

CHAPTER.....

AN ACT relating to estates; revising provisions relating to the succession of property under certain circumstances; modifying the compensation structure authorized for attorneys for personal representatives; making various other changes relating to the administration of estates of deceased persons; revising provisions governing declaratory relief for certain probate matters; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law provides, with certain exceptions, that a will is revoked as to a person’s spouse if the person married the spouse after making a will and the spouse survives him. **Section 2** of this bill additionally provides that the will is not revoked if the spouse is provided for by a transfer of property outside of the will under certain circumstances. (NRS 133.110) Further, **section 2** provides that if a will is revoked as to a spouse, the spouse is entitled to the same share of the property as if the person who made the will had died intestate, meaning without a will. **Section 3** of this bill amends the law in a similar manner as **section 2** with regard to a child who is born after his parent made a will that does not provide for the child. (NRS 133.160)

Existing law provides that if a person dies without a will and he leaves no issue, meaning children, grandchildren or more remote lineal descendants, surviving spouse, father or mother, the person’s estate must be distributed in equal shares to his brothers and sisters and to the children of his deceased brother or sister in equal shares per person. **Section 5** of this bill provides that under such circumstances, the person’s brothers and sisters each receive a share and the lawful issue of any deceased brother or sister receive shares by right of representation, which means the lawful issue receive the same share their parents would have received. (NRS 134.060)

Section 8 of this bill generally provides for the enforcement of a no-contest clause in a will with certain exceptions, including that a devisee’s share will not be reduced or eliminated if the devisee institutes legal action to invalidate a will in good faith and based on probable cause. **Section 35** of this bill amends the law in a similar manner as **section 8** with regard to a no-contest clause in a trust.

Existing law sets forth the qualifications for an executor of an estate, which include that a person must not have been convicted of a felony relating to the position of an executor. **Section 9** of this bill gives the court discretion to determine whether a conviction for a felony should disqualify the person from serving in the position of an executor. (NRS 138.020) Existing law sets forth the qualifications for appointment as an administrator of an estate, which include that a person must not have been convicted of a felony relating to the position of an administrator. **Section 10** of this bill: (1) amends the law in a similar manner as **section 9** with regard to the qualifications for an administrator; and (2) revises the circumstances in which a person who is not a resident of Nevada may be qualified to serve as an administrator and in which a banking corporation not authorized to do business in Nevada may be qualified to serve as an administrator. (NRS 139.010) Existing law provides for the appointment by the court of a special administrator to collect and take charge of the estate of a decedent. **Section 13** of this bill amends existing law to require a court to appoint as special administrators of an estate only those



persons who satisfy the qualifications for appointment as an administrator of an estate. (NRS 140.020)

Sections 15-18 of this bill revise certain provisions regarding the support of a decedent's family to authorize the court to make certain decisions if it is deemed advisable considering the family's needs and resources. (NRS 146.010, 146.020, 146.030, 146.050)

Existing law provides for compensation of an attorney for a personal representative. (NRS 150.060) **Sections 21-24 and 27** of this bill provide for compensation of such an attorney based upon, among other things, an hourly basis, the value of the estate and a contingency fee basis. **Section 21** also provides for compensation of such an attorney for extraordinary services and defines the term "extraordinary services" for that purpose.

Sections 30 and 31 of this bill provide that certain persons may seek declaratory relief under chapter 30 of NRS regarding a will, trust or certain other probate matters, but such proceedings for declaratory relief must only be commenced pursuant to titles 12 and 13 of NRS, as appropriate. (NRS 30.040, 30.060) **Section 32** of this bill revises the definition of "community property" as used in various provisions throughout NRS. (NRS 41B.050, 123.220, 132.075)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. (Deleted by amendment.)

Sec. 2. NRS 133.110 is hereby amended to read as follows:

133.110 **1.** If a person marries after making a will and the spouse survives the maker, the will is revoked as to the spouse, unless ~~[provision]~~ :

(a) Provision has been made for the spouse by marriage contract ~~[-, or unless the]~~ ;

(b) The spouse is provided for in the will, or in such a way mentioned therein as to show an intention not to make such provision; ~~[and no other evidence to rebut the presumption of revocation shall be received.] or~~

(c) The spouse is provided for by a transfer of property outside of the will and it appears that the maker intended the transfer to be in lieu of a testamentary provision.

2. When a will is revoked as to the spouse pursuant to subsection 1:

(a) The spouse is entitled to the same share in the estate of the deceased spouse as if the deceased spouse had died intestate; and

(b) The remaining provisions of the will remain intact to the extent those provisions are not inconsistent with paragraph (a), including, without limitation, any provision concerning the appointment of a personal representative.



