NEVADA PROBATE STATUTES

Bulletin No. 113

LEGISLATIVE COMMISSION

OF THE

LEGISLATIVE COUNSEL BUREAU

STATE OF NEVADA

September 1974

Table of Contents

* * *

LEGISLATIVE COMMISSION

Carl F. Dodge
James I. Gibson
Warren L. Monroe
William J. Raggio
C. Coe Swobe
Lee E. Walker

Keith Ashworth
Joseph E. Dini, Jr.
Lawrence E. Jacobsen
Zelvin D. Lowman
Donald R. Mello
Roy L. Torvinen

Senate Concurrent Resolution No. 11—Senator Monroe

FILE NUMBER 122

SENATE CONCURRENT RESOLUTION—Directing the legislative commission to conduct a study of the probate and related provisions in the statutes of the State of Nevada, to make recommendations and to report to the next regular session of the legislature.

WHEREAS, It has become apparent that the increase in population and the mobility of the population in our society necessitates a serious consideration of the adequacy of the probate and related provisions in the statutes of the State of Nevada; and

WHEREAS, Although these provisions were adequate in a less mobile society, such laws tend to decrease in effectiveness and are insufficient to deal with problems encountered in a shifting society, many of which result from conflicting provisions in other states' statutes; and

WHEREAS, There is a trend toward modernizing these related codes to permit a more effective and efficient administration of the laws; now, therefore, be it

Resolved by the Senate of the State of Nevada, the Assembly concurring, That the legislative commission is hereby directed:

1. To make a thorough study of the probate and related provisions in the statutes of the State of Nevada and other states, including a study of the Uniform Probate Code, with a view to modernizing and improving the existing probate and related provisions in the statutes of the State of Nevada; and

2. To report the results of such directed study to the 58th session of the legislature, together with recommendations for any necessary and appropriate legislation.

19 73

Assembly Concurrent Resolution No. 19—Messrs. Fry, Torvinen, Howard, Getto, Dini, Young, Jacobsen and Capurro

FILE NUMBER...87....

ASSEMBLY CONCURRENT RESOLUTION—Directing the legislative commission to conduct a study of the probate and related provisions in the statutes of the State of Nevada, to make recommendations and to report to the next regular session of the legislature.

WHEREAS, It has become apparent that the increase in population and the mobility of the population in our society necessitates a serious consideration of the adequacy of the probate and related provisions in the statutes of the State of Nevada; and

WHEREAS, Although these provisions were adequate in a less mobile society, such laws tend to decrease in effectiveness and are insufficient to deal with problems encountered in a shifting society, many of which result from conflicting provisions in other states' statutes; and

WHEREAS, There is a trend toward modernizing these related codes to permit a more effective and efficient administration of the laws; now, therefore, be it

Resolved by the Assembly of the State of Nevada, the Senate concurring, That the legislative commission is hereby directed:

1. To make a thorough study of the probate and related provisions in the statutes of the State of Nevada and other states, including a study of the Uniform Probate Code, with a view to modernizing and improving the existing probate and related provisions in the statutes of the State of Nevada; and

2. To report the results of such directed study to the 58th session of the legislature, together with recommendations for any necessary and appropriate legislation.

1973

REPORT OF THE LEGISLATIVE COMMISSION

TO THE MEMBERS OF THE 58th SESSION OF THE NEVADA LEGISLATURE:

This report is submitted in compliance with Senate Concurrent Resolution No. 11 and Assembly Concurrent Resolution No. 19 of the 57th session of the Nevada Legislature, which directed the Legislative Commission to conduct a study of the probate and related provisions in the Statutes of Nevada.

The Legislative Commission appointed a subcommittee to make the study and recommend appropriate legislation to the next session of the legislature. Assemblyman Keith Ashworth was designated chairman of the subcommittee and the following legislators were named members: Senators Warren L. Monroe, Chic Hecht and Melvin D. Close, Jr., and Assemblyman Virgil M. Getto, Leslie Mack Fry and Keith C. Hayes.

The Legislative Commission approves the subcommittee's report with its suggested legislation and transmits the report to the members of the 1975 legislature for their consideration and appropriate action.

Respectfully submitted,

Legislative Commission
Legislative Counsel Bureau
State of Nevada

September 1974

SUMMARY OF RECOMMENDATIONS

The Legislative Commission's Subcommittee for Study of the Probate and Related Provisions in the Statutes of Nevada summarizes its recommendations as follows:

1. Changes should be made in a number of areas of the Nevada probate laws to provide more efficient and expeditious procedures for settling decedents' estates.

2. Legislation is being recommended which involves enactment of two new sections and amendments to 35 sections of NRS.

3. Generally, the present body of Nevada laws on probate appears to be satisfactory to Nevadans; a course of action aimed toward refining these laws is believed preferable to one directing the immediate repeal of the entire body and substitution of unfamiliar laws.

4. Ceilings should be raised for the handling of estates under the present time-saving procedures; that is, in summary administration from $8,000 to $60,000, in setting aside without administration from $5,000 to $10,000 and in obtaining property by affidavit from $1,000 to $2,000.

5. An executor or administrator should be required to report and explain any excessive delay in his administration, and he should be subject to sanctions if his delay is unreasonable.

6. The authority of the executor or administrator with regard to investing funds, leasing property and paying small debts should be increased.

7. The method of compensating the executor or administrator should be modernized and the scale of commissions refined.

8. The statutory provisions on compensating attorneys for executors or administrators should encourage private agreements on the amount of fees and should establish hearings at which the court would approve or fix the amounts after hearing any objections raised by persons interested in the estates.

9. Various requirements for giving notices should be updated, clarified and standardized.

10. Changes should be made to improve various procedures, as in proof of wills where subscribing witnesses are unavailable, in substitution of executors, in accounting by special administrators and in assigning priority for letters of administration.

1. Introduction

During the 1973 session of the Nevada legislature the senate and assembly adopted identical concurrent resolutions (SCR 11 and ACR 19) which directed the Legislative Commission to make a thorough study of the probate and related provisions in the statutes of Nevada and other states, including a study of the Uniform Probate Code, with a view to modernizing and improving the existing Nevada laws on the subject. These resolutions further directed the Legislative Commission to report the results of the study to the 58th session of the legislature, together with recommendations for any necessary and appropriate legislation.

Pursuant to these resolutions, the Legislative Commission on July 5, 1973, appointed the following subcommittee to prosecute such a study:

Assemblyman Keith Ashworth, Chairman
Senator Warren L. Monroe
Senator Chic Hecht
Senator Melvin D. Close, Jr.
Assemblyman Virgil M. Getto
Assemblyman Leslie Mack Fry
Assemblyman Keith C. Hayes

Senator Monroe was elected by the subcommittee to serve as its Vice Chairman.

On December 4, 1973, the Governor of the State of Nevada, The Honorable Mike O'Callaghan, appointed Assemblyman Hayes to a judgeship in the Eighth Judicial District Court in and for Clark County, the office to become effective on January 7, 1974. Mr. Hayes then resigned as state assemblyman, discontinuing his work with the subcommittee. No substitute was appointed to fill his position as a subcommittee member.

2. Methodology

The study began with the task of compiling and reviewing all the provisions which deal with probate and closely related matters in the Nevada Revised Statutes. The core of the subject matter lies in Title 12 on Wills and Estates of Deceased

Persons. Much related law is contained in Title 13 on Guardianships, Conservatorships and Trusts. Titles 12 and 13 form part of the civil code of Nevada. Other important related provisions are distributed throughout 16 additional chapters of the NRS. More than 700 pages of statutes are involved.

The term "probate" originally referred to the legal procedure used for proving that a document asserted to be the decedent's last will and testament was indeed genuine and valid. The term has since acquired an additional and more expanded meaning. It now often refers generally to all methods by which a decedent's property may be transferred to his survivors. In the latter sense "probate" embraces such matters as the administration of estates even where no will exists to be proved; the establishment of ownership rights even without any administration, as in joint tenancies; and the handling of living as well as testamentary trusts.

The two legislative resolutions generating the study directed that its coverage include the probate laws of Nevada's sister states and also the Uniform Probate Code. Examination has therefore been made of a selection of documents fulfilling this scope, particularly the following:

- Idaho and Arizona enacted versions of the UPC
- Analyses comparing the UPC with the Statutes of Colorado, Nebraska, Illinois and Utah
- Official Text of the UPC and Comments
- Law review articles on the UPC, including Professor Richard Wellman's "Blueprint for Reform in the '70's"
- Report of the State Bar of California, "The Uniform Probate Code, Analysis and Critique."

The subcommittee sent a staff representative to attend the Third National Conference on the Uniform Probate Code held in Kansas City under the sponsorship of the Joint Committee of the American Law Institute, the American Bar Association and the Joint Editorial Board of the Uniform Probate Code to obtain information on the UPC from persons familiar with its development and present status.

The subcommittee has especially desired to have its study reflect the probate thinking of the various interested citizens and groups in Nevada. A statewide series of public hearings was therefore conducted to provide a means for these individuals and groups to participate in the study. Advance notices of these hearings were given in the press and often individually to interested persons. Persons and groups having special knowledge in the field were extended invitations to address the subcommittee. Following each prepared address, public discussion took place. There were five hearings, two in Las Vegas, two in Carson City and one in Reno. A sixth and final meeting was held in Carson City for roundtable deliberations on specific legislative proposals. Throughout the study the subcommittee kept a major focus of its attention on finding ways to reduce the time and cost of settling decedents' estates.

3. Support for the Uniform Probate Code

The subcommittee heard testimony by Professor Richard W. Effland of Arizona State University and Senator Edith Miller Klein of Boise, Idaho, both of whom favored the Uniform Probate Code as a vehicle for modernizing state probate laws.

The Uniform Probate Code is a suggested pattern of law developed by the National Conference of Commissioners on Uniform State Laws. Nevada is represented by three commissioners on the National Conference, which is designated by law as a joint governmental agency of this state (chapter 219 of NRS). The Uniform Probate Code has received the endorsement of the American Bar Association. The Chief Justice of the United States, Warren E. Burger, has urged lawyers to support the UPC (U.S. Law Week, June 4, 1974).

Sometimes portrayed as an attempt to simplify probate procedures, the Uniform Probate Code (or UPC) is itself a rather complex body of rules. The official text, including copious official commentaries, extends to 278 pages in the printing by West Publishing Company.

Professor Effland was one of the reporters (or drafters) for the UPC. Before taking up his present position as a law

professor with Arizona State University at Tempe, Arizona, he was a member of the Wisconsin University law faculty for 21 years. He described the development of the UPC as part of the consumer revolt. Speaking of its background, he said that there had been a series of articles, some written by informed people, some by uninformed people, expressing public dissatisfaction with the way the probate system works in many states. Meanwhile lawyers themselves had anticipated the need for modernizing state laws on decedents' estates and guardianships. A national group of lawyers and their advisors proceeded to expend 5 years of effort, preparing five successive drafts, to create the UPC.

Professor Effland noted that the UPC has been enacted in Idaho, Alaska, Arizona, North Dakota and Colorado. (Since his address, it has been enacted in Montana, South Dakota and Nebraska.) Adoptions of parts of the UPC have occurred in Maryland, Oregon, Minnesota and Wisconsin. The UPC is under legislative consideration in about half of the remaining states.

Professor Effland briefly summarized the eight articles of the UPC for the subcommittee. He concluded that the UPC provides a simple estate plan for the person who dies without a will and makes it possible to handle estates without court appearances if there are no disputes. Numerous provisions in the UPC would benefit members of the public and facilitate the work of the courts. The UPC offers an ideal basis on which Nevada could revise its probate laws. The highlights of Professor Effland's address appear as Exhibit A.

The subcommittee also heard testimony by Senator Edith Miller Klein, a legislator and lawyer from Boise, Idaho. She was the Chairman of the Judiciary Committee of the Idaho Senate and was instrumental in steering the UPC through the Idaho legislature to enactment.

Senator Klein depicted the situation in Idaho before passage of the UPC as one where frequent amendments were being made to the former probate laws to alleviate particular problems. The result was that the probate laws had grown into a patchwork, containing unnecessary protective devices, omissions and inconsistencies. By 1969 Idaho was ripe for a wholesale overhaul of its probate laws, and in 1971 the legislature passed the UPC.

In her role as practicing lawyer, Senator Klein was enthusiastic over the actual operation of the UPC in Idaho. She said that experience with the UPC shows that it permits a great saving of time in probate matters, not only for lawyers but also for the courts. The UPC gives protection when needed, but does not any longer impose formal procedures that really in the past amounted to only a facade of protection.

She stated that the UPC combines what its sponsors believe are the best features to be found in the various state probate laws and that the UPC has infinite flexibility to dispose of any problem in the probate areas, one which is noted for its complexities.

A resume of Senator Klein's testimony appears as Exhibit B.

4. Position of State Bar of Nevada

The Chairman of the Probate and Trust Committee of the State Bar of Nevada, Mr. George K. Folsom of Reno, testified that his committee was unanimous in recommending against any entire adoption of the UPC. He said that such adoption would depart from many longstanding probate rules found wholly satisfactory to Nevadans.

The present law fixes responsibility and provides for the stabilizing influence of the courts. He urged that, instead of UPC adoption, refinements and improvements be made in the existing Nevada probate laws. He furnished the subcommittee a written memorandum setting forth this position. The first portion of the memorandum was a statement by the State Bar's President, Mr. George M. Dickerson of Las Vegas, on means for coping with two problem areas, delay in closing estates and determination of attorneys' fees. He suggested legislative changes be made in these areas. Mr. Folsom's portion of the memorandum contained numerous other legislative suggestions. The combined memorandum is attached as Exhibit C.

Later Mr. Dickerson appeared personally before the subcommittee to warn against adoption of the UPC and advise that it may not be the panacea for all probate ills. He compared a number of the UPC provisions with corresponding NRS

provisions, concluding in many instances that the NRS provision was much superior and the UPC provision would be wrong in principle or detrimental in effect. While he pointed to a few UPC provisions that could be utilized in Nevada law, he opposed any wholesale modification of the existing law. He acknowledged that it has some deficiencies, and he pledged the efforts of the State Bar's Probate and Trust Committee in developing corrective amendments.

Attorney Charles W. Johnson of Las Vegas, who had developed the comparative outline used by Mr. Dickerson, declared that the UPC was an overreaction to abuses that had occurred in the eastern states and that the UPC lacked suitability for the conditions in Nevada.

Subsequently the State Bar of Nevada submitted a group of specific legislative recommendations. An accompanying written report by the State Bar's 17-man Probate and Trust Committee concluded that the existing Nevada probate statutes should be continued in effect. The report said that these statutes are basically sound and provide well-balanced safeguards for all persons interested in decedents' estates. The specific recommendations had been approved by the State Bar's Board of Governors under the procedure required by Rule No. 88 of the Nevada Supreme Court.

Mr. Dickerson appeared before the subcommittee a second time to explain these proposals in detail. They included new procedures for reporting unreasonable delays in administration and for determining attorneys' fees. Also included were proposals to raise the maximum amounts for (a) summary administration, (b) setting aside estates without administration and (c) transferring estate property by affidavit.

5. Advice by Probate Commissioner of the district court in Clark County

The Probate Commissioner and Court Administrator for the Eighth Judicial District Court, Judge Russell S. Waite of Las Vegas, testified that he also opposed adoption of the UPC. He said he agreed with the position taken by the State Bar President.

Judge Waite has had an unusually large amount of experience in the probate field. He has examined 27,000 probate matters in California and 9,317 in Nevada. He is a retired superior court judge from Riverside County, California, and is presently a member of the Nevada Bar.

Judge Waite identified some of the problem areas in the existing Nevada probate law. He later furnished the subcommittee a set of written proposals he had developed to improve certain noticing provisions, to correct technical problems and generally to aid the administration of estates under the NRS. The testimony of Judge Waite and portions of the discussion which followed it are attached as Exhibit D.

6. Position of Nevada Bankers Association

The Chairman of the Trust Division of the Nevada Bankers Association, Mr. C. Don Brown of Las Vegas, declared to the subcommittee that his association recommends against adoption of the UPC. Among other reasons for this stand, he said that the UPC contains many undesirable aspects, lacks fundamental safeguards for creditors and heirs, would increase the number of escheats to the state, would allow undesirable application of out-of-state laws, would cause repeal of the entire body of existing Nevada probate law and would not be any general improvement over the existing law.

He assured the subcommittee that the Nevada probate law is not generally antiquated or outmoded and that, on the contrary, it does provide a workable statutory framework for the safe and speedy settlement of estates. He said that the principal causes of delay in closing estates arise, not from any deficiency in the Nevada framework, but from outside causes, which are:

(a) Litigation over meaning of wills, determination of heirs and proof of creditors' claims.

