) the performance of which contemplates the franchisee to establish or maintain a place of: business within the State of Nebraska; (2) when gross sales between the franchisor and franchisee covered by the franchise exceed \$35,000 for the 12-month period preceding the institution of suit pursuant to the Act; and (3) when more than 20% of the franchisee’s gross sales are intended to be or are derived from the franchise. NEB. REV. STAT. § 87-403.

Nebraska has disclosure and filing requirements governing the sale of “seller-assisted marketing plans.” See the Seller-Assisted Marketing Plan Act (NEB. REV. STAT. §§ 59-1701 to 59-1762). Seller-assisted marketing plans include the sale or lease of any products, equipment, supplies, services, licenses, or any combination thereof which is made for the purposes of helping the purchaser to begin or maintain a business when the seller of the plan has advertised or solicited the plan and the seller has made any of the representations specified in the Act to the prospective purchaser. NEB. REV. STAT. § 59-1703. The Act does not apply to transactions where the immediate cash payment is less than \$500. The Act exempts from its application a number of other types of transactions—including those relating to securities and those governed by insurance or real estate regulations.

Prior to marketing or selling the plan in Nebraska, the seller must file with the Nebraska Department of Banking and Finance\* a disclosure document setting forth all information required by the Act and pay a fee of \$100. NEB. REV. STAT. § 59-1724. In addition to the disclosure document, the seller must file a list of the names and resident addresses of individuals selling the plan (there is not cost for this filing but the list must be resubmitted every six months). If the seller continues to solicit seller-assisted marketing plans in Nebraska, he or she must file an updated disclosure document on an annual basis, which is accompanied by a \$50 fee. The seller must provide every prospective purchaser with the disclosure document.

Nebraska also has franchise regulation laws relating to certain other industries, including agricultural equipment, motor vehicles, motor fuels, beer distributorships, and industrial equipment.

## **CONSUMER PROTECTION LAWS**

Consumer protection is regulated by the Nebraska Consumer Protection Act and the Uniform Deceptive Trade Practices Act. The Nebraska Consumer Protection Act prohibits: unfair methods of competition, unfair or deceptive trade practices, contracts or conspiracies restraining trade, and monopolies. See NEB. REV. STAT. §§ 59-1601 to 59-1623. The Act permits any person who is injured in his or her business or property by a violation of the Act to bring actions for damages, injunction, and attorney’s fees. The Nebraska Attorney General may seek injunctive relief and various civil penalties against offenders; in the case of business entities, the Attorney General may seek dissolution, suspension, or forfeiture of entity, or to hold personally liable any officer of the entity who knowingly violates the Act.

The Uniform Deceptive Trade Practices Act prohibits “deceptive trade practices,” which include certain false or misleading representations made with respect to goods or services by an individual in the course of business. See NEB. REV. STAT. §§ 87-301 to 87-306. The Act subjects offenders to various civil penalties and criminal charges, and also affords individuals damaged by deceptive trade practices the right to injunctive relief.

## **STATE LABOR AND EMPLOYMENT**

### **EMPLOYMENT AT WILL**

The general rule in Nebraska is that employment is “at-will;” accordingly when employment is not for a definite term, an employer may—unless constitutionally, statutorily, or contractually prohibited—discharge an employee at any time with or without reason, without incurring liability. This doctrine is subject to certain limited exceptions. For example, an employee may have a claim for

wrongful discharge, notwithstanding his or her at-will status, when the discharge violates state or federal constitutional law, statutory law, or regulation that creates a clear mandate of public policy. Nebraska courts have also applied the doctrine of promissory estoppel as a common law exception to the employment at-will doctrine.

An employee's at-will status may always be altered by contract. It should be noted that Nebraska courts have held that an employee handbook may create an implied employment contract if its provisions meet the requirements of unilateral contract formation. Accordingly, the handbook provisions must communicate an offer definite in form to the employee, the offer must be accepted, and consideration must be furnished for its enforceability to create an implied employment contract.

## **DISCRIMINATION LAWS**

The Nebraska Fair Employment Practice Act prohibits employment discrimination, including harassment, on the basis of race, color, religion, sex, disability (including pregnancy and post-delivery recovery), marital status, or national origin. See NEB. REV. STAT. §§ 48-1101 to 48-1126. In addition to harassment, discriminatory practices include bias in hiring, promotion, termination, job assignment, and compensation. The prohibition applies to "employers," which includes any person engaged in an industry who has fifteen or more employees at least twenty weeks a year, any agent of such a person, and any party whose business is financed in whole or in part by the Nebraska Investment Finance Authority Act regardless of its size. Covered entities include employers, employment agencies, and labor organizations.

Charges of a violation are filed with the Nebraska Equal Opportunity Commission ("Commission"). If the Commission issues a "for cause" finding, it will initially attempt to settle the charge through informal means, such as mediation or arbitration. If the charge remains unresolved, the Commission will order a public hearing. If the hearing officer determines that an unlawful employment practice occurred, the Commission shall order the employer to cease and desist from the discriminatory practice; may order other affirmative actions such as reinstatement, with or without back pay; and may order other appropriate affirmative relief. Parties may appeal the Commission's decision under the rules of the Nebraska Administrative Procedure Act. At any stage of the proceedings prior to dismissal, if the complainant has suffered physical, emotional or financial harm as a result of the unlawful employment practice, the complainant may file an action in the district court.

Nebraska has several other laws that prohibit discrimination. The Age Discrimination in Employment Act prohibits discrimination by employers of twenty or more workers against people over forty years of age where the job requirements do not qualify an age distinction. See NEB. REV. STAT. §§ 48-1001 to 48-1010. The Sex Discrimination Law applies to employers of fifteen or more workers and prohibits sex-based wage discrimination for equal work on jobs which require equal skill, effort, and responsibility under similar working conditions. See NEB. REV. STAT. §§ 48-1219 to 48-1227.01. In addition, the HIV Discrimination Act prohibits employers from discriminating against a person who has or is suspected of having HIV or AIDS. See NEB. REV. STAT. §§ 20-167 to 20-169.

## **DRUG AND ALCOHOL TESTING**

Nebraska law regulates employer procedures and use of drug and alcohol test results. However, it neither requires employers to conduct drug and alcohol testing nor specifies the cases or circumstances under which drug or alcohol tests may be performed. See NEB. REV. STAT. §§ 48-1901 to 48-1910.

Test results may not be used to deny continued employment or in any disciplinary or administrative action unless a positive finding of drugs or alcohol is subsequently confirmed by additional procedures. An employee who refuses his or her employer's lawful directive to provide a body fluid or breath sample may also be subject to disciplinary or administrative actions, including denial of continued employment. Furthermore, it is unlawful to provide, acquire, or use body fluids for

the purpose of altering the results of the test to determine the presence of drugs or alcohol. Employers and their agents are prohibited from releasing or disclosing test results to the public, except as required by law or when requested by a tested employee.

## **BENEFITS**

### **Workers' Compensation**

The Nebraska Workers' Compensation Act applies to, among others, every employer who employs one or more employees in the regular trade, business, profession, or vocation of such employer. See NEB. REV. STAT. §§ 48-101 to 48-1,117. The Act does not apply to railroad companies engaged in interstate commerce, employers of household domestic servants in a private residence, and employers of an agricultural operation unless there are ten or more unrelated full-time employees for thirteen weeks.

An employee may receive compensation from his or her employment when injured by an accident or occupational disease arising out of and in the course of employment, provided the employee was not willfully negligent at the time of the injury. The Nebraska Workers' Compensation Court has authority to administer and enforce all provisions of the Act and hear all disputed claims for workers' compensation.

### **Unemployment**

Unemployment compensation is governed by the Employment Security Law and is administered by the Commissioner of Labor. See NEB. REV. STAT. §§ 48-601 to 48-671. For a benefit year, an individual's weekly benefit amount is one-half of his or her average weekly wages rounded down to the nearest even whole dollar amount but shall not exceed one-half of the state average weekly wage as annually determined under § 48-121.02.

An unemployed individual is eligible to receive benefits each week if the individual: (1) has registered for work at, and continues to report to, an employment office; (2) has made claims for benefits; (3) is able to work and is available to work; (4) has been unemployed for a waiting period of one week; (5) has earned at least the statutory amount for the base period; and (6) is participating in reemployment services as directed by the Commissioner.

## **MINIMUM WAGE, OVERTIME, CHILD LABOR**

### **Minimum Wage**

The current (2015) minimum wage is \$8.00 per hour with some exceptions. The minimum wage for employees compensated by gratuities—such as waitresses, waiters, hotel bellhops, porters, and shoeshine person—is \$2.13 per hour; however, the total of gratuities and the minimum wage compensation must be at least \$8.00 per hour. In addition, student-learners employed as part of a bona fide vocational training program must earn at least 75% of the minimum wage rate (\$6.00). An employer may pay a new employee who is under 20 years old a training wage of 75% of the federal minimum wage for the first ninety days from the date of hire if the worker is not a seasonal or migrant worker; an additional ninety days at this rate is available if the employee receives on-the-job training of technical or personal skills required for employment. The minimum wage is scheduled to increase to \$9.00 per hour, with these exceptions, on January 1, 2016. See NEB. REV. STAT. §§ 48-1201 to 48-1209.01.

### **Child Labor**

Child labor in Nebraska is governed by NEB. REV. STAT. §§ 48-301 to 48-313. An employer must obtain and file an employment certificate for any child employed under the age of 16 years. The employer must also file a list of all the children employed in the building and post a copy near the main

entrance of the building where the children are employed. Minors under 16 years of age may not work more than 48 hours a week, more than 8 hours per day, before 6:00 a.m., or after 10 p.m.; if the child is under 14 years of age, then he or she may not work after 8:00 p.m. Minors between 14 and 16 years of age may work after 10:00 p.m. if he or she consents to the extension by signing their name on the endorsement extension, if there is no school the following day, the person issuing the work certificate authorizes the extension, and the employer has to obtain a special permit from the Department of Labor. Children between the ages of 12 and 16 years may be employed in corn detasseling when: outside school hours in June, July, or August; the employer receives consent from the minor's parent; the location of labor is within 75 miles of the minor's domicile; and the time and hour restrictions of §48-310 are complied with. An additional age exemption exist for businesses owned and operated by the minor's parent, but the rules concerning hours and type of work still apply. No child under 16 years of age may be employed in any work that is dangerous, may cause an injury to his or her health, or is immoral, even with permission from a parent or guardian.