Sec. 3. NRS 133.160 is hereby amended to read as follows:

133.160 **1.** When a child is born after the making of a will by a parent of that child and no provision is made for the child in the will, the child is entitled to the same share in the estate of the testator as if the testator had died intestate, unless ~~it~~:

(a) *It* is apparent from the will that it was the intention of the testator that no provision should be made for that child ~~it~~; or

(b) *The testator provided for the omitted child by a transfer of property outside of the will and it appears that the testator intended the transfer to be in lieu of a testamentary provision.*

2. *If, pursuant to subsection 1, a child is entitled to take the same share in the estate of the testator as if the testator had died intestate, the remaining provisions of the will remain intact to the extent those provisions are not inconsistent with this subsection, including, without limitation, any provision concerning the appointment of a personal representative.*

Sec. 4. (Deleted by amendment.)

Sec. 5. NRS 134.060 is hereby amended to read as follows:

134.060 If there is no issue, surviving spouse, or father or mother, then the estate goes in equal shares to the brothers and sisters of the decedent and to the ~~children~~ *lawful issue* of any deceased brother or sister ~~in equal shares, per capita.~~ *by right of representation as follows:*

1. *To the brothers and sisters, each a share; and*

2. *To the lawful issue of each deceased brother and sister, by right of representation, the same share that the parent would have received if the parent had been living at the time of the death of the decedent.*

Sec. 6. NRS 136.090 is hereby amended to read as follows:

136.090 **1.** A petition for the probate of a will and issuance of letters must state:

(a) The jurisdictional facts;

(b) Whether the person named as personal representative consents to act or renounces the right to letters;

(c) The names and residences of the heirs, next of kin and devisees of the decedent, the age of any heir, next of kin or devisee who is a minor, and the relationship of the heirs and next of kin to the decedent, so far as known to the petitioner;

(d) The character and estimated value of the property of the estate;

(e) The name of the person for whom letters are requested, and ~~that~~ *whether* the person has ~~never~~ been convicted of a felony; and



(f) The name of any devisee who is deceased.

2. No defect of form or in the statement of jurisdictional facts actually existing voids the probate of a will.

Sec. 7. NRS 136.240 is hereby amended to read as follows:

136.240 1. The petition for the probate of a lost or destroyed will must include a copy of the will, or if no copy is available state, or be accompanied by a written statement of, the testamentary words, or the substance thereof.

2. If offered for probate, a lost or destroyed will must be proved in the same manner as other wills are proved under this chapter.

3. In addition, no will may be proved as a lost or destroyed will unless it is proved to have been in existence at the death of the person whose will it is claimed to be, or is shown to have been fraudulently destroyed in the lifetime of that person, nor unless its provisions are clearly and distinctly proved by at least two credible witnesses.

4. The testimony of each witness must be reduced to writing, signed by the witness and filed, and is admissible in evidence in any contest of the will if the witness has died or permanently moved from the State.

5. *Notwithstanding any provision of this section to the contrary:*

(a) The production of a person's lost or destroyed will, whose primary beneficiary is a nontestamentary trust established by the person and in existence at his death, creates a rebuttable presumption that the will had not been revoked.

(b) If the proponent of a lost or destroyed will makes a prima facie showing that it was more likely than not left unrevoked by the person whose will it is claimed to be before his death, then the will must be admitted to probate in absence of an objection. If such prima facie showing has been made, the court shall accept a copy of such a will as sufficient proof of the terms thereof without requiring further evidence in the absence of any objection.

6. If the will is established, its provisions must be set forth specifically in the order admitting it to probate, or a copy of the will must be attached to the order.

Sec. 8. Chapter 137 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsections 3 and 4, a no-contest clause in a will must be enforced by the court.

2. A no-contest clause must be construed to carry out the testator's intent. Except to the extent the will is vague or



ambiguous, extrinsic evidence is not admissible to establish the testator's intent concerning the no-contest clause. The provisions of this subsection do not prohibit such evidence from being admitted for any other purpose authorized by law.

3. Notwithstanding any provision to the contrary in the will, a devisee's share must not be reduced or eliminated if the devisee seeks only to:

(a) Enforce the terms of the will;

(b) Enforce the devisee's legal rights in the probate proceeding; or

(c) Obtain a court ruling with respect to the construction or legal effect of the will.

4. Notwithstanding any provision to the contrary in the will, a devisee's share must not be reduced or eliminated under a no-contest clause because the devisee institutes legal action seeking to invalidate a will if the legal action is instituted in good faith and based on probable cause that would have led a reasonable person, properly informed and advised, to conclude that there was a substantial likelihood that the will was invalid.

5. As used in this section, "no-contest clause" means one or more provisions in a will that express a directive to reduce or eliminate the share allocated to a devisee or to reduce or eliminate the distributions to be made to a devisee if the devisee takes action to frustrate or defeat the testator's intent as expressed in the will.