(b) Problems involved in the liquidation of estates.

(c) Federal income and estate taxation.

He stated that changes in Nevada's probate law would not cure these principal causes of delay in settling estates. A copy of his address is attached as Exhibit E.

Later the Nevada Bankers Association submitted a number of written legislative proposals, and Mr. Brown appeared again before the subcommittee to explain many detailed aspects of these proposals. He was assisted by the succeeding Chairman of the Association's Trust Division, Mr. Theodore C. Nigro of Reno. The proposals included ones for substantially raising the ceiling amounts in summary administration and setting aside estates without administration. The other proposals involved various legislative changes formulated to promote the efficiency of the Nevada probate system.

7. Participation of other interested groups

Upon invitation of the subcommittee a spokesman for the Nevada Society of Certified Public Accountants, Mr. Robert Somps of Reno, appeared before the subcommittee and briefly discussed accounting procedures as they are affected by the existing probate laws. He stated that, with some qualifications, his society regarded the existing probate laws as adequate for accounting purposes. His written statement is appended as Exhibit F.

The State Chairman of the Joint Legislative Committee of the American Association of Retired Persons and National Retired Teachers Association, Mr. Donald K. Perry of Carson City, gave testimony urging the subcommittee to weigh carefully the needs of average citizens. He said that these associations represent 19,000 senior citizens living in Nevada.

He generally attributed advantages to the UPC but stopped short of recommending any repeal of the Nevada probate statutes to make way for a substitution of the UPC. He said, however, that his associations believe the UPC would enable persons of ordinary means to pass on their property at death with fewer delays and less cost. A copy of his address is attached as Exhibit G.

Other representatives of the two associations as well as the Nevada Organization of Relocatable and Mobile Home Owners

participated in the discussions. These organizations did not submit any specific legislative proposals.

8. Subcommittee's consideration of testimony and proposals

The subcommittee has carefully reviewed all the testimony presented in the course of its study and has given full consideration to the written legislative proposals submitted by interested persons and groups. The study has demonstrated the need for improvements in a number of probate areas.

The subcommittee has come to the conclusion that it is feasible to make such improvements in the existing Nevada probate laws and it is not necessary to incur the risk of making extreme innovations or repealing the entire body of present law. Accordingly, the subcommittee is recommending legislation which will accomplish the appropriate changes. These changes involve enactment of two new statutory sections and amendment of 35 existing sections.

The recommended legislation is attached as Exhibit H. The subcommittee believes that enactment of these changes to the Nevada probate law will lead towards a fairer, prompter and more efficient administration of decedents' estates.

9. Discussion of the subcommittee's recommendations

The following discussion sets forth the specific nature and purpose of the subcommittee's recommendations. For convenience of discussion, they are classified into five general groupings. The discussion does not attempt to cover every detailed change to be found in Exhibit H but seeks to explain the principal changes. The affected sections of the NRS are listed at the foot of each part of the discussion.

(a) Recommendations which raise ceilings of timesaving procedures

Summary Administration

Relatively small and simple estates should be administered with a minimum of legal formality and delay. This is possible under summary administration, a

procedure already in the Nevada lawbooks. But the existing procedure may be used only if the estate has a value of $8,000 or below.

Under economic conditions today, many estates which once would have been thought large are now regarded as comparatively small. A reason for increasing the ceiling is to offset the inflationary trend by setting a currently realistic figure. Moreover, public sentiment favors more expeditious and less costly methods of settling estates. Summary administration constitutes one such method, however its full potential is not realized. The method should be made available for most ordinary estates. A substantial increase in the ceiling would broadly extend the availability of the method and its advantages.

The subcommittee therefore recommends that the ceiling be raised to $60,000. This level marks the threshold for federal estate taxation. Above this level, general administration should be required because of the taxes and other complications likely to be present in estates of such size.

The eligibility of an estate for summary administration now depends on its gross value. The subcommittee considered changing to net value as the test. Net value would be a more accurate measure of the successors' interest. The subcommittee decided to retain gross value, however, because this value might be more readily found prior to the commencement of administration, when a test is needed to ascertain whether summary administration is proper.

At present, the court has the discretion to decide whether or not any inventory and appraisal should be filed in summary administration. The subcommittee recommends that the filing of an inventory and appraisal be mandatory because of the size of estates that may be involved in the procedure and to make the data available to all persons interested in the estate.

The existing law gives the court discretion to deny summary administration, even where the estate is valued below the ceiling. The feature is retained so that the court will continue to have the flexibility to require estates of lower value but higher complexity to be handled under general administration.
NRS 145.030, 145.040, 145.050, 145.060 and 145.090

Setting Aside Without Administration

For similar reasons, the subcommittee recommends raising from $5,000 to $10,000 the ceiling for estates that, under present law, the court either must set aside without administration to the spouse or minor children or may so set aside to any other entitled claimant. The subcommittee has decided to keep the concept of gross value as the basis of the estate's eligibility in this procedure for consistency with summary administration. The phrase "total value" should be deleted in favor of "gross value." The subcommittee has made no change in the existing $5,000 limit on the amount of a minor child's funds that are allowed to be distributed to its parent without prior bonding or creation of a general guardianship.
NRS 145.100 and 146.070

Obtaining Property by Affidavit

The subcommittee also recommends an increase from $1,000 to $2,000 in the maximum value of a decedent's personal property which certain related persons may obtain from the custodian merely by presenting him an affidavit showing their right to succeed to the property. The proposed increase is not of the same magnitude as for the other timesaving procedures since less protection exists in transfers by affidavit.
NRS 146.080

(b) Recommendations which add to duties or powers of executor and administrator

Duty to Report Delay

The subcommittee believes the purpose of avoiding unreasonable delays in administration will be furthered by adding a new section to deal expressly with the problem. The new section would require the executor or administrator to use reasonable diligence in pursuing his administration. A reporting system would be established to make the court aware of delays and empower it to impose any orders or sanctions necessary to hasten the closing.

Specifically, if the executor or administrator has not closed the estate within a span of 6 months following his appointment, and where the estate does not involve a federal estate tax, he must file a report explaining to the court why the estate is not closed and must appear at a hearing on the question. Such a report is not required until 12 months if the estate does involve a federal estate tax. No absolute limit of time for closing estates is recommended, since estates have different degrees of complexity and compelling reasons may exist for keeping particular estates open. The new section would create civil liability on the part of the executor or administrator for any losses or damage caused by his neglect.

Power to Invest

The subcommittee recommends adding another new section which would authorize executors or administrators to make limited investments of estate funds without the necessity of obtaining court approval. The new section designates certain categories of permissible investments: securities issued by the United States Government, prime commercial paper, and savings accounts in banks and savings and loan institutions.

Chapter 143 of NRS on the Powers and Duties of Executors and Administrators now authorizes them to put funds into certain investments insured by the Federal Housing Administrator and in farm loan bonds, obligations secured by federal land banks and banks for cooperatives. A few other provisions on the subject are to be found elsewhere in the NRS. See NRS 99.070(2), 315.100, 315.760 and 673.360. The new section would place information as to the investment authority in chapter 143, a central point of reference. Authorizing limited deposits and investments would save the time of the executor or administrator by dispensing with any need, in such instances, for petition, notice, hearing and court approval.

The UPC empowers the personal representative (acting reasonably for the benefit of interested persons) to invest the estate funds as follows: When not needed to meet debts and expenses currently payable and not immediately distributable, he may deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally (Section 3-715(5)).

Power to Lease

The subcommittee recommends giving the executor or administrator the authority to lease real property of the estate up to 1 year regardless of the amount of rent. At present, the authority extends only where the rent is $100 per month or below. NRS 149.100

Power to Pay Small Debts

The subcommittee also recommends giving the executor or administrator the authority to pay small debts of the decedent (amounting to $100 or less each, with a maximum aggregate of $1,000) without prior court approval if claims on these debts have been properly

filed, the debts are justly due and the estate is solvent. The executor or administrator would be held personally liable if the conditions are not met and any claimants become damaged as a result of such payments.

The subcommittee also recommends clarifying the authority of the executor or administrator so that he may pay certain priority expenses, such as those of the funeral and last illness, upon submission of sworn statements and without the formality of creditors' claims.
NRS 150.230

(c) Recommendations which deal with compensation of executor or administrator and his attorney

Commissions of Executor or Administrator

Under present Nevada law an executor or administrator receives compensation for his services according to a statutory table of commissions (unless he accepts provisions of a will fixing his compensation). The table is based on percentages of the "whole" (or gross) amount of the personal estate. For his services respecting any real property in the estate, the court may allow him additional compensation if such allowance appears "just and reasonable."

The Uniform Probate Code simply provides that a personal representative is entitled to reasonable compensation for his services (section 3-719). On petition and notice, any interested person may have the court review the reasonableness of the compensation that the personal representative has set for his own services (section 3-721).

The subcommittee proposes to amend the present Nevada law on the commissions of the executor or administrator by eliminating the distinction between personal and real property. The table of commissions would be made applicable to the decedent's entire estate, that is, to all property it comprises whether classified

personal or real. The amendment would then delete the existing provision authorizing the court to allow additional compensation for ordinary services regarding the real property.

The existing table of commissions progresses through three levels. The table causes a higher percentage to be drawn from smaller estates and a lower percentage from larger estates. The progression was designed to take account, apparently, of the irreducible minimum of time involved in administering even smaller estates and the probability that larger estates will yield adequate compensation for the work involved, even at lower percentages.

The subcommittee proposes to change the table to six levels and make the progression sharper. As compared with the existing table, the new table would have slightly higher percentages at the lower levels and slightly lower percentages at the higher levels. The new table is believed to be a refinement constituting a fair method of compensation, both from the standpoint of the executor or administrator and the successors.
NRS 150.020

Fees of Attorneys

The existing Nevada law provides that attorneys for executors or administrators shall be entitled to "a reasonable compensation" to be allowed by the court and paid out of the estate.

The UPC authorizes the personal representative to employ an attorney for advice or assistance (section 3-715-21), entitles the personal representative to receive from the estate his expenses of litigation including attorney's fees (section 3-720); and empowers the court to review the propriety of the attorney's employment and the reasonableness of his fees when review is requested by an interested person on notice to all other interested persons (section 3-721).

The subcommittee proposes amending the Nevada law to provide for the attorney's fees to be fixed by agreement between the executor or administrator and his attorney, subject to approval by the court. Aside from probate cases, the method of private agreement is used to determine attorneys' fees generally. The proposal is, further, that if no private agreement can be reached between the executor or administrator and his attorney, the court will fix the amount. Hence, in either case a court hearing will be held on the fees.

Prior notice of the hearing will be given to all interested persons. The notice must include information of the amount of fees to be requested. The hearing will provide an opportunity for interested persons to present any objections to the fees.

Under the UPC, no hearing on fees occurs unless an interested person petitions or moves for it. The subcommittee's proposal, in effect, makes a hearing on fees mandatory.

The subcommittee has considered alternatives. The possible use of a system of fixed hourly fees was rejected because the system would overcompensate a slow, inexperienced attorney and undercompensate a fast, experienced attorney. The possible use of a commission table for attorneys was rejected because percentages are arbitrary and lack any relation to the attorney's variable services. It appears better that he be paid the actual value of the services, as established by private agreement or court determination.
NRS 150.060

(d) Recommendations which improve certain noticing provisions

Notice of Hearing on Probate and Application for Letters

The subcommittee recommends that the same type of notice of hearing be required in the case of petitions

for probate and issuance of letters as in the case of petitions for issuance of letters of administration. In the one case the decedent has left a will and in the other he has not. The sanctity of the will does not appear to be a substantial reason for maintaining a dual system of notices, in which a stricter kind of noticing is required for testate estates.

The distinction exists in the present Nevada laws. Publication in a newspaper is prescribed for a testate estate but mere posting, for an intestate one. Registered or certified mailing is prescribed for a testate estate but mere regular mail, for an intestate one.

The subcommittee has reviewed the different methods of noticing, with the object of selecting those most suitable for use in establishing a uniform pattern. The qualities of the methods, good or bad, are evaluated as follows.

The superior method of giving notice to an intended recipient is by handing the notice to him or by sending it by mail addressed to him. If mail is used, the notice should be registered or certified to insure delivery. This method assumes that the identity and whereabouts of the intended recipient are known.

Publication in a newspaper is a reasonable auxiliary method to attempt communication with an intended recipient whose identity or whereabouts is not known. In theory, it would be best to publish in the area where the recipient is most likely to be. For practical reasons, however, the publication should be required in a newspaper printed in the county where the proceedings are pending, if there is such a newspaper; if not, then in one having a general circulation in the county.

Posting on a bulletin board of a public building is a very poor way of communicating notice today. The method has become only a formality, unlikely to give notice to anyone. Posting should be eliminated wherever it is feasible to prescribe some better method of giving notice.

To standardize the noticing provisions for the original testate and intestate hearings, the subcommittee recommends in both cases the use of registered or certified mail plus newspaper publication. The testate publishing rules (as to the number of issues and period of publication) should be applied to both.

Furthermore, the law should always be clear as to whether the responsibility to give the notices rests with the court clerk or the petitioner. Noticing statutes in the NRS place the burden variously on the one or the other or equivocate. The proper solution seems to be to require the petitioner to cause the proper notices to be given. The petitioner is the party in interest, and he should be responsible for initiating the notices and paying their costs. Such clarifications have been made in the proposed changes to the testate and intestate noticing provisions. NRS 136.100, 136.110 and 139.100

Notices on Borrowing, Conveying and Leasing

The existing laws require that a notice of hearing be published in a newspaper before the court may grant an executor or administrator authority to:

(1) Borrow money or give security.

(2) Convey property to fulfill a decedent's contract.

(3) Lease real property of the estate (except for a short-term lease under $100 a month rent).

These hearings are intermediate steps in administration and do not require as full a noticing effort as the original hearings. The general public has no sufficient interest in matters of borrowing, conveying or leasing to warrant the time and cost of having the notices published.

The subcommittee recommends elimination of the publishing requirements in each case. Other noticing requirements would remain. These include notice by

mail to persons who have requested special notices and to persons who have appeared in the estate proceedings.
NRS 149.020, 149.070, 149.120, 155.010 and 155.020

Notices of Sales of Personal Property

The existing law provides, in general, that personal property of the estate may be sold only after public notice has been given either by posting or newspaper publication. The law contains exceptions for sales of certain perishables, sales of certain securities and sales under authority of a will.

The subcommittee recommends that the option of posting be eliminated but that the requirement of newspaper publication be retained. Posting is not effective. Published information that a sale will occur may bring forth more bidders and consequently be advantageous to the estate.

The existing law fails to prescribe any term for the publication. The subcommittee recommends that the publication be made at least once, 10 days or more before the sale.

The subcommittee also recommends that the law concerning the place of sale be made more flexible. The executor or administrator should be given the alternative to designate the place. This authority would be particularly helpful where valuable items, such as jewelry, antiques or art, pose a security problem.
NRS 148.190

Notices in Summary Administration

According to the present law on summary administration, posting upon the courthouse bulletin board is the only method prescribed for giving notice of the hearing on the issuance of letters. The subcommittee recommends that the posting be eliminated and, instead, that the petitioner be required to mail

notices (ordinary mail being sufficient) to the decedent's heirs and his devisees and legatees if any.
NRS 145.030

Following the appointment of the executor or administrator, a notice of the fact of the appointment must now be given by publication or, if the judge so orders, by posting. The subcommittee recommends elimination of the posting option; but if the estimated publication cost should exceed $25, the court would decide the method of notice.

The existing provision is not clear as to whether the notice of appointment includes a notice informing creditors how long they have to file their claims. The subcommittee's proposed amendment would put into the law a form of brief, combined notice. This notice would announce the appointment and expressly tell creditors they have 60 days to file claims.

The 60-day period is a change from the present 45-day period. The change appears desirable because of the larger estates that may be involved under the raised ceiling.
NRS 145.050 and 145.060

Notices on Petition for Distribution

On a petition for final distribution, the existing law requires that notice of hearing be given by one of two methods:

(1) Personal service on all personally interested in the estate, or

(2) Publication in a newspaper.

The existing law indicates that when personal service is used it must be carried out by the process of citation, which means that the court clerk will issue a citation under the court's seal, commanding the persons to appear. This method is not only cumbersome

but some of the persons compelled to appear may not actually wish to be heard in opposition to the petition. The subcommittee recommends that this alternative be changed to individual notification by delivery or mail.

