

Probate: Nevada

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A Q&A guide to the laws of probate in Nevada. This Q&A addresses state laws and customs that impact the process of an estate proceeding, including the key statutes and rules related to estate proceedings, the different types of estate proceedings available in Nevada, and the processes for opening an estate, appointing an estate fiduciary, administering the estate, handling creditor claims, and closing the estate.

KEY STATUTES AND RULES

1. What are the state laws and rules that govern estate proceedings?

The Nevada laws governing estate proceedings are contained in Title 12 of the Nevada Revised Statutes (NRS 132.010 to 156.260). Counsel should also check local court rules in their counties for those affecting estate proceedings. For example:

- Part IV of the Eighth Judicial District Court Rules (“EDCR”) governs the practice and procedure of all probate proceedings in Clark County (EDCR Rule 4.01 to EDCR Rule 4.50).
- Rule 57 of the Washoe District Court Rules (“WDCR”) governs the practice and procedure of all probate proceedings in Washoe County (WDCR Rule 57.1 to WDCR Rule 57.8).

2. What court has jurisdiction over estate proceedings in your state?

In Nevada, the district court in the county where the decedent was a resident at death has exclusive jurisdiction over estate proceedings. If a decedent was a nonresident, but owned real property in Nevada, then the district court of the county where the real property is located has exclusive jurisdiction. If the nonresident decedent owned real property in multiple counties, then the district court of any of the

counties where the real property is located may have jurisdiction, and the first district court that receives a petition for probate has exclusive jurisdiction over all the real property in Nevada. (NRS 136.010.)

Probate for a nonresident (ancillary probate) is limited to real property located in Nevada. Nevada courts generally take the position that a nonresident decedent’s personal property (wherever located), is the subject of the domiciliary estate proceedings.

RESIDENCY

For estate proceedings in Nevada, a person is generally considered a resident of the place where the person lived at death (NRS 10.155). The court commonly relies on the address listed in the death certificate to determine residency at death no matter which state issues the death certificate. The listed residency information generally creates a rebuttable presumption that can be overcome with contrary evidence. An example of contrary evidence is a declaration of domicile in a will or other document.

PROBATE COMMISSIONER IN CLARK AND WASHOE COUNTIES

In Clark County (which includes the city of Las Vegas), all probate proceedings are initially assigned to the probate commissioner. The probate commissioner is considered a special master and is akin to a referee in the matter. If an interested party objects to the commissioner hearing the matter, they may have a hearing before the probate judge. (EDCR Rule 4.03 and EDCR Rule 4.08.)

In Washoe County (which includes the city of Reno), all probate proceedings are automatically assigned to the probate commissioner unless disqualification is warranted (WDCR Rule 57.3).

In all other counties in Nevada, probate matters are generally assigned to one of the district court judges of that county.

In contested matters, the probate commissioner generally issues a Report and Recommendations, which contains the commissioner’s findings of fact, recommended conclusions of law, and recommendations for the provisions and enforcement of any order (EDCR Rule 4.04 and WDCR Rule 57.3). For non-contested matters that comply with applicable statutes and rules, the probate commissioner generally has the judge issue an order (EDCR Rule 4.14 and WDCR Rule 57.4).

TYPES OF ESTATE PROCEEDINGS

3. What are the different types of probate or other estate proceedings or processes for transferring a decedent's assets at death?

In Nevada, the main types of estate proceedings are:

- **General administration.** General administration is a full probate where a personal representative is appointed to administer estate matters. This type of proceeding is required when the net value of the estate (value of all assets subject to probate less any encumbrances) exceeds \$300,000. A general administration may also be used if the value of the estate is unknown. The personal representative may seek to administer the estate under the Independent Administration of Estates Act, which enables a personal representative to take many actions as to estate assets without court order, approval, or ratification (see Question 20: Independent Administration).
- **Summary administration.** Summary administration is like general administration, except that in summary administration, certain proceedings and notice requirements are waived. The court may order summary administration when the net value of the estate is less than or equal to \$300,000. (NRS 145.010 to 145.110 and see Question 19: Summary Administration.) The personal representative may seek to administer the estate under the Independent Administration of Estates Act in a summary administration as well. For more information about independent administration, see Question 20: Independent Administration.
- **Set aside estate.** If the net value of a decedent's estate does not exceed \$100,000, the estate may be distributed by court order, without further administration, to those persons entitled to the assets (NRS 146.070 and see Question 19: Set Aside Estate). Although a surviving spouse can use a small estate affidavit for an amount up to \$100,000 (the same limit as a set aside), a set aside proceeding would be required if real property is involved. A set aside may be preferable also if the decedent has debts because a set aside proceeding allows the court to distribute the full estate to the spouse to the exclusion of creditors. A small estate affidavit requires the affiant to pay or provide for all the decedent's debts.
- **Small estate affidavit.** If the net value of a decedent's estate does not exceed \$25,000 and does not include real property, those entitled to the assets of the estate may present an affidavit claiming the property without any court interaction. The \$25,000 threshold increases to \$100,000 if the person claiming the property is a surviving spouse. (NRS 146.080 and see Question 19: Small Estate Affidavit.) If there are creditors of the decedent, however, a surviving spouse may prefer to use the set aside process rather than the small estate process, even though the small estate process is otherwise available.
- **Ancillary probate.** In Nevada, an ancillary estate proceeding is used to transfer a non-resident decedent's Nevada real property that does not transfer by non-probate means such as through a revocable trust or by a survivorship right. For more information on ancillary probate, see Question 19: Ancillary Probate.

OPENING THE ESTATE

4. What is the typical initial filing process for opening an estate? Specifically, please discuss:

- How original wills are handled.
- Whether filing typically occurs by mail, e-filing, or in person and common practices for the most common methods.
- Documents typically submitted to the court with the initial filing.
- Any additional practical advice regarding the initial process for opening an estate.

DELIVERY OF WILL

In Nevada, within 30 days of learning of the decedent's death, a person in possession of a will must deliver the will to either:

- The clerk of the district court that has jurisdiction.
- The nominated personal representative.

If the personal representative has the will, the representative must file the will with the clerk within 30 days of either:

- The decedent's death.
- The personal representative's knowledge of being named as representative in the will.

(NRS 136.050.)

In an ancillary probate, a certified copy from the court where the original will was filed is filed in Nevada as an exhibit to the petition to open the ancillary probate (NRS 136.180(1) and see Question 19: Ancillary Probate).

Lost Will

If a will is accidentally lost or fraudulently destroyed, the court may admit a copy of the will. A petitioner must prove the will was in existence at the testator's death and was not revoked. Proof of execution and validity of the copy must be done in the same manner as proving an original will. (NRS 136.230 and 136.240.)

METHOD OF FILING

The method of filing for probate depends on the county where the petition is filed. For example, all probate documents are filed with the clerk of the court electronically in Clark County and Washoe County.

