

SB 484
Executive Summary

Offered by:

Legislative committee of the Probate and Trust Law Section of the State Bar of Nevada

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A brief Synopsis of the bill precedes the language of the bill itself. This summary is intended to provide additional detail.

Overview of BDR

The intent of this bill is to improve Nevada’s laws pertaining to the administration of trusts and estates by:

1. Clarifying existing law which is intended to lessen litigation and the burden on the courts;
2. Promote the enactment of laws which create greater certainty for the public and make administering estates and trusts more efficient and less costly to the beneficiaries by providing such alternatives to court proceedings such as binding arbitration and non-judicial settlements; and
3. Promote legislation which will help keep Nevada competitive with other jurisdictions such as Delaware, South Dakota and Alaska regarding locating and administering trusts in Nevada such as clarifying Nevada’s decanting statutes with respect to federal taxation issues and unifying accounting provisions to apply the same procedural requirements to both testamentary and non-testamentary trusts.

Sections 1-2 Amends NRS 40.515 and 111.365 to provide a clear method of terminating a life estate in real property by recording an affidavit and providing a certified death certificate, instead of requiring a court petition, which is similar to how interests in real property that are held as joint tenancy or community property with rights of survivorship are terminated.

Section 3 Clarifies the effective date of NRS 111.781, which pertains to the effect of a divorce or annulment on non-probate transfers. This statute was added in 2011 but the effective date was unclear in the 2011

amendment. This amendment clarifies that the relevant date for the application of the statute is where the transfer became effective on or after October 1, 2011, which clarifies ambiguous situations where a transfer occurred prior to October 1, 2011, but the divorce occurs after October 1, 2011.

Sections 4-11 Amend certain definitions contained in Chapter 132, including clarifying that a “domestic partner” has the same rights as a spouse in Titles 12 and 13. Most significantly, the definition of “interested person” is clarified and amplified to include all persons whose interest in an estate or trust will be materially affected by a decision of a fiduciary (trustee or personal representative) or a decision of the court and that person’s status as an interested person is determined according to the particular purposes of, and the matter involved in, each proceeding. The definition excludes persons whose interests are not affected by the action.

Section 12 Amends NRS 133.110 which currently provides that a decedent’s spouse is entitled to an intestate share of the decedent’s estate if the decedent’s will predates the marriage, unless certain criteria exist. Section 12 amends NRS 133.110 and clarifies that a testator may now exclude a future spouse by name, and the future spouse may not receive an intestate share. This is designed to streamline prenuptial planning where new estate plans are drawn up concurrently with prenuptial agreements.

Section 13 Amends Chapter 136 and clarifies the impact of a pre-death declaratory judgment regarding the validity of a will. Section 12 provides that if a declaratory judgment establishing the validity of a will is entered during the lifetime of the person executing the will, the validity of the will cannot be challenged after the death of the person executing the will. Section 12 does not prohibit an action to establish that the will was later revoked or that the decedent later executed another valid will.

Sections 14 &16 Modify NRS 138.020 - appointment of executors of an estate - and 139.010 – appointment of administrators of an estate - to give the court discretion to reject a personal representative for any “compelling reason.” Current law requires the court to appoint an individual to serve as a personal representative of a decedent’s estate, even when it is clear that the personal or financial relationships that the individual may have make it inappropriate for the individual to serve as the personal representative.