The other alternative is complicated by a requirement that the publication be in such newspaper "as the court or judge shall order." This formality should be dropped. The executor or administrator should be allowed to go ahead without court order and publish in a newspaper printed in the county; or if there is no such newspaper, then in one of general circulation in the county.

The subcommittee recommends that the period of publication on the petition for final distribution be once a week for 2 weeks, a period shorter than on the petition for letters.
NRS 151.090 and 155.010

Reorganization of Noticing Provisions

A general reorganization of the various provisions on notices in the NRS appears desirable. The Trust Division of the Nevada Bankers Association reported that chapter 155 of NRS is unnecessarily complicated. The organization said:

> It would seem that the Nevada Bar Association in conjunction with the association of District Court Judges could recommend a simple clearly understood procedure of publication and posting of notices which would be absolutely uniform for all needs.

The bankers' recommendations declared that no attempt would be made to identify the areas which lead to confusion as this entire chapter should be the subject of a special study.

The correspondence of State Bar of Nevada acknowledged that some housecleaning as to notice provisions might

well be considered by the legislature. Mention was made of creating uniformity of noticing in administration of estates by intestate succession as well as probate of wills. The correspondence indicated that the State Bar's Probate and Trust Committee would prepare legislative recommendations on these matters for submission at a later date.

The UPC has a single master section (1-401) on notices of hearings. Several related sections are to be found in the UPC, for example, 3-310, 3-403, 3-602, 3-705 and 3-806(b). Additionally, there are 11 notice sections in the two UPC articles on foreign personal representatives and protected persons. The UPC total is about 17.

NRS has 68 sections dealing with notices of hearing in the probate title, another 24 in the title on guardianships and trusts and an extra 13 scattered sections on proof of notice. The NRS total is about 105.

The large number of NRS sections on notices should be reduced through consolidation and made as uniform or symmetrical as possible. The maze of detail in these provisions makes the task a very time-consuming one, which would perhaps be best handled over an extended period of time and in stages. The subcommittee encourages the professional groups whose activities are involved with decedents' estates to continue their commendable efforts toward improving this technical, but important, area of probate law.

(e) Recommendations which improve provisions in miscellaneous areas

Proof of Wills

The existing Nevada law does not provide for a will to be proved without the testimony of one or more of the subscribing witnesses except where such witnesses are dead or absent in the course of service in the Armed Forces or merchant marine. The policy of the law should be to allow every decedent's will to become

effective so far as can possibly be done. The subcommittee recommends that the existing exception be broadened to cover the absence of witnesses for other reasons. Thus, a will would be susceptible of proof, for example, by handwriting evidence, whenever the subscribing witnesses are dead, mentally or physically incapable of testifying, or otherwise unavailable.
NRS 136.170

Substitution of Executor

The subcommittee recommends clarifying the present law so that an out-of-state bank whom the decedent has named as his executor may appoint a resident substitute without having also to associate a resident bank in order to make the appointment. The present wording of the law plainly prohibits an out-of-state bank, although named executor, from serving in that capacity in Nevada. Unfortunately, the wording seems further to disqualify the bank, acting alone, from even appointing the Nevada substitute. The proposed change would make it clear that no prior association is required simply to appoint a resident substitute.
NRS 138.020 and 138.045

Accounting by Special Administrator

Under existing law a special administrator is required to file an accounting at the end of his special administration. Frequently, when the court has appointed a certain individual as special administrator for temporary preservation of an estate, the court thereafter appoints the same individual as the general administrator. The subcommittee recommends that where an individual has thus succeeded himself, he should have to account only as the general administrator. His account due as special administrator would be included in his first account due as general administrator. The result would be the elimination of an unnecessary report.
NRS 140.080

Sex Discrimination in Appointment of Administrator

The existing Nevada law gives a brother a right of preference over his sister in the appointment of an administrator. The provision is probably unconstitutional.

In 1971 the U.S. Supreme Court considered the constitutionality of a former Idaho law which had required appointment of the father of a decedent in preference to his mother. The Idaho court had upheld the law on the ground that it eliminated controversy. The U.S. Supreme Court declared the law unconstitutional:

> To give mandatory preference to members of either sex over members of the other, merely to accomplish the elimination of hearings on the merits, is to make the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause of the Fourteenth Amendment; and whatever may be said as to the positive values of avoiding intrafamily controversy, the choice in this context may not lawfully be mandated solely on the basis of sex. Reed v. Reed, 404 U.S. 71 at 75, 92 S.Ct. 251 at 254

Involved in the opinion was the Idaho statutory clause, "males shall be preferred to females." In 1973 the Nevada legislature deleted a similar general clause preferring males.

The subcommittee recommends the further deletion of the lingering specific Nevada preference of brothers over sisters.
NRS 139.040

Exhibits

HIGHLIGHTS OF ADDRESS BY PROFESSOR
RICHARD W. EFFLAND ON UNIFORM
PROBATE CODE

Chairman Ashworth introduced Richard W. Effland, professor of law from Arizona State University at Tempe, and expressed the appreciation of the subcommittee for his expenditure of time and effort in coming to Las Vegas to address the meeting. Professor Effland has had considerable experience in the field of probate. He worked with a special committee as a reporter in the preparation of the Uniform Probate Code. Before going to Arizona, he was a member of the Wisconsin University law faculty for 21 years.

Item 4--Presentation by Professor Effland.
- a. Background of the Uniform Probate Code (UPC).
- b. Summary of the UPC contents.
- c. State adoptions of the UPC to date.
- d. The Arizona experience with UPC legislation.

As background to the formulation of the Uniform Probate Code, Professor Effland stated that in 1962 a number of the leaders of the American Bar Association were concerned about the status of probate law in this country. This concern arose before Norman F. Dacey wrote a book entitled How to Avoid Probate. Subsequently, the bar leaders had started working with the National Conference of Commissioners on Uniform State Laws. The National Conference has machinery for promulgating laws, which then can be adopted by the various states, hopefully to achieve a degree of uniformity in selected areas. The National Conference is composed of commissioners from each of the states, thereby affording each state a voice in the ultimate work of the conference.

The Uniform Probate Code was the result of the cooperative efforts of the American Bar Association and the National Conference. The final code was developed after five working drafts, prepared by a group of reporters over a period of 5 years. The reporters worked with an advisory committee of the conference and a liaison committee from the American Bar Association. The advisory committee was composed of judges and practicing lawyers with experience in the probate field. The code is not a law professors' code but is the product of many minds concerned about improvement of probate law.

In recent years, the public has become concerned about the probate laws. A series of critical articles have been written, some by informed people, some by uninformed people, but expressing public dissatisfaction with the way the probate system works in many states. The public criticism is perhaps part of the general consumer revolt in the last decade. To get away from the probate process, people put their property in joint tenancy and make arrangements which are unsatisfactory for tax reasons. The revocable living trust has come into popularity. Often, when a will is drawn, people do not realize that the assets put in joint tenancy and other arrangements are not affected by the will.

There are increasing problems as the result of the increasing mobility of the population. A person makes an estate plan in one state; then he moves to another state and finds a different set of applicable laws. People quite often own property in several states, and there is need of a common way to handle the property when the owners die.

It is very difficult for a single state to develop a set of laws initially in a field like probate. Consequently, probate change was moving very slowly, if at all. The hope was to get a national code, which could serve as a pattern for adoption by various states. The states would then have a common base and a good work product to use. The product would reflect not just the local practices that had grown up, but would be, instead, a selection of the best ways of handling probate estates to be found in the various states. The conference tried to pick the best parts of probate laws from around the country. This product would meet the public demand for ways of handling probate in a simpler, more expeditious and less costly manner.

The result was that in 1969 the Uniform Probate Code came into being, and since then has been adopted in five states: Alaska, Idaho, Arizona, North Dakota and Colorado. Prospects are good that the code will be widely adopted. It is currently in bill form in 13 states and is under study in several more states.

Professor Effland then proceeded to give an overview of the contents of the Uniform Probate Code. He said that the code actually covers many things that are not probate in the pure sense. The probate court in many states handles matters that are related to guardianships of the person and property of minors, disabled and incapacitated persons, and also handles trust matters, at least to the degree that trusts are created by wills. So the code scope is broader than the field of decedent's estates as such.

Article I, General Provisions, Definitions and Probate Jurisdiction of Court.

This article is general and deals primarily with court organization. This is one area where the purpose of the code is to make the probate court a court of general jurisdiction. Nevada already has district courts of broad jurisdiction. Some sections of Article I deal with notices, the purpose being to make notices as realistic as possible and to do away with practices such as public posting except for situations in which the whereabouts of persons are unknown. Article I includes a general overriding provision covering fraud. An injured person is authorized relief against the perpetrator or person benefiting from the fraud. Throughout the code there are also built-in provisions designed to protect the public against wrongdoing by persons who might misuse the probate procedures.

Article II, Intestate Succession and Wills.

This is an important article for Nevada. "Intestate Succession" refers to the inheritance laws, which govern a man's property if he dies without a will. Article II also governs methods of executing wills, the validity and revocation of a will. In many states the intestate laws are obsolete. The provisions of the code on intestate succession are aimed more directly toward people in lower income brackets and younger people, since older people and those with higher incomes have wills made.

The existence of minority heirs often creates problems as to the handling of their inherited property. Sometimes it becomes necessary to appoint a guardian or in some states, a "conservator." The code drafters had in mind that the surviving spouse,

who is typically the parent of the minor children, has the legal responsibility to support the children out of her or his share of the estate. The code is designed with the concept that the typical person having a will drawn wants everything to go to the spouse. Basically, what the code does is to give the whole estate, both the separate and community property, to the surviving spouse if there are no issue or if the issue are all children of the surviving spouse and if the estate is under $50,000. The $50,000 estate does not include life insurance, real property in joint tenancy or bank accounts in joint ownership, because those assets do not go through probate. If there are children by a prior marriage, another problem is presented. In that case the estate is split, half to the spouse and half to the children. Any excess over $50,000 is shared with the decedent's children or parents. The $50,000 level means that most estates, where the decedent leaves no will, are going to go to the surviving spouse. This provision avoids the problems of fractional ownership of real estate and creation of guardianships for minor children. The provision is believed to follow the pattern that most people want in this type of situation.

Article II contains a common accident provision for intestacy. Nevada already has the "Uniform Simultaneous Death Act." This act is designed to deal with a common accident situation where husband and wife are killed in the same accident and their property will go to their children. Theoretically, the act should take care of this situation. The problem is that the act applies only if there is no evidence that one of the parties survived the other. For example, if the wife survived the husband by a few minutes, the property would go first to her in part and then to the children. The Uniform Probate Code has a 5-day requirement of survivorship for anyone to inherit property. The requirement serves a dual purpose: first, it protects the normal heirs, and second, it avoids the cost of a double probate.

Presently under the law of Nevada there is no limit on the tracing of heirs. A provision of Article II limits heirship to people descended through grandparents. This limit is to keep heir hunting out of the picture, to avoid will contests and to avoid tracing heirs, which can be a very expensive process.

Article II provides a simple method of executing wills, permits holographic wills and abolishes oral wills.

Article III, Probate of Wills and Administration.

Article III is the heart of the code. The article covers the area that gets the most public criticism of probate, the area of real interest and the area which involves the most dramatic changes in the law. This article deals with the administration of a decedent's estate, what happens to the estate upon death--how the estate is handled and what kind of machinery is available. Traditionally, in this country a process has developed known as court supervision of a decedent's estate. When a man dies, someone has to file a petition in court for administration. Once the court gets jurisdiction, the court retains jurisdiction and exercises supervision over the estate. By and large, everything that is done must be done with court approval. For example, the court has to approve the creditors' claims. The same is true as to sales, unless the sale is made by an executor given power to sell under a will. Court approval is also required before any distribution of the estate to heirs or persons named in the will. Originally, this system was based on very sound reasoning--it was set up to protect the heirs. The problem today with the system is that it was not designed for estates where there are no reasonable expectations of controversy. The code committee and advisors surveyed the probate process in all the states and found that some states, i.e., Texas and Washington, use a procedure called independent administration. Once the personal representative is appointed in these states, he does not have to go back to court. He can sell property and distribute property to the heirs or devisees without court approval. In other states, although not authorized by statute, the attorneys themselves have worked out ways to minimize the paper work involved in handling estates. In some states the cost of the paper work alone is prohibitive for simple estates.

In an estate where the wife is the sole beneficiary and the will also appoints her as personal representative, court approval should not be necessary. If the will does not waive bond, she might have to put up a bond, which would mean, in effect, she is putting up a bond to protect herself from herself. The code provides a system which permits handling simple estates with a minimum of paper work and court supervision, reserving court supervision for estates where there are contested matters or insolvency problems.

Article III, therefore, offers a flexible system, which opens a variety of procedures for handling estates. To illustrate, Professor Effland distributed copies of a chart entitled Flow Chart of Flexible Administration Under Code. (A copy is attached as Exhibit "A".) He discussed the chart, referring first to the portion entitled "Fully Supervised Administration." He explained that this procedure is similar to the way most estates are run under present law in most jurisdictions. The court has continuing control under the procedure and may exercise the control over the personal representative whenever appropriate. Article III provides that even though an administration starts out informally (without court supervision) it can be shifted over into the "Fully Supervised" procedure if necessary because later problems develop.

Article III thus creates a system whereby an estate may be handled either formally or informally. The basic difference between formal and informal proceedings under the code is that informal proceedings are used in estates in which there is no contest.

Informal proceedings are handled on the basis of an application made under oath, filed with the court and acted upon by an officer called the registrar. Arizona has empowered the presiding judge in the county to designate the registrar. Two heavily populated areas exist in Arizona as in Nevada. Arizona now has gone to the practice of having a single judge assigned to probate for a period of time, and judges are rotated in and out of the probate branch of the superior court. In the two heavily populated counties, uncontested probate matters usually go before the court commissioner rather than the judge. Under the Arizona version of the code, the presiding judge can designate as registrar either the court commissioner, a judge or the court clerk. The informal proceedings are designed to be fairly automatic. The registrar generally has only to be certain that the filed documents comply with the statutes. But he is also given discretionary power to deny informal proceedings if he feels that formality is needed in any particular instance. The informal applications are not made on advance notice. The registrar can act immediately, issuing a statement which allows the will"for probate" and he appoints the personal representative based on the code's statutory schedule of priorities for appointment.

On the other hand, a formal application is made with actual advance notice to the heirs or other persons involved. A hearing is set before the judge, and people have a chance to come in and litigate. If there is no controversy, there should be no need for the formal petition and hearing. However, the avenue to a formal hearing is always open.

If a will has been probated informally, there is still a period of time in which it can be challenged in court. Meanwhile, if the will remains unchallenged, administration of the estate may proceed through distribution. This procedure is like the form of "common probate" used in England for the last 50 years. England also has "solemn probate," which involves notices and stricter handling.

Following the informal probate of a will under the code, how is the estate administered? For an understanding of the code procedure, it should be recognized that estates are handled in different ways under existing laws. The option is now available of putting all one's property into a living trust, which transfers title to a trust company or individual acting as trustee. The trustee may be given the power to sell the property or take any other action he feels necessary. He acts without court control. The code gives similar powers to the personal representative of a decedent's estate. So, under the code, it is usually not necessary for the personal representative to go to court to sell property. If he wants to resort to the court for approval of a particular sale, he may do so. Moreover, someone else may resort to the court to have the personal representative restrained from making an improper sale.

The code does not change the normal method of processing creditors' claims. The personal representative advertises for creditors. There is a four-month period for presentation of claims, which period could be varied where a state is accustomed to using a different length of time. Claims must be acted on by the personal representative within 60 days after the period ends. If he does nothing, the claims are allowed. He must specifically disallow improper claims.

The personal representative may also distribute the estate without first getting court approval. Under the code, a decedent's estate may be closed two ways:

1. By accounting to the beneficiary and simply filing a closing statement in the court. When the statement is filed, there are 6 months within which the personal representative may be sued. After 6 months, the personal representative is discharged with respect to any person who has received a copy of the statement.

2. By going into court on a procedure called "formal closing," which secures an order of the court for complete protection of the estate.

The entire administration may be handled informally up to the point of closing. Then the court may be petitioned for a general order allowing the will, formally probating it, approving the payment of claims, approving any acts done by the personal representative and decreeing title to the property. All these matters may be handled at a single hearing.

One of the main purposes of the code is to free judges for contested matters, to free the court from routine paper work and to facilitate the handling of simple estates.