DOCUMENTS SUBMITTED WITH INITIAL FILING

To open a probate proceeding and to appoint a personal representative, Nevada courts generally require:

- A petition to open probate.
- As exhibits to the petition:
 - a certified copy of death certificate; and
 - a file-stamped copy of the will that has been submitted to the clerk (if the decedent died testate).

The nominated personal representative or a family member should order multiple certified copies of the decedent's death certificate

as soon as possible. Certified copies of the death certificate may be needed to facilitate the transfer of the decedent's assets throughout the estate administration. For more information on ordering death certificates for a Nevada decedent, see Birth and Death Certificates for State of Nevada.

If a death certificate is not available when filing the probate petition, other evidence of death (for example, an affidavit of death from the funeral home) may be filed as an exhibit to the petition to prove the decedent's death. This evidence can be sufficient to initiate probate proceedings. A death certificate must be filed, however, before any distributions from the estate.

In addition to the initial petition and the relevant exhibits, because probate matters are part of the Family Division, Clark County requires submission of a Family Court Cover Sheet to initiate a new probate case (EDCR Rule 5.103(b)).

CONTACTING THE COURT

Most communication with the probate court should be made by email to the clerk. The clerks take phone calls to discuss matters, but generally prefer email. Email addresses are generally available on the applicable court's website.

SETTING A HEARING DATE

Hearing dates are set under the rules of the local court where the estate matter is to be heard. For example, in Clark County, hearings for probate matters in front of the probate commissioner are held on Friday mornings. The probate court allows a petitioner to choose the hearing date if the notice requirements are met. To set the hearing date, a petition should include the desired hearing date on the petition and the accompanying notice. The clerk sets the matter for that date if the probate calendar is not already full (EDCR Rule 4.10).

5. Who can petition to open an estate and what information is required for the petition?

STANDING TO PETITION TO OPEN ESTATE

In Nevada, a personal representative or devisee named in a will, or any other person interested in the estate, has standing to petition for the probate of a will and issuance of Letters Testamentary in a testate estate, or for Letters of Administration in an intestate estate (NRS 136.070). An interested person is a person whose right or interest in an estate may be materially affected by a fiduciary's, or the court's, decision (NRS 132.185).

Generally, the nominated personal representative or the family member with the highest priority to serve as personal representative (if the decedent died intestate) petitions the court to open probate and for appointment as personal representative.

STATUTES OF LIMITATION

Nevada has no statute of limitation to initiate an estate proceeding. If there are assets subject to probate, a petition may be filed to open probate so long as a probate is not open in the matter.

PETITION REQUIREMENTS

The court process for probate in Nevada begins with filing the petition for probate.

The petition must be:

- Signed by the petitioning party or their attorney.
- Verified (the petitioner must declare under penalty of perjury that the statements in the petition are true).
- Filed with the clerk of the court.

(NRS 136.100(1), 132.270, and 132.360.)

The petition must include:

- Jurisdictional facts, which are the facts forming the basis for the court's jurisdiction. This is generally that the decedent died a resident of Nevada, or that the decedent died owning real property in Nevada (for an ancillary estate). For more information on residency, see Question 2: Residency.
- Whether the named personal representative, if any, consents to serve.
- Names and addresses of the heirs and beneficiaries of a will (if applicable).
- Ages of the heirs and beneficiaries of a will (this is generally accomplished by indicating that the individual is either an adult or a minor).
- Relationship between the decedent and each heir or beneficiary.
- Character and estimated value of the estate property.
- Name and address of the person requesting appointment as personal representative and whether that person have been convicted of a felony.
- Name of any beneficiary that predeceased the decedent.
- A copy of the decedent's will, if any.
- An explanation of whether the will (if any) meets the statutory requirements.
- The facts necessary to prove the will (if any).

(NRS 133.040, 133.050, 136.090, 139.090, and 136.130 to 136.190.)

The petition may include a request to administer the estate under the Independent Administration of Estates Act, which enables a personal representative to take many actions as to estate assets without court order, approval, or ratification (see Question 20: Independent Administration).

6. Who does the petitioner have to provide notice to during the estate opening process? Specifically, please discuss:

- Who is entitled to receive notice?
- What notice is required when an estate is open?
- Who has standing to object to the petition for probate or administration?

WHO IS ENTITLED TO RECEIVE NOTICE OF A HEARING ON PETITION TO OPEN ESTATE

In Nevada, the petitioner must give notice of a hearing on a petition to open an estate to:

- The decedent's heirs (any person, including the surviving spouse, that is entitled by intestate succession to the decedent's property).
- All beneficiaries named in the will.
- Any nominated personal representatives who are not joining in the petition.
- The Director of Health and Human Services.
- Any other interested person.
- The public (by publication).

(NRS 136.100(2), 132.165, 132.185, 132.390 and 155.020.)

METHOD OF PROVIDING NOTICE OF HEARING ON PETITION TO OPEN ESTATE

Nevada requires that notice of a petition for probate:

- Must be mailed at least ten court days before the hearing date to all interested parties.
- Must include the time and place of the hearing.
- May be sent by certified, registered, or ordinary first-class mail to the person's home or work address or delivered by personal delivery.
- Must be published in the local newspaper three times before the hearing date, with at least ten days between the first and the last publication if the probate will be a general administration (over \$300,000 estate). It is common to have the publication run three times, each one week apart.
- Must be published in the local newspaper once a week for three consecutive weeks, with the last publication at least ten court days before the hearing date if the address or the identity of a person entitled to notice is not known.

(NRS 155.010 and 155.020.) The larger counties have a legal newspaper in which these publications are generally made.

The notice of the hearing for a petition for probate must be in substantially the following form:

"Notice is hereby given that [PETITIONER NAME] has filed in this court a petition for the probate of a will and for letters testamentary, or for letters of administration, of the estate of [DECEDENT NAME], deceased, and a hearing has been set for the [DATE] day of the month of [MONTH], of the year [YEAR], at [TIME] [a.m./p.m.] at the courthouse of the above-entitled court. All persons interested in the estate are notified to appear and show cause why the petition should not be granted.

Dated: [DATE]"

(NRS 155.020(3).)

If the estate is to be administered under the Independent Administration of Estates Act (enabling a personal representative to take many actions as to estate assets without court order, approval, or ratification), special language must be included in the notice of hearing for the petition (see Question 20: Independent Administration).

Nevada law does not require that the petition be sent with the notice of hearing. However, the petitioner should generally provide each interested party a copy of the petition to notify all parties of the relief requested and the actions to be taken by the personal representative. The court may grant certain relief (for example, request for fees) only if it is fully-disclosed to the interested parties by either:

- Including the relief in the petition's title.
- Providing a copy of the petition to the interested parties.

By always providing a copy of the petition, the petitioner generally complies with the Court's preference to have certain information fully disclosed.

For information about notice specifically to creditors, see Question 14.