## **NON-COMPETE AGREEMENTS**

The Nebraska Supreme Court has adopted a three-part test to determine the enforceability of a non-compete agreement: (1) whether the restriction is injurious to the public; (2) whether the restriction is no greater than is reasonably necessary to protect the employer in some legitimate interests; and (3) whether the restriction is unduly harsh and oppressive on the employee. In practice, courts have generally limited enforcement of such agreements to those that require reasonable temporal and geographic restrictions and prevent former employees from contacting customers with whom the former employee had direct contact with while employed. Additionally, the Nebraska Supreme Court has enforced a variety of quasi non-compete agreements, such as forfeiture-for-competition clauses, located in deferred compensation plans, and other agreements, by applying the same standard.

Nebraska courts have taken a restrictive approach to the enforceability of restrictive covenants, and have made clear that they will *not* reform a covenant to correct an offending provision even if the contract includes a severability clause. Accordingly, if any provision of the covenant is deemed overly broad, the entire covenant is unenforceable.

## **TAXATION**

### **PERSONAL INCOME TAX**

Nebraska imposes a tax on the income of all residents of Nebraska. Nebraska's income tax for each resident is a percentage of the individual's federal adjusted gross income modified by a few statutory adjustments. Also, all non-residents or part-time residents who derive income from sources within Nebraska are taxed on their Nebraska source income.

The individual income tax rates for 2014 in Nebraska ranged from 2.46% to 6.84%. NEB. REV. STAT. § 77-2715.03. The applicable rate depends on the individual's income and filing status. The tax commissioner prepares tax tables illustrating the differing tax rates for different incomes and filing statuses. There are two different bills before the Nebraska legislature proposing changes to the current personal income tax rate in 2016. They are L.B. 523 and L.B. 357, each before the 104th Legislature.

Individual S corporation shareholders and partners of a Nebraska entity taxed as a partnership for federal purposes, are responsible for their share of the corporation's or partnership's income when filing their Nebraska tax returns.

All residents who are required to file a federal income tax return are required to file a Nebraska income tax return. Non-residents must file tax returns in Nebraska if they have taxable income

derived from Nebraska sources. Individuals filing in Nebraska must fill out a Form 1040N.

Employers are required to withhold from employees' or payees' wages an amount substantially equal to the tax reasonably estimated to be due from the employee or payee.

Income tax forms for individuals can be found at:  
[http://www.revenue.ne.gov/tax/current/ind\\_inc\\_tax.html](http://www.revenue.ne.gov/tax/current/ind_inc_tax.html).\*

## **TAXATION OF PARTNERSHIPS**

A partnership is not subject to income tax. Instead, entities taxed as partnerships for federal tax purposes file a Form 1065N. Partners should include their share of partnership income or losses in their individual income tax returns. Partnerships with nonresident partners must follow more detailed provisions. A partnership, limited partnership, or limited liability partnership created under Nebraska law will be taxed in the same manner as that which the organization elects to be taxed under the Internal Revenue Code.

## **TAXATION OF LIMITED LIABILITY COMPANIES**

A limited liability company is classified for Nebraska state income tax purposes in the same manner as it is classified for federal income tax purposes.

## **CORPORATE INCOME TAX**

Corporations (except for S corporations and certain financial institutions) engaged in business in Nebraska, or having sources of income from Nebraska, are taxed 5.58% on the first \$100,000 and 7.81% on taxable income over that amount. NEB. REV. STAT. § 77-2734.02. Organizations exempt from federal income tax are exempt from Nebraska's income tax. L.B. 523 and L.B. 357 both propose amendments to the corporate income tax rate for 2016; each was introduced in January 2015 and are currently before the Revenue Committee for consideration.

No deductions are specifically defined by Nebraska law. However, all federal deductions implicitly apply to Nebraska's tax law, since taxable income in Nebraska is defined by federal taxable income. Special limitations may apply to net operating loss carryovers, as well as other limited adjustments.

Corporations required to file federal tax returns must file a Nebraska tax return. Corporations file a Form 1120N. This form can be found on the Nebraska state web page listed above. S corporations must file Form 1120-SN, and financial institutions file Form 1120NF.

## **FRANCHISE TAX**

Nebraska imposes a franchise tax on all financial institutions qualified to do business in Nebraska. The franchise tax is based on the financial institution's average deposits. The tax applies whether or not the financial institution operates as a C corporation or S corporation.

Corporations doing business for profit in Nebraska are also subject to a biennial fee based on the amount of authorized capital stock of the corporation.

## **PROPERTY TAX**

All property in the state of Nebraska is subject to property tax unless expressly exempted. Exemptions include non-depreciable property, state or municipal property, property owned and

used exclusively for agricultural and horticultural societies, property owned by religious, educational charitable or cemetery organizations, business and agricultural inventories, household goods of individuals, some property of veterans, and motor vehicles required to be registered for operation on the highways of this state.

Real property is valued at its actual value. Actual value is the market value of real property in the ordinary course of trade. Tangible personal property, not including motor vehicles registered for operation on Nebraska highways, constitutes a separate and distinct class of property and is required to be valued at its net book value.

Property tax is assessed by the county assessor. Real and tangible personal property is assessed as of January 1<sup>st</sup>. Personal property brought into the state or into one county from another after January 1<sup>st</sup> and prior to July 1<sup>st</sup> of any year is assessed for the current tax year.

Real property valuations are subject to review, correction, and equalization by the county board of equalization. Appeals may be taken from any action of the county board of equalization to the Tax Equalization and Review Commission.

## **SALES AND USE TAX**

Nebraska imposes a sales and use tax of 5.5% upon the gross receipts from all sales of tangible personal property sold at retail in the state, the gross receipts from retail sales of property, furnishing, installing or connecting utilities or community antenna television services, retailers of intellectual or entertainment properties, admission tickets, warranties, guarantees, service agreements or maintenance agreements, building maintenance and security, motor vehicle washing and towing, computer software training, and installing and applying tangible personal property if the sale was subject to tax. NEB. REV. STAT. § 77-2715.03. Certain enumerated services are also subject to Nebraska sales and use tax. In addition to the state sales tax rate, a local sales tax option may also be imposed by a city at a rate of 0.5%, 1.0%, or 1.5%. L.B. 256 proposed to increase the sales and use tax rate to 6% in October of 2015.

There are a multitude of exemptions from Nebraska's sales and use tax. Exemptions include sales of aircraft and motor vehicle fuels, newspaper advertising, prescription medications and insulin, meals and food sold by schools and churches, sales or rentals to churches and other charitable organizations, sales of electricity or fuel most of which is to be used for farming, coin-operated laundry machines, and agricultural machinery and equipment. Certain entity-based exemptions may also apply to organizations purchasing goods and services that are otherwise taxable, such as purchases by nonprofit Nebraska licensed hospitals, Nebraska educational institutions, and organizations created for religious purposes.

The sales tax is collected by retailers from the consumers, and the retailers then pay the tax to the state. Use tax is withheld and remitted by the purchaser.

## **SUB-S STATUS**

Nebraska recognizes S corporations. Nebraska generally adopts the federal tax treatment of S corporations and their shareholders as set forth in I.R.C. §§ 1361-1379. There are modifications for non-resident shareholders and S corporations that have income derived from sources outside Nebraska. Income and losses, including net operating losses, of an S corporation pass through to shareholders. When S corporation shareholders file their Nebraska tax returns, they must include their proportionate share of the S corporation's income.

## **INHERITANCE AND ESTATE TAX, FIDUCIARY INCOME TAX**

All property that passes by will or by the laws of intestacy of Nebraska, including proceeds of life insurance policies receivable by the executor or administrator of the estate, is subject to an



inheritance tax. Transfers to grandparents, parents, siblings, children, or other lineal descendants is taxed at 1% for any amount over \$40,000. Transfers to remote relatives are taxed at 13% for any amount over \$15,000. Transfers to other persons are taxed at 18% for any amount exceeding \$10,000. NEB. REV. STAT. §§ 77-2004–77-2006.

Nebraska currently imposes no estate tax or generation-skipping tax.

Nebraska also imposes a fiduciary income tax on estates and resident trusts, as well as nonresident estates and trusts with Nebraska source income. An estate or trust subject to Nebraska income tax must also remit tax on behalf of nonresident beneficiaries unless the beneficiary files a Form 12N for each tax year.

## **STATE ENVIRONMENTAL**

The Nebraska Department of Environmental Quality\* ("NDEQ") was created pursuant to passage of the Nebraska Environmental Protection Act in 1971. The NDEQ has grown and assumed additional responsibilities, but its primary purpose remains protecting Nebraska's air, land, and water resources. As the enforcing agency, the NDEQ exercises exclusive general supervision of the administration and enforcement of the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act.

The Nebraska Environmental Protection Act also established the Environmental Quality Council ("Council") as the body that adopts rules and regulations to set air, water, and land quality standards for the protection of the public health and welfare of the state.

### **CLEAN AIR, CLEAN WATER, AND POLLUTION CONTROL**

It is unlawful in the state of Nebraska for any person to cause air or water pollution or to discharge or emit any wastes into the air or water which reduce the quality of the air or water to a standard below that which was established by the Council. Before a person can discharge any pollutant into state waters, he or she must first obtain a permit as required by the National Pollutant Discharge Elimination System, created by the Clean Water Act. The Council considers applications for such permits and has the ability to make exemptions. The Council also has the power to adopt and promulgate rules and regulations for air pollution control, including a construction permit program which requires owners and operators of air contaminant sources to obtain permits prior to construction, an operating permit program for minor sources of air pollution, and restrictions on open burning and fugitive emissions.