There are some code provisions for small estates. The handling of small estates is criticized by the public. At present, Nevada has limits of $8,000 for summary administration and $5,000 for setting estates aside to the surviving spouse or minor children without administration. The code would effect some changes in Nevada law. For instance, the code allows the handling of an estate without going to court at all if the total value of the estate is less than $5,000. Also, summary administration is available under the code if the value of the estate is no more than all the claims of creditors, the expense of administration, the homestead allowance, the exempt property and the family allowance.

There are three kinds of allowances under the code. First, there is the homestead allowance which the code does not tie to any lifetime homestead. The code homestead allowance is set at a fixed dollar amount, suggested as $5,000. Second, there is the exempt property allowance, which under the code is limited to $3,500. Both the homestead and exempt property allowances go to the surviving spouse or if there is no surviving spouse, to the dependent children. Third, there

is the family allowance. This is the traditional allowance made by the court to support the family while the estate is being administered. Under the code, the family is entitled to a "reasonable" sum as the allowance. The personal representative may determine what is reasonable up to $500 per month, and may pay the sum to the family without going to court. If these three allowances, plus the expenses of the last illness, funeral and administration total more than the value of the estate, there is no need for the personal representative to advertise for creditors, and he may proceed with the inventory and closing of the estate. This kind of short administration could be completed within 2 weeks after death.

Article IV, Foreign Personal Representatives; Ancillary Administration.

Article IV deals with the law applicable to decedents' estate problems which involve more than a single state. The last domicile of a decedent may have been in one state, while some or all of his property may be located in other states. If so, the estate of the deceased would have to be administered in the state of his last domicile, and his personal representative must be appointed in the home state. Under present law, the personal representative would not have jurisdiction to act in any other states where the deceased's property may be located.

The code is designed to make it easier to handle a multi-state administration. The present handling is another source of criticism with the public; furthermore, cases of this type are awkward for lawyers to handle. The improvement is accomplished by the code in two different ways:

1. A provision allows a personal representative appointed in the decedent's home state to go into another state and collect assets (personal property) by using an affidavit. It simply states that he is the personal representative appointed in the decedent's home state and that there is no administration planned in the other state;

2. A provision allows the personal representative appointed in the decedent's home state to go into another state where the decedent's property is located and file with a court of the other state a copy of the representative's letters (which certify to the fact that he is the representative in the home state) and a copy of any bond required in the home state. Once this filing is done, he has the same powers as though he were appointed in the other state where the personal property is located.

The code recognizes a third method, now being used, called Ancillary Administration. A person goes into a court in a state where property of the decedent is located, although the state is not the decedent's home state. The court appoints the person as the local personal representative. The code gives him priority for the local appointment. He then proceeds with the usual type of administration.

These code provisions enable the personal representative from the domiciliary state to avoid carrying out full administrations in other states where the decedent's property is located if there are no creditors or they have been paid off.

Article V, Protection of Persons Under Disability and Their Property.

Article V is concerned with guardianships or conservatorships for minors and those under some kind of disability or incapacity. The code extensively revises the existing law in this area.

Most states now have laws set up to protect the property of such people but the laws at times overprotect. The guardian charged with handling the property of persons under disability must account fully to the court. He cannot act on such matters as selling property, distributing property or paying bills without court order.

The code differentiates between the problems of protecting a person and protecting his property. A guardian handles the kind of problems a parent handles for his children. The problem of protecting property is treated separately,

although a guardian may also be appointed as the conservator of the ward's property. If only a single transaction is necessary, the code allows the court to approve the transaction in a proper case without appointing a conservator. If a continuing management is needed, a conservator should be appointed.

The code provides for an appointment of a conservator in cases where a person is missing. Under the code, it is not necessary to find a person "incompetent" before appointing a conservator. The appointment may be made if the court finds that the person is "unable effectively to manage his property." Such an appointment would afford protection in cases where a person is old and unable to manage his property yet not truly incompetent; or where a person has had a stroke and is incapable physically of taking care of things but is mentally able to carry on; or where a person is a minor and therefore lacks capacity to manage his property by himself. In this area, the court still has full control and may restrict what the conservator does. However, the conservator has two kinds of powers he may exercise without court permission, provided no restrictions were made at the time of his appointment:

1. To administer and manage the property; and

2. To distribute current income to take care of the protected person and his dependents.

Under the code, bonding of a conservator is discretionary with the court. Arizona has reversed the rule and requires bonding of all conservators. There are some disadvantages to mandatory bonding. Even under the code, however, bonding would take place in most of the conservatorships.

Article VI, Non-Probate Transfers.

The first part of Article VI deals with multiple-party financial accounts. The term includes joint accounts with a bank, credit union or savings and loan company and accounts opened in one of these institutions by a depositor in trust for someone else. Litigation has arisen in many instances from

this type of financial arrangement. One situation where there may be a problem is this: a father deposits funds into a joint account with his daughter because he wants her to have everything when he dies. In the meantime, one of her creditors attaches the account. The question arises as to her share of the ownership. One of the purposes of the code is to straighten out this area of law, and the code does so in three respects:

1. Protection of the financial institution. In multiple-party accounts, the institution is assured of the right to pay a party who appears to be an owner.

2. Rights between parties to the account while they are still alive. Under the code, the account belongs to the party who makes the deposit. In a mixed account there is a problem of tracing, but the ownership generally turns out to be an even split. If all the money is put in by one party, presumably he owns the account. He should not have to pay gift taxes. The account should not be considered as belonging partly to the other party or be subjected to the claims of the other party's creditors.

3. Rights at death. Presumably in the event of death, the account will belong to the survivor; however, there are instances where survivorship should not be applied. Even though the form of account looks as though it is payable to the surviving party, the right of survivorship may never have been intended.

The code has flexible rules to deal with each of these problem areas.

Article VII, Trust Administration.

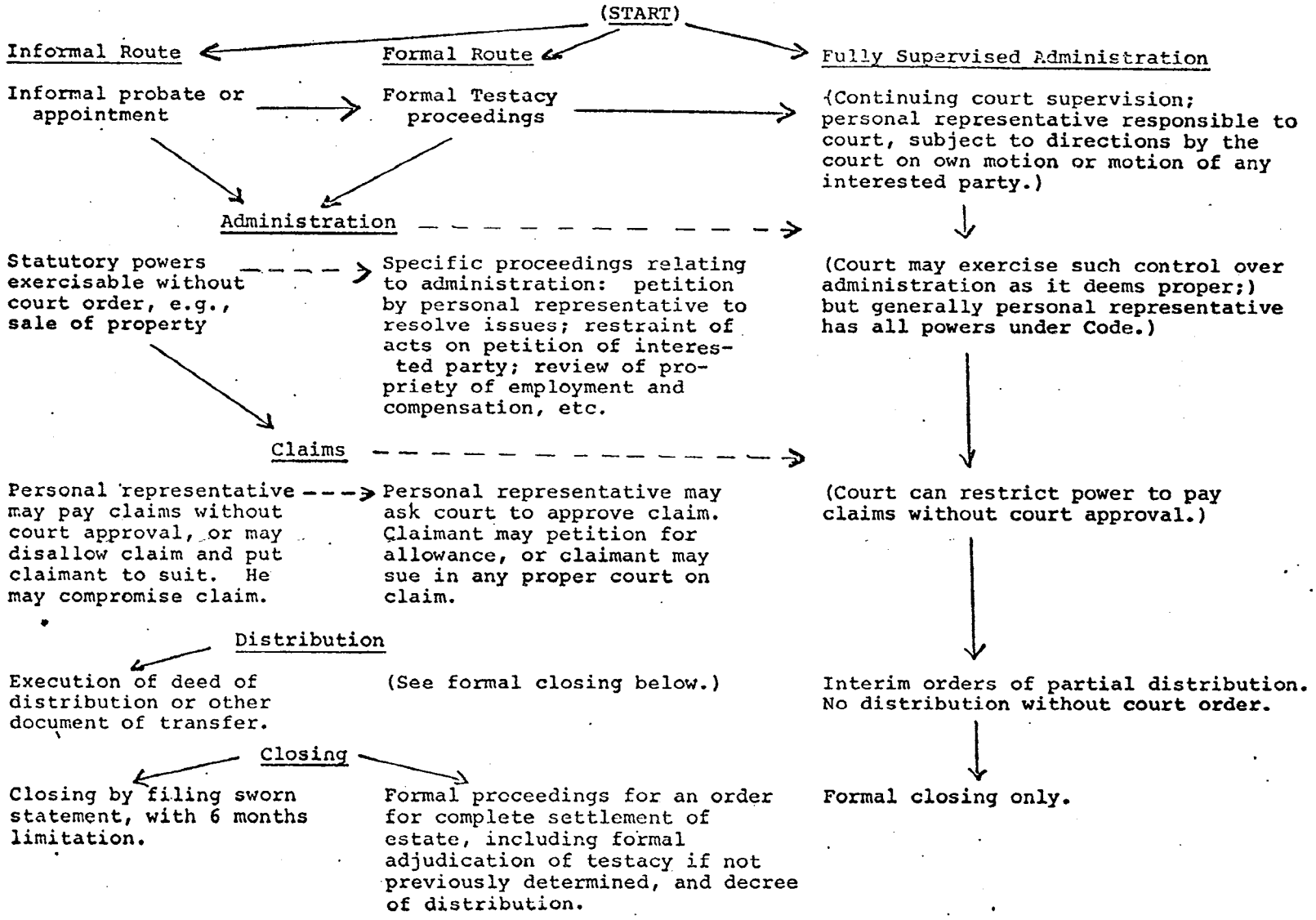
According to Professor Effland, Article VII is a skeleton article. It is not intended to be a complete codification of the law of trusts.

The main purpose of Article VII is to eliminate the necessity for a testamentary trustee to account to the court for everything that he wishes to do. In many states the probate court retains jurisdiction and supervision over all matters relating to testamentary trusts.

Article VII provides that the court having probate jurisdiction is the court to which parties resort for settling problems relating to any trust, without distinction as to trusts created by will or by a living trust agreement. The same court should do both.

The code requires every trust to be registered. A registration system is established. Registration is done by filing a minimal statement giving the name and address of the trustee and the current beneficiaries of the trust. The registration of a trust constitutes consent for the court to handle all the trust problems, even though the trustee or beneficiaries are outside the normal jurisdiction of the court.

FLOW CHART OF FLEXIBLE ADMINISTRATION UNDER CODE



RESUME OF ADDRESS BY IDAHO STATE
SENATOR EDITH MILLER KLEIN

Senator Klein directed her presentation toward the Idaho experiences relating to the legislative passage of the Uniform Probate Code and actual practice under the new code. Prior to the adoption of the code and in response to public demand, the Idaho legislature had frequently amended its existing probate laws. The result was that the law had grown into a maze of contradictions, unnecessary protective devices and even omissions.

Consequently, during the 1970 session the Idaho legislators established a nine-member interim committee to study the Uniform Probate Code and adapt it to the Idaho law. It met with selected advisors from title companies, bank and trust organizations, the Veterans' Administration, insurance companies, newspapers, the bar association and others interested in the code. Professor Philip E. Peterson, a teacher of tax and probate subjects at the University of Idaho law school, was the interim committee's chief advisor. The interim committee asked him to prepare an analysis of the code. He recommended that the code be adopted in its entirety. Another attorney who also analyzed the code for the interim committee recommended that the code's informal procedures be eliminated.

The interim committee then had a bill drafted so that it could study each item separately. The final draft was submitted to the Judiciary Committee of the Senate in the 1971 session of the legislature. The Judiciary Committee met every day and made even further changes in the bill. The amended bill eventually passed both houses in the 1971 session and became effective July 1, 1972.

One of the major changes the Idaho legislators made in the code was in the area of the spouse's election. The Uniform Probate Code permits the surviving spouse to take an elective share of one-third of the deceased spouse's property. Instead, Idaho adopted the formula used by California wherein property accumulated during the marriage in a common law state is considered quasi-community property. In a common law state the marital accumulations belong to the husband, subject to the wife's dower right. The Idaho

version of the code gives the surviving spouse the option to take one-half of such property. The surviving spouse may elect to take the one-half share even though the will of the deceased spouse is contrary, and in some circumstances the surviving spouse may recover the share from a person to whom the decedent had transferred the property in his lifetime.

Further amendments were made to the bill during the 1973 session, most of which were corrective and designed to return to closer conformity with the Uniform Probate Code.

The aim of the code drafters was to adopt the best provisions in the probate laws of the various states. It is significant that almost every provision of the Uniform Probate Code has been utilized and tested by one state or another, although not as a total code. The code drafters pulled out the various reforms and correlated them to produce a single plan.

During the Idaho deliberations, some people criticized the code as having three different kinds of proceedings. In Senator Klein's view, the code really operates as one proceeding, which can be adapted to every type of estate.

There is no field where greater variety exists than in probate. Some estates are insolvent, some involve only the surviving spouse, some involve the surviving spouse and children and some involve different kinds of heirs. Some estates involve the problem of how to manage property. But most estates are basically simple.

The underlying intent is to carry out the decedent's wishes. Under Idaho's old laws, the opening of administration and every subsequent step required going into court. By contrast, the new code simplifies the requirements of bonding, noticing and accounting and reduces the occasions where court hearings are necessary.

Since the code was adopted in Idaho, time involved in court hearings has been reduced as much as two-thirds. Senator Klein has had approximately 30 estate cases since the code went into effect and has found that it provides a great savings of time to the attorneys as well. During the process of handling those estates, she has not found it

necessary to go to court. The documents are prepared and mailed to the court with instructions, and are then signed and returned. The code eliminates the necessity, in almost 100 percent of the probate cases, for taking the former protective precautions.

The informal procedure under the code with respect to the personal representative is very simple. To appoint a personal representative, an application is sent to the court along with a form for appointment (letters), which the court issues and returns. The applicant has to take an oath before he is appointed. To avoid delay, his notarized oath is also sent to the court. The personal representative then has all the authority he would have if appointed in a more formal manner. When closing the estate, all that is required is a statement, to be filed with the court, that he has completed the probate of the estate. It is automatically closed 6 months later. In most cases, notice to creditors is not required, nor are bonds.

In some contested cases, restrictions may be placed on the personal representative by the simple means of another party going into court and asking for supervised administration. There is one general proceeding given in the code for anyone who feels protection is needed. There is only one file in a case, even if someone asks for protection at some stage. Side determinations may be made, but the proceeding is continuous. Senator Klein emphasized that it is doubtful whether any probate problems will be encountered which cannot easily and simply be resolved by the procedures outlined in the code.

The principal adaptations Idaho made in the code are as follows:

1. Selection of the community property options.

2. Designation of district judges as registrars. In turn, the judges are permitted to designate which magistrate in each county will act for the court as the registrar. The registrar should be someone who understands the legalities of the process. The UPC empowers the court to appoint the clerk or any other person as registrar.

3. Change of the spouse's elective share so that it applies to the quasi-community property.

4. Adoption of the old Idaho summary procedure for small estates. This procedure is longer and more complicated than the one under the code and is not recommended by Senator Klein.

5. Expansion of code section 6-201 on agreements which may be entered into and have the effect of a will without the formality of a will. The Idaho version authorizes continuation of payments to a survivor, and includes many other types of contracts and agreements which can go to a survivor without the formality of a will.

6. Placing a limit on benevolent bequests.

7. Rewording the section on rights of inheritance after the heir has murdered the person who leaves the estate.

8. Adding to the code's guardianship provisions relating to veterans' benefits to satisfy the Veterans' Administration.

9. More explicit provision made for the compromise of a single claim of a minor. The Idaho law ties back into the restrictions on the use of money handled by parents on behalf of minors.

C
O
P
Y

MEMORANDUM OF STATEMENTS BY
REPRESENTATIVES OF THE NEVADA STATE BAR
PROBATE AND TRUST COMMITTEE

TO
NEVADA LEGISLATIVE COMMISSION
STUDYING PROBATE AND RELATED PROVISIONS
IN THE STATUTES OF THE STATE OF NEVADA
AND OTHER STATES

Statement By George M. Dickerson, Esq., President of the State Bar of Nevada and Member Of The Probate and Trust Committee:

As representatives of the Probate and Trust Committee of the State Bar of Nevada, we welcome this opportunity to address this Commission of Nevada legislators appointed to study the probate laws with a view to modernizing our Nevada statutes to permit a more effective and efficient administration of these laws.

Our committee, and we believe Nevada lawyers generally, think that our state's probate laws should be revised in certain respects to better serve the public interest in transferring property at death. We are aware that much criticism has been leveled at lawyers and the courts in national periodicals, books, and news media complaining of inefficient and costly probate procedures. I understand that a presentation was made at a hearing of this Commission held in Las Vegas on October

24, 1973, by proponents of the Uniform Probate Code promulgated by the National Conference of Commissioners on Uniform State Laws which is now substantially the law in five states of the United States.