Waiver of Notice

Anyone entitled to notice may waive notice in writing (NRS 155.010(5)). Notice is usually waived if an interested party has no desire to follow the probate proceedings, or when a personal representative inadvertently fails to give proper notice and the party entitled to notice has no dispute with the pending petition. A waiver of notice may include language like the following:

"I, [INTERESTED PERSON NAME], declare under penalties of perjury under the laws of the State of Nevada that I waive the requirement of notice of hearing for the [PETITION NAME] in this matter pursuant to NRS 155.010."

STANDING TO OBJECT

Only an interested person in an estate may contest the validity of the will. An interested person is a person whose interest in an estate may be materially affected by a decision of a fiduciary or a decision of the court (NRS 132.185). An interested person in a testate estate includes a person who:

- Stands to receive more or different property rights if the will is not admitted to probate.
- Is an intestate heir who would receive property if the decedent died with no will.
- Is a beneficiary under another purported will of the decedent.

(NRS 137.010 and 137.080.)

An interested person can also object to the appointment of a personal representative (either in a testate or intestate administration) if, for example:

- A will, not presented to the court, nominates a personal representative other than the petitioning party. This may include a previous will if a challenge is brought contesting the validity of the current will.
- There is no will and an intestate heir has a higher priority to serve as a personal representative than the petitioning party.
- There is no will and an intestate heir has a lower priority to serve as a personal representative than the petitioning party, but the petitioning party is disqualified to serve.

(NRS 138.060(1).)

APPOINTING AN ESTATE FIDUCIARY

7. How is the person in charge of the estate (referred to here as the fiduciary) appointed? in particular please consider:

- The procedure for appointing a fiduciary when the decedent died with a will.
- The procedure for appointing a fiduciary when the decedent died without a will.
- The procedure for appointing a fiduciary in urgent or unusual circumstances.
- Any restrictions on a person's eligibility to act as fiduciary, including whether an attorney who prepares a will for a client can act as the fiduciary.

In Nevada, the person the court appoints to administer the estate is called the personal representative. The term personal representative refers to both an executor of a testate estate and an administrator of an intestate estate (NRS 132.265).

APPOINTING A FIDUCIARY WHERE DECEDENT DIED WITH A WILL

When a decedent dies with a will, typically the nominated personal representative submits the original will to the clerk of the district court that has jurisdiction and files a petition requesting probate of the will and the nominee's appointment as personal representative. The court generally appoints the person nominated in the will to serve as personal representative (NRS 138.020 and 138.040). However, an interested person may object to the appointment (see Question 6: Standing to Object).

The clerk issues letters testamentary to the personal representative after the personal representative has taken an oath declaring the representative will perform the representative's required duties (NRS 142.010).

APPOINTING A FIDUCIARY WHERE DECEDENT DIED WITHOUT A WILL

When a decedent dies without a will, the person seeking appointment as personal representative files a petition requesting estate administration and their appointment as personal representative. The clerk issues letters of administration to the personal representative after the personal representative has taken an oath declaring the representative will perform the representative's required duties (NRS 142.010).

In Nevada, appointment of a personal representative where the decedent died without a will is granted in the following order of priority:

- Surviving spouse.
- Children.
- A parent.
- A sibling.
- Grandchild.
- Any other kindred entitled to a share of the estate.
- Public administrator.
- Creditor of the decedent.
- Any other kindred within fourth degree of consanguinity.
- Any person legally qualified.

(NRS 139.040.) A person with priority may be appointed personal representative if that person is qualified (see Qualification as Fiduciary).

When there are several persons equally entitled to administration, the court has discretion to grant letters to one or more of them (NRS 139.070).

APPOINTING A FIDUCIARY IN URGENT OR UNUSUAL CIRCUMSTANCES

A Nevada probate court may appoint a special administrator to ensure the estate is preserved in urgent or unusual circumstances. This includes when there is a delay in opening probate or when there are no assets subject to probate, but good cause exists for appointment of a special administrator (for example, to search for possible probate assets or maintain a personal injury claim). (NRS 140.010.)

The court can make the appointment in chambers or in open court, with or without notice, as the court deems reasonable. The order grants specific authority to the personal representative based on the urgent or unusual circumstance (NRS 140.020(1)).

A special administrator's powers terminate on:

- Returning to the court to render an account and close the special administration.
- When Letters Testamentary or Letters of Administration are granted (the special administrator's powers automatically cease after a petition for probate has been granted).

(NRS 140.070 and 140.080.)

QUALIFICATION AS FIDUCIARY

An individual is qualified to serve as a personal representative in Nevada if the individual:

- Is the age of majority.
- Has never been convicted of a felony.
- Is a resident of Nevada.

If the individual is not a resident of Nevada, the individual may still serve as personal representative if either:

- The individual is nominated in the decedent's will to serve as personal representative.
- A co-personal representative is appointed with the non-resident nominee and that co-personal representative is:
 - a resident of Nevada; or
 - a bank authorized to do business in Nevada.

(NRS 138.020, 139.010, and 139.040(2).)

8. Is a fiduciary bond required, and if so, in what circumstances?

The requirement of a bond in Nevada is in the court's discretion. If a will waives the requirement of bond, then the court generally does not require it. However, the court may still require bond if evidence is presented showing its necessity. (NRS 142.070.)

If a will does not waive the requirement of bond, or the decedent died intestate, the court generally does not require bond if the liquid assets will be held in the attorney's IOLTA (client trust account) or a blocked account (NRS 142.020). It is common for the liquid funds

to be held in the attorney's IOLTA as this is more economical and efficient for the estate when disbursements are to be made.

For more information on waiver of bond by will, see Question 20: Bond Waiver.

9. How are the key estate fiduciaries compensated?

INDIVIDUAL EXECUTORS OR ADMINISTRATORS

The personal representative of a Nevada estate is compensated based on the terms of the will (if any). The personal representative may renounce (waive) the compensation specified in the will in favor of statutory compensation. (NRS 150.010.)

If the will does not provide specific compensation (or the personal representative waives the compensation in the will), the personal representative is paid based on the estate's value, less liens and encumbrances, as follows:

- 4 percent for the first \$15,000.
- 3 percent of the next \$85,000.
- 2 percent above \$100,000.

(NRS 150.020.) The court may allow additional fees if it determines that the statutory fees are insufficient to reasonably compensate the personal representative (NRS 150.020(4)). Additionally, the court may authorize additional compensation for extraordinary services (NRS 150.030).

The personal representative is also reimbursed from the estate for all personal funds expended to assist in the estate's administration (NRS 150.010).

MULTIPLE FIDUCIARIES

If there are two or more personal representatives, the compensation is the same as for a single personal representative, but the court must apportion the fees among them according to the percentage of work performed by each (NRS 150.020(3)).

CORPORATE EXECUTORS

In Nevada, there is no specific statute regarding compensation of a corporate fiduciary. A corporate fiduciary is compensated in the same manner as all other personal representatives. If the corporate fiduciary has a set fee schedule, it is best to seek court approval of the fee schedule at the outset of the administration (usually as part of the initial petition to open probate and appoint the personal representative). If approved by the court, a provision confirming the fee schedule can be part of the initial order. However, a contract for higher compensation than the statutory rate provided by NRS 150.020 and 150.030 is void (NRS 150.040).