The NDEQ is charged with developing comprehensive programs for the prevention, control, and abatement of new or existing air pollution and to act as the state air pollution control agency for the purposes of the federal Clean Air Act, as amended, 42 U.S.C. § 7401. The NDEQ also collects an annual emission fee from major sources of air pollution. The fee is based upon the amount of emissions of each regulated pollutant as reported or estimated by the source in the previous calendar year, but sources do not have to pay fees on amounts in excess of four thousand tons per year for any regulated pollutant. The NDEQ remits all fees collected to the State Treasurer for credit to the Clean Air Title V Cash Fund, which is used to pay the reasonable direct and indirect costs required to develop and administer the air quality permit program. The application fees for air quality construction permits, based on potential to emit, are remitted to the State Treasurer for credit to the Air Quality Permit Cash Fund.

### **SOLID & HAZARDOUS WASTE**

In Nebraska, it is illegal to construct or operate a solid waste management facility without first obtaining a permit required under the Environmental Protection Act or under the Integrated Solid Waste Management Act and by the rules and regulations adopted by the Council. It is also unlawful

to dispose of solid waste anywhere other than a solid waste management facility that holds a current permit. The term “solid waste” refers to garbage, refuse, or sludge from a waste or water supply treatment plant or air pollution control facility.

Permits are also required in order to operate commercial hazardous waste management facilities. “Hazardous waste” refers to a solid waste or combination of solid wastes that, due to its quantity, concentration, or physical, chemical, or infectious characteristics, may significantly contribute to an increase in mortality or serious illness or may pose a substantial hazard to health or the environment when improperly treated, stored, disposed of, or transported.

## **UNDERGROUND STORAGE**

Underground storage of natural gas or liquefied petroleum gas or both is found and declared to be in the public’s interest if it promotes the conservation of natural gas and permits the accumulation of natural gas reserves or liquefied petroleum gas reserves, or both, in an underground reservoir in order to make natural gas readily available to the domestic, commercial and industrial consumers of Nebraska.

The term “underground storage” refers to the right to inject and store both natural and liquefied petroleum gas within, and to withdraw natural and liquefied petroleum gas, from an underground reservoir. The term “condemner” refers to any person, partnership, limited liability company, corporation, association, or municipal corporation authorized to transport or distribute natural gas as a public utility within the state for public use or consumption.

In order to obtain the right to underground storage in any of the lands within Nebraska, a condemner may file an action to condemn and acquire such underground storage in and under the lands sought to be condemned, including the amount of commercially recoverable native gas, if any, remaining in the reservoir, provided that any obtainable right of underground storage is without prejudice to the rights of the owners of the surface of the land.

## **WATER RESOURCES**

Nebraska has established the Water Planning and Integrated Management program to ensure a balance between water supplies and uses, and to protect the rights of existing users of surface and groundwater. The Nebraska Department of Natural Resources\* (“DNR”) is the primary state agency involved in the management of water resources. The DNR has responsibilities in the areas of surface water, ground water, floodplain management, dam safety, natural resources planning, and administration of state aid to Natural Resource Districts (“NRDs”). It has jurisdiction over all matters pertaining to surface water rights for irrigation, power, and other useful purposes.

There are twenty-three (23) NRDs that are also involved with water management in Nebraska. In 1972, the Nebraska Legislature created the NRDs to consolidate numerous small boards and districts with a variety of purposes relating to natural resources. The boundaries of each district are based primarily on Nebraska’s major river basins. The NRDs have responsibilities in the areas of groundwater use and conservation, water supply, flood control, pollution control, and drainage improvement. Each is autonomous and has its own organization and structure, so management in each district varies from the next. Each NRD has primary jurisdiction over all matters pertaining to the regulation of ground water rights within its boundaries and is also responsible for the development of its Integrated Management Plan and Ground Water Management Plan.

Nebraska has a Water Resources Trust Fund, from which the DNR may spend money on costs it, NRDs, or other political subdivisions, incurs in connection with various water resource development and compliance issues.

## **WILDLIFE/CONSERVATION**

The Nebraska Game and Parks Commission\* ("Commission") conducts investigations of non-game wildlife in order to gather information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine conservation measures necessary to enable such wildlife to sustain itself successfully. The Commission uses these determinations to develop a list of non-game wildlife in need of conservation and develop conservation programs designed to insure the continued ability of non-game wildlife, in need of conservation, to perpetuate itself successfully. The Commission proposes limitations relating to the taking, possession, transportation, export, processing, sale or offer for sale, or shipment, as may be necessary, to conserve such nongame wildlife. In addition, it is unlawful for any person to take, possess, transport, export, process, sell or offer for sale, or ship nongame wildlife, except as provided in regulations issued by the Commission.

In Nebraska, any species of flora or fauna protected under the Endangered Species Act is considered an endangered species under the Nongame and Endangered Species Conservation Act; similarly, any species of flora or fauna designated as a threatened species under the Endangered Species Act is considered a threatened species under the Nongame and Endangered Species Conservation Act.

## **RADIOACTIVE WASTE**

In Nebraska, the term "high-level radioactive waste" refers to: (1) irradiated reactor fuel; (2) liquid wastes resulting from the operation of the first cycle solvent extraction system or equivalent and the concentrated wastes from subsequent extraction cycles or the equivalent in a facility for reprocessing irradiated reactor fuel; (3) solids converted from such liquid wastes; and (4) other highly radioactive waste material as defined by the U.S. Nuclear Regulatory Commission. The term "low-level radioactive waste" includes any radioactive waste not classified as high-level radioactive waste, spent nuclear fuel, or byproduct material.

The Low-Level Radioactive Waste Disposal Act (the "Act") governs the state's disposal of low-level radioactive waste. See NEB. REV. STAT. §§ 81-1578 to 81-15,116. In order to carry out the purposes of the Act, the Council has the duty to adopt and promulgate rules and regulations for such disposal. The NDEQ is responsible for the administration of the Act; the powers and duties in carrying out the Low-Level Radioactive Waste Disposal Act include the following: to develop a program for the regulation of low-level radioactive waste disposal based on a zero-release objective; to issue, modify, suspend, or revoke licenses or orders; to advise and consult with other state agencies and the federal government concerned with control of sources of radiation; to enter upon private or public property at reasonable times to determine compliance with the act; and to institute training programs to qualify personnel to administer the Act.

## **INTELLECTUAL PROPERTY**

### **PATENTS AND COPYRIGHTS**

Patents and copyrights are property rights that are exclusively granted by the federal government.

### **TRADEMARKS, SERVICE MARKS AND TRADE NAMES**

Nebraska protects trademarks, service marks, and trade names both under common law and state registration statutes.

#### **Common Law**

Generally, under common law the first user of a mark or trade name is protected from those who use marks which are similar and are used with similar goods, services or businesses that they are likely to confuse the public. Nebraska courts apply a two-part test to determine the rights to superior

use of a trade name. The party alleging the infringement has the burden to prove the existence of: (1) a valid trade name entitled to protection; and (2) a substantial similarity between the plaintiff's and the defendant's names, which would result in either actual or probable deception or confusion by ordinary persons dealing with ordinary caution. *Hong's, Inc. v. Grand China Buffet, Inc.*, 805 N.W.2d 90 (Neb. Ct. App. 2011).

### **Trademarks and Service Marks – Registration**

Trademarks and service marks may be registered in Nebraska following actual use in the state. Marks are registered by filing a completed form, in duplicate, with the Nebraska Secretary of State\*, along with a filing fee and specimens showing use of the mark. The state registration and protection system is intended to be substantially consistent with the federal system of trademark registration and protection. A mark will not be registered if it consists of or comprises a mark, which so resembles a mark registered with the state; or previously used by another and not abandoned, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive. Other reasons for non-registration are similar to those found under the Federal Trademark Act. The Secretary of State will perform a search of registered marks by written request. Telephonic searches are not available.

The term of registration is ten years, and registration may be renewed for additional ten-year terms upon payment of a renewal fee and submission of a renewal request within six months prior to the expiration of the current term.

Any mark and its registration are assignable with the goodwill of the business in which the mark is used or with that part of the goodwill of the business connected with the use of and symbolized by the mark. Assignments are required to be in writing duly executed and to include the street address, city and state of the assignee, and to be recorded with the Secretary of State, in duplicate, along with a recording fee.

Any person using, without the consent of the registrant, any reproduction, counterfeit, copy or colorable imitation of a mark, or reproducing, counterfeiting or applying such copies to labels, signed, packages, or other items, may be liable to the registrant in a civil action. Remedies available to the registrant include injunctive relief, and the court may enter a judgment for profits derived from and all damages suffered by reason of the wrongful manufacture, use or sale of the mark. The court may also order such counterfeits or imitations delivered up and destroyed. The court in its discretion may include an award for reasonable attorney's fees where the wrongful acts were committed with knowledge or in bad faith.

Nebraska statutes provide that the dilution of the distinctive quality of a famous mark shall be a ground for injunctive relief notwithstanding the absence of competition between the parties or the absence of confusion as to the source of goods.

### **Trade Name Registration**

Nebraska provides for registration of trade names. A trade name is defined as every name under which any individual or business entity does or transacts any business in the state other than the true name of such person. A trade name may not be registered if it is merely a surname. However, the statutes also provide that nothing shall prevent the registration of a trade name that has become distinctive of the applicant's business. Subject to certain exceptions, any person who engages in business in the state under a trade name, without registering the trade name, may be guilty of a Class V misdemeanor.

Trade names are registered by filing a completed form, in duplicate, with the Nebraska Secretary of State along with a filing fee. A name will not be registered if it resembles a trade name registered in the state or the name of a corporation incorporated or authorized to do businesses

in the state of Nebraska as a foreign corporation, as to be likely to cause confusion, mistake or deception of purchasers, except that a name, although similar, may be used if the corporation affected consents in writing and the consent is filed with the Secretary of State. The Secretary of State will perform a search of registered names by written request. Telephonic searches are not available.