- Section 15 Modifies NRS 138.090 which pertains to the appointment of an administrator with the will annexed (i.e., the individual who is appointed by the court as the personal representative is not named in the will – but the will is admitted to probate). This section clarifies that a person who is excluded as a beneficiary or as a fiduciary in a will is ineligible to serve as an administrator. Further, the court is now given discretion to favor the appointment of a beneficiary with a larger gift over a beneficiary receiving a lesser share from the estate.
- Section 17 Provides a technical correction to NRS 143.380 concerning the sale of property held in an estate and provides the circumstances in which a court confirmation of a sale of estate property is not required.
- Sections 18 & 19 Modifies NRS 144.010 and 144.020 pertaining to filing inventories and appraisals in decedent’s estates. Section 17 and 18 modify these sections to allow the court or interested parties to waive the need for preparing and filing an inventory and appraisal. This streamlines the probate process in situations where all interested persons are in agreement.
- Section 20 Modifies NRS 146.070, which relates to the administration of estates of \$100,000 or less. This section provides for some technical corrections. It also allows the probate court to reduce the amount set aside to the surviving spouse or minor children by amounts received by them as part of a nonprobate transfer (e.g. transfers pursuant to trust, transfer on death accounts, or property received by rights of survivorship). This section also allows the court to award attorney fees out of the estate. Spouse’s and minor children’s interests still take precedence, especially in situations where the set aside amounts are all that is available. This section simply allows the court to take into account other assets that the spouse or minor children may receive to prevent an injustice to creditors akin to a fraudulent transfer, such as in situations where a decedent has already provided substantial amounts to a spouse and/or children through a trust. This section allows the court to consider all of the assets left to a spouse and/or children as opposed to an inquiry strictly limited to probate assets.
- Section 21 Makes a technical correction to NRS 153.031(3(b) to eliminate a cross reference to a statute that has been modified further by this bill. (Deletes a reference to the accounting statute that does not apply).
- Sections 22-24 Amends Chapter 155 to provide definitions applicable to NRS 155.094-155.098 which deals with the presumption that certain transfers effective at death are presumed to be induced by fraud, undue influence or coercion are void. These sections should be included with Section 26-

- Section 25 Amends NRS Chapter 155 and provides clarification concerning the jurisdiction of the probate court with respect to testamentary trusts and estate matters. The court’s jurisdiction is further clarified in Section —.
- Section 26 Amends Section 155.010 to conform to the modification made to the definition of “interested person” made in section 9 of this bill. Section 155.010 addresses who is entitled to notice with respect to certain actions.
- Section 27-34 Amends NRS section 155.094 through 155.098. Existing law, enacted in 2011, presumes that certain transfers effective at death are presumed to be induced by fraud, undue influence or coercion and are void. This amendment provides a more restrictive definition of the term “caregiver”; it provides technical corrections and amplifies the statute to cover lifetime transfers as well as transfers at death. This section also restricts the application of the presumption so it does not apply to the spouse or domestic partner of the testator and it further clarifies when this section becomes applicable, which is 10/1/2011 as to transfers at death and 10/1/2015 as to lifetime transfers.
- Section 35 NRS 155.165 was also added in 2011 and allows the court to classify a person as a “vexatious litigant” when that person was acting unreasonably by repeatedly filing meritless petitions or motions. This section clarifies that the court may find that a fiduciary (e.g. trustee or personal representative) be classified as a “vexatious litigant” if acting unreasonably.
- Sections 35.1-35.7 Amends Title 13, to include the definition of Domestic Partner. Any reference to Spouse shall now include Domestic Partners, as is provided in Title 12.
- Sections 36-39 Amends Chapter 163 to provide definitions of “Nontestamentary Trust”, “Testamentary Trust” and “Trust Instrument”.
- Sections 40-41 Modify Chapter 163 to add to the default powers of a trustee. The powers will now include the power to combine or divide trusts (section 40) and the power to change the name of an irrevocable trust or give a name to a trust that does not have one (section 41).
- Sections 42-43 Clarify current law relating to “directed trusts” - where someone other than the trustee has authority to direct the trustee to take certain actions. Section 38 provides a definition for a “Directing Trust Adviser”, as an individual who has authority to give direction to the trustee that must be followed. If the trustee is required under the trust

instrument to follow the directions of another individual, as designated under the trust, the trustee is not liable for following those directions. (Section 52 also addresses directed trusts.)

Section 44 Clarifies the law concerning the administration of Public Benefit Trusts – trusts created for religious, scientific, literary, educational, community development, personal improvement or philanthropic purposes – that are not illegal or against public policy.