The Probate and Trust Committee of the State Bar of Nevada, consisting of fourteen members of the State Bar, has met in both Reno and Las Vegas for the purpose of studying, discussing, and making recommendations with respect to Nevada probate laws and the Uniform Probate Code. The Committee will gladly respond to any request to assist this Commission and the Nevada Legislature in every way practicable to give Nevada residents the best, safest, and most efficient probate laws attainable.

The Committee has designated me to speak to this Commission with respect to two areas of probate law which we believe have evoked most of the criticism, and has designated George K. Folsom, Chairman of the Probate and Trust Committee, to speak to you in general about our recommendation for changes in Nevada probate law.

As I understand the situation, the principal areas of complaint according to the most outspoken opponents of the prevailing probate systems in the states of the United States are (1) undue delay in closing estates and (2) excessive fees.

Nevada probate statutes have no specific provisions requiring the closing of an estate within a time certain. Nor does the Uniform Probate Code provide more than a right in any interested person to petition the Court after one year from the appointment of the original representative for an order of complete settlement of the estate (Section 3-1001 (a)). Our Probate and Trust Committee suggests amending Nevada statutes to alleviate the delay problem as follows: For estates not required to file a U.S. Estate Tax Return, the personal representative shall submit a report to the Court for any estate not closed within six months from the date of his appointment advising the Court why the estate has not been settled and closed. A hearing with notice to interested parties shall be held not later than 30 days or sooner than 15 days after the filing of the report. The Court shall then order the personal representative to continue administration of the estate if such is necessary or settle and close the estate within a fixed period of time to be set by the Court. Failure to comply with the Court's order will subject the personal representative to contempt proceedings under Chapter 22 of NRS and/or removal. A similar report shall be filed for an estate required to file a U.S. Estate Tax Return if such estate has not been settled and closed within three

months after the estate tax has been finally determined. Such a statutory provision would effectively place responsibility on the personal representative and his attorney to close the estate in a reasonable time or in the alternative to explain to the Court why the administration of the estate must continue and for how long a period. Oftentimes there are compelling reasons for keeping estates open so no arbitrary closing times should be enacted.

As to attorney's fees, Nevada statutes presently provide for a reasonable attorney's fee to be fixed by the Court upon petition for allowance of fees. (NRS 150.060). The Uniform Probate Code makes no provision for amounts to be paid as attorney's fees, but instead backs into the problem by providing in Section 3-721 that upon petition to the Court any interested person may have Court review as to the reasonableness of compensation paid to the personal representative, attorney, auditor, or other professional employed by the estate, and if the Court finds the compensation excessive, appropriate refunds may be ordered. This leaves the matter open for dispute indefinitely.

Our Probate and Trust Committee suggests NRS 150.060 (1) be amended to provide that attorney's fees shall be paid in accordance with an agreement between the attorney and the

personal representative with the concurrence of a majority in interest of those persons from whose share of the estate the fee will be paid. Notice as prescribed by NRS (notice statute) shall be given of the agreement and terms thereof within 10 days after date of said agreement to all persons whose interests are subject to payment of the fee agreed upon. Any such person may within 15 days of receipt of such notice petition the Court for a determination of the reasonableness thereof. If no such agreement is reached, then the attorney, the personal representative or any interested person may petition the Court for a determination of reasonable compensation and the Court's decision shall be final subject to usual rights of appeal to the Supreme Court. Such a procedure based upon agreement between the parties and their attorney will accord with usual fee arrangements in other legal matters.

Our Committee considered the pros and cons of percentage fees or other rates fixed by statute, but concluded that any laws requiring the same fees be paid to all attorneys in estate matters would ignore the realities of the endless varieties of estate matters (seldom are two estates alike) and would compensate attorneys who performed poor and inefficient work as well as or better than experienced attorneys rendering

highly skilled and efficient services. Fixed fee schedules are in effect the equivalent of unlawful price fixing.

We believe that the foregoing recommendations for prompt closing of estates and for paying attorney's fees based on agreements would represent constructive steps toward overcoming criticism of our probate system.

Statement by George K. Folsom, Esq., Chairman of the State Bar of Nevada Probate and Trust Committee.

The members of the Probate and Trust Committee of the State Bar of Nevada are unanimous in recommending to this honorable Commission that existing Nevada probate laws be modified and amended to provide greater efficiency in administration of estates and less Court supervision than is now required. The Committee membership is also unanimous in recommending that the State of Nevada not adopt the Uniform Probate Code.

State Bar President Dickerson has already furnished you with out Committee recommendations to deal with the problems of inordinate delay and fees in estate matters. With respect to other changes in Nevada probate law, our Committee respectfully submits that there is no need for drastic change, particularly not by substituting a whole new body of

law known as the Uniform Probate Code which would depart from many longstanding rules of law found to be wholly satisfactory to Nevadans.

As to the Uniform Probate Code (UPC), the drafters of the UPC start with the premise that the probate laws should be concerned primarily with the small estate because most estates are small. The draftsmen of the UPC had studies available showing that most estates are less than $20,000. Yet the body of law drafted by the Commissioners is a vast compilation of new laws both substantive and procedural. The subject of property rights at death is terribly complex. In the words of Prof. Richard V. Wellman, the Chief Reporter of the UPC, "The briefest description of existing probate problems suggests complexity beyond the reach of simple remedies. The Uniform Probate Code is neither simple nor easy to describe." The printed code with official comments runs to 278 pages. It consists of eight articles, the headings of which are as follows:

Article I	General Provisions, Definitions And Probate Jurisdiction Of Court
Article II	Intestate Succession And Wills
Article III	Probate Of Wills And Administration
Article IV	Foreign Personal Representatives; Ancillary Administration

Article V	Protection Of Persons Under Disability And Their Property
Article VI	Non-Probate Transfers
Article VII	Trust Administration
Article VIII	Effective Date And Repealer

It is obvious that the UPC deals with much more than simple administration of average estates.

The State Bar of California in its analysis and critique of the Uniform Probate Code published in March, 1973 concluded, "The California Legislature has been attentive to the need for constantly updating and modernizing the California Probate Code and, in fact, more than 120 changes and amendments have been made in the California Probate Code in the last five year period. To repeal a system of laws that reflects the public policy of this State, carefully honed and refined over a great number of years, for an Act which, on one hand, strips the system of laws of even minimal safeguards for the persons beneficially interested in a decedent's estate (Article III) and, on the other hand, suffocates the system of laws in connection with the appointment of conservators and guardians with unnecessary costs, expense, and delay (Article V), would be a mistake from which it would take California years to recover . . . . In each state the question

must be: 'Will the adoption of the Uniform Probate Code constitute an improvement over the existing probate system?' In California the answer is a firm and confident 'No'".

There are numerous other articles written by sincere and learned people both for and against the UPC.

Admittedly some improvements can and should be made to Nevada probate laws, but some middle ground for change would be far more desirable to keep Nevada's image as "One Sound State" with a minimum of laws rather than adopt a vast new system that may be totally unacceptable to Nevadans when they wake up to what has happened if the UPC is adopted. One author writing for the Illinois Bar Journal has stated: ". . . the joint ISBA-CBA committee in Illinois which studied the Code for more than three years concluded that the Code contains a number of serious drafting errors and ambiguities, that many of the substantive changes which the Code would make are questionable and that the Code should not be adopted by Illinois in its present form." (Zartman, Illinois Bar Journal, April, 1973). Thus far, only Alaska, Arizona, Colorado, Idaho, and North Dakota (10% in number of the states of the Union, but population-wise far less than 10%) have adopted the UPC as law, and each of these states has already made or is contemplating numerous amendments to the Code. The UPC is in an experimental stage and how effective it will be over a

period of time remains to be seen. It is the unanimous opinion of the Nevada Bar Probate and Trust Committee that Nevada should not join these experimenters and expose Nevadans to a set of new laws that may take many years to interpret and evaluate.

One of the principal advantages claimed for the UPC by its drafters is flexibility. Again quoting Prof. Wellman, Chief Reporter for the UPC, "The code offers a flexible system for the administration of decedent's estates. The purpose is to offer alternatives that permit the details of procedure to be determined by the needs of each estate, rather than to be dictated by state statute. Another objective is to create substantial opportunities for some sets of survivors to avoid any contact with a public office if no will or need for administration appears within a set number of years after death. Under the code, wills are ineffective unless probated after death. Whether or not a will is probated, the appointment of a personal representative is optional, but successors will find that appointment will be a practical necessity if they wish to protect transfer agents and purchasers during the first three years after a decedent's death. After three years unsecured claims against the decedent and any proceeding for probate or appointment in regard to his estate are

barred. This period of limitation co-ordinates with a provision passing title to all estate assets at death, subject to probate and administration, and aids survivors who want to avoid all probate or appointment steps." (American Bar Association Journal, July, 1970, page 638).

Our Committee believes the UPC is too flexible in many respects, and its provisions may aid and encourage unscrupulous or dishonest persons with possession of a decedent's property. Our Committee recommends that at least two probate procedures should be Court supervised in larger estates to maintain order in administration and to provide some safeguard against carelessness and/or dishonesty. First, the appointment of the personal representative should be upon petition to and order of the Court with proper notice to interested parties. Responsibility is then fixed in an orderly manner with respect to who will marshall, administer, and distribute the decedent's property. Second, at the time of closing and distributing the estate, an accounting should be made to the Court to explain what the personal representative has done with the decedent's money and property. Anything less is an invitation to carelessness at the least and perhaps even dishonesty. The UPC does not require even this

much protection to persons interested in the decedent's property.

As to recommended changes to existing Nevada probate law, only general statements of recommendations are possible in a presentation of this kind. Our Committee members will be pleased to meet with the staff of the Nevada Legislative Counsel Bureau and with members of the Judiciary Committees of the Assembly and Senate to discuss the details of recommended changes. To summarize generally some of the existing probate law provisions which our Committee believes are in need of change, we submit the following:

1. Notice provisions should be modernized so that notice is given directly by mail or personal service to those persons interested in an estate.

2. Appraisers should be selected by the personal representative according to the needs of an estate and not be appointed by the Court.

3. Sales, mortgages, and leases of real and personal property of an estate by the personal representative should be free from Court supervision unless specific objection is raised.

4. Summary administration should be extended to estates up to $20,000. Transfers of assets without administration should be permissible for estates up to $5,000.

5. Testators should be able to dispense with Court review of annual accountings of testamentary trusts, if the testator so chooses.

6. NRS 134.230-.250 dealing with inheritance rights of aliens should be repealed inasmuch as such laws have been held unconstitutional.

7. Consideration should be given to consistent treatment on death of community property of both the husband and the wife. They are now treated differently.

8. Mention has already been made for proposed statutes covering closing of estates and fee agreements.

Some of the provisions of the UPC not found in Nevada statutes which our Committee thinks should be added to Nevada law are as follows:

(a) A requirement that an heir or devisee survive decedent for 120 hours. Secs. 2-104 and 2-601.

(b) Validation of a separate writing identifying bequest of tangible personal property (personal effects). Sec. 2-513.

(c) A general residuary clause in a will, or a will making general disposition of all of the testator's property, shall not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power. Sec. 2-610.

(d) Provide for interest at legal rate on general pecuniary bequests after one year. Sec. 3-904.

Thank you for your attention.

FOLEY BROTHERS
LAW OFFICES
770 EAST SAHARA
LAS VEGAS, NEVADA 89105

C
O
P
Y

January 7, 1974

Thomas A. Foley
John P. Foley

Telephone 734-1147
Area Code 702

Pat J. Fitzgibbons

Mr. George K. Folsom
Messrs. Woodburn, Wedge, Blakey,
Folsom and Hug
Sixteenth Floor
First National Bank Building
One East First Street
Reno, Nevada 89505

Re: Your letter of January 4, 1974 addressed to members of the Nevada State Bar, Probate and Trust Committee

Dear George:

Please be advised that I received the memorandum of statements to be presented to the Nevada Legislative Subcommittee in connection with the Subcommittee's hearing on Nevada probate law to be held at the Pioneer Auditorium, Reno, Nevada, on January 9, 1974. I hasten to advise that I will be unable to attend but wish to send along my comments with respect to several items contained in said statements. I refer principally to the statement that you intend to submit, under general summarization which the Committee believes are in need of change, at page 9.

With respect to Item 2: "Appraisers should be selected by the personal representative according to the needs of an estate and not be appointed by the Court."

So long as our executors and administrators statute remains on the books in relation to compensation and commissions, I feel that such appointment, if needed, should require the

approval of the Court. Otherwise the appointment of an appraiser by the personal representative could lead to improprieties, as well as dishonesty.

With respect to Item 3: "Sales, mortgages, and leases of real and personal property of an estate by the personal representative should be free from Court supervision unless specific objection is raised."

I acknowledge that red tape cutting would expedite sales, mortgages, and leases of real and personal property but this could lead to improper disposition of an estate's property by either a neglectful, uninformed, as well as dishonest personal representative. I might suggest in this case that no sale, nor lease of real or personal property of an estate could be had without due and proper notice giving any interested person an opportunity to object. Upon any objection being made the Court could make a determination as to whether or not such disposition is in the best interests of the estate and all parties interested therein.

I further find objectionable your suggested change under Item 7 (a) whereby there would be a requirement that an heir or devisee survive decedent for 120 hours.

In my experience I have found that the Uniform Simultaneous Death Act, Chapter 135 of Nevada Revised Statutes has a long history of judicial determination behind it both in determining heirship as well as questions relating to estate taxes involving the Treasury Department Internal Revenue Service.

I would hesitate to place a requirement on a heir or devisee that they survive decedent for a period of five days. In this connection I can perceive that an heir or devisee of my Will could be either my wife or one of my four children. Any one or both or all might be involved in an accident and whether by succession or by way of being an heir or devisee such could lapse provided they did not survive me by five full days.

I hasten to dispatch to you these criticisms and in closing, brief though my remarks may have been, I am personally most appreciative of the work you have done with the assignment of the Probate and Trust Committee and wish you great success on the presentation thereof at the Pioneer Auditorium on January 9th.

Best regards.

Respectfully yours,

TAF:le

Thomas A. Foley
Ex-Officio Member
Probate and Trust Committee
Nevada State Bar
Member, Board of Governors

C
O
P
Y

ADDRESS OF JUDGE RUSSELL S. WAITE, PROBATE COMMISSIONER AND COURT ADMINISTRATOR FOR THE DISTRICT COURT IN CLARK COUNTY, TO THE LEGISLATIVE SUBCOMMITTEE ON PROBATE LAWS, FEBRUARY 26, 1974.

Thank you, Mr. Chairman. I am one of the younger members of the bar, that Mr. Dickerson referred to. I was admitted to the practice of law in Nevada in September 28, 1972. So I've been in about a year and a half. But I was admitted in California in 1932, just 40 years before. I'm in the rather anomalous position today of being an attorney who's admitted in California and in Nevada and not practicing in either state, and a judge who is retired from the bench in California and has gone back to work as Probate Commissioner for the District Court of Clark County.

I was the one smart fellow who went to Reno as far as the airport in Las Vegas was concerned and didn't go on the joy ride that circled Reno and came back. But I had expected to testify before this committee on January 9 and was foreclosed by the failure to take off from Las Vegas.

As a member of the State Bar of Nevada and the Probate and Trust Committee and as Probate Commissioner, I want to second everything that George Dickerson has said. I think he has given you a very fine, close analysis of certain features of the probate code of this state that need to be revised and has made comparisons with the Uniform Probate Code that are detrimental to that Probate Code. But I want to tell you that there are many areas of the Nevada law that need to be changed.

I took over the office of Probate Commissioner in November of 1972, but before that I was examining probate cases for this county since August of 1968. And in those intervening years I've examined 9,317 probate matters for the district court of this county. Prior to that in California, I had examined and gone over 27,000 probate matters in the Superior Court of Riverside County.

And the same criticism that I have of your statutes here applies to some of the probate sections of the California code. I'm not picking on Nevada. But there are some places

where change is sorely needed. Inconsistencies in your statutes. There's an old legal adage that when a reason for the rule ceases, so does the rule itself. For example, let me give you just a couple of illustrations.

When there's a will, notice of the hearing is required to be given by publication, if the estate is over $8,000. And notice to the heirs, devisees, and legatees must be given by registered or certified mail.

Not so where you have intestate administration. You simply give notice to the heirs and post at the courthouse. And you give notice to the heirs by ordinary mail.