Sec. 9. NRS 138.020 is hereby amended to read as follows:

138.020 1. No person is qualified to serve as an executor who, at the time the will is probated:

(a) Is under the age of majority;

(b) Has been convicted of a felony ~~[relating to]~~ , *unless the court determines that such a conviction should not disqualify the person from serving in* the position of an executor;

(c) Upon proof, is adjudged by the court disqualified to execute the duties of executor by reason of conflict of interest, drunkenness, improvidence or lack of integrity or understanding; or

(d) Is a bank not authorized to do business in the State of Nevada, unless it associates as coexecutor a bank authorized to do business in this State. An out-of-state bank is qualified to appoint a substitute executor, pursuant to NRS 138.045, without forming such an association, but any natural person so appointed must be a resident of this State.

2. If a disqualified person is named as the sole executor in a will, or if all persons so named are disqualified or renounce their



right to act, or fail to appear and qualify, letters of administration with the will annexed must issue.

Sec. 10. NRS 139.010 is hereby amended to read as follows:

139.010 No person is entitled to letters of administration ~~[who:]~~ *if the person:*

1. Is under the age of majority;
2. Has been convicted of a felony ~~[relating to]~~ , *unless the court determines that such a conviction should not disqualify the person from serving in* the position of an administrator;
3. Upon proof, is adjudged by the court disqualified by reason of conflict of interest, drunkenness, improvidence, or lack of integrity or understanding; ~~[or]~~
4. Is not a resident of the State of Nevada ~~[and who does not associate]~~ , *unless the person:*

(a) Associates as coadministrator a resident of the State of Nevada ~~[for which, in the case of a banking corporation, is not authorized to do business in this State and does not associate as coadministrator a resident of the State of Nevada]~~ or a banking corporation authorized to do business in this State [-]; or

(b) Is named as personal representative in the will if the will is the subject of a pending petition for probate, and the court in its discretion believes it would be appropriate to make such an appointment; or

5. Is a banking corporation that is not authorized to do business in this State, unless the banking corporation:

(a) Associates as coadministrator a resident of the State of Nevada or a banking corporation authorized to do business in this State; or

(b) Is named as personal representative in the will if the will is the subject of a pending petition for probate, and the court in its discretion believes it would be appropriate to make such an appointment.

Sec. 11. NRS 139.040 is hereby amended to read as follows:

139.040 1. Administration of the intestate estate of a decedent must be granted to one or more of the persons mentioned in this section, and they are respectively entitled to priority for appointment in the following order:

- (a) The surviving spouse.
- (b) The children.
- (c) The father or the mother.
- (d) The brother or the sister.
- (e) The grandchildren.



(f) Any other of the kindred entitled to share in the distribution of the estate.

(g) The public administrator.

(h) Creditors who have become such during the lifetime of the decedent.

(i) Any of the kindred not above enumerated, within the fourth degree of consanguinity.

(j) Any person or persons legally qualified.

2. A person in each of the foregoing classes is entitled:

(a) To appointment, if the person is:

(1) A resident of the State of Nevada or ~~{associates}~~ *the person:*

(I) *Associates* as coadministrator a resident of the State of Nevada ~~{}~~ *or a banking corporation authorized to do business in this State; or*

(II) *Is named as personal representative in the will if the will is the subject of a pending petition for probate, and the court in its discretion believes it would be appropriate to make such an appointment; or*

(2) A banking corporation which is authorized to do business in this State or which ~~{associates}~~ :

(I) *Associates* as coadministrator a resident of the State of Nevada or a banking corporation authorized to do business in this State ~~{}~~ ; *or*

(II) *Is named as personal representative in the will if the will is the subject of a pending petition for probate, and the court in its discretion believes it would be appropriate to make such an appointment.*

(b) To nominate a resident of the State of Nevada or a qualified banking corporation for appointment, whether or not the nominator is a resident of the State of Nevada or a qualified banking corporation. The nominee has the same priority as the nominator. That priority is independent of the residence or corporate qualification of the nominator.

3. If any heir who is otherwise entitled to appointment is a minor or an incompetent person for whom a guardian has been appointed, the court may appoint the guardian of the minor or incompetent person as administrator.

Sec. 12. NRS 139.090 is hereby amended to read as follows:

139.090 1. A petition for letters of administration must be in writing, signed by the petitioner or the attorney for the petitioner and filed with the clerk of the court, and must state:

(a) The jurisdictional facts;



(b) The names and addresses of the heirs of the decedent and their relationship to the decedent, so far as known to the petitioner, and the age of any who is a minor;

(c) The character and estimated value of the property of the estate; and

(d) ~~[That]~~ *Whether* the person to be appointed as administrator has ~~[never]~~ been convicted of a felony.

2. No defect of form or in the statement of jurisdictional facts actually existing voids an order appointing an administrator or any of the subsequent proceedings.

Sec. 13. NRS 140.020 is hereby amended to read as follows:

140.020 1. The appointment of a special administrator may be made at chambers or in open court, and without notice or upon such notice to such interested persons as the court deems reasonable, and must be made by entry upon the minutes of the court or by written order signed and filed, which must specify the powers to be exercised by the special administrator.