Proof of publication must be filed with the Secretary of State within thirty (30) days from the date of registration. If proof of publication is not filed, the registration will be cancelled. The term of registration is ten years, and registration may be renewed for additional ten-year term upon payment of a renewal fee and submission of a renewal request within six months prior to the expiration of the current term.

Any registered trade name is assignable with the goodwill of the business in which the trade name is used. Assignments are required to be in writing duly, executed in duplicate, and recorded with the Secretary of State along with a recording fee. An assignment is void as against any subsequent purchaser for value without notice unless the assignment is recorded with the Secretary of State prior to the subsequent purchase.

Any person using in connection with his or her business, without the consent of the registrant, any reproduction or copy or colorable imitation of the registered trade name or reproducing or copying the trade name and applying the reproduction or copy to labels, signs, packages, or other items, in conjunction with another business in the state is liable to a civil action by the registrant. Remedies available to the registrant include injunctive relief and, if the court deems it just and reasonable, all profits attributable to and/or all damages caused by the wrongful use of the name, reasonable attorney's fees, and in lieu of the aforementioned remedies, the court may require the defendants to pay statutory damages of one thousand dollars, reasonable attorney's fees, and may order that any counterfeits or imitations in the possession or under the control of any defendant to be delivered to the complainant or destroyed. The complainant is not entitled to recover profits or damages, however, unless the acts were committed with knowledge that the imitation was intended to be used to cause confusion, mistake, or deception of purchasers.

## **TRADE SECRETS**

Nebraska provides both statutory and common law protection for trade secrets.

### **Uniform Trade Secrets Act**

Nebraska has adopted a version of the Uniform Trade Secrets Act ("UTSA"). The Act provides injunctive relief if a trade secret is misappropriated or there is a threat that a trade secret will be misappropriated. The act also provides for awards of monetary damages for both actual loss and the unjust enrichment caused by the misappropriation. In lieu of damages measured by any other methods, damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for the misappropriator's unauthorized disclosure or use of a trade secret. An action for misappropriation must be brought within four years after misappropriation is discovered or by the exercise of reasonable diligence should have been discovered.

The Nebraska Trade Secrets Act (the "Act") varies from the UTSA in three basic items:

(1) Nebraska deleted Section 5 of the UTSA which specifically authorized courts to hold in camera proceedings and seal court records to protect trade secrets in the course of litigation. The Act substitutes non-uniform language which provides for protective orders against revealing trade secret information and provides that the disclosure of such information during court proceedings would not constitute abandonment of the trade secret;

(2) The definition of "trade secret" as drafted in the UTSA was modified to delete the words

“generally” and “easily” so that a trade secret exists under the Act only if it is not known to, and not ascertainable by “proper means,” as opposed to being merely not generally known and not readily ascertainable by such means; and

(3) The Act omits entirely Section 7 of the UTSA which provides generally that the uniform measures intended to displace any conflicting law and remedies in civil cases relating to trade secret misappropriation are not intended to affect private contractual remedies, civil remedies not based upon misappropriation of trade secrets or criminal remedies.

### **Common Law**

Nebraska courts recognize that a business has the right to protect a trade secret from discovery or use by others. Nebraska courts utilize the Nebraska Trade Secrets Act's definition of a trade secret; a trade secret is information including, but not limited to, a drawing, formula, pattern, compilation, program, device, method, technique, code, or process that: (a) derives independent economic value, actual or potential, from not being known to, and not being ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. See NEB. REV. STAT. §§ 87-502-04.

Even if the information does not rise to the level of trade secret, however, it may be protected under Nebraska law as “confidential” information that was made available to employees on a “need to know only” basis.

Under Nebraska common law, the plaintiff has the burden of proving: (1) the existence of a trade secret or secret manufacturing process; (2) the value and importance of the trade secret to the employer in the conduct of the business; (3) the employer's right by reason of discovery or ownership to the use and enjoyment of the secret; and (4) the communication of the secret to the employee while employed in a position of trust and confidence and under circumstances making it inequitable and unjust for the employee to disclose it to others or to use it to the employer's prejudice. The nature of a trade secret is such that so long as it remains a secret, it is valuable property to its possessor; a public sale of the article or description of the article in literature available to the public destroys the secret.

### **RIGHT OF PUBLICITY**

Nebraska recognizes the right to privacy and the right to publicity. With certain exceptions, any person, firm, or corporation that exploits a natural person, name, picture or portrait, or personality for advertising or commercial purposes may be liable for invasion of privacy. A cause of action arising out of exploitation of a person's name or likeness for advertising or commercial purposes may survive the death of the subject. An action for invasion of privacy must be brought within one year of the date the cause of action arose.

## **DISPUTE RESOLUTION**

### **LOWER COURTS**

#### **County Court**

The State of Nebraska has 12 county courts which serve up to 9 counties each. There are 58 judges in the Nebraska County Court System.

Although the county courts have concurrent jurisdiction with the district courts in some types of cases, Nebraska county courts are of limited jurisdiction and usually hear cases involving criminal

misdemeanors, traffic and municipal ordinance violations, preliminary hearings for criminal felony cases, civil disputes with up to \$53,000 in controversy, and small claims. County courts have exclusive jurisdiction in probate guardianship, conservatorship and adoption matters, and, in counties that do not have separate juvenile courts, juvenile matters. Douglas, Lancaster, and Sarpy Counties have separate juvenile courts.

### **District Court**

The State of Nebraska has 12 district courts divided to cover all 93 counties in the state. There are 56 judges in the Nebraska District Court System.

The district courts have general, original and appellate jurisdiction in all matters, both civil and criminal, except as otherwise provided. District courts usually hear felony criminal cases, equity, and civil cases with more than \$53,000 in controversy. District courts serve as appellate courts for some county court appeals and administrative agency cases.

## **APPELLATE COURTS**

### **Court of Appeals**

The Nebraska Court of Appeals is composed of six judges. Panels of three judges hear appeals throughout Nebraska. The Court of Appeals is an intermediate appellate court, and hears appeals from the lower trial courts, except for those cases where the Nebraska Supreme Court has exclusive jurisdiction. Under Nebraska Supreme Court Rules of Practice and Procedure, any party to a case appealed to the Court of Appeals may file a petition in the Supreme Court to bypass the review by the Court of Appeals and for direct review by the Supreme Court. Such review is discretionary and based on a number of statutory factors. Moreover, Supreme Court Rules provide for the removal of a case from the Court of Appeals to the Supreme Court for decision by the Supreme Court at any time before a final decision has been made on the case by the Court of Appeals. Generally, the Court of Appeals is subject to the same constitutional, statutory, and court-promulgated rules as the Supreme Court.

### **Supreme Court**

The highest appellate court in Nebraska, the Nebraska Supreme Court, consists of the Chief Justice and six justices, and the Chief Justice presides at all sessions of the Court. The Nebraska Supreme Court has discretionary authority to hear appeals from the Court of Appeals. The Court has original jurisdiction in cases relating to the revenue, civil cases in which the state is a party, mandamus, quo warranto, habeas corpus, and election contests involving state officers other than members of the Legislature.

## **MEDIATION/ARBITRATION**

### **Mediation**

Nebraska State Courts.

While a number of state courts sponsor mediation programs as part of the established justice system, mediation is voluntary in Nebraska, except in certain custody disputes and in certain young adult criminal restorative justice cases. Parties desiring to mediate can opt to use a mediation center sponsored by the Nebraska Office of Dispute Resolution or they can select a private mediator. Additional information regarding mediation in Nebraska state courts can be found in the Nebraska Dispute Resolution Act, NEB. REV. STAT. §§ 25-2901 to 25-2921, and the Nebraska Uniform Mediation Act, NEB. REV. STAT. §§ 25-2930 to 25-2942.

## Federal District Court for the District of Nebraska.

The Federal District Court for the District of Nebraska has adopted a Mediation Plan. Pursuant to the Mediation Plan, any district, bankruptcy, or magistrate judge may refer a case to mediation when the judge finds that the nature of the case and the amount in controversy, together with the information available regarding the possibility of settlement make resolution of the case by mediation a practical possibility. Cases may be referred for mediation to mediators formally approved by the court, to mediators not formally approved by the court, to private mediation services, or through mediation centers affiliated with the Nebraska Office of Dispute Resolution. For additional information regarding the Mediation Plan, see the Federal District Court for the District of Nebraska's web-site at [www.ned.uscourts.gov/mediation](http://www.ned.uscourts.gov/mediation).

### **Arbitration**

The Nebraska Uniform Arbitration Act, NEB. REV. STAT. §§ 25-2601 to 25-2622, and the Dispute Resolution Act, NEB. REV. STAT. §§ 25-2901 to 25-2921, recognize the right of parties to enter into contracts that permit resolution of disputes in arbitration rather than through litigation. Pursuant to the Nebraska Arbitration Act, most agreements to arbitrate are valid, enforceable, and irrevocable except upon such grounds as exist at law or in equity for the revocation of any contract. The Arbitration Act does not recognize any agreements to arbitrate workers' compensation cases, and it does not recognize agreements to arbitrate controversies that may arise in the future for claims arising out of personal injury based on tort or claims falling under the Nebraska Fair Employment Practice Act. Following an award, courts may either confirm, vacate, or modify an award.

## **FINANCING INVESTMENTS**

### **TAX-EXEMPT FINANCING**

Nebraska law permits the issuance of tax-exempt obligations for a variety of purposes through many different types of political subdivisions and instrumentalities. These include:

#### **Industrial Development Revenue Bonds**

IDB's may be issued in Nebraska pursuant to NEB. REV. STAT. §§ 13-1101 to 13-1110, which authorize a municipality or county of Nebraska to issue revenue bonds for manufacturing or industrial enterprises.

#### **Health Care Financing**

Nonprofit hospitals may have bonds issued on their behalf by local hospital authorities under NEB. REV. STAT. §§ 23-3570 to 23-3572 or through NIFA (see below).