Now, why is this so? Is there something so sacrosanct about proving of the will that you have to publish it in the papers and give notice to the heirs, devisees and legatees by registered or certified mail, where in the case of intestate administration you just post at the courthouse and give notice by ordinary mail? There's no reason for the rule and so the rule should cease.

Another requirement of the Nevada statutes (and in some respects these are similar to the California statutes), if an executor or administrator wants to borrow money on pledge of property or on an unsecured note, the statute requires that notice of that hearing be published in the paper and posted at the courthouse. Now why is this? Why publish in the paper that he wants to borrow this money?

If he wants to make a conveyance and complete a decedent's contract, unless the contract was recorded, he has to publish notice of that. Why publish notice of hearing on a petition to complete a decedent's contract?

If he wants to lease property, he has to attach a copy of the proposed lease to his petition, but why is it he has to publish it in the paper?

Publication is for the purpose of giving news to the public that such a petition is before the court. The public couldn't care less whether the petitioner wants to borrow money, to make a conveyance to complete a decedent's contract, or to lease real property.

Now the one place where publication is good is in the case of sale. That is to give notice to the public that a sale is about to be made and they better get in and bid. And it's advantageous to the estate. A lot of attorneys in this town, where the will gives the executor power of sale without notice, still publish in order to get more bidders, and that's good. But why all these other requirements for publication? They don't make any sense at all.

Another provision that comes to my mind at this moment is found in 151.090 of your probate statutes. It requires upon distribution that you give notice in either of two ways, and a lot of attorneys give it both to be safe. You either have to personally serve all persons personally interested in the estate at least 5 days before the hearing. Now if you'll examine 155.040, that statute says when personal notice is required and no other means is prescribed for giving it, it has to be by a citation. So if you took these words literally (and that's the only way I can take them), it would mean that every time you want to distribute an estate, unless you went and got an affidavit of publication of notice in the newspaper as to the second provision of 151.090, if you want to distribute an estate you have to get out a citation on order of the court and personally serve that on all the heirs. Now fortunately, the judges of this district, at least, have not construed that as meaning exactly what it says. They have held that "personal service" means individually served. But that isn't what the statute says. It should be changed to remove that doubt.

There are other places where personal service is required. For example, if the executor or administrator is not the petitioner in the petition to execute a deed to complete a decedent's contract, he must be personally served, but it doesn't say how. So you go back to 155.040, and you find you have to get out a citation to him.

And the statutes are replete with that type of thing where they're left high and dry as to giving notice. And you're stuck with 155.040.

The two principal areas which I have heard discussed, at least so far as the Uniform Probate Code is concerned are the questions of delay in closing as estate, and Mr. Dickerson has covered that, and the question of fees and that is one

of the sore spots. I don't believe in statutory fees, by percentage and so forth. That tells you that the young kid just fresh out of law school is entitled to the same compensation for handling a complex estate perhaps as the seasoned lawyer who knows what he is doing and doesn't have to go look it up or doesn't have to call the Probate Commissioner and ask him how to handle it. And I get a lot of those calls believe me. There has to be something done to the fee schedule. The reasonable compensation to be fixed for attorneys according to their expertise and skill and the amount of work done.

Now, with those remarks, I think that I've said about all I would want to say except this, that I'm perfectly willing to work with the State Bar of Nevada, Probate Trust Committee, with this subcommittee, with any commission, to point out those areas (I've just mentioned a few of them this morning) where the Nevada statutes need to be revised to bring them into meaningful operation. We have wasted too many words in the Nevada Revised Statutes, just as they have in the California Probate Code, on things that not only don't make any sense but they are inconsistent and confusing.

Thank you very much, gentlemen.

C
O
P
Y

ADDRESS BY CHAIRMAN OF
TRUST COMMITTEE OF NEVADA
BANKERS ASSOCIATION

Gentlemen:

My appearance today is in response to Mr. Richard Sheffield's invitation to Mr. K. J. Sullivan, Jr., President of the Nevada Bankers Association, to designate an Association Spokesman to address your Subcommittee concerning any problems that have arisen under the existing Probate Code in Nevada.

Mr. Sullivan has designated me, as Chairman of the Nevada Bankers Association Trust Committee, to represent the N.B.A. In December our Trust Division held a meeting in Reno to discuss a proposed response. The comments set forth hereinafter have met with the unanimous support of the N.B.A. and they, therefore, constitute our official response.

First, we emphasize our conclusion that Nevada Probate Statutes are not antiquated or outmoded and in our judgment are modern in scope and provide to Nevada residents a workable statutory framework wherein estates can be settled speedily and provide protection to heirs, creditors and the general public.

Occasionally we hear complaints that probate is unnecessarily slow and that estates could be closed substantially sooner. The inference is that if we had some different laws that somehow it would speed up the closing of estates.

Nothing can be further from the fact in Nevada. Actually, the principal causes of delay in closing estates are not brought about by deficiencies in our Nevada Probate Code but can be broken down into four general areas:

1) Litigation regarding construction of Wills, determination of heirship and proof of Creditor's Claims, etc.
2) Problems related to liquidity of estate assets to take care of debts, taxes and cost of administration.
3) The liability of Executors for the payment of a decedent's Income taxes. By Federal Statute an Executor is personally liable for payment of a decedent's Income Taxes. Estates cannot be distributed with safety until the demands of the I.R.S. are satisfied. An Executor's sole protection from this liability under Federal Law is

to request an early determination of tax liability under section 6887 of the Internal Revenue Code which provides a period of 18 months within which the I.R.S. must audit the decedent's Income Tax Return and determine any additional liability.

4) Federal Estate Tax Returns. Many years ago the Internal Revenue Code established a minimum value of $60,000.00 for a tax free estate. A decedent's estate totaling that amount was then a relatively large estate. This is not the case today under our inflationary economic conditions. While the value of estates has increased dramatically in the last 10 to 15 years, the minimum non-taxable estate has continued to have an exemption of $60,000.00. Consequently, more and more estates fall within the purview of the Federal Estate Tax. This results in more estate tax audits and more delay in closing estates. An Executor can be relieved of personal liability by requesting an early audit of the Estate Tax Return

under Internal Revenue Code, section 6501(d) which gives the I.R.S. a period of 18 months to audit and accept the return. Actually, this period limits the period of assessment, serving only to relieve the Executor of personal liability. This does not necessarily mean that the closing of the estate will not be further delayed if the I.R.S. Estate Tax audit occurs at a later time.

It is the opinion of the N.B.A. that one of the most effective ways to speed probates to a conclusion would be to urge our Nevada Congressional delegation to introduce legislation raising the Estate Tax Exemption to $120,000.00 or $150,000.00.

It has been suggested that were Nevada to adopt the Uniform Probate Code it would be in the public interest. The N.B.A. is opposed to adoption of the U.P.C. upon several grounds.

1) First, for the reasons described above, no Probate Code changes will cure the problems described above.
2) Second, the ultimate test is whether or not the U.P.C. is a better Probate Code than our existing Code. The N.B.A. feels that it is

not an improvement and that it contains many undesirable aspects. The U.P.C. does not provide the protection now given creditors and heirs under our present Code. Some of the highlights of our objections are as follows:

A) The Flexible Administration provision of the U.P.C. constitutes a form of independent administration permitting the personal representative the option of alternately seeking Court supervision of his acts or a completely independent administration without Court supervision. We believe this latter provision is lacking in the fundemental safeguards that the people of this State have come to expect and rely upon from Court supervision provided in our present Code.

B) Adoption of the U.P.C. would have the effect of repealing every provision of the Nevada Probate Code including the entire body of the law dealing with

(1) Intestate Succession; (2) the execution and validity of Wills; (3) Guardianships and Conservatorships; (4) Court Jurisdiction over Inter Vivos and Testamentary Trusts and (5) Joint Tenancy and other nonprobate transfers.

C) Many estates under the U.P.C. would not descend, under the laws of intestate succession, to relatives of the decedent but would escheat to the State of Nevada rather than passing to collateral heirs.

D) The U.P.C.'s provisions regarding publishing of a Will does not provide the safeguards that exist in our present Code.

E) Provisions for the sale of estate assets under the U.P.C. can only be described as inadequate compared to our existing Code. The protection of heirs does not exist under provisions provided in the U.P.C.

F) The N.B.A. believes in strong provisions for the protection of estate assets by the appointment of financially responsible personal representatives or in the alternative adequate bonds to protect creditors and heirs. The provisions under the U.P.C. does not provide this protection in all cases.

G) U.P.C. 2-602 authorizes the Testator to select the local law of another state to be applied to the dispositions under his Will. Nevada has certain property concepts that are not common to all the states, such as community property, and serious problems could be created by attempting to apply the law of other states to these concepts.

H) The provisions of U.P.C. 3-104 allowing a creditor to proceed against a Distributee or a personal representative if an estate has been closed, are needed due to to the ability to close an estate under the U.P.C. procedures before all claims have been presented or paid. No compelling reason exists for closing estates

without providing a minimal period for creditors to present claims. Under Nevada law, a three (3) month period is provided for presentation and payment of claims.

I) There are several other U.P.C. provisions which are of lesser importance which we shall not go into in detail at this time. If the members of this Committee desire a point by point critique of the U.P.C., the N.B.A. Trust Division shall be pleased to furnish a more detailed analysis. However, the points described above cover our major objections.

None of the foregoing should be interpreted by this Committee as an adamant stand by the N.B.A. against any changes in Nevada Probate laws.

In our judgment, the reason our present Code is generally a satisfactory one rests upon the proposition that from time to time the people of the State have been able to effect changes in our Code to meet current public attitudes and desires for modification.

The N.B.A. believes there are some areas for modification. Some of the major areas for consideration are these:

1) N.R.S. Chapter 145 on Summary Administration of estates should provide for shortened administration on all estates up to $25,000.00, instead of the $5,000.00 maximum now provided.

2) We believe N.R.S. 145.100 should be changed to provide that estates upon which no administration is required should be increased to $5,000.00 from $1,000.00.

3) N.R.S. Chapter 147; provisions should be made to enable a personal representative to immediately pay funeral bills and Creditor's Claims against the decedent up to $100.00 for each bill without the necessity of filing a Creditor's Claim with perhaps some maximum dollar limitation on the total claims that can be so paid.

4) Chapter 143 should be modified to broaden a personal representative's authority to keep free funds in quality short-term Commercial Paper and U.S. Treasury Bills and simular U.S. Obligations without obtaining specific Court authority.

5) Chapter 148 and 155 regarding sales are in need of some clarification regarding Notice

and Time and Place of sales of both real and personal property. Existing code provisions cause confusion between sales of personal property and real property.

6) In addition, there are several other procedural areas in our Nevada Probate Code that could be clarified to provide for smoother administration. The N.B.A. will submit a detailed analysis of all suggested changes to the Committee if it is your wish.

I thank you for the opportunity to appear before you today upon behalf of the N.B.A. and I should now be pleased to respond to any questions or further suggestions you may wish to make.

Respectfully submitted,

C. D. Brown, Chairman
Nevada Bankers Association,
Trust Division

STATEMENT BY ROBERT J. SOMPS
REPRESENTING THE NEVADA
SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS

C
O
P
Y

GENERAL

We feel the existing probate laws are adequate to enable executors to properly calculate the various interests in estate proceedings.

It is, however, our experience, with the exception of corporate fiduciaries, that accountings presented and accepted by the court are often woefully inadequate in clearly reflecting the various interests in the estate as directed by the will of the decedent or failing to so direct, as set forth in this state's probate laws. This is so in spite of the fact the Uniform Principal and Income Act gives clear direction for segregating receipts and expenditures in order to establish the rights of various beneficiaries in these amounts.

We feel the court accountings should reflect the provisions of the Uniform Principal and Income Act. Such an accounting will show a clear picture of transactions leading to the final distribution of the estate. This should dispel much of the suspicion and mistrust which currently clouds the probate proceedings. In addition, such an accounting will provide the information required to properly report such transactions for federal income and estate tax matters.

C
O
P
Y

ADDRESS BY STATE CHAIRMAN
OF JOINT LEGISLATIVE COMMITTEE OF
THE AMERICAN ASSOCIATION OF RETIRED PERSONS
AND
THE NEVADA RETIRED TEACHERS ASSOCIATION

Mr. Chairman and members of the sub-committee:

My name is Don Perry. I am a retired teacher and school administrator and a member of the Carson City unit of the National Retired Teachers Association.

I appear before you today as the Chairman of the Nevada Joint State Legislative Committee of Nevada Retired Teachers and the American Association of Retired Persons, representing their combined membership of over 19,000 Nevada senior citizens.

Before I get too far into the subject of today's discussion, perhaps I should digress a moment to tell you about our joint legislative committee. The committee consists of 10 members, five members from each organization. These members were selected from various sections of the state so that constant communication with the local associations could be maintained. Organization of this joint legislative committee took place in October 1972 and was active for the first time during the 1973 session of the Nevada legislature supporting legislation of particular interest and concern to senior citizens.

One of our 1973 resolutions provided in essence that there be a study of the Uniform Probate Code. You, gentlemen, are now in the process of conducting such a study. The members of our Associations would like to believe that our resolution had something to do with the inauguration and implementation of your study.

The Associations which I represent actively support the concept of probate reform. By this statement we do not demand the repeal of all Nevada statutes relative to probate and forthwith there be substituted the Uniform Probate Code. Rather, we would like to suggest that your subcommittee consider in your study the method being used in our neighboring state of Utah. A legislative subcommittee of that state is studying the same problem that you are.

Their method consists of analyzing and comparing the Uniform Probate Code with existing Utah law. In order to do this they have arranged the material into four columns. The first column is a summarization of the text of the indicated section of the U.P.C. (Uniform Probate Code). The second column is a summarization of the Utah law which compares to the U.P.C. section. The third column contains comments on the comparison and other information as to what other states have done with respect to the adoption of the indicated

U.P.C. section, and what the California State Bar Critique had to say about that section of the U.P.C. The fourth column is a recommendation of what the committee might consider doing.

I have a copy of the Utah study with me. I also provided Mr. Sheffield with a copy several weeks ago. It is not a bulky document, consisting of approximately forty pages. It is readable and understandable to the average citizen. If individual members of your subcommittee desire a copy, extra copies can be reproduced for you from either Mr. Sheffield's copy or from mine.

Since assuming chairmanship of the joint legislative committee I have received ever-increasing complaints about obsolete inheritance laws and irrelevant and expensive procedures. These apparently have been with us for decades, so long, in fact, that some of us tend to discount the frustrations and problems they generate. However, to the people who have undergone the archaic and costly probate machinery, the problem is real and deep-seated and they desire to see something done about it.

Therefore, the Associations which I represent would like to bring the probate process into conformity with the needs and wishes of the average American who wishes to

insure the orderly distribution of his estate, but for whom extensive estate planning is simply not feasible. It is the considered opinion of our joint state legislative committee that if you choose to use the Utah plan that this objective will be largely accomplished.

I believe that I should try to pass on to you those provisions of the Uniform Probate Code which we feel are of primary importance to Nevada senior citizens and, for that matter, to the average person in the State of Nevada.

We believe that the passage of the UPC will enable persons of ordinary means to pass on their property at death with fewer delays, less cost and, most importantly, with the assurance that their wishes will be carried out. The Probate Code accomplishes this result by simplifying the making and probating of a will. Just as importantly, the Code relieves most persons in ordinary circumstances of the necessity to make wills by providing a modern intestate succession plan that reflects the intentions of most people. Studies have shown that most persons of modest means want their estate to pass entirely to the surviving spouse. Whereas most statutory estate plans still divide a decedent's property between the spouse and other relatives, often including collateral relatives. Under present statutes, people are forced to make wills simply to avoid the undesireable effects of the law.

Present statutes also contain other provisions which tend to force people to make wills: Wills are commonly used to name family members to administer estates; the UPC sets up the order of priority for administration beginning with the surviving spouse. Today, wills are used to avoid common disaster problems, under the UPC a spouse must survive the decedent by five full days. Today, old legal formalities throw considerable doubt on the validity of a will made in one state when the testator later takes up residence in another state. Under the UPC it would no longer be necessary to make a new will when a person took up residence in another state where the Code had been enacted, for it recognizes the validity of "foreign" wills.

For those who prefer to control their estates by their own will, the Code also offers some significant improvements. Under it, a simple signed statement is valid as a will, and even if witnesses are used for additional safety, the Code permits the will to be probated without calling the witnesses to court after the death. In short, the will would have a presumption of validity unless challenged by any interested party, at which time a court proceeding would be convened to determine its validity.

The Code also slices away a lot of red tape and reduced procedural requirements relating to inheritance. By offering procedures for informal probate and administration (that is, without court supervision), the Code reduces the need for a lawyer in every estate and the need to wait months or even years for an inheritance. The simplicity and speed of Code procedures work to shorten delays and lower the expense of settling small, troublefree estates.