2. Upon the filing of the order, and after the person appointed has given bond if fixed by the court, the clerk shall issue special letters of administration, with a copy of the order attached.

3. In making the appointment of a special administrator, the court ~~[may]~~ :

(a) *Must appoint a person who satisfies the qualifications set forth in NRS 139.010; and*

(b) *May* give preference to the person or persons entitled to letters testamentary or letters of administration, but no appeal may be taken from the appointment.

Sec. 14. NRS 145.020 is hereby amended to read as follows:

145.020 All proceedings taken under this chapter, whether or not the decedent left a will, must be originated by a petition for letters testamentary or letters of administration containing:

1. Jurisdictional information;

2. A description of the property of the decedent, including the character and estimated value of the property;

3. The names and residences of the heirs and devisees of the decedent and the age of any who is a minor and the relationship of each heir and devisee to the decedent, so far as known to the petitioner; and

4. A statement ~~[that]~~ *indicating whether* the person to be appointed as personal representative has ~~[never]~~ been convicted of a felony.



Sec. 15. NRS 146.010 is hereby amended to read as follows:

146.010 Except as *otherwise* provided in *this chapter or in* NRS 125.510, if a person dies leaving a surviving spouse or a minor child or minor children, the surviving spouse, minor child or minor children are entitled to remain in possession of the homestead and of all the wearing apparel and provisions in the possession of the family, and all the household furniture, and are also entitled to a reasonable provision for their support, to be allowed by the court.

Sec. 16. NRS 146.020 is hereby amended to read as follows:

146.020 Upon the filing of the inventory or at any time thereafter during the administration of the estate, the court, on its own motion or upon petition by an interested person, ~~[shall]~~ *may, if deemed advisable considering the needs and resources of the surviving spouse, minor child or minor children,* set apart for the use of the ~~[family]~~ *surviving spouse, minor child or minor children* of the decedent all of the personal property which is exempt by law from execution, and shall *, in accordance with NRS 146.050,* set apart the homestead, as designated by the general homestead law then in force, whether the homestead has theretofore previously been selected as required by law or not, and the property thus set apart is not subject to administration.

Sec. 17. NRS 146.030 is hereby amended to read as follows:

146.030 1. If the whole property exempt by law is set apart and is not sufficient for the support of the surviving spouse, minor child or minor children, the court ~~[shall]~~ *may, if deemed advisable considering the needs and resources of the surviving spouse, minor child or minor children,* make such reasonable allowance out of the estate as is necessary for the maintenance of the family according to their circumstances during the progress of the administration of the estate, which, in case of an insolvent estate, may not be longer than 1 year after granting letters of administration.

2. If the surviving spouse or any minor child has a reasonable maintenance derived from other property, and there are other persons entitled to a family allowance, the allowance must be granted only to those who do not have such maintenance, or the allowance may be apportioned in such manner as may be just.

Sec. 18. NRS 146.050 is hereby amended to read as follows:

146.050 1. If the homestead was selected by the spouses, or either of them, during their marriage, and recorded while both were living, as provided in chapter 115 of NRS, it vests, on the death of either spouse, absolutely in the survivor, unless vesting is otherwise required pursuant to subsection 2 of NRS 115.060.



2. If no homestead was so selected, a homestead may be set apart by the court to the ~~[family]~~ *surviving spouse, minor child or minor children* of the decedent for a limited period if deemed advisable considering the needs and resources of the family and the nature, character and obligations of the estate. The duration of the homestead must be designated in the order setting it apart and may not extend beyond the lifetime of the surviving spouse or the minority of any child of the decedent, whichever is longer. A homestead so set apart then vests, subject to the setting apart:

(a) If set apart from the separate property of the decedent, in the heirs or devisees of the decedent.

(b) If set apart from community property, one-half in the surviving spouse and one-half in the devisees of the decedent, or if no disposition is made, then entirely in the surviving spouse.

3. In either case referred to in subsection 1 or 2, the homestead is not subject to the payment of any debt or liability existing against the spouses, or either of them, at the time of death of either, unless the debt or liability is secured by a mortgage or lien.

Sec. 19. NRS 148.120 is hereby amended to read as follows:

148.120 When an offer is presented for confirmation by the court, other offerors may submit higher bids and the court may confirm the highest bid. ~~[Upon]~~ *Except as otherwise provided in this section, upon* confirmation, the real estate commission must be divided between the listing agent and the agent, if any, who procured the purchaser to whom the sale was confirmed, in accordance with the listing agreement. *If the agent who procured the offer presented for confirmation by the court is not the agent who procured the purchaser to whom the sale was confirmed, then the real estate commission payable to the agent who procured the purchaser must be divided equally between the agent who procured the offer and the agent who procured the purchaser unless otherwise directed by the court.*

Sec. 20. Chapter 150 of NRS is hereby amended by adding thereto the provisions set forth as sections 21 to 25, inclusive, of this act.