DRAFTING ATTORNEY AS EXECUTOR

An attorney who drafted a testator's will may be named as the personal representative of the testator's Nevada estate and may receive compensation for services as personal representative. An attorney who is serving as personal representative may receive compensation as the personal representative or as the attorney for the personal representative, but not both without court approval (NRS 150.025). This attorney will generally only receive one fee.

Nevada courts are generally reluctant to grant both fees absent an extraordinary showing justifying both fees.

10. What is the level of care that each estate fiduciary owes to the beneficiaries of the estate?

A personal representative in Nevada must use reasonable diligence in performing the duties of the personal representative and in administering the estate (NRS 143.035(1)). A personal representative is not liable for losses when the personal representative acts in good faith and exercises ordinary prudence (*In re Pedroli's Estate*, 221 P. 244, 244 (Nev. 1923)). In general, a Nevada personal representative is subject to the common law fiduciary duties to account, comply with the terms of the will, be loyal, be impartial, and manage estate assets prudently.

ADMINISTERING THE ESTATE

11. What are the main duties of the estate fiduciary in administering the estate?

In Nevada, the personal representative typically has the following duties:

- Open the estate.
- Identify and collect assets of the estate (NRS 143.030).
- Manage and invest (when applicable) the assets of the estate pending distribution (NRS 143.175). Unless prohibited by the will, the personal representative may petition to manage and administer the estate assets under the Independent Administration of Estates Act, which enables a personal representative to take many actions as to estate assets without court order, approval, or ratification (see Question 20: Independent Administration).
- Keep appropriate records of estate property and transactions, including the filing of tax returns, inventories, and accountings (NRS 144.010 and 150.080 to 150.115).
- Pay taxes, debts, and other expenses of the estate (NRS 147.195).
- Keep the court informed about the status of the administration of the estate (NRS 143.035).
- Distribute the remaining assets of the estate (including any real property or proceeds thereof) to the appropriate beneficiaries (NRS 151.110).

12. What are the key documents and procedures in your state for ongoing estate administration?

A Nevada personal representative typically prepares the following documents to properly administer the estate:

- **Notice to Creditors.** The personal representative must publish a notice to creditors and mail a copy of the notice to those creditors whose names and addresses are readily ascertainable (NRS 147.010 and 155.020(4) and see Question 14).
- **Inventory.** The personal representative must file an inventory with the Court within 120 days after appointment. If additional assets are discovered after filing the inventory, the personal representative should file an amended inventory. For more information, see Inventory.

- **Accountings.** The personal representative is accountable for the whole estate that comes into the personal representative's possession (NRS 150.070(1)). For more information, see Accountings.
- **Report.** If the estate is open longer than six months if no federal estate tax return is required, or 18 months if a federal estate tax return is required, the personal representative must file a report with the court explaining why the estate has not been closed (NRS 143.035(2)).
- **Sale of Property.** If estate assets will be sold during probate, the personal representative must generally file a petition seeking confirmation of the sale (NRS 148.060(1)). An appraisal of the property to be sold must accompany the petition. For more information, see Petition for Sale of Property.

INVENTORY

The estate inventory typically includes detailed information regarding each asset in the estate. The personal representative should hire an appraiser to determine the value of assets when the value is not known (for example, real property, business interests, jewelry). Values should include any encumbrance and be reported at the net value as of the decedent's date of death. (NRS 144.010 and 144.020.) The inventory must include:

- All assets of the estate, both real and personal.
- A statement of all receivables, partnerships, and other interests, bonds, notes, and other securities.
- Mortgages of any kind on real and personal property of estate. (NRS 144.040(2).)

The inventory must show what portion of the estate is community property and what portion is separate property (NRS 144.040(3)(a)). Unless otherwise altered by an agreement between the spouses:

- Separate property is all property of a spouse owned before the marriage. Separate property also includes property acquired after the marriage by gift, inheritance, or as an award for personal injury damages (NRS 123.130).
- Community property is all property acquired after marriage other than property acquired by gift, inheritance, or as an award for personal injury damages (NRS 123.220).

After the personal representative files the inventory, the personal representative must mail a copy to each beneficiary and other interested party (NRS 144.010(3)).

Waiver of Inventory by Interested Persons

The inventory requirement may be waived by written consent of all interested persons (NRS 144.010(1)). Waiver of an inventory is common when there are relatively few beneficiaries and there are no disputes.

The written consent, to be signed by each interested person, to waive the inventory may include language like the following:

"I, [BENEFICIARY NAME], as a beneficiary of the Estate of [DECEDENT NAME], declare under penalties of perjury under the laws of the State of Nevada, that I waive the requirement of an inventory in this matter pursuant to NRS 144.010."

ACCOUNTINGS

The personal representative must prepare accountings throughout the estate administration process. The first accounting is due six months after the personal representative's appointment. The first accounting should list all transactions of the estate from the date of the personal representative's appointment through the date the accounting was prepared. The starting value of the account should be the inventory value of the estate assets. In addition to the transactions, the first accounting should list the creditor claims filed against the estate, give the name of each claimant, the nature of his or her claim, when it became due or will become due, and whether it was allowed or rejected by the personal representative. (NRS 150.080.)

Until all property is distributed, the personal representative must file an annual account showing all transactions of the estate since the last account. Once the estate is in a proper condition to be closed, the personal representative files a final account (NRS 150.105 and 150.110 and see Question 15).

Often, in simple estates where no federal estate tax return is required, the estate may be in a condition to be closed about the time the first accounting is due. In these circumstances, the first accounting may be a first and final accounting.

Waiver of Accounting by Interested Persons

The court may waive any accounting requirement if all interested persons consent in writing (NRS 150.075). Waiver of an accounting is common when there are relatively few beneficiaries and there are no disputes.

The written consent, to be signed by each interested person, to waive the accounting may include language like the following:

"I, [BENEFICIARY NAME], as beneficiary of the Estate of [DECEDENT NAME], declare under penalties of perjury under the laws of the State of Nevada, that I waive the requirement of an accounting in this matter pursuant to NRS 150.075."

PETITION FOR SALE OF PROPERTY

If assets of the estate will be sold during probate, the personal representative must file a petition seeking confirmation of the sale. This applies to both real and personal property. (NRS 148.060.) However, the following estate property may be sold without first seeking court approval:

- Perishable property and other personal property which will depreciate if not disposed of promptly.
- Property which will incur loss or expense by being kept.
- So much other personal property as necessary to provide the family allowance under NRS 143.525, pending the receipt of other sufficient money.

(NRS 148.170.)