The Code provides modern, sensible laws relating to guardianships, conservatorships and other means for handling the affairs of persons who are incapacitated by illness, advanced age or other disability. The Code provides for powers of attorney that remain good in spite of incompetency, so that persons who expect difficulties in managing for themselves can arrange for others to act for them.

Finally, the Code unifies administration of estates consisting of land or savings located in two or more states. The mobility of Americans makes this reform essential. In short, the Uniform Probate Code assumes that most people are trustworthy and honest, and makes the law work in their favor. But at the same time, it fully protects those who need safeguards against foul play.

Thank you very much for your kind attention. We urge that you consider and weigh carefully the needs and wishes of the average citizen in your deliberations.

SUMMARY--Makes certain changes in administration of decedents' estates. Fiscal Note: No. (BDR 12-160)

AN ACT relating to proceedings on estates of deceased persons; increasing the maximum value of estates for summary administration and other procedures; adding to the duties and powers of executors and administrators; modifying the provisions for compensating executors and administrators and their attorneys; changing certain procedures for giving notices; and providing other matters properly relating thereto.

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

Section 1. Chapter 143 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. The executor or administrator shall use reasonable diligence in performing his duties and in pursuing the administration of the estate.

2. Every executor or administrator in charge of an estate that has not been closed shall:

(a) Within 6 months after his appointment, where no federal estate tax return is required to be filed for the estate; or

(b) Within 12 months after his appointment, where a federal estate tax return is required to be filed for the estate,

flush file with the district court a report explaining why the estate has not been closed.

3. Upon receiving the report, the court clerk shall set a time and place for a hearing of the report, not later than 30 days nor sooner than 15 days after receiving it. At least 10 days before the hearing, the executor or administrator shall send a copy of the report and shall give notice of the hearing, by registered or certified mail, to each person whose interest is affected as an heir, devisee or legatee.

4. At the hearing, the court shall determine whether or not the executor or administrator has used reasonable diligence in his administration and if he has not, the court may:

(a) Prescribe the time within which the estate shall be closed;

(b) Allow the executor or administrator additional time for closing and order a subsequent report; or

(c) Suspend or revoke the letters of the executor or administrator.

Sec. 3. Executors and administrators may, without court approval, deposit or invest funds of the estate in:

1. United States Treasury notes, bills or bonds;

2. Negotiable commercial paper, not exceeding 180 days maturity, of prime quality as defined by a nationally recognized organization which rates such securities;

3. Savings accounts or certificates of deposit in national banks, banks chartered by the State of Nevada, federal savings and loan associations or savings and loan associations chartered by the State of Nevada; or

4. Any other investment in which an executor or administrator is authorized by law or by a will to invest moneys or funds under his control.

Sec. 4. 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 executor consents to act or renounces his right to letters testamentary.

(c) The names, ages and residences of the heirs, next of kin, devisees and legatees of 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 testamentary are prayed.

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

Sec. 5. NRS 136.100 is hereby amended to read as follows:

136.100 1. [All petitions] Every petition for the probate of a will and for the issuance of letters shall be signed by the party petitioning, or the attorney for the petitioner, and filed with the clerk of the court, who shall [publish a notice in some newspaper, if there is one printed in the county; if not, then by posting the notice in three public places in the county.] set the petition for hearing. The petitioner shall cause notice of the hearing to be published in a newspaper printed in the county where the proceedings are pending, if there is such a newspaper; if not, then in one having general circulation in the county.

2. If the notice is published in a weekly newspaper, [it must] the notice shall appear therein on at least [3] three successive dates of publication [;] prior to the hearing; and if in a newspaper published oftener than once a week, [it] the notice shall be so published that there will be , prior to the hearing, at least 10 days from the first to the last dates of

publication [, both first and last days being included,] (both first and last days being included) and at least [3] three [times] issues during this period.

3. [If the notice is by posting, it must be given at least 10 days before the hearing.

4.] The notice shall state the filing of the petition, the object, and designate the time for proving such will.

Sec. 6. NRS 136.110 is hereby amended to read as follows:

136.110 At least 10 days before the hearing, the petitioner shall cause copies of the notice of the hearing of a petition for probate and for the issuance of letters [must] to be [personally] individually served upon the heirs of the testator and the devisees and legatees named in the will and all persons named as executors who are not petitioning, or to be mailed, postage prepaid, registered or certified mail, from a post office within this state, addressed to such person or persons at their respective places of residence, if known to the petitioner; if not known, such notice shall be addressed and mailed, postage prepaid, to such persons whose addresses are unknown, to the county seat of the county where the proceedings are pending.

Sec. 7. NRS 136.170 is hereby amended to read as follows:

136.170 1. When it appears to the court that a will cannot be proven as otherwise provided by law because one or more or all of the subscribing witnesses to the will, at the time the will is offered for probate, are serving in or present with the Armed Forces of the United States or as merchant seamen, or are dead or mentally or physically incapable of testifying or otherwise unavailable , [in the course of such service,] the court may admit the will to probate upon the testimony in person or by deposition of [a] at least two credible disinterested witnesses that the signature to the will is in the handwriting of the person whose will it purports to be, or upon other sufficient proof of such handwriting.

2. The provisions of subsection 1 shall not preclude the court, in its discretion, from requiring in addition, the testimony in person or by deposition of any available subscribing witness, or proof of such other pertinent facts and circumstances as the court may deem necessary to admit the will to probate.

Sec. 8. NRS 138.020 is hereby amended to read as follows:

138.020 1. No person [shall be deemed] is competent to serve as an executor or executrix who, at the time the will is probated:

(a) Is under the age of majority; [or]

(b) Has been convicted of a felony; [or]

(c) Upon proof, is adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of integrity or understanding; or

(d) Is a banking corporation whose principal place of business is not in the State of Nevada, unless it associates as coexecutor a banking corporation whose principal place of business is in this state [.] ; however, such an out-of-state banking corporation is competent to appoint a substitute executor or executrix, under NRS 138.045, without forming such an association.

2. If any such person be named as the sole executor or executrix in any will, or if all persons so named are incompetent, or shall renounce the trust, or fail to appear and qualify, letters of administration with the will annexed shall issue.

Sec. 9. NRS 139.040 is hereby amended to read as follows:

139.040 1. Administration of the estate of a person dying intestate shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order:

(a) The surviving husband or wife.

(b) The children.

(c) The father or the mother.

(d) The brother [.] or the sister.

(e) [The sister.

(f)] The grandchildren.

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

[(h)] (g) Creditors who have become such during the lifetime of the deceased.

[(i)] (h) The public administrator.

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

[(k)] (j) Any person or persons legally competent.

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

(a) To appointment, if such person is a resident of the State of Nevada or is a banking corporation whose principal place of business is in this state or which associates as coadministrator a banking corporation whose principal place of business is in this state.

(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 shall have the same priority as his nominator. Such priority is independent of the residence or corporate qualification of the nominator.

Sec. 10. NRS 139.100 is hereby amended to read as follows:

139.100 1. The clerk shall set the petition for hearing . [by causing a notice to be posted at the courthouse of the county where the petition is filed, giving the name of the decedent, the name of the applicant, and the time at which the application will be heard. Such notice must be given at least 10 days before the hearing.] The petitioner shall cause notice of the hearing on the petition to be published in a newspaper printed in the county where the proceedings are pending, if there is such a newspaper; if not, then in one having general circulation in the county.

2. If the notice is published in a weekly newspaper, the notice shall appear therein on at least three successive dates of publication prior to the hearing; and if in a newspaper published oftener than once a week, the notice shall be so published that there will be, prior to the hearing, at least 10 days from the first to the last dates of publication (both first and last days being included) and at least three issues during this period.

[2. The clerk] 3. At least 10 days before the hearing, the petitioner shall cause similar notice to be individually served upon the decedent's heirs, as named in the petition, or to be mailed, postage prepaid, to [the heirs of the decedent named in the petition at least 10 days before the hearing,] them by registered or certified mail, addressed to them at their respective post office addresses, as set forth in the petition; otherwise at the county seat of the county where the proceedings are pending.

Sec. 11. NRS 140.080 is hereby amended to read as follows:

140.080 The special administrator shall also render an account, under oath, of his proceedings in like manner as other administrators are required to do [.] ; but if a person serving as special administrator is appointed the succeeding general administrator, the accounting otherwise due from him as special administrator may be included in his first accounting as general administrator.

Sec. 12. NRS 142.010 is hereby amended to read as follows:

142.010 1. Before letters testamentary or letters of administration [shall] may be issued to the executor or administrator he shall take and subscribe an oath or affirmation, before an officer authorized to administer oaths, that

he will perform according to law the duties of executor or administrator. The oath shall be filed and recorded by the clerk.

2. The oath of a corporation appointed as executor or administrator may be taken and subscribed by its president or vice president, trust officer, or secretary or treasurer, upon its behalf, and the oath of a banking corporation may be taken and subscribed by any of the above-named officers, or by its cashier, trust officer, assistant trust officer, manager , [or] branch manager [.] or other duly authorized officer.

Sec. 13. NRS 144.010 is hereby amended to read as follows:

144.010 [Except as provided in NRS 145.050, every] Every executor or administrator shall make and return to the court, within 60 days after his appointment, unless the court shall extend the time, a true inventory and appraisement of all the estate of the deceased which [shall have] has come to his possession or knowledge.

Sec. 14. NRS 145.030 is hereby amended to read as follows:

145.030 [Notice] The petitioner shall give notice by mail to the decedent's heirs, devisees and legatees of hearing of

the petition [shall be given by posting upon the bulletin board of the county courthouse of the county in which the petition is filed for] at least 10 days before the date set for the hearing of the petition.

Sec. 15. NRS 145.040 is hereby amended to read as follows:

145.040 When it [shall be] is made to appear to the court or judge, by affidavit or otherwise, that the gross value of the whole estate does not exceed [$8,000,] $60,000, the court or judge may, if deemed advisable, make an order for a summary administration of the estate.

Sec. 16. NRS 145.050 is hereby amended to read as follows:

145.050 1. The order for a summary administration of the estate shall:

(a) Dispense with all regular proceedings and notices, except for the notice [of] to creditors of the appointment of the executor or administrator and for sales of real property.

(b) Provide [whether] that an inventory and appraisement shall be made and returned to the court.

2. The notice [of] to creditors of the appointment of the executor or administrator shall be given by [:

(a) Publication once a week for 4 successive weeks, provided the cost does not exceed $5; or

(b) Posting instead of by publication, if deemed proper and ordered by the judge or court.] publication once a week for 4 successive weeks, provided the cost does not exceed $25, in a newspaper printed in the county where the proceedings are pending, if there is such a newspaper; if not, then in one having general circulation in the county. If the cost of publication will exceed $25, the notice shall be given in such manner as the court may require.

3. If a notice to creditors of the appointment of the executor or administrator is published in a weekly newspaper, the notice must appear therein on at least three successive dates of publication; and if in a newspaper published oftener than once a week, the notice shall be so published that there will be at least 10 days from the first to the last dates of publication (both first and last days being included) and at least three issues during this period.

4. The notice shall be substantially in the following form:

Notice to Creditors

Notice is hereby given that the undersigned has been duly

appointed and qualified by the (giving the title of the court and the date of appointment), as executor or administrator (as the case may be) of the estate of ....., deceased. All creditors having claims against the estate are required to file the same, with proper vouchers attached, with the clerk of the court, within 60 days after the first publication of this notice.

Date .....

Sec. 17. NRS 145.060 is hereby amended to read as follows:

145.060 1. Creditors of the estate must file their claims, due or to become due, with the clerk within [40] 60 days after the first publication [or posting] of the notice of appointment of the executor or administrator, and within 5 days thereafter the executor or administrator must act on the claims filed and present them in 3 days thereafter to the judge for his action.

2. Any claim which [shall not be] is not filed within [40] the 60 days shall be barred forever.

3. Every claim which [shall have been] is filed as provided in this section, allowed by the executor or administrator, and

approved by the judge, shall then, and not until then, be ranked as an acknowledged debt of the estate [,] and [to] be paid in due course of administration [.] except that advance payment of small debts may be made pursuant to subsection 2 of NRS 150.230.

Sec. 18. NRS 145.090 is hereby amended to read as follows:

145.090 The total of fees and costs of the clerk in a summary administration shall not exceed [$15.] $25.

Sec. 19. NRS 145.100 is hereby amended to read as follows:

145.100 Estates not exceeding [$5,000] $10,000 may be assigned and set apart without administration as provided in NRS 146.070.

Sec. 20. NRS 146.070 is hereby amended to read as follows:

146.070 1. When a person [shall die] dies leaving an estate, the gross value of which does not exceed [$5,000,] $10,000, and there [be] is a surviving [husband or wife,] spouse or minor child or children [,] of the deceased, the estate shall not be administered upon, but the whole thereof, after directing such payments as may be deemed just, shall be, by an order for that purpose, assigned and set apart for the support of the surviving [husband or wife] spouse or minor children , [of the deceased,] or for the support of the minor

child or children, if there [be] is no surviving [husband or wife.] spouse. The whole of the estate, even though there [be] is a surviving [husband or wife,] spouse, may, in the discretion of the court, after directing the deductions aforesaid, be set aside to the minor child or children , [of the deceased,] according to the subserviency of [the] their best interests . [of the minor child or children.]

2. When a person [shall die] dies leaving no surviving spouse or minor child, and an estate, the gross value of which does not exceed [$5,000,] $10,000, upon good cause shown therefor, the judge may order that the estate shall not be administered upon [,] but the whole thereof shall be [by the judge, by an order for that purpose,] assigned and set apart:

First: To the payment of funeral expenses, expenses of last illness, and creditors, if there [be] are any; and

Second: Any balance remaining to the claimant or claimants entitled thereto.

3. All proceedings taken under this section, whether or not the decedent left a will, shall be originated by a verified petition containing:

(a) A specific description of all of the decedent's property.

(b) A list of all the liens, encumbrances of record at the date of his death.

(c) An estimate of the value of the property.

(d) A statement of the debts of the decedent so far as known to the petition.

(e) The names, ages and residences of the decedent's heirs, devisees and legatees.

flush The petition may include a prayer that if the court finds the [total] gross value of the estate does not exceed [the sum of $5,000,] $10,000, the same be set aside as provided in this section.

4. [Notice of the petition shall be given by posting a notice upon the bulletin board of the county courthouse of the county in which the petition is filed for at least 10 days before the date set for the hearing of the petition.] At least 10 days before the date set for the hearing of the petition, the petitioner shall give notice of the petition and hearing, by registered or certified mail, to the decedent's heirs, devisees and legatees. If such [be] is the fact, the notice shall include a statement that a prayer for setting aside the estate to the [husband, or wife,] spouse, or minor child or children, as the case may be, is included in the petition.

5. No court or clerk's fees [shall] may be charged for the filing of any petition in, or order of court thereon, or for any certified copy of the petition or order in an estate not exceeding $1,000 in value.

6. If the court finds that the [total] gross value of the estate does not exceed the sum of $5,000, the district court may direct that the estate be distributed to the father or mother of any minor heir or legatee, with or without the filing of any bond, or may require that a general guardian be appointed and that the estate be distributed to such guardian, with or without bond as in the discretion of the court seems to the best interests of the minor. The court may in its discretion direct the manner in which such money shall be used for the benefit of the minor.

Sec. 21. NRS 146.080 is hereby amended to read as follows:

146.080 When a decedent leaves no real property, nor interest therein nor lien thereon, in this state, and the [total] gross value of the decedent's property in this state, over and above any amounts due to the decedent for services in the Armed Forces of the United States, does not exceed [$1,000,] $2,000, the surviving spouse, the children, lawful issue of deceased children, the parent, the brother or sister

of the decedent, or the guardian of the estate of any minor or insane or incompetent person bearing such relationship to the decedent, if such person has a right to succeed to the property of the decedent or is the sole beneficiary under the last will and testament of the decedent, may, 40 days after the death of decedent, without procuring letters of administration or awaiting the probate of the will, collect any money due the decedent, receive the property of the decedent, and have any evidences of interest, indebtedness or right transferred to him upon furnishing the person, representative, corporation, officer or body owing the money, having custody of such property or acting as registrar or transfer agent of such evidences of interest, indebtedness or right, with an affidavit showing the right of the affiant or affiants to receive such money or property or to have such evidences transferred.