Sec. 21. 1. *If an attorney for a personal representative receives compensation pursuant to NRS 150.060 based on the value of the estate accounted for by the personal representative, the court may allow additional compensation for extraordinary services by the attorney for the personal representative in an amount the court determines is just and reasonable after petition, notice and hearing in the manner provided in NRS 150.060.*



2. *Extraordinary services by the attorney for a personal representative for which the court may allow compensation include extraordinary services performed by a paralegal under the direction and supervision of the attorney.*

3. *The petition requesting approval for compensation for extraordinary services must include the following information:*

- (a) Reference to time and hours;*
- (b) The nature and extent of services rendered;*
- (c) The complexity of the work required;*
- (d) The hours spent and services performed by a paralegal if the compensation includes extraordinary services performed by a paralegal as described in subsection 2; and*
- (e) Other information considered to be relevant to a determination of entitlement.*

4. *An attorney for a personal representative may agree to perform extraordinary services on a contingency fee basis if:*

(a) There is a written agreement between the personal representative and the attorney that sets forth the manner in which the compensation is to be calculated and that is approved by the court after a hearing; and

(b) The court determines that the compensation provided in the agreement is just and reasonable and that the agreement will be to the advantage of the estate and is in the best interests of the persons interested in the estate.

5. *Notice of a hearing required by subsection 4 must be given for the period and in the manner provided in NRS 155.010.*

6. *As used in this section, "extraordinary services" include, without limitation:*

- (a) Sales or mortgages of real or personal property;*
- (b) Operating a decedent's business;*
- (c) Participating in litigation relating to the estate;*
- (d) Securing a loan to pay debts relating to the estate; and*
- (e) Preparing and filing income tax returns for the estate.*

Sec. 22. *If there are two or more attorneys for a personal representative, the compensation must be apportioned among the attorneys by the court according to the services actually rendered by each attorney unless otherwise provided in an agreement by the attorneys.*

Sec. 23. 1. *At any time after the expiration of the period for creditors of the estate to file their claims in a summary or full administration pursuant to NRS 145.060 or 147.040, as applicable, the personal representative or the attorney for the personal representative may file a petition with the court for an allowance*



upon the compensation of the attorney for the personal representative.

2. The clerk shall set the petition for hearing and the petitioner shall give notice of the petition to the personal representative if he is not the petitioner and to all known heirs in an intestacy proceeding and devisees in a will proceeding. The notice must be given for the period and in the manner provided in NRS 155.010. If a complete copy of the petition is not attached to the notice, the notice must include a statement of the amount of the compensation which the court will be requested to approve or allow and the manner in which the compensation was determined.

3. On the hearing, the court may enter an order allowing the portion of the compensation of the attorney for the personal representative for such services rendered up to that time as the court deems proper. The order must authorize the personal representative to charge against the estate the amount of compensation allowed by the court pursuant to this subsection.

Sec. 24. *1. At the time of the filing of the final account and of a petition for an order for final distribution of the estate, the personal representative or the attorney for the personal representative may file a petition with the court for an order fixing and allowing the compensation of the attorney for the personal representative for all services rendered in the estate proceeding.*

2. The request for compensation described in subsection 1 may be included in the final account or in the petition for an order for final distribution of the estate or may be made in a separate petition.

3. The clerk shall set the petition for hearing and the petitioner shall give notice of the petition to the personal representative if he is not the petitioner and to all known heirs in an intestacy proceeding and devisees in a will proceeding. The notice must be given for the period and in the manner provided in NRS 155.010. If a complete copy of the petition is not attached to the notice, the notice must include a statement of the amount of the compensation which the court will be requested to approve or allow and the manner in which the compensation was determined.

4. On the hearing, the court shall make an order fixing and allowing the compensation for all services rendered in the estate proceeding. The order must authorize the personal representative to pay the attorney out of the estate the amount of compensation allowed by the court pursuant to this subsection less any amount paid to the attorney out of the estate pursuant to section 23 of this act.



Sec. 25. *Except as otherwise provided by the donor or decedent in writing:*

1. Except as otherwise provided in subsection 3, for gifts that were made subject to the federal gift tax and in cases where the decedent's estate is insufficient to pay all federal gift taxes due at the time of the decedent's death, the unpaid federal gift tax must be borne on a pro rata basis by those receiving the transfers that triggered the tax in the proportion that the value of the property, interest or benefit of each such person bears to the total value of the property subject to the federal gift tax.

2. The federal generation-skipping transfer tax must be borne on a pro rata basis by those persons receiving the transfers that triggered the tax in the proportion that the value of the property, interest or benefit of each such person bears to the total value of the property subject to the federal generation-skipping transfer tax.

3. The application of exclusions, exemptions, deferrals or other provisions of the law available at the time of each transfer must be applied in chronological order to the transfers to which they relate.

