

Nevada Probate Administration

1. What is Probate. Probate is the legal process of changing title of assets from a deceased person (the “Decedent”) to the person or entity entitled to receive or inherit those assets.

1.1 With a Will. A Decedent who leaves a will is said to have died testate. The executor/personal representative named in the will is generally appointed by the court to administer the estate. The assets of the estate pass to the beneficiaries named in the will.

1.2 Without a Will. A Decedent who does not leave a will is said to have died intestate. The estate will be administered by a court-appointed administrator, generally a close family member. The assets of the estate pass to the heirs according to Nevada law, who are generally the closest living family members.

2. What Assets are Subject to Probate. Only assets that are part of the probate estate are subject to probate court proceedings. Asset ownership is the key to determining what assets are subject to probate. As a general rule, assets subject to probate are those assets that were owned individually by the decedent (no other joint owner) in the decedent's name (not in the name of a trust or business entity) with no beneficiary designation. It is easier to define the probate estate by first explaining what assets are not part of the probate estate. Non-probate assets are those that pass by operation of law or under the terms of a contract:

2.1 By Operation of Law. This category includes assets held by two or more persons in joint tenancy (which includes a “right of survivorship”) and property held by married couples as community property with a right of survivorship, as well as accounts and investments held with a beneficiary designation, such as “in trust for” or “payable on death to.”

(a) Deed Upon Death. Nevada law permits a landowner to make a deed upon death, which conveys his or her interest in property to a beneficiary or multiple beneficiaries upon the death of the landowner without the need for probate.

(b) Joint Accounts. Any joint accounts owned by the decedent and another individual become the surviving party's sole and separate property upon the death of the decedent.

(c) Joint Tenancy. Property held as joint tenants transfers title in the property to the surviving owner upon the death of the co-owner.

2.2 Under the Terms of a Contract. This includes various contracts that permit the designation of one or more beneficiaries, such as life insurance, retirement accounts/benefits, annuities, and some buy-sell agreements related to business entities.

2.3 Excluded Items. Some assets that would normally be non-probate assets sometimes become part of the probate estate. This happens if the estate is designated as the beneficiary under a contract, or if the person who would otherwise receive something by operation of law or under a contract dies before the decedent or waives the right to receive the asset.

3. What are the Types of Probate Proceedings. Under Nevada probate law, the main types of estate proceedings are:

3.1 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).

3.2 Summary administration. Summary administration is similar to general administration, except that 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.

3.3 Set aside estate. If the net value of a decedent's estate does not exceed \$100,000, and there are no outstanding debts of the decedent, the full probate process can be skipped, and, upon a single petition to the court, the estate may be distributed by court order without further administration to those persons entitled to inherit the assets.

3.4 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 inherit 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.

3.5 Ancillary probate. In Nevada, an ancillary estate proceeding is used to transfer Nevada real property of a decedent that was a resident of another state.

4. What are the Steps in a Probate Administration. All probate administrations begin with a petition to the court seeking to open probate. The process is outlined as follows:

4.1 A petition is filed for the appointment of a personal representative and, if there is a will, to admit the will to probate.

(a) A notice of the hearing on the petition to open probate is mailed to all interested parties, including the heirs and beneficiaries.

(b) Objections may be filed opposing the appointment of the personal representative and/or admission of the will to probate.

(c) The court holds a hearing on the initial petition and officially appoints a personal representative.

4.2 During the administration period, the personal representative undertakes the following actions:

(a) A notice to creditors is sent to all known creditors and published in the legal newspaper. For summary administration the creditor period is 60 days, and in general administration the creditor period is 90 days. This is the period of time a creditor must file a claim with the court. If they do not, then they are barred from trying to collect or enforce the claim later.

(b) The personal representative obtains appraisals, gathers assets, and inventories the estate. The inventory lists and values the assets, as of the Decedent's date of death.

(c) The personal representative pays priority claims and reviews any creditor claims filed with the court.

(d) The personal representative protects the assets of the estate and can sale and liquidate assets in preparation to close and distribute the estate.

(e) Shortly after the conclusion of the creditor period, the personal representative files an accounting. If the estate is ready for final distribution (i.e. all assets have been gathered, liquidated, and prepared for distribution), the first accounting can also be the final accounting and the personal representative can petition for authority to distribute the assets and close the estate. If the estate is not ready for final distribution, the personal representative files a report regarding the status of the estate and can petition for partial distribution of some of the estate assets can be filed.

(f) After the court orders a final distribution, the personal representative makes the approved distribution of the estate's assets and obtains receipts. Upon filing each of the receipts, the court issues a Final Discharge Order and closes the Estate.

5. Will Contests. Under Nevada law, a will that complies with the statutory requirements is presumed valid unless someone proves that: (a) the will was not properly signed and witnessed; (b) the maker of the will lacked sufficient mental capacity; or (c) the maker was

coerced or unduly influenced by someone. The burden of proof is on the person contesting the validity of the will.

6. Tax Considerations. A personal representative must comply with all federal and state tax laws. Depending on the size of the estate, and the type of assets owned by the decedent, this may include estate and income taxes.

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