#### **Nebraska Investment Finance Authority**

Through the Nebraska Investment Finance Authority ("NIFA"), the state encourages private investment for agricultural facilities, housing, energy development, health care, sewer systems and wastewater treatment, schools, solid waste disposal, water systems and public safety communication systems. See NEB. REV. STAT. §§ 58-201, *et seq.*

#### **Governmental Finance**

Cities, villages, counties, school districts, natural resources districts, public power districts, educational service units, rural fire protection districts, sanitary and improvement districts, public hospitals and a variety of other public entities are authorized to issue bonds under specific statutes relating to their powers.



## COMMERCIAL BANKING

Nebraska has a strong system of intrastate banking. While many national banks have branches in Nebraska, no foreign banks operate in the state. Nebraska banking institutions offer a wide array of financing alternatives, including real estate loans, construction loans, agricultural loans, and Small Business Administration loans. The Nebraska Department of Banking and Finance regulates and supervises the various financial industries within the state.

## STATE SECURITIES LAWS

Nebraska securities law is governed by the Securities Act of Nebraska (the "Securities Act"). See NEB. REV. STAT. §§ 8-1101 to 8-1123.

### Registration

The Securities Act makes it unlawful to offer or sell any security in Nebraska unless the security is exempt or sold in an exempt transaction, the security is a federal covered security, or such security is registered by coordination or qualification. Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination. Any security is eligible to be registered by qualification.

Under Nebraska law, a security is defined as any note, stock, treasury stock, bond, debenture, units of beneficial interest in a real estate trust, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, viatical settlement contract or any fractional or pooled interest in such contract, membership interest in any LLC organized under Nebraska law or any other jurisdiction unless otherwise excluded, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, in general any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. The definition of security does not include any insurance or endowment policy or annuity contract issued by an insurance company or a membership interest in an LLC if each member enters into a written commitment to be actively engaged in the management of the company and all members are so engaged.

### Exemptions

A number of securities are exempt from registration under the Securities Act. See NEB. REV. STAT. § 8-1110. The following securities are exempt from registration: (1) any security issued or granted by Nebraska; (2) securities issued by foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor; (3) any security issued or guaranteed by any federal credit union or any credit union or similar association; (4) any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company, provided certain conditions are met; (5) securities listed on major stock exchanges as well as any other exchange or market systems approved by the director; and (6) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, as a chamber of commerce or as a trade or professional association.

Moreover, a number of transactions are also exempt from registration under the Securities Act. See NEB. REV. STAT. § 8-1111. The following transactions are exempt from registration: (1) any isolated transaction, whether effected through a broker-dealer or not; (2) any nonissuer transaction by a registered agent of a registered broker-dealer in a security of a class that has been outstanding in the hands of the public for at least 90 days, provided certain conditions are met; (3) any nonissuer transaction effected by or through a registered agent of a registered broker-dealer pursuant to an unsolicited order or offer to buy; (4) any transaction between the issuer or other person on whose

behalf the offering is made and an underwriter or among underwriters; (5) any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust or by an agreement for the sale of real estate or chattels if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, are offered and sold as a unit; (6) any transaction by an executor, personal representative, guardian or receiver; (7) any transaction executed by a bona fide pledgee without any purpose of evading the Securities Act of Nebraska; (8) any offer or sale to a bank, other financial institution, insurance company, or any individual accredited investor; (9) any transaction pursuant to an offer to existing security holders of the issuer; (10) issuance of any stock dividend; (11) any transaction not involving a public offering by a Nebraska issuer solely to Nebraska residents; and (12) the issuance of any investment contract issued in connection with any employee's stock purchase, pension, profit-sharing or similar benefit plan. Not all of the aforementioned exemptions are self-executing.

Also exempt from registration are transactions pursuant to an offering in which sales are made to not more than 15 persons in this state during any period of 12 consecutive months if: (a) the seller reasonably believes that all the buyers are purchasing for investment; (b) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer; (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within 30 days after the first sale for which this exemption is claimed; and (d) no general or public advertisements or solicitations are made; provided, however, if the seller makes sales pursuant to this exemption for five consecutive 12-month periods or makes sales of \$1 million or more, the seller is required to file audited financial statements and sales reports with the director. See NEB. REV. STAT. § 8-1111(9).

### **Broker-Dealer, Investment Adviser Registration**

Under the Securities Act, a broker-dealer generally means any person engaged in the business of effecting transactions in securities for the account of others or for his or her own account. Generally, an investment adviser means any person who for compensation engages in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who for compensation and as a part of a regular business issues or promulgates analyses or reports concerning securities. An investment adviser representative means one who makes any recommendations or otherwise renders advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, solicits, offers, or negotiates for the sale of or sells investment advisory services, or supervises employees who perform any of the foregoing.

The Securities Act prohibits broker-dealers, investment advisers, and investment adviser representatives from transacting business in this state unless registered under the Securities Act.

### **ANTIFRAUD PROVISIONS**

The Securities Act prohibits any person, in connection with the offer, sale, or purchase of any security, directly or indirectly from employing any device, scheme, or artifice to defraud; making any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. See NEB. REV. STAT. § 8-1102(1). If the Securities Act is violated, the Director of Banking and Finance may issue a cease and desist order, or in his or her discretion bring an action for injunction and to enforce compliance with the Securities Act or any rule or order thereunder, or refer the matter for criminal prosecution.

# NEBRASKA REAL ESTATE LAW

## OWNERSHIP

Real estate located in Nebraska can be owned by individuals, partnerships, corporations, limited liability companies, limited partnerships, and other entities recognized by Nebraska law.

### **Individuals**

The age of majority in Nebraska is nineteen years of age. However, an individual's minority ends upon marriage. In any case, an eighteen-year-old minor can enter into a binding contract or lease of any kind or nature. Accordingly, any individual eighteen years of age or older may convey real property in Nebraska so long as such individual is not a ward of the state. See NEB. REV. STAT. § 43-2101.

### **Domestic Entities**

Domestic corporations, limited liability companies, and partnerships in Nebraska have the power to purchase, receive, lease, or otherwise acquire, and own real or personal property, or any legal or equitable interest in property. Such powers are acquired regardless of where the property is located. Corporations, limited liability companies, and partnerships may also sell, convey, mortgage, pledge, lease, exchange, and dispose of all or any part of their property. See NEB. REV. STAT. § 21-227.

When a corporation dissolves or ceases to exist, any possibility of reverter or right of entry or reentry reserved by the corporation and affecting land in Nebraska ceases and determines. See NEB. REV. STAT. § 76-2,101.

Real and personal property owned or purchased by a limited liability company is held and owned in the name of the limited liability company, and conveyed in the same manner. The manager or member of the managing class must execute the acquisition, mortgage, or disposition of property of the limited liability company in order for the transaction to be valid and binding. If a limited liability company has filed a certified statement of authority with both the Nebraska Secretary of State and the Recorder of Deeds for the county in which the parcel of real estate to be conveyed is located, then the individual named in the statement of authority is deemed conclusively to be authorized to transfer the parcel of real estate. NEB. REV. STAT. § 21-127.

Property acquired by a partnership is the property of the partnership and not the individual partners. Property is partnership property if it is acquired in the name of the partnership or by one or more partners, by an instrument indicating the existence of a partnership. Property acquired by partnership assets is also considered partnership property. However, property acquired in any other way is considered separate property, even if it is used for partnership purposes.

The only transferable interest of a partner in the partnership is his or her corresponding personal property, which is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions.

### **Foreign Entities**

Foreign corporations, partnerships, and limited liability companies may not transact business in the state of Nebraska until they obtain a certificate of authority from the Secretary of State. Owning real or personal property in the state of Nebraska, without more, is not considered conducting business in Nebraska.

A deed to be recorded in Nebraska may be executed and acknowledged in any other state, territory, or district of the United States, provided that it is executed and acknowledged in accordance with the laws of such state, territory, or district in accordance with the laws of Nebraska. The acknowledgement of such deed must be before either a court of record or clerk holding the seal of the court, a commissioner appointed by the Governor of Nebraska to take the acknowledgment of deeds, or a notary public.

Deeds may be executed in a foreign country according to the laws of such country, and the execution may be acknowledged before a notary public therein, or before any minister plenipotentiary, minister extraordinary, minister resident, charge d'affaires, commissioner, commercial agent, or consul of the United States appointed to reside in such country.

## **Concurrent Ownership**

### Tenancy in Common

A tenancy in common is recognized by Nebraska law. A conveyance to two or more persons is presumed to create a tenancy in common and not a joint tenancy.

### Joint Tenancy

A joint tenancy must contain the four unities of time, title, interest, and possession. Persons who hold property in joint tenancy enjoy rights of survivorship. Accordingly, if one of the joint tenants dies, the remaining joint tenants automatically become owners of the decedent's share in equal proportions. There is no severance of a joint tenancy in real estate when all joint tenants execute any instrument with respect to the property held in joint tenancy, unless there is an express intention to do so. Any person owning property, which he or she has the power to convey, may effectively convey such property by a conveyance naming himself or herself, regardless of whether it creates a joint tenancy, tenancy in common, or tenancy in partnership. The conveyance of all of the interest of one joint tenant to himself or herself as grantee severs the joint tenancy only if the intent to sever is evident in the instrument.

### Tenancy by the Entirety

Tenancy by the entirety does not exist in the state of Nebraska.

## **SPOUSAL RIGHTS**

### **Generally**

Nebraska is an equitable distribution state. Property acquired by either husband or wife, or both, during marriage is not regarded as community property unless proved otherwise. NEB. REV. STAT. § 42-603. However, each spouse has the power to receive, manage, control, and dispose of or otherwise deal with property standing in his or her name or under his or her management or control, in such manner as he or she would be so entitled to do by law. See NEB. REV. STAT. § 42-618.