Sec. 22. NRS 147.010 is hereby amended to read as follows:

147.010 1. Immediately after his appointment, every executor or administrator shall [:

(a) Cause] cause to be published a notice to creditors of his appointment as executor or administrator in [some] a newspaper published in the county [,] where the proceedings

are pending, if there [be one;] is such a newspaper; if not, then in [such newspaper as may be designated by the court or judge.

(b) Post a copy of the notice at the courthouse of the county.] one having general circulation in the county. The notice shall be published at least once a week for 4 successive weeks.

2. If any executor or administrator [shall neglect, for] fails to give the notice within 15 days after his appointment, [to give notice of his appointment] as prescribed in subsection 1, the court shall revoke his letters.

3. The notice shall be substantially in the following form:

Notice to Creditors

Notice is hereby given that the undersigned has been duly appointed and qualified by the (giving the title of the court and the date of appointment), as executor or administrator [, as the case may be,] (as the case may be) of the estate of ....., deceased. All creditors having claims against the estate are required to file the same, with proper vouchers attached, with the clerk of the court [, within 3 months] within 90 days after the first publication of this notice.

Dated .....

Sec. 23. NRS 147.040 is hereby amended to read as follows:

147.040 1. All persons having claims against the deceased must, within [3 months] 90 days after the first publication of the notice specified in NRS 147.010, file the same, with the necessary vouchers, with the clerk of the court, who shall file and register each claim.

2. If a claim [be] is not filed with the clerk within [3 months] 90 days after the first publication of the notice, [it] the claim shall be forever barred; but when it [shall be] is made to appear , by the affidavit of the claimant [,] or by other proof [, that he] to the satisfaction of the court or judge, that the claimant had no notice as provided in this chapter, [to the satisfaction of the court or judge, it] the claim may be filed at any time before the filing of the final account.

Sec. 24. NRS 148.190 is hereby amended to read as follows:

148.190 1. Except as provided by NRS 148.080, 148.170 and 148.180 [, personal property may be sold only after public notice given for at least 10 days by notices posted in 3 public places in the county in which the proceedings are pending, or by publication in a newspaper in such county, or both, as the executor or administrator may determine, containing] and in

summary administration under chapter 145 of NRS, the executor or administrator may sell personal property of the estate only after he has caused notice to be published at least 10 days before the sale in one or more issues of a newspaper published in the county where the proceedings are pending, if there is such a newspaper; if not, then in one having general circulation in the county. The notice shall include the time and place of sale, and a brief description of the property to be sold.

2. Public sales must be made at the courthouse door, [or] at some other public place, [or] at the residence of the decedent [;] or at a place designated by the executor or administrator; but no sale [shall] may be made of any personal property which is not present at the time of sale, unless the court shall otherwise order.

Sec. 25. NRS 148.360 is hereby amended to read as follows:

148.360 1. To enter into an agreement to sell or to give an option to purchase a mining claim or claims, or real property worked as a mine, belonging to the estate of a decedent, the executor or administrator, or any person interested in the estate, shall file a verified petition describing the property in question, stating the terms and general conditions of the

proposed agreement or option, showing the advantage or advantages that may accrue to the estate from entering into it, and praying for an order authorizing or directing its execution.

2. The clerk shall set the petition for hearing by the court , and [give] notice thereof shall be given for the period and in the manner required by NRS 155.010 and 155.020.

Sec. 26. NRS 149.020 is hereby amended to read as follows:

149.020 1. The executor or administrator, or any person interested in the estate, shall file a verified petition showing:

(a) The particular purpose or purposes for which the order is sought.

(b) The necessity for or advantage to accrue from the order.

(c) The amount of money proposed to be raised, if any.

(d) The rate of interest to be paid.

(e) The length of time the note or notes are to run.

(f) A general description of the property proposed to be mortgaged or subjected to such deed of trust, security agreement or other lien.

2. The clerk shall set the petition for hearing by the court . [and give notice thereof for the period and] Notice of the hearing shall be given in the manner required by NRS

155.010 [and 155.020,] or [in the alternative give such notice] as the court by order may require.

Sec. 27. NRS 149.070 is hereby amended to read as follows:

149.070 1. To obtain such an order the executor or administrator, or any person interested in the estate, shall file a verified petition, showing the advantage to accrue from giving the lease, a general description of the property proposed to be leased, and the term, rental and general conditions of the proposed lease.

2. The clerk shall set the petition for hearing by the court . [and give notice thereof for the period and] Notice of the hearing shall be given in the manner required by NRS 155.010 [and 155.020,] or [in the alternative such notice] as the court by order [shall] may require.

Sec. 28. NRS 149.100 is hereby amended to read as follows:

149.100 The executor or administrator may lease real property without an order of court when the tenancy is from month to month, or for a term not to exceed 1 year . [, and the rental does not exceed $100 a month.]

Sec. 29. NRS 149.120 is hereby amended to read as follows:

149.120 1. The executor or administrator, or any person claiming to be entitled to such conveyance or transfer, may

file with the clerk of the court a verified petition setting forth the facts upon which the claim is predicated.

2. Thereupon the clerk shall set the petition for hearing by the court, and notice thereof shall be [served on the executor or administrator personally, when he is not the petitioner, and shall be published once, at least 10 days before the hearing, in a newspaper published in the county where the proceedings are pending, or, if there is no such newspaper, then in lieu of publication a written notice of the hearing shall be posted at the courthouse of the county in which the proceedings are pending, at least 10 days before the hearing; but if such contract was recorded before the death of the person executing it, notice of the hearing may be given by serving such notice on the executor or administrator personally, when he is not the petitioner, and posting a copy of the notice at the courthouse of the county in which the proceedings are pending, for at least 10 days prior to the hearing.] given as provided in NRS 155.010.

Sec. 30. NRS 150.020 is hereby amended to read as follows:

150.020 1. When no compensation [shall have] has been provided by the will, or the executor [shall renounce] has renounced all claims thereto, he shall be allowed commissions upon the [whole amount] gross value of the [personal] estate accounted for by him, as follows:

(a) For the first $1,000, at the rate of [6] 7 percent.

(b) For the next [$4,000,] $9,000, at the rate of 4 percent.

(c) For [all above $5,000, at the rate of 2 percent.] the next $40,000, at the rate of 3 percent.

(d) For the next $450,000, at the rate of 2 percent.

(e) For the next $500,000, at the rate of 1.5 percent.

(f) For all above $1,000,000, at the rate of 1 percent.

2. The same commissions shall be allowed to administrators.

3. If there are two or more executors or administrators, the compensation shall be apportioned among them as they may agree, and in the absence of an agreement, by the court according to the services actually rendered by each.

[4. In all cases additional allowance may be made by the court for services in regard to the real property when it shall be made to appear that the same is just and reasonable.]

Sec. 31. NRS 150.060 is hereby amended to read as follows:

150.060 1. [All attorneys for estates or executors or administrators appointed in the proceedings shall be attorneys of record with like powers and responsibilities as attorneys in other actions and proceedings, and shall be entitled to receive a reasonable compensation, to be paid out of the estate they respectively represent, for services rendered, to be allowed by the court.

2. Any attorney who has rendered services to an executor or administrator at any time after the issuance of letters testamentary or letters of administration, and upon such notice to the executor or administrator and to the persons interested in the estate as the court or a judge thereof shall require, may apply to the court for an allowance upon his fees. On the hearing, the court shall make an order requiring the executor or administrator to pay such attorney out of the estate such compensation, on account of the services rendered up to that time, as the court shall deem proper, and

such payment shall be made forthwith.] Attorneys for executors and administrators are entitled to reasonable compensation for their services, to be paid out of the estate. The amount shall be fixed by agreement between the executor or administrator and the attorney, subject to approval by the court. If the executor or administrator and the attorney fail to reach agreement, or if the attorney is also the executor or administrator, the amount shall be determined and allowed by the court.

2. The executor or administrator or his attorney may apply to the court for the approval of an agreed fee or where agreement has not been reached, for the allowance of a reasonable fee. The application may be made on account of services rendered up to a certain time during the proceedings. The applicant shall give notice of his application and the hearing thereof to the executor or administrator if he is not the applicant and to all persons whose interest will be affected. The notice shall be sent by registered or certified mail at least 10 days before the hearing. The notice shall include a statement of the amount of the fee which the court will be requested to approve or allow.

3. Any person whose interest will be affected may file

objections to the application, and the objections shall be considered at the hearing.

[3.] 4. Attorneys for minors, absent or nonresident heirs shall receive compensation primarily out of the estate of the distributee so represented by him in such cases and to such extent as may be determined by the court, but if the court finds that all or any part of the services performed by the attorney for the minors, absent or nonresident heirs were of value to the estate as such and not just of value to the minors, absent or nonresident heirs, then the court shall order that all or part of the fee to be paid to such attorney shall be paid out of the funds of the estate and shall be a general administration expense of the estate. The amount of such fees shall be determined by the court.

Sec. 32. NRS 150.230 is hereby amended to read as follows:

150.230 1. The executor or administrator shall, as soon as he has sufficient funds in his hands, pay the funeral expenses, the expenses of the last sickness, the allowance made to the family of the deceased, and wage claims to the extent of $600 of each employee of decedent for work done or personal services rendered within 3 months prior to the death of the employer ; [,] but he may retain in his hands the

necessary expenses of administration. The funeral expenses, expenses of the last illness and such wage claims may be paid upon the submission of sworn statements showing the obligations and without any formal processing of creditors' claims.

2. He [shall not be] is not obliged to pay any other debt or any legacy until the payment [shall have been] is ordered by the court.

3. He may, prior to court approval or order, pay any of the decedent's debts amounting to $100 or less each but not exceeding an aggregate amount of $1,000 if:

(a) Claims for payment thereof are properly filed in the proceedings;

(b) Such debts are justly due; and

(c) The estate is solvent.

flush In settling the account of the estate, the court shall allow any such payment if the conditions of paragraphs (a), (b) and (c) have been met; otherwise, the executor or administrator is personally liable to any person sustaining loss or damage as a result of such payment.

[3.] 4. Funeral expenses and expenses of a last sickness shall be deemed debts payable out of the estate of the deceased spouse and shall not be charged to the community share of a

surviving spouse, whether or not the surviving spouse is financially able to pay such expenses and whether or not the surviving spouse or any other person is also liable therefor.

Sec. 33. NRS 151.090 is hereby amended to read as follows:

151.090 1. When a petition for final distribution [shall be] is filed, the petitioner shall cause notice of the hearing of the petition [shall:] to be:

(a) [Be personally served, at the time of the filing of the final account or subsequently thereto,] Served, by registered or certified mail, on all personally interested in the estate at least [5] 10 days before the [time specified in the notice; or] day of the hearing; or

(b) [Be given] Given by publication [for] at least once a week for [3] 2 successive weeks [in such newspaper as the court or judge shall order.] before the hearing in a newspaper printed in the county where the proceedings are pending, if there is such a newspaper; if not, then in one having general circulation in the county.

2. The court may order such further notice as it may deem proper.

Sec. 34. NRS 155.010 is hereby amended to read as follows:

155.010 1. Upon the filing of:

(a) A petition relating to the family allowance filed after the return of the inventory; [or]

(b) A petition for leave to settle or compromise a claim against a debtor of the decedent, or a claim against the estate, or a suit against the executor or administrator, as such; [or]

(c) A petition for the sale of stocks or bonds; [or]

(d) A petition for leave to sell or give an option to purchase a mining claim or real property worked as a mine; [or]

(e) A petition for leave to execute a promissory note, mortgage, or deed of trust or give other security; [or]

(f) A petition for leave to lease or to exchange property, or to institute an action for partition of property; [or]

(g) A petition for an order authorizing or directing the investment of money; [or]

(h) A report of appraisers concerning a homestead; [or]

(i) An account of an executor, administrator or trustee; [or]

(j) A petition for partial or ratable [or final] distribution; [or]

(k) A petition for the delivery of the estate of a nonresident; [or]

(l) A petition for determination of heirship or interest in an estate; [or]

(m) A petition of a trustee for instructions; or

(n) A petition for the appointment of a trustee after distribution; and

flush in all cases in which notice is required and no other time or method is prescribed by law or by the court, the clerk shall set the same for hearing by the court and shall give notice of the petition, application, report or account by causing a notice to be posted at the courthouse of the county where the proceedings are pending, at least 10 days before the day of hearing.

2. The notice shall:

(a) Give the name of the estate.

(b) Give the name of the petitioner.

(c) State the nature of the application.

(d) Refer to the petition for further particulars.

(e) Notify all persons interested to appear at the time and place mentioned in the notice and show cause, if any they have, why the order should not be made.

3. Unless otherwise ordered by the court, within 10 days

after the filing of such petition, account, return or report the person filing the same must cause a copy of the notice to be delivered to the executor or administrator, when he is not the petitioner, or any coexecutor or coadministrator not petitioning, and to all persons (or to their attorneys, if they have appeared by attorney), who have filed a written request for notice in accordance with the provisions of NRS 155.030, or who have given notice of appearance in the estate in person or by attorney, as heir, devisee, legatee or creditor, or as otherwise interested, as follows:

(a) By handing the notice or copy to the party in interest personally or to his guardian, or attorney of record; or

(b) By sending it by registered or certified mail with return receipt requested to such party in interest, or his guardian or attorney of record, at the last-known address of the addressee.

4. Proof of the giving of notice must be made at the hearing; and if it appears to the satisfaction of the court that the notice has been regularly given the court shall so find in its order, and the order, when it becomes final, shall be conclusive upon all persons.

5. Whenever notice of any proceeding listed in subsection 1 is required by this Title to be given by publication, proof of the publication of such notice as so required shall be equivalent to compliance with the provisions of this section relating to posting of notice.

Sec. 35. NRS 155.020 is hereby amended to read as follows:

155.020 1. In the case of a petition for leave [:

(a) To] to sell or give an option to purchase a mining claim or real property worked as a mine , [; or

(b) To borrow money or execute a mortgage, deed of trust or give other security; or

(c) To execute a lease or sublease;] in addition to the notice by mailing or personal service required by NRS 155.010, the [clerk] petitioner shall cause notice of the application to be published in a newspaper of general circulation in the county in which the estate is being probated.

2. If the notice is published in a weekly newspaper, it must appear therein on at least 2 different days of publication, and the first publication must be at least 10 days before the hearing; if in a newspaper published more often, the notice shall be published twice, that is, in [2] two

issues of the newspaper, but there shall be at least 10 days from the first to the last day of publication, both days included.

Sec. 36. NRS 155.030 is hereby amended to read as follows:

155.030 1. At any time after the issuance of letters testamentary or letters of administration upon the estate of any decedent, any person interested in the estate or the property thereof, or the attorney for such person, may serve upon the executor or administrator (or upon the attorney for the executor or administrator), and file with the clerk of the court wherein administration of the estate is pending, a written request stating that he desires special notice of any or all of the following matters, steps or proceedings in the administration of the estate:

(a) Filing of returns of sales, leases or mortgages of any property of the estate, and for confirmation thereof.

(b) Filing of accounts.

(c) Filing of petitions for any purpose.

(d) Filing of reports explaining why estates have not been closed.

2. The request shall state the post office address of the person or his attorney, and thereafter a brief notice of the

filing of any such returns, petitions , [or] accounts or reports shall be addressed to such person, or his attorney, at his stated post office address, and deposited in the United States Post Office, with the postage thereon prepaid, within 2 days after the filing of the return, petition or account; or personal service of such notices may be made on such person or his attorney within the 2 days, and such personal service shall be equivalent to deposit in the post office, and proof of mailing or of personal service must be filed with the clerk before the hearing of the petition, return or account.

3. If, upon the hearing, it shall appear to the satisfaction of the court that the notice has been regularly given, the court shall so find in its order or judgment and such judgment shall be final and conclusive upon all persons.

Sec. 37. NRS 159.197 is hereby amended to read as follows:

159.197 1. After the winding up of the affairs of the guardianship, the guardian shall deliver physical possession of all of the ward's property to the ward, his executor or administrator or the successor guardian, as the case may be, and obtain a receipt therefor.

2. If the guardian has terminated by reason of the death of the ward, the court, by order, may authorize the guardian to distribute the deceased ward's property in the same manner as authorized by NRS 146.070 , [or 146.080,] if the value of the property remaining in the hands of the guardian does not exceed [the sum of $5,000.] $10,000, or as authorized by NRS 146.080, if the value of the property remaining in the hands of the guardian does not exceed $2,000.

Sec. 38. NRS 165.030 is hereby amended to read as follows:

165.030 Within [30] 75 days after it is the duty of the first qualifying testamentary trustee to take possession of the trust property he shall file with the district court where the will was admitted to probate an inventory under oath, showing by items all the trust property which shall have come to his possession or knowledge.