If an estate is being administered under the Independent Administration of Estates Act with full authority, then a personal representative is not required to seek court confirmation of a sale of real property, a business, or other personal property. If an estate is being administered under the Independent Administration of Estates

Act with limited authority, then a personal representative is not required to seek court confirmation of a sale of a business or other personal property, but must seek court confirmation of a sale of real property. (NRS 143.405, 143.410, and 143.535.) For more information on the Independent Administration of Estates Act, see Question 20: Independent Administration.

An appraisal of the property to be sold must accompany the petition. However, the court waives the requirement of an appraisal if all beneficiaries consent in writing. (NRS 148.260.) Waiver of an appraisal is common when there are relatively few beneficiaries, there are no disputes, and everyone agrees on the sale terms.

The written consent, to be signed by each interested person, to waive the appraisal may include language like the following:

"I, [BENEFICIARY NAME], as a beneficiary of the Estate of [DECEDENT NAME], declare under penalties of perjury under the laws of the State of Nevada, that I waive the requirement of an appraisal for the [PROPERTY DESCRIPTION] pursuant to NRS 148.260(2)."

Notice of Petition for Sale of Property

Notice of the time and place of the sale generally must be published in the local newspaper, consisting of three publications of the notice in that newspaper (each one week apart), before the day of sale. The court waives the publication requirement if either:

- All beneficiaries consent in writing.
- The property has been listed publicly for at least 30 days.
- The property is subject to a short sale.

(NRS 148.220(2).) The larger counties have a legal newspaper in which these publications are generally made. Waiver of publication is common when there are relatively few beneficiaries and there are no disputes.

The written consent, to be signed by each interested person, to waive the appraisal may include language like the following:

"I, [BENEFICIARY NAME], as a beneficiary of the Estate of [DECEDENT NAME], declare under penalties of perjury under the laws of the State of Nevada, that I waive the requirement of publication of the Notice of Sale for the [PROPERTY DESCRIPTION] pursuant to NRS 148.220(2)."

13. What are the due dates for key documents and processes during and after the estate proceeding?

NOTICE OF PETITION FOR PROBATE

Nevada law requires that notice of a petition for probate be mailed at least ten days before the hearing date to all interested parties (NRS 155.010). Additionally, if the address and identity of all persons entitled to notice:

- Is known, the notice of a petition for probate must be published in the local newspaper three times, with at least ten days between the first and the last publication (NRS 155.020).
- Is not known, the notice must be published in the local newspaper once a week for three consecutive weeks and the date of the last publication must be at least ten days before the date of hearing (NRS 155.010(1)(b)).

The larger counties have a legal newspaper in which these publications are generally made.

Anyone entitled to notice may waive notice in writing (NRS 155.010(5)). For more information on the petition for probate, see Question 6.

CREDITOR CLAIMS

Any person or entity that has a claim against the decedent must file their claim in the matter within the longer of:

- 90 days after the first publication of the notice to creditors.
- 30 days after the notice has been mailed to a known creditor.

If a creditor fails to file a claim within this time, the claim is barred. If summary administration is granted, the period of 90 days above is reduced to 60 days after first publication of the notice to creditors. (NRS 147.040.) For more information on creditor claims, see Question 14.

INVENTORY OF ASSETS

The personal representative must file an inventory with the Court within 120 days after appointment. If additional assets are discovered after filing the inventory, the personal representative should file an amended inventory (NRS 144.010 and see Question 12: Inventory).

STATUS REPORT

The personal representative must file a status report with the court explaining why the estate is not closed if the estate is open longer than:

- 6 months if no federal estate tax return is required.
- 18 months if a federal estate tax return is required. (NRS 143.035(2).)

ESTATE TAX RETURN

Federal Estate Tax Return

The due date for filing a federal estate tax return is nine months after the decedent's date of death (26 U.S.C. § 6075). A six-month extension for filing the return may be requested and, if filed before the due date of the return, is automatically granted (26 C.F.R. § 20.6081-1(b)). If an estate has more than one personal representative, only one personal representative needs to sign the estate tax return. However, all personal representatives are responsible for the information contained on the return (26 C.F.R. § 20.6018-2 and see "Signature and Verification" section of the Form 706 Instructions). For more information on the federal estate tax, see Practice Note, Federal Estate Tax ([w-000-2504](#)).

State Estate Tax Return

In Nevada, there is no state income tax, gift tax, estate tax, or generation-skipping transfer tax.

ESTATE INCOME TAX RETURN

The due date for the estate federal income tax return, if necessary, varies depending on whether the estate is operating on a calendar year or a fiscal year. For calendar year estates, the returns are due by April 15 of the year following the calendar year in which the estate received the income. For fiscal year estates, the returns are due by the 15th day of the fourth month following the close of the tax year. An automatic five-month extension is available. (See Instructions for IRS Form 1041.)

CONSIDERATIONS FOR CREDITOR CLAIMS

14. What is the procedure for notifying and paying creditors of the estate?

NOTICE TO CREDITORS

In Nevada, a personal representative must provide notice to all creditors of the decedent. This is done in two ways. First, the personal representative must publish a notice to creditors in the local newspaper:

- At least three times.
- With at least ten days between the first and last publication.

(NRS 147.010 and 155.020.) The larger counties have a legal newspaper in which these publications are generally made.

The personal representative must also:

- Mail a copy of the notice to all known creditors (NRS 155.020(4)).
- File an affidavit of publication with the court when publication is complete (NRS 147.030).
- File a certificate of mailing with the court after mailing the notice to creditors (NRS 147.030).

The notice to creditors must be in substantially the following form:

“Notice is hereby given that the undersigned has been appointed and qualified by the [COURT TITLE] on [APPOINTMENT DATE] as personal representative of the estate of [DECEDENT NAME], deceased. All creditors having claims against the estate are required to file the claims with the clerk of the court within [60/90] days after the mailing or the first publication (as the case may be) of this notice.”

(NRS 155.020(4).) The notice should recite 60 days for a summary administration and 90 days for a general administration (NRS 147.040(4)).

TIME TO FILE A CLAIM

Publishing the notice to creditors starts the time within which a creditor must file a claim against the estate (the creditor period). The creditor period runs for 90 days from the first publication date or 60 days if in a summary administration. If a creditor is discovered during the creditor period (after mailings have already been made for known creditors), the personal representative must mail a copy of the notice to the newly discovered creditor.

A known creditor must file their claim within the longer of:

- 30 days from the mailing of the notice to creditors (whether in a general or summary administration).
- The expiration of the 90-day creditor period (or 60-day period if in a summary administration).

An unknown creditor must file their claim within 90 days from the first publication of notice to creditors (or 60 days if in a summary administration).

If a creditor fails to file a claim within this time, the claim is forever barred. (NRS 147.040 and 155.020.)

FILING A CLAIM

For a creditor to file a timely claim, the creditor’s claim must be filed with the court clerk (NRS 147.040(3)). Under a strict interpretation of the statute, mailing the claim to the personal representative or to the attorney for the personal representative is insufficient and may result in the creditor’s claim being barred.