A married person has the power to convey property directly to his or her spouse, just as if they were not married. However, when property is conveyed, the rights of the grantor as spouse of the grantee exist to the same extent as if a stranger conveyed the property to the grantee. See NEB. REV. STAT. § 76-119.

The homestead of a married person cannot be conveyed or encumbered unless both husband and wife execute and acknowledge the conveyance or encumbrance before a notary public. See NEB. REV. STAT. § 40-104.

Nebraska does not recognize common law marriage, so spousal rights may only be created if the parties' marriage conformed to Nebraska statutory requirements or the laws another state where the parties entered into marriage. See NEB. REV. STAT. § 42-104.

## **Rights of Surviving Spouse**

If a married person domiciled in Nebraska dies, the surviving spouse has a right to take an elective share in any fraction not in excess of one-half of the augmented estate. See NEB. REV. STAT. § 30-2313. The surviving spouse must exercise his or her right of election during his or her lifetime. See NEB. REV. STAT. § 30-2315. If a married person not domiciled in Nebraska dies, the surviving spouse's rights to the deceased's property are governed by the law of the decedent's domicile at death. See NEB. REV. STAT. § 30-2313.

The surviving spouse must have joined in the conveyance for the real estate to be subject to any claims or interests derived from the grantor or the grantor's estate. See NEB. REV. STAT. § 30-2313.

If the surviving spouse married the testator after the execution of the will and is not provided for in the will, he or she will receive the same share of the estate he or she would have received if the decedent left no will. See NEB. REV. STAT. § 30-2320.

A surviving spouse of a decedent who was domiciled in Nebraska is entitled to: a homestead allowance of \$20,000, a family allowance in a "reasonable amount," and a property exemption of \$12,500. See NEB. REV. STAT. §§ 30-2322 to 30-2324. If there is no surviving spouse, each of the decedent's non-disinherited children are entitled to an equal portion of the property exemption; all minor and dependent children are entitled to an equal portion of the homestead and family allowances. See NEB. REV. STAT. §§ 30-2322 to 30-2324. The homestead allowance, the exempt property, and the family allowance are exempt from and have priority over all claims against the estate except for costs and expenses of administration. See NEB. REV. STAT. §§ 30-2322 to 30-2324. Each sum is in addition to any share passing to the surviving spouse or children, and vests as of the date of decedent's death as an indefeasible right of property. See NEB. REV. STAT. § 30-2325.

Property settlements are favored in Nebraska and will be overturned by the court only if considered unconscionable. If the parties fail to reach a property settlement which the court deems conscionable, the court will order an equitable division of the marital estate. See NEB. REV. STAT. § 42-366.

## **Responsibility for Execution of Mortgages/Deeds of Trust**

Mortgages pledging parcels of land as security for a collateral note have first priority and are superior to the borrower's former spouse's lien for alimony, child support, and property settlement, where the mortgage was valid and the execution and delivery of the collateral note, collateral agreement, and mortgage were created before the former spouse acquired rights under the divorce decree.

## **PURCHASE AND SALE OF REAL ESTATE IN NEBRASKA**

### **Purchase Agreements and Documentation**

Agreements for the transfer of real estate in Nebraska are governed by state contract law. The Nebraska State Bar Association and many associations of real estate professionals have developed forms for use in residential property transactions. Generally, the identity of parties, a description of property, terms of purchase, and terms of financing are included in the purchase agreement. A variety of other terms, such as terms relating to title insurance and the method of payment of the title insurance premium, apportionment of real estate taxes and special assessments, and compliance with zoning conditions and surveys are also included in the purchase agreement.

Deeds of real estate, or any interest therein, executed in the state of Nebraska, must be written and signed by grantor(s) of lawful age and be acknowledged and recorded. NEB. REV. STAT. § 76-211. Each seller of residential property in Nebraska must also provide the buyer with a written disclosure statement of the condition of the real property. NEB. REV. STAT. § 76-2,120. This disclosure

must be delivered by the seller to the purchaser on or before the effective date of the contract for the purchase of the property. *Id.* Nebraska law provides that a purchaser may sue a seller for failing to disclose defects in the residential property on the disclosure statement. *Id.* A purchaser must bring the lawsuit within one (1) year of taking possession of the property, or alternatively the purchaser can bring a cause of action alleging common law fraud, which has a statute of limitations of four (4) years. See *id.* Certain transactions, specified by statute, are exempt from the requirement of delivering a disclosure statement. See NEB. REV. STAT. § 76-2,122.

Nebraska has a race-notice recording act. Deeds, mortgages, trust deeds, and other instruments become valid when delivered to the register of deeds for recording, and not before, as to all creditors and subsequent purchasers without notice of the said deeds. NEB. REV. STAT. § 76-238. Deeds and other instruments relating to or affecting the title of real estate must be recorded in the county where the real estate is located. NEB. REV. STAT. § 76-245. Acknowledgment of proof taken before a notary public or other officer using the official seal, except a commissioner, is sufficient for recording purposes. NEB. REV. STAT. § 76-243.

### **Assessments**

All real property in Nebraska subject to taxation is assessed as of January 1<sup>st</sup> at 12:01 a.m. NEB. REV. STAT. § 76-1301.

The county assessor has general supervision over, and direction of, the assessment of all property in the county. Among other duties, the county assessor annually revises the real property assessment for the correction of errors and property values. NEB. REV. STAT. § 76-1311.

### **Proration of Taxes**

Subject to certain exemptions, all real property in Nebraska is subject to taxation and is valued at 100% of its actual value. However, agricultural land and horticultural land constitute a separate and distinct class of property for purposes of property taxation, and may be taxed at 69% to 75% of their actual values. Nebraska has no statutory requirements for methods of prorating property taxes. See NEB. REV. STAT. §§ 77-201, 77-5023.

All property taxes are on a calendar year basis and are due and payable on December 31<sup>st</sup> next following the date of levy which is in the same calendar year to which the taxes apply. Commencing on that date, taxes on real property become a first lien on the property taxed until paid or extinguished as provided by law. NEB. REV. STAT. § 77-203. However, real estate and personal property taxes become delinquent in two installments, the first half on May 1<sup>st</sup> and the second half on September 1<sup>st</sup> of the following calendar year, except in counties having a population of more than one hundred thousand where the first half becomes delinquent on April 1<sup>st</sup> and the second half on August 1<sup>st</sup>. NEB. REV. STAT. § 77-204.

Prorating taxes on the sale of real estate is a matter of local custom and practice. In residential sales, such practices are well-established, and they may also be followed in commercial transactions. However, the method of proration of real estate taxes in commercial transactions is sometimes negotiated. The proration of real estate taxes on farmland is also by custom and practice but is distinct when compared to residential and commercial properties, and will be discussed separately below. Generally, the vendor must pay all taxes or assessments for which he is liable by the terms of the contract or the covenants in the deed, or in the absence of an express agreement, the vendor must pay all taxes which are a lien at the time of delivery of the conveyance.

In the case of non-farmland, the general practice is to prorate between the purchaser and seller, as of the date of closing, the real estate taxes that are becoming delinquent in the year of closing, with the seller responsible for taxes relating to the period from January 1<sup>st</sup> of the current year through the date of closing. The purchaser is responsible for taxes for the balance of the year.

In some areas of the state, the practice is to prorate taxes that will become delinquent in the calendar year after the calendar year in which closing occurs, using the amount for the currently known year as the basis for the next year's proration. This assumed tax amount for the real estate taxes to become delinquent in the following year is used for the proration as of the date of closing, with the seller responsible for all prior taxes and for the prorated assumed taxes relating to the period from January 1<sup>st</sup> of the current year through the date of closing, and the purchaser responsible for taxes for the period thereafter. When real estate tax statements are issued for the calendar year in which closing occurred, they are paid by the purchaser.

In the absence of an agreement to the contrary, personal property taxes that are becoming delinquent in the year of closing are not prorated between the purchaser and the seller. All of such personal property taxes are paid by the seller.

With farmland, the well-established practice and custom is that real estate taxes follow the crop. Thus, the taxes that are becoming delinquent in the year of closing are for the prior calendar year and, assuming the seller is entitled to all crops for the prior year, the seller pays all of those real estate taxes. They are not prorated on a daily basis as of the date of closing.

### **Closing**

Generally, the details and requirements for the closing of a real estate transaction are determined in the purchase agreement. If a real estate broker is involved in the transaction, he or she will usually designate a title insurance company to conduct the closing and to perform all of the functions necessary to complete the closing. Closing documents may include a bill of sale, warranty deed, escrow instructions, FIRPTA certification, owner's affidavit, secretary's certification, and an assignment of leases. All documents should be reviewed by the buying and selling parties and their attorneys.

### **Introduction**

Generally, Nebraska has two types of foreclosures, judicial and nonjudicial, the use of which depends mainly on the type of security interest involved. The most common real estate security interests in Nebraska are mortgages and trust deeds. Trust deeds are typically foreclosed nonjudicially but may be foreclosed judicially, whereas mortgages must be foreclosed judicially by filing a civil complaint against the borrower and any others who may have an interest in the secured real estate. For Nebraska law governing judicial foreclosures, see *generally*, NEB. REV. STAT. §§ 25-2137 to 25-2155, 25-1506, 25-1530 and 25-1531. The Nebraska Trust Deeds Act governs nonjudicial foreclosure. See *generally* NEB. REV. STAT. §§ 76-1001 to 76-1018.

### **Judicial (Mortgages and Deeds of Trust)**

Nebraska is a deeds of trust state that permits judicial foreclosure on mortgages and trust deeds. See *generally*, Nebraska Trust Deeds Act, NEB. REV. STAT. §§ 76-1001 to 76-1018.

### **Notice of Default / Acceleration**

There is no statutory requirement that a mortgagee or trustee/beneficiary send written notice of default and acceleration before the foreclosure of nonagricultural real estate. However, in any action for the foreclosure of a mortgage upon agricultural land encumbered by a mortgage or deed of trust, if the mortgaged premises are used in farming operations carried on by the mortgagor, the mortgagee must send the mortgagor written notice of default and the mortgagor's right to cure the default before the commencement of the foreclosure action. NEB. REV. STAT. § 76-1903. In any event, sending written notice of default and acceleration is considered good business practice.