4. To the extent issues remain unresolved after applying the principles set forth in subsections 1, 2 and 3, the provisions of NRS 150.290 to 150.380, inclusive:

(a) Must be applied to determine the allocation, apportionment and collection of federal transfer taxes other than the federal estate tax, including, without limitation, the federal gift tax and the federal generation-skipping transfer tax; and

(b) Must be applied to determine the procedures for the judicial determination of the apportionment of federal transfer taxes other than the federal estate tax, including, without limitation, the federal gift tax and the federal generation-skipping transfer tax.

Sec. 26. NRS 150.020 is hereby amended to read as follows:

150.020 1. If no compensation is provided by the will, or the personal representative renounces all claims thereto, fees must be allowed upon the whole amount of the estate which has been accounted for, less liens and encumbrances, as follows:

(a) For the first \$15,000, at the rate of 4 percent.

(b) For the next \$85,000, at the rate of 3 percent.

(c) For all above \$100,000, at the rate of 2 percent.

2. The same fees must be allowed to the personal representative if there is no will.



3. If there are two or more personal representatives, the compensation must be apportioned among them by the court according to the services actually rendered by each.

4. In addition to the fees described in subsection 1, the court may allow such fees as it deems just and reasonable if the fees authorized pursuant to subsection 1 are not sufficient to reasonably compensate the personal representative.

Sec. 27. NRS 150.060 is hereby amended to read as follows:

150.060 1. Attorneys for personal representatives are entitled to reasonable compensation for their services, to be paid out of the decedent's estate.

2. An attorney for a personal representative may be compensated based on:

(a) The applicable hourly rate of the attorney;

(b) The value of the estate accounted for by the personal representative;

(c) An agreement as set forth in subsection 4 of section 21 of this act; or

(d) Any other method preapproved by the court pursuant to a request in the initial petition for the appointment of the personal representative.

3. If the attorney is requesting compensation based on the hourly rate of the attorney, he may include, as part of that compensation for ordinary services, a charge for legal services or paralegal services performed by a person under his direction and supervision.

4. If the attorney is requesting compensation based on the value of the estate accounted for by the personal representative, the allowable compensation of the attorney for ordinary services must be determined as follows:

(a) For the first \$100,000, at the rate of 4 percent;

(b) For the next \$100,000, at the rate of 3 percent;

(c) For the next \$800,000, at the rate of 2 percent;

(d) For the next \$9,000,000, at the rate of 1 percent;

(e) For the next \$15,000,000, at the rate of .05 percent; and

(f) For all amounts above \$25,000,000, a reasonable amount to be determined by the court.

5. Before an attorney may receive compensation based on the value of the estate accounted for by the personal representative, the personal representative must sign a written agreement as required by subsection 8. The agreement must be prepared by the attorney and must include detailed information, concerning, without limitation:



- (a) The schedule of fees to be charged by the attorney;*
- (b) The manner in which compensation for extraordinary services may be charged by the attorney; and*
- (c) The fact that the court is required to approve the compensation of the attorney pursuant to subsection 8 before the personal representative pays any such compensation to the attorney.*

6. For the purposes of determining the compensation of an attorney pursuant to subsection 4, the value of the estate accounted for by the personal representative:

(a) Is the total amount of the appraisal of property in the inventory, plus:

- (1) The gains over the appraisal value on sales; and*
- (2) The receipts, less losses from the appraisal value on sales; and*

(b) Does not include encumbrances or other obligations on the property of the estate.

7. In addition to the compensation for ordinary services of an attorney set forth in this section, an attorney may also be entitled to receive compensation for extraordinary services as set forth in section 21 of this act.

8. The ~~amount~~ compensation of the attorney must be fixed by written agreement between the personal representative and the attorney, and is subject to approval by the court, after petition, notice and hearing as provided in ~~subsection 2-~~ this section. If the personal representative and the attorney fail to reach agreement, or if the attorney is also the personal representative, the amount must be determined and allowed by the court. The petition requesting approval of the compensation of the attorney must contain specific and detailed information supporting the entitlement to compensation, including:

(a) If the attorney is requesting compensation based upon the value of the estate accounted for by the personal representative, the attorney must provide the manner of calculating the compensation in the petition; and

(b) If the attorney is requesting compensation based on an hourly basis, or is requesting compensation for extraordinary services, the attorney must provide the following information to the court:

- (1) Reference to time and hours;*
- ~~(b)~~ *(2) The nature and extent of services rendered;*
- ~~(c)~~ *(3) Claimed ordinary and extraordinary services;*
- ~~(d)~~ *(4) The complexity of the work required; and*



~~[(e)]~~ (5) Other information considered to be relevant to a determination of entitlement.

~~[(2)]~~ 9. The clerk shall set the petition for hearing, and the petitioner shall give notice of the petition to the personal representative if he is not the petitioner and to all known heirs in an intestacy proceeding and devisees in a will proceeding. The notice must be given for the period and in the manner provided in NRS 155.010. If a complete copy of the petition is not attached to the notice, the notice must include a statement of the amount of the fee which the court will be requested to approve or allow.