ACCEPTING OR REJECTING AND PAYING CLAIMS

Within 15 days of the expiration of the creditor period, the personal representative should determine the validity of all filed claims and allow, reject in part, or reject in whole each claim. Once the representative has made this determination, the representative should either file a notice allowance or file a notice of rejection (NRS 147.110(1)).

If a claim is allowed, it is ranked among the debts of the estate and other claims allowed, and paid from the assets of the estate in the normal course of administration (NRS 147.120).

If the personal representative rejects a claim (in whole or in part), the representative should immediately send a notice of rejection to the creditor’s mailing address by registered or certified mail. The creditor then has 60 days from the date of the notice to bring an action in the proper court against the personal representative to determine whether the claim is due (NRS 147.130(1)). Alternatively, instead of bringing a claim against the personal representative, a creditor may petition the probate court to determine the validity of the claim. This petition must be brought within 20 days of receipt of the rejection notice (NRS 147.130(2)).

If a personal representative rejected a creditor claim, and provided notice of the rejection by registered or certified mail, and the creditor fails to take the required action within 20 days or 60 days as applicable, then the creditor’s claim is forever barred (NRS 147.130(1), (2)).

If a personal representative fails to file an allowance or rejection of a claim within 15 days of the expiration of the creditor period, the claim is deemed rejected (NRS 147.110(2)). The 60-day and 20-day periods to seek confirmation of the creditor claim do not begin running, however, unless notice of the rejection is affirmatively given (NRS 147.130(1), (2)).

The personal representative may allow a valid claim that was deemed rejected (neither affirmatively allowed nor affirmatively rejected) at any time before the final accounting (NRS 147.110).

CLAIMS OF THE PERSONAL REPRESENTATIVE

If the personal representative has a personal claim against the decedent, the claim must be presented to the court for allowance or rejection. If allowed, the claim is paid as other claims. If rejected, the personal representative can file an action to determine the claim’s validity and for recovery from the estate. However, if the action fails, the personal representative making the claim must pay all costs of the action, including reasonable attorneys’ fees for the estate, to be fixed by the court. (NRS 147.050.)

CLOSING THE ESTATE

15. What is the process for concluding (or closing) the estate?

A Nevada estate can be closed when the assets are ready for distribution and all creditor claims have been paid or are barred by law. The estate cannot be closed if:

- There is pending litigation involving the estate.
- Assets need to be sold before distribution.
- Money or other property that is due to the estate is still uncollected.
- Creditor claims remain unsettled.
- There is a dispute among beneficiaries regarding the accounting or distribution.
- Tax liabilities or other legal obligations of the decedent or the estate have not been satisfied.

If the estate is ready for final distribution, the personal representative files a final accounting for court confirmation. On settlement of the final accounting, the court may order final distribution. An estate may not be finally distributed without an order from the court. (NRS 151.080.) A petition for final distribution is therefore usually brought as part of the petition to confirm the final accounting. A final petition should include:

- A statement that the personal representative has fully administered the estate.
- A statement that all timely-filed creditor claims have been paid, settled, or otherwise disposed of (or will be paid as part of the final distribution).
- The amount of compensation paid or to be paid to the personal representative and the attorneys, and the manner of determining the compensation.
- The plan of distribution, which should include:
 - a schedule of all prior distributions;
 - the property remaining to be distributed;
 - a schedule describing the proposed distribution of the remaining assets; and
 - the amount of funds to be retained to pay expenses that are incurred in the distribution of the remaining assets and termination of the estate administration.

The personal representative must provide notice of the hearing on the petition for settlement and distribution to all interested parties (NRS 151.090). After an order for distribution is entered, the personal representative must distribute the assets of the estate under the order (NRS 151.110). In some cases, the order may reflect distributions to which the beneficiaries agreed, which is different from the distribution stated in the will.

BENEFICIARIES MAY AGREE TO ALTER WILL DISTRIBUTION TERMS

The beneficiaries of an estate may agree among themselves to alter the amounts to which they are entitled under the terms of a decedent's will, or under the laws of intestacy. To do so, all affected parties must execute a written agreement. The personal representative must still fulfill their duty to administer the estate for the benefit of creditors, to pay all taxes and costs of administration,

and to carry out the responsibilities to any beneficiary who is not a party to the agreement (NRS 151.005 and see Question 10).

A beneficiary agreement, to be signed by each affected beneficiary, may include language like the following:

"Pursuant to NRS 151.005, [BENEFICIARY NAMES] (the "Beneficiaries"), as the beneficiaries of the Estate of [DECEDENT NAME] (the "Estate"), enter into this agreement."

It is important for the beneficiaries to understand that an agreement may trigger gift tax implications. The key is to determine if a gift is being made. When a beneficiary gives away an interest in the estate voluntarily without full consideration, a gift is made, and the gift tax applies. However, when a beneficiary enters into a binding agreement to settle a bona fide dispute, a gift is not made, and the gift tax does not apply. Resolving a real dispute is adequate to avoid gift tax implications. If the parties are not making a deal at arm's length, however, a gift tax can be triggered. (26 U.S.C. §§ 2501 and 2503.)

16. Please describe if there is any special action needed to discharge the estate fiduciary from continuing liability for actions taken on behalf of the estate.

A Nevada personal representative should provide a receipt to each distributee (each person or entity to which assets of the estate are distributed) to sign confirming they received the assets that the court ordered to be distributed to them. All signed receipts should be filed with the court. Once the estate is fully distributed, and all receipts are filed, the personal representative sends a final discharge order to the court for review and signature. If the court is satisfied the personal representative complied with the court's order regarding distribution of the estate's assets, the court signs the final discharge order discharging the personal representative and all sureties from continuing liability (NRS 151.230(1)).

If a beneficiary fails to sign and return their receipt, the personal representative may file proof of distribution by providing a copy of the canceled check or other evidence showing receipt by the beneficiary (NRS 151.230(2)).

EXPENSE AND TIMELINE

17. What are the expected costs for a typical estate proceeding?

The primary costs of an estate proceeding in Nevada are:

- **Personal representative compensation and expenses.** For more information on personal representative compensation and expenses, see Question 9.
- **Legal fees.** For a routine, non-contested probate in Nevada, average legal fees if billed hourly can range anywhere from \$5,000 to \$15,000. Much of the expense depends on the nature of the estate assets, how complicated it is to marshal the assets, whether a business must be managed, taxes filed, and assets sold. If attorneys' fees are based on the value of the estate (which must be disclosed to the court in the initial petition), the compensation is:
 - 4 percent for the first \$100,000;
 - 3 percent for the next \$100,000;
 - 2 percent for the next \$800,000;

- 1 percent for the next \$9,000,000;
- 0.5 percent for the next \$15,000,000; and
- above \$25,000,000, a reasonable amount determined by the court.

(NRS 150.060(4).)

- **Filing fees.** The initial filing fee to open a probate can range between approximately \$150 and \$550 depending on the value of the estate. Filing fees after the initial filing are minimal.