### **One-Action Rule / Antideficiency Statute**

Effectively, Nebraska has a one-action rule in that the law does not permit any proceedings at law for recovery of the debt secured by a mortgage after a complaint for foreclosure of the mortgage has been filed. However, after the completion of the foreclosure proceeding, the law

permits actions at law for deficiency on the secured note. A creditor, on the other hand, may proceed at law for deficiency on a secured note without having first exhausted the remedy by foreclosure

### Redemption

The mortgagor may redeem the mortgaged property at any time before confirmation of the judicial sale, and special redemption rights may be available to mortgagors of real estate subject to the Nebraska Farm Homestead Protection Act, NEB. REV. STAT. §§ 76-1901 to 76-1916. No other parties have redemption rights.

### Procedure

Suit must be brought in the district court of the county in which the land or some part thereof is situated. The complaint must state whether any proceedings have been had at law for the recovery of debt secured by the mortgage or trust deed and whether any part of such debt has been paid. The defendant must file an appropriate written response within thirty days after the service of summons. After the entry of a decree of foreclosure, the order of sale of the mortgaged premises cannot be issued within twenty days thereafter. However, upon defendant's written request to the clerk of the court within twenty days after the entry of the foreclosure decree, the order of sale is stayed for nine, six or three months after the entry of such decree, depending upon the final maturity date and type of property involved.

### Timing

Judicial foreclosure generally will take four to six months, excluding appeals, and approximately one to two years to complete an appeal proceeding in a mortgage foreclosure case before the Nebraska Court of Appeals, and the Supreme Court if further review is granted.

## **Non-Judicial (for Deeds of Trust only)**

### Notice of Default / Acceleration

Before exercising the power of sale, the trustee must file a notice of default in the office of the register of deeds of each county wherein the trust property or some part or parcel thereof is situated, and within ten days after recordation of such notice of default must mail a copy of such notice, by registered or certified mail with postage prepaid, to each person whose name and address is set forth in a request therefore which has been recorded prior to the filing for record of the notice of default.

### One-Action Rule / Antideficiency Statute

After completion of the nonjudicial trust deed foreclosure, and at any time within three months after any sale of property under a trust deed, an action may be commenced to recover the balance due upon the obligation for which the trust deed was given as security.

### Redemption

The only redemption rights in Nebraska are special rights of the trustor of agricultural real estate subject to the Nebraska Farm Homestead Protection Act.

### Procedure

The trustee must give notice of the time and place of sale by publication of such notice, once a week for five consecutive weeks, the last publication to be at least ten days but not more than thirty days prior to the sale, in a newspaper in the county where the property is to be sold, or some part thereof, is situated. The purchaser at the sale pays the price bid, and upon receipt of payment, the trustee executes and delivers his or her deed to such purchaser. Although not required by statute, good practice is to file in the real estate records an affidavit of mailing of the notices of default and sale.



## Timing

Generally, nonjudicial foreclosure takes three to four months for non-farm property and four to five months for farm property, if uncontested.

## **CONSTRUCTION LIENS**

### **General**

In Nebraska, mechanics' liens are referred to as construction liens and are governed by the Nebraska Construction Lien Act. See NEB. REV. STAT. §§ 52-125 to 52-159. The purpose of the Act is to provide for the attachment and enforceability of real estate liens, which cover land and structures thereon, in favor of persons furnishing services or materials under real estate improvement contracts. Courts construe construction liens liberally to further such purpose. However, that the Act does not take away a construction lienholder's common-law right to sue for breach of contract. Except as provided in the Act, no nonconsensual lien may arise against real estate by reason of improvement thereon.

### **Recordings and Notices**

A construction lien does not attach and is not enforceable unless, after entering into the contract under which the lien arises, the claimant properly records the lien within 120 days after the claimant's final furnishing of services or materials. The claimant must send a copy of the recorded lien to the contracting owner within ten days after recording. Although a claimant may give to the contracting owner notice of claimant's right to assert a lien, the notice is not itself a lien.

### **Notice of Commencement**

In Nebraska, construction liens are deemed to be effective (and thus, have priority) if: (a) no notice of commencement is filed in the real estate records, as of the date of visible commencement of construction of the improvement; or (b) a notice of commencement has been filed in the real estate records, the date and time of recording a notice of commencement. To be effective, a notice of commencement must be denominated notice of commencement, include the name and address of the contracting owner and a description of the real property to be improved, and be executed by the contracting owner. It is common practice in Nebraska for a construction lender to require its borrower to execute a notice of commencement concurrently with the execution of the construction security instrument, and for the construction lender to file the notice of commencement immediately after filing its construction security instruments.

### **Duration**

Typically, a construction lien is enforceable for two years after its recording.

### **Foreclosure**

In addition to other remedies, all liens may be foreclosed by a common law suit in equity, the procedure of which is similar to the foreclosure of a real estate mortgage.

### **Substitution of Collateral; Release of Lien**

Upon depositing an amount sufficient to pay the lien plus fifteen percent of such total with the clerk of the district court of the county in which the lien is recorded, the lien claim is transferred to the deposit and the real estate is released from the lien.

## LAND CONTRACTS

Installment contracts for the sale of real property should be in writing, executed and acknowledged by the parties, and contain the essential terms of the agreement between the parties and a mandatory notice provision. To provide notice to third parties, the contract or a memorandum thereof should be recorded in the county in which the real property is located. Because of Nebraska's streamlined process for non-judicial foreclosure of trust deeds, land contracts are relatively uncommon.

## EASEMENTS

Easements in Nebraska are governed primarily by common law. Nebraska recognizes three means for creating easements: grant, implication, and prescription. Easements created by a grant arise out of explicit language in a deed or conveyance. Easements created by implication arise only when: (1) the use giving rise to the easement existed at the time of the conveyance subdividing the property; (2) the use has been so long continued and so obvious as to demonstrate permanence; and (3) it is necessary for the proper and reasonable enjoyment of the dominant tract. The standard of reasonableness for the third requirement depends upon whether the easement arose from former use or implied creation; if the easement arose from former use, the standard is "reasonably necessary;" but if the easement arises from implied creation, the standard is "strict necessity." Easements created by prescription require substantially the same elements as property acquired by adverse possession: the land use must be exclusive, adverse, under a claim of right, continuous and uninterrupted, open and notorious, exclusive, with the knowledge and acquiescence of the owner of the servient tenement, and for the full prescriptive period of ten years.

Under Nebraska law, determination of whether an easement is abandoned hinges on the intent of the possessors and is a question of fact for the court.

## LEASES

### Residential

#### General

Although most issues relating to residential leases are still governed by common law, a number of rulings have been codified. In Nebraska, the Uniform Residential Landlord and Tenant Act ("URLTA"), NEB. REV. STAT. §§ 76-1401 to 76-1449, governs many such issues. Other Nebraska law, including local ordinances, affects residential leases. URLTA applies to, regulates and determines the rights, obligations, and remedies under a rental agreement, wherever made, for dwelling units located in Nebraska. Nebraska law defines a dwelling unit as a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household. L.B. 409 proposes to amend the definition of "tenant" and increase the maximum amount that landlords may charge tenants for pet deposits. L.B. 409 was introduced on January 16, 2015, and is currently before the Judiciary Committee.

#### Notice

For the purposes of notice to a lessor or lessee, a person has notice of a fact if he or she has actual notice of it, has received a notice or notification of it, or from all the facts and circumstances known at the time in question, he or she has reason to know that it exists.

#### Deposit

Typically, a landlord may not demand or receive as rental deposit an amount or value in excess of one month's periodic rent.

## Eviction

Eviction is a term many Nebraska lawyers use to refer to an action for restitution of premises. The most common types of such actions are actions for possession, brought pursuant to NEB. REV. STAT. §§ 76-1440 to 76-1447, and forcible entry and detainer actions, brought pursuant to NEB. REV. STAT. §§ 25-21,219. A landlord must give appropriate notification before the landlord may commence proceedings to recover possession of the premises.

## **Commercial**

URLTA does not apply to commercial leases. Rather, commercial leases in Nebraska are governed mainly by contract law and other common law. However, certain statutory provisions may still affect the rights and duties of the parties to commercial leases. For example, forcible entry is governed by NEB. REV. STAT. § 25-21,219, and abandoned property is governed by the Disposition of Personal Property Landlord and Tenant Act, NEB. REV. STAT. §§ 69-2301 to 69-2314.

## **Agricultural**

URLTA has limited application to agricultural leases, and most issues relating to agricultural leases are governed by common law applicable to leases generally. However, Nebraska law imposes certain restrictions on agricultural leases. For example, only certain types of trusts may lease agricultural land. Traditionally, farm leases are for one year terms, commencing March 1<sup>st</sup>. Termination of such a farm lease requires six months' prior written notice or, by operation of law, it will renew for an additional one year term. Forcible entry and detainer statutes apply to agricultural leases.

The two most common forms of agricultural leases in Nebraska are "cash rental leases," in which the landowner provides the land and receives cash rent from the tenant, and "crop-share leases," in which the landowner provides the land and improvements, the tenant provides machinery and labor, and both share in the profit from the production of the land.

## **ZONING**

In Nebraska, zoning is determined by local law (city or county) and varies across the state. Additional land use restrictions may be imposed by the state or the United States on properties located in designated historic districts or designated as having special historic significance.

City or village zoning ordinances regulate, among other things, the height, number of stories, and size of buildings and other structures; the percentage of lot that may be occupied; the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. Such powers may be exercised only after the municipal legislative body has established a planning commission, received from its planning commission a recommended comprehensive development plan, adopted such comprehensive development plan, and received the specific recommendation of the planning commission on the adoption or amendment of zoning regulations.