~~[(3)]~~ 10. On similar petition, notice and hearing, the court may make an allowance to an attorney for services rendered up to a certain time during the proceedings.

~~[(4)]~~ *If the attorney is requesting compensation based upon the value of the estate as accounted for by the personal representative, the court may apportion the compensation as it deems appropriate given the amount of work remaining to close the estate.*

11. An heir or devisee may file objections to a petition filed pursuant to this section, and the objections must be considered at the hearing.

~~[(5)]~~ 12. Except as otherwise provided in this subsection, an attorney for minor, absent, unborn, incapacitated or nonresident heirs is entitled to compensation primarily out of the estate of the distributee so represented by him in those cases and to such extent as may be determined by the court. If the court finds that all or any part of the services performed by the attorney for the minor, absent, unborn, incapacitated or nonresident heirs was of value to the decedent's entire estate as such and not of value only to those heirs, the court shall order that all or part of the attorney's fee be paid to the attorney out of the money of the decedent's entire estate as a general administrative expense of the estate. The amount of these fees must be determined in the same manner as the other attorney's fees provided for in this section.

Sec. 28. NRS 153.031 is hereby amended to read as follows:

153.031 1. A trustee or beneficiary may petition the court regarding any aspect of the affairs of the trust, including:

- (a) Determining the existence of the trust;
- (b) Determining the construction of the trust instrument;
- (c) Determining the existence of an immunity, power, privilege, right or duty;
- (d) Determining the validity of a provision of the trust;



(e) Ascertaining beneficiaries and determining to whom property is to pass or be delivered upon final or partial termination of the trust, to the extent not provided in the trust instrument;

(f) Settling the accounts and reviewing the acts of the trustee, including the exercise of discretionary powers;

(g) Instructing the trustee;

(h) Compelling the trustee to report information about the trust or account, to the beneficiary;

(i) Granting powers to the trustee;

(j) Fixing or allowing payment of the trustee's compensation, or reviewing the reasonableness of his compensation;

(k) Appointing or removing a trustee;

(l) Accepting the resignation of a trustee;

(m) Compelling redress of a breach of the trust;

(n) Approving or directing the modification or termination of the trust;

(o) Approving or directing the combination or division of trusts;

(p) Amending or conforming the trust instrument in the manner required to qualify the estate of a decedent for the charitable estate tax deduction under federal law, including the addition of mandatory requirements for a charitable-remainder trust; ~~and~~

(q) Compelling compliance with the terms of the trust or other applicable law ~~and~~; and

(r) Permitting the division or allocation of the aggregate value of community property assets in a manner other than on a pro rata basis.

2. A petition under this section must state the grounds of the petition and the name and address of each interested person, including the Attorney General if the petition relates to a charitable trust, and the relief sought by the petition. Except as otherwise provided in this chapter, the clerk shall set the petition for hearing and the petitioner shall give notice for the period and in the manner provided in NRS 155.010. The court may order such further notice to be given as may be proper.

3. If the court grants any relief to the petitioner, the court may, in its discretion, order any or all of the following additional relief if the court determines that such additional relief is appropriate to redress or avoid an injustice:

(a) Order a reduction in the trustee's compensation.

(b) Order the trustee to pay to the petitioner or any other party all reasonable costs incurred by the party to adjudicate the affairs of the trust pursuant to this section, including, without limitation, reasonable attorney's fees. The trustee may not be held personally



liable for the payment of such costs unless the court determines that the trustee was negligent in the performance of or breached his fiduciary duties.

Sec. 29. NRS 155.190 is hereby amended to read as follows:

155.190 ~~{1-}~~

1. Except as otherwise provided in subsection 2, in addition to any order from which an appeal is expressly permitted by this title, an appeal may be taken to the Supreme Court within 30 days after the notice of entry of an order:

~~{1-}~~ ***(a)*** Granting or revoking letters testamentary or letters of administration.

~~{2-}~~ ***(b)*** Admitting a will to probate or revoking the probate thereof.

~~{3-}~~ ***(c)*** Setting aside an estate claimed not to exceed ~~[\$50,000]~~ ***\$100,000*** in value.

~~{4-}~~ ***(d)*** Setting apart property as a homestead, or claimed to be exempt from execution.

~~{5-}~~ ***(e)*** Granting or modifying a family allowance.

~~{6-}~~ ***(f)*** Directing or authorizing the sale or conveyance or confirming the sale of property.

~~{7-}~~ ***(g)*** Settling an account of a personal representative or trustee.

~~{8-}~~ ***(h)*** Instructing or appointing a trustee.

~~{9-}~~ ***(i)*** Instructing or directing a personal representative.

~~{10-}~~ ***(j)*** Directing or allowing the payment of a debt, claim, devise or attorney's fee.