The expected costs of an estate proceeding vary greatly depending on:

- The size of the estate.
- The nature and complexity of the estate assets.
- Whether a bond is required.
- Whether there are any challenges to the estate.
- How involved a lawyer needs to be in the estate matters.

18. How long does the typical estate proceeding take?

A typical Nevada estate proceeding takes approximately six months. An estate administration may take longer than six months if:

- There is a contest or other litigation.
- There are unknown assets and a search is required to discover the assets of the estate.
- Marshaling or liquidating the assets requires significant time.
- A federal estate tax return is required.

MISCELLANEOUS ESTATE PROCEEDINGS AND PROCESSES

19. Please list and describe any simplified or special proceedings or non-court processes for transferring a decedent's assets at death that are available in your state.

SUMMARY ADMINISTRATION

Summary administration is a similar process to general administration but is simplified, and can be used when the net value of the estate (the value of all assets subject to probate less any encumbrances) does not exceed \$300,000. A personal representative is appointed to administer the estate, but certain proceedings and notice requirements are waived. (NRS 145.010 to 145.110.)

In a summary administration, the petitioner must file a petition for letters testamentary or of administration with the court containing:

- Jurisdictional facts, which are the facts forming the basis for the court's jurisdiction. This is generally that the decedent died a resident of Nevada, or that the decedent died owning real property located in Nevada (for an ancillary estate). For more information on residency, see Question 2: Residency.
- Whether the named personal representative (if any) consents to serve.
- Names and addresses of the heirs and beneficiaries of a will (if applicable).
- Age of the heirs and beneficiaries of a will (this is generally accomplished by indicating that the heir or beneficiary is either an adult or minor).

- Relationship between the decedent and each heir and beneficiary.
- Character and estimated value of the estate.
- Name and address of the person requesting appointment as personal representative and whether they have been convicted of a felony.
- Name of any beneficiary that predeceased the decedent.
- A copy of the decedent's will, if any.
- An explanation of whether the will (if any) meets the statutory requirements (NRS 133.040).
- The facts necessary to prove the will (if any) (NRS 133.050 and 136.130 to 136.190).

(NRS 136.090 and 139.090.)

The primary differences between a general administration and summary administration are:

- The statutory creditor claims limitations periods which are 90 days for general administration are 60 days in a summary administration (NRS 147.040(4) and see Question 14: Time to File a Claim).
- Notice of a petition for probate is not required to be published in the local newspaper unless the address or identity of an interested party is unknown (NRS 145.030). The larger counties have a legal newspaper in which these publications are generally made.

Once a summary administration is opened and the personal representative is appointed, administration is substantially the same as general administration:

- The creditor claim process is the same (except for the 60-day creditor period instead of a 90-days creditor period) (NRS 147.040(4) and see Question 14).
- The requirements of preparing and filing an inventory and accountings are the same (see Question 12: Inventory and Accountings).
- The processes to petition the court to close the estate and discharge the personal representative is the same. A summary administration may be closed when the assets are ready for distribution and all creditor claims have been paid or are barred by law. If the estate is ready for final distribution, the personal representative files a final accounting for court confirmation and final distribution. (NRS 145.080 and see Question 15.) For more information on discharge of the personal representative, see Question 16.

As in a general administration, a personal representative may also seek to administer the estate under the Independent Administration of Estates Act in a summary administration (NRS 143.340).

SET ASIDE ESTATE

If the net value of a decedent's estate does not exceed \$100,000 (the net value is the value of all assets subject to probate less any encumbrances), the court may order the assets of the estate to be set aside without administration and distributed to those entitled to the assets, such as the intestate heirs or the beneficiaries under a will (NRS 146.070).

The assets are disbursed in the following priority to pay:

- Attorneys' fees and costs.
- Funeral expenses, expenses of last illness, and payments to Medicaid.
- All other creditors. In a set aside proceeding, there is no creditor process, but the petitioner must inform the court of all the decedent's debts. The debts must be paid in full from the estate assets before the heirs or beneficiaries receive their share, unless the heir is the surviving spouse or minor children, or both.
- Beneficiaries pursuant to the terms of a will if the decedent died testate, otherwise to the heirs through intestate succession.

(NRS 146.070(1), (2).)

If the decedent left a surviving spouse or minor children, or both, then the entire estate must be set aside for their benefit, despite the existence of creditors or what the terms of a will may provide to the contrary. The court may allocate the assets of the estate among the surviving spouse and minor children as the court deems proper.

If there are creditors of the decedent, and the spouse or minor children received non-probate transfers greater than \$100,000, the court has the discretion to allocate a portion of the estate to the payment of creditors. (NRS 146.070(3), (4).)

Petition for Set Aside

A petition for set aside cannot be made until at least 30 days have elapsed since the decedent's death. The petition must state:

- The specific description of all the estate property.
- A list of all known liens and encumbrances against estate property (and an explanation if any are not valid).
- The estimated value of the property along with an explanation of how the estimate was determined.
- A statement of the decedent's debts known to the petitioner.
- The name, address, age, and relationship to the decedent of each heir and, if the decedent left a will, each beneficiary.
- If there is a will, a statement proving the validity of the will.
- If a petition is brought by a surviving spouse or for a minor child, the petition must also contain:
 - a specific description and estimated value of all non-probate transfers from the decedent to the surviving spouse or minor children; or
 - a statement that the estimated value of the assets to be set aside, combined with the value of all non-probate transfers from the decedent to the surviving spouse or minor children is less than \$100,000.

(NRS 146.070(8), (9).)

SMALL ESTATE AFFIDAVIT

If the net value of a decedent's estate does not exceed \$25,000 (the net value is the value of all assets subject to probate less any encumbrances) and does not include real property, the person or persons entitled to the estate assets may present an affidavit claiming the property to the third party in control of the property and collect the property without any court involvement. The \$25,000

threshold is increased to \$100,000 if the person claiming the property is the surviving spouse. (NRS 146.080.)

The affidavit must state:

- The affiant's name and address.
- The decedent's date and place of death.
- That the gross value of the decedent's property does not exceed the applicable amount (\$25,000 or \$100,000) and that there is no real property or an interest in real property.
- That at least 40 days have passed since the decedent's death.
- That no petition for appointment of a personal representative is pending.
- That all debts of the decedent have been paid or provided for.
- A description of the property claimed.
- That the affiant has given at least 14 days written notice (by personal service or certified mail) to each person with an equal right to claim the property.
- That the affiant is entitled to the property (personally or on behalf of someone else).
- That the affiant does not know of any personal injury or tort claims against the decedent.
- An acknowledgment that filing a false affidavit is a felony in the Nevada.

(NRS 146.080(2).)

A third party receiving an affidavit with the required information may turn over the claimed assets to the affiant and is immune from civil liability if the third party relied in good faith on the affidavit (NRS 146.080(4)).