County zoning ordinances regulate, among other things, the location, height, bulk, number of stories, and size of buildings and other structures; the percentage of lot areas which may be occupied; building setback lines; sizes of yards, courts, and other open spaces; the density of population; the uses of buildings and the uses of land for agriculture, forestry, recreation, residence, industry, and trade. However, the powers granted to counties may not be exercised within the limits of any incorporated city or village nor within the area over which a city or village has been granted or ceded zoning jurisdiction and is exercising such jurisdiction.

## **MINERAL RIGHTS**

Estates in mineral rights, such as oil and gas rights, may be created in the same manner as estates in land. They may be created by separate conveyance or by reservation in a deed. The estate in land and the mineral interest may be listed as separate entries with the register of deeds and each may be taxed separately.

A severed mineral interest will be considered abandoned in Nebraska if the owner of the corresponding land interest brings an abandonment suit and the record owner of the mineral interest has failed to display public ownership of the mineral interest for the twenty-three (23) years prior to the suit being filed. Public ownership can be displayed in the following manner: (1) acquiring, selling, leasing, pooling, utilizing, mortgaging, encumbering or transferring the mineral interest by an instrument properly recorded in the register of deeds office in the county in which the mineral interest is located; (2) drilling or mining for, removing, producing, or withdrawing minerals from the land in accordance with the rights conveyed or reserved in the instrument which creates the mineral interest; or (3) recording a verified claim of the mineral interest in the county in which the mineral interest is located.

A lease in mineral rights is not a conveyance of the mineral rights, and does not pass title to the mineral rights. Instead, the lease grants the lessee permission to enter onto the land and explore for minerals and, if minerals are found, to get the working interest established in the lease. In Nebraska, the working interest is generally 7/8 of the oil or gas produced. Mineral leases should be executed and recorded in the same manner as a deed.

## **EMINENT DOMAIN**

Eminent domain is defined generally as the power of the nation or a state, or authorized public agency to take or to authorize the taking of private property for a public use without the owner's consent, conditioned upon the payment of just compensation. The State of Nebraska may acquire, by eminent domain, lands necessary for any state use. The procedure to condemn property is exercised as set forth in NEB. REV. STAT. §§ 76-704 to 76-724. However, a condemnor may not take property through the use of eminent domain if the taking is primarily for an economic development purposes.

## **WATER RIGHTS**

### **Surface Water**

People who use Nebraska's surface water resources are required, in most instances, to obtain a surface water permit from the Nebraska Department of Natural Resources ("DNR"). Water rights are administered by DNR and are not recorded with a deed when land is bought, sold, or transferred. A surface water permit/right allows the appropriator, in many cases the landowner, the right to divert a certain amount of water, at a set rate, from an approved point of diversion, in order to irrigate a certain area of land or impound a specified volume in a reservoir.

### **Ground Water**

The Director of Water Resources of the State of Nebraska is authorized to grant and administer permits to public water suppliers: (a) to locate, develop, and maintain ground water supplies through water wells or other means and to transport water into the area to be served; and (b) to continue existing use of ground water and the transportation of ground water into the area served. In determining whether to grant or deny ground water permits, the Director of Water Resources considers: (1) the nature of the proposed use and whether it is a beneficial use of ground water; (2) the availability to the applicant of alternative sources of ground water; (3) any negative effect of the proposed withdrawal of ground water supplies needed to meet present or reasonable future

demands for water in the area of the proposed withdrawal; (4) any adverse environmental effect of the proposed withdrawal or transportation of ground water; and (5) any other factors consistent with the purposes of protecting the health, safety, and welfare of the state and its citizens.

### **Determination of Priority**

The Nebraska Department of Natural Resources determines the priorities of rights to use the public waters of the State.

## **MISCELLANEOUS**

### **QUALIFICATION TO DO BUSINESS IN NEBRASKA**

To transact business in Nebraska, a foreign corporation must obtain a certificate of authority from the Nebraska Secretary of State. However, the following activities do not constitute transacting business within the State under Nebraska law:

- An individual who resides in Nebraska and whose registered office is identical with the registered office;
- A domestic business or nonprofit corporation whose office is identical with the registered office; or
- A foreign business or nonprofit corporation authorized to transact business in Nebraska whose office is identical
- Maintaining, defending, or settling any proceeding;
- Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;
- Maintaining bank accounts;
- Maintaining offices or agencies for the transfer, exchange, and registration of memberships or securities or maintaining trustees or depositaries with respect to those securities;
- Selling through independent contractors;
- Soliciting or obtaining orders, whether by mail or through employees, agents or otherwise, if the orders require acceptance outside Nebraska before they become contracts;
- Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
- Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
- Owning, without more, real or personal property;
- Conducting an isolated transaction which is completed within thirty days and which is not one in the course of repeated transactions of a like nature; or
- Transacting business in interstate commerce. with the registered office.

Note that a foreign corporation that conducts business in Nebraska without a certificate of authority is subject to civil penalties of \$500.00 per day, not to exceed \$10,000.00 per year.

Each foreign corporation authorized to transact business in Nebraska must continuously maintain a registered office and a registered agent who may be:

- An individual who resides in Nebraska and whose registered office is identical with the registered office;
- A domestic business or nonprofit corporation whose office is identical with the registered office; or
- A foreign business or nonprofit corporation authorized to transact business in Nebraska whose office is identical with the registered office.

As an alternative to and in lieu of obtaining a certificate of authority, any corporation organized under the laws of any other state may become domesticated and be a corporate body of Nebraska if it has filed with the Secretary of State of Nebraska a copy of its charter or articles of association or incorporation, together with all amendments and the street address of its registered office in Nebraska and the name of its registered agent at that office, and a certified copy of a resolution adopted by its board of directors accepting and agreeing to be bound by the provisions of the Nebraska Business Corporation Act with respect to its property and business operations within Nebraska. See NEB. REV. STAT. § 21-20,181.01. All provisions in statutes in Chapter 21, Article 20 will be repealed and replaced by the Nebraska Model Corporation Act effective January 1, 2017. For the replacement provisions, see the Nebraska Model Business Corporation Act, Chapter 21, Article 2.

## **LICENSING AND REGULATORY REQUIREMENTS**

In lieu of obtaining a certificate of authority, any foreign corporation may become domesticated and be a corporate body of Nebraska if it has filed with the Secretary of State of Nebraska a copy of its charter or articles of association or incorporation, together with all amendments and the street address of its registered office in Nebraska and the name of its registered agent at that office, and a certified copy of a resolution adopted by its board of directors accepting and agreeing to be bound by the provisions of the Nebraska Business Corporation Act with respect to its property and business operations within Nebraska.

### **APPLICABILITY OF STATE USURY LAWS**

Nebraska retains the power to establish usury limits provided under the Nebraska statutes and the Nebraska Constitution and has rejected federal limits on interest rates.

Subject to certain exceptions, any rate of interest not exceeding 16% per annum on the unpaid principal balance, is valid upon any loan or forbearance of money, goods, or things in action. The limitation does not apply to various types of loans and charges, including loans made to any corporation, partnership, limited liability company, or trust. For a complete list of exceptions, see NEB. REV. STAT. § 45-101.04.

Generally, such rate of interest, may be charged on a variable rate basis. If the lender proposes to increase the interest rate during the term of a loan on consumer goods, notice of the proposed increase must be communicated in writing to the person(s) primarily obligated on such loan at least ten days prior to the proposed increase. Deposit of such notice in the U.S. Mail is sufficient notice.

## RESTRICTIONS ON SPECIFIC PROFESSIONS

Most restrictions on specific professions are governed by a state departmental agency or board. Lawyers practicing in the state of Nebraska generally first must seek admission from the Nebraska State Bar Commission and from the Nebraska Supreme Court. Licenses are required for a large number of occupations, including:

- Boxing Promoter
- Aircraft Mechanics & Technicians
- Airline Pilots
- Horse Trainers
- Barbers
- Chiropractors
- Dentists
- Electricians
- Teachers
- Librarians
- Massage Therapists
- Mental Health Therapists
- Personal Financial Advisors
- Notary Public
- Race Horse Owner
- Athletic Trainer
- Child Care Provider
- Pharmacists
- Police Patrol Officers
- Private Detectives and Investigators
- Purchasing Agents and Buyers of Farm Products
- Registered Nurses
- Recreation Workers
- Motorcycle Dealer
- Surveyors
- Truck Drivers
- Title Examiners & Abstractors
- Veterinarians
- Water and Liquid Waste Treatment Plant and System Operators
- Well & Core Drill Operators
- Nursing Home Administrator

## **APPENDIX**

### Nebraska Department of Economic Development

301 Centennial Mall South  
P.O. Box 94666  
Lincoln, NE 68509-4666  
Ph: 1 – 800 – 426 – 6505  
<http://www.neded.org/>

### Nebraska Department of Environmental Quality

1200 N St., Suite 400  
P.O. Box 98922  
Lincoln, NE 68509-8922  
Ph: (402) 471 – 2186  
<http://www.deq.state.ne.us/>

### Nebraska Department of Natural Resources

301 Centennial Mall South, 4th Floor  
P.O. Box 94676  
Lincoln, NE 68509-4676  
Ph: (402) 471 – 2363  
<http://www.dnr.nebraska.gov/>

### Nebraska Game and Parks Division

2200 N. 33rd St.  
Lincoln, NE 68503  
Ph: (402) 471 – 0641  
<http://outdoornebraska.ne.gov/>

### Nebraska Secretary of State

Mailing Address:  
Secretary of State  
PO Box 94608  
Lincoln, Nebraska 68509-4608

Physical Address:  
Secretary of State  
Corporations Division  
State Capitol, Room 1301  
Lincoln, Nebraska 68509  
Ph: (402) 471-4079  
Fax: (402) 471-3666  
<http://www.sos.ne.gov/dyindex.html>

### Nebraska Department of Banking and Finance

Mailing Address:  
Nebraska Department of Banking & Finance  
P.O. Box 95006  
Lincoln, Nebraska 68509-5006



Physical Address:  
Nebraska Department of Banking & Finance  
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