~~{11-}~~ ***(k)*** Determining heirship or the persons to whom distribution must be made or trust property must pass.

~~{12-}~~ ***(l)*** Distributing property.

~~{13-}~~ ***(m)*** Refusing to make any order mentioned in this section .
~~{or}~~

(n) Making any decision wherein the amount in controversy equals or exceeds, exclusive of costs, ~~[\$5,000-]~~ ***\$10,000.***

~~{14-}~~ ***(o)*** Granting or denying a motion to enforce the liability of a surety filed pursuant to NRS 142.035.

~~{15-}~~ ***(p)*** Granting an order for conveyance or transfer pursuant to NRS 148.410.

2. If a party timely files in the district court any of the following motions under the Nevada Rules of Civil Procedure, the time to file a notice of appeal pursuant to this section runs for all parties from entry of an order disposing of the last such remaining motion, and the notice of appeal must be filed not later than 30



days after the date of service of written notice of entry of that order:

- (a) A motion for judgment under Rule 50(b);*
- (b) A motion under Rule 52(b) to amend or make additional findings of fact;*
- (c) A motion under Rule 59 to alter or amend the judgment; or*
- (d) A motion for a new trial under Rule 59.*

Sec. 30. NRS 30.040 is hereby amended to read as follows:

30.040 **1.** Any person interested under a deed, ~~[will,]~~ written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

2. A maker or legal representative of a maker of a will, trust or other writings constituting a testamentary instrument may have determined any question of construction or validity arising under the instrument and obtain a declaration of rights, status or other legal relations thereunder. Any action for declaratory relief under this subsection may only be made in a proceeding commenced pursuant to the provisions of title 12 or 13 of NRS, as appropriate.

Sec. 31. NRS 30.060 is hereby amended to read as follows:

30.060 **1.** Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, lunatic or insolvent, may have a declaration of rights or legal relations in respect thereto:

~~[1.]~~ **(a)** To ascertain any class of creditors, devisees, legatees, heirs, next of kin or others; ~~[or]~~

~~—2.]~~ **(b)** To direct the executors, administrators or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

~~[3.]~~ **(c)** To determine any question arising in the administration of the estate or trust, including questions of construction of wills , *trusts* and other writings.

2. Any action for declaratory relief under this section may only be made in a proceeding commenced pursuant to the provisions of title 12 or 13 of NRS, as appropriate.

Sec. 32. NRS 123.220 is hereby amended to read as follows:

123.220 All property, other than that stated in NRS 123.130, acquired after marriage by either husband or wife, or both, is community property unless otherwise provided by:



1. An agreement in writing between the spouses . ~~[, which is effective only as between them.]~~

2. A decree of separate maintenance issued by a court of competent jurisdiction.

3. NRS 123.190.

4. A decree issued or agreement in writing entered pursuant to NRS 123.259.

Sec. 33. Chapter 163 of NRS is hereby amended by adding thereto the provisions set forth as sections 34 and 35 of this act.

Sec. 34. (Deleted by amendment.)

Sec. 35. *1. Except as otherwise provided in subsections 3 and 4, a no-contest clause in a trust must be enforced by the court.*

2. A no-contest clause must be construed to carry out the settlor's intent. Except to the extent the no-contest clause in the trust is vague or ambiguous, extrinsic evidence is not admissible to establish the settlor's intent concerning the no-contest clause. The provisions of this subsection do not prohibit such evidence from being admitted for any other purpose authorized by law.

3. Notwithstanding any provision to the contrary in the trust, a beneficiary's share must not be reduced or eliminated if the beneficiary seeks only to:

(a) Enforce the terms of the trust or any other trust-related instrument;

(b) Enforce the beneficiary's legal rights related to the trust or any trust-related instrument; or

(c) Obtain a court ruling with respect to the construction or legal effect of the trust or any other trust-related instrument.

4. Notwithstanding any provision to the contrary in the trust, a beneficiary's share must not be reduced or eliminated under a no-contest clause in a trust because the beneficiary institutes legal action seeking to invalidate a trust or any other trust-related instrument if the legal action is instituted in good faith and based on probable cause that would have led a reasonable person, properly informed and advised, to conclude that there was a substantial likelihood that the trust or other trust-related instrument was invalid.

5. As used in this section:

(a) "No-contest clause" means one or more provisions in a trust that express a directive to reduce or eliminate the share allocated to a beneficiary or to reduce or eliminate the distributions to be made to a beneficiary if the beneficiary takes action to frustrate or defeat the settlor's intent as expressed in the trust or in a trust-related instrument.



(b) “Trust” means the original trust instrument and each amendment made pursuant to the terms of the original trust instrument.

(c) “Trust-related instrument” means any document purporting to transfer property to or from the trust or any document made pursuant to the terms of the trust purporting to direct the distribution of trust assets or to affect the management of trust assets, including, without limitation, documents that attempt to exercise a power of appointment.