Because there is no creditor process when using a small estate affidavit, the person or persons that are entitled to the estate assets of the estate must pay or provide for all debts of the decedent (NRS 146.080(2)(f)). This requires the affiant to become familiar with the decedent's debts before using the affidavit. If an affiant collects the estate assets and there are outstanding debts, then the affiant may be liable for such debt up to the amount received from the estate if the creditor seeks payment (NRS 146.080(3)(a)).

Small Estate Versus Set Aside Estate

Although a surviving spouse can use a small estate affidavit to distribute an amount up to \$100,000 (the same limit as a set aside), a set aside proceeding is required to distribute real property.

A set aside may also be preferable if there are debts of the decedent because a set aside proceeding allows the court to distribute the full estate to the spouse to the exclusion of creditors, whereas a small estate affidavit requires the affiant to pay or provide for all the decedent's debts. For all other heirs or beneficiaries, a set aside is appropriate if the assets of the estate exceed \$25,000, but do not exceed \$100,000.

ANCILLARY PROBATE

If a nonresident of Nevada, with an estate proceeding opened in the nonresident's home state, died owning real property in Nevada

that does not transfer by non-probate means (for example, through a revocable trust or by a survivorship right), an ancillary estate proceeding in Nevada is required to transfer that real property to the heirs or beneficiaries.

If the nonresident decedent died owning personal property in Nevada, that property is subject to the domiciliary estate proceeding process even if the decedent also owned Nevada real property. The only asset subject to a Nevada probate for a nonresident decedent is real property.

Ancillary probate processes are generally identical to the Nevada domiciliary process; the only difference is the assets subject to Nevada ancillary jurisdiction (only Nevada real property). However, the small estate affidavit process is not available because it cannot be used to transfer Nevada real property.

In a Nevada ancillary probate, the original will cannot be filed with the clerk for probate in Nevada because it should be admitted in the domiciliary state. In these cases, a copy of the will may be produced instead, and the copy has the same effect as the original in probate proceedings (NRS 136.180(1)). The probate commissioner requires the copy be certified from the court where the original will was filed.

For more information on ancillary probate, see Practice Note, *Ancillary Probate in Nevada* ([w-017-6331](#)).

WAIVER OF PROBATE REQUIREMENTS AND FORMAL PROBATE

20. What types of estate proceedings or probate requirements can be waived by will in your state? Specifically, please discuss:

- Whether any particular language is required to accomplish a waiver and if so, please include the language.
- Whether it is common to waive these estate proceedings or probate requirements.

INDEPENDENT ADMINISTRATION

In Nevada, unless the will provides otherwise, a personal representative may seek to administer the estate under the Independent Administration of Estates Act (NRS 143.330). Independent administration enables a personal representative to act as to estate assets without judicial order, authorization, approval, confirmation, or instructions required if there were no independent administration (NRS 143.310). It is uncommon for a decedent's will to contain a provision prohibiting administration of the estate under the Independent Administration of Estates Act. Even though independent administration is permitted without including language in the will, some attorneys are beginning to add language into their wills expressly authorizing it. However, this is not a general trend.

Though independent administration is common, it is not the preferred procedure for many estate attorneys in Nevada who prefer the security of a court order confirming the actions of a personal representative (for example, the sale of estate assets). Under independent administration, a personal representative may act without court confirmation. The personal representative is still liable,

however, if the action was improper (for example, the sales price for estate assets was too low) (NRS 143.375).

For an attorney familiar with the probate process, the cost and time to confirm a personal representative's actions are not materially different from that required for a personal representative to take the same action without court authority. The personal representative must still prepare and send certain notices to the interested parties (see Notice of Proposed Action). Therefore, many attorneys for a personal representative advise the personal representative to obtain the court order to protect their client.

Petition for Independent Administration

A personal representative must petition the court for Independent Administration and may request the power of independent administration with either full authority or limited authority and may do so in the original petition for probate or in a separate petition requesting independent administration (NRS 143.340). The primary difference between full authority and limited authority under the IAEA is that a representative administering the estate with limited authority requires court authorization for transactions regarding real property, but administering with full authority does not (NRS 143.315 and 143.320).

The notice of hearing on the petition for independent administration, whether made in the original petition for probate or in a separate petition, must be given as provided in NRS 155.010 to:

- Each person specified in NRS 155.010.
- Each known heir or devisee whose interest is affected by the petition.
- Each person named as personal representative in the decedent's will.

(NRS 143.345.) This notice must contain a statement substantially similar to:

"The petition requests authority to administer the estate under the Independent Administration of Estates Act. This will avoid the need to obtain court approval for many actions taken in connection with the estate. However, before taking certain actions, the personal representative will be required to give notice to interested persons unless they have waived notice or have consented to the proposed action. Independent administration authority will be granted unless good cause is shown why it should not be."

(NRS 143.345(3).)

Notice of Proposed Action

If the court grants independent administration, a personal representative must still provide notice of a proposed action to each interested person regarding certain actions during the estate administration. The actions requiring notice and the type of notice given are provided under statute (NRS 143.375 and 143.700). An interested party may object to a proposed action. If an interested person objects to a proposed action, the personal representative must petition the court for authority to take that action. (NRS 143.745.) An interested person may waive the right (in writing) to notice of a proposed action (NRS 143.715(2)).

A notice of proposed action must contain the following:

- The name and mailing address of the personal representative.
- The person and telephone number to call to get additional information.
- The action proposed to be taken, with a reasonably specific description of the action.
- The date on or after which the proposed action is to be taken.
- A form for objecting to the proposed action.

(NRS 143.725.)

A notice of proposed action must be mailed or personally delivered to each interested person at least 15 days before the proposed action will be taken (NRS 143.730 and 155.010).

Even when Independent Administration is granted, court approval is still required for:

- Allowance of personal representative's compensation.
- Allowance for attorneys' fees.
- Settlement of accounts.
- Distributions and discharge.
- Any transaction personally involving the personal representative or their attorney.

(NRS 143.370.)

Probate Requirements

The will cannot waive probate notice requirements, the inventory, or the accounting. However, interested parties may waive these

requirements (see Question 6: Waiver of Notice and Question 12: Waiver of Inventory by Interested Persons and Waiver of Accounting by Interested Persons).

Bond Waiver

The requirement of a bond in Nevada is discretionary with the court. However, if a will waives the requirement of bond, the court generally does not require bond. If a will does not waive the requirement of bond, or the decedent died intestate, the court generally does not require bond if the liquid assets will be held in the attorney's IOLTA or a blocked account. (NRS 142.020.) It is common for the liquid funds to be held in the attorney's IOLTA as this is more economical and efficient for the estate when disbursements are to be made.

A petitioner may request the court waive bond with language like the following, as the circumstances warrant:

"The requirement of bond should be waived pursuant to [WILL PROVISION NUMBER] of the decedent's will, which specifically waives the requirement of bond."

OR

"The Petitioner requests that the Court waive the requirement of bond pursuant to NRS 142.020(1)(b), and instead require all liquid assets be placed in the [LAW FIRM NAME] attorney trust account."

For more information on bond, generally, see Question 8.

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