Sections 45 Provides that if a Trust has no serving trustee because of death, incapacity or resignation of the last serving trustee, and no further designation of a trustee is made in the trust instrument, that the current beneficiaries of the trust may appoint a successor trustee without court approval, as long as the person appointed is not related or subordinate in relation to the Settlor.

Section 46 Modifies Chapter 163 to allow a fiduciary to take such actions as are necessary to cause gains from the sale or exchange of trust assets to be taxed for federal income tax purposes as part of a distribution of income.

Section 46.5 Amends NRS 163 to add a new section which allows the Trustee to terminate a trust under certain circumstances when the value of the trust is less than \$100,000.

Section 47 A technical amendment to NRS 163.001 to refer to definitions set forth in Section 37 (Defines “Nontestamentary Trust”), Section 38 (defines “Testamentary Trusts”) and Section 39 (Defines “Trust Instrument”).

Section 48 Clarifies existing law (NRS 163.002) with respect to the assets of a trust when it is created, even when formal title to assets intended to be held in trust are not changed, and clarifies that the income and reinvestments of the property declared to be held in trust remain trust property. This sections lessens the burden on the court system by avoiding court proceedings to declare that title to these assets belong to the trust under current common law principles.

Section 49 Amends NRS 163.004 to clarify that a trust may determine and vary the rights of a beneficiary including but not limited to the right to be informed of the beneficiary’s interest and the grounds for removing a fiduciary. This section was further modified to codify the rule that a trust is irrevocable by the settlor except to the extent that the trust instrument specifically reserves the right to amend or revoke the trust.

- Section 50 Clarifies NRS 163.006, which currently provides that a trust is created only when there is a beneficiary. This amendment clarifies that the beneficiary requirement is satisfied if the trust instrument provides for a charitable trust, a trust for the benefit of animals or a public benefit trust.
- Section 51 Provides a technical amendment to NRS 163.020 to refer to sections 40 (regarding a trustee’s ability to combine and divide trusts) 41 (a Trustee’s ability to change the name of a trust) and 46.5 (the ability to terminate trusts under 100K) of this Act.
- Section 52 Modifies NRS 163.4157 with respect to powers of appointment and clarifies that the power of appointment may be held by any person, which could include the Settlor.
- Section 53. Modifies NRS 163.419 to clarify that a beneficiary who only holds a discretionary interest cannot seek to compel a distribution if that beneficiary is not entitled to receive distributions except as the trustee determines. This section also clarifies that a court may review a trustee’s exercise of discretion only if the trustee acts dishonestly, with bad faith or with willful misconduct.
- Section 54 Provides a technical correction to 163.553 to cross reference other sections of this Act.
- Section 55 This section amends NRS 163.5549 and also concerns directed fiduciaries as did Sections 42-43. This section clarifies that a directed fiduciary (i.e. a fiduciary who has no discretion as to a particular action and is required to comply with directions given by an authorized individual) is not liable, individually or as a fiduciary, for any loss which results from complying with the directions given.
- Section 56 Provides a technical correction to NRS 163.555 and allows a directed fiduciary to continue to follow the direction of a directing adviser upon the death or incapacity of the settlor of a trust if the document so provides.
- Section 57 Section 57 provides amendments to NRS 163.556, which was enacted in 2009. This section is commonly referred to as a “decanting statute”, and is effectively a statutory power of appointment that allows a trustee with discretionary distribution powers to transfer (“pour” or “decant”) the assets of an irrevocable trust into a second irrevocable trust, which is primarily used to update a trust to conform to new laws or tax regulations or to separate out trusts with multiple beneficiaries to avoid future conflict. This amendment clarifies who may establish the second trust to receive the assets, who may be beneficiaries of the

second trust and when such appointment is not allowed. This section further clarifies the application of this section to trusts which are governed by Nevada law or administered in Nevada.

Sections 58-59 Adds a new section to Chapter 164 to allow a Settlor of a trust, or a person with the specified power, to determine that Nevada law will apply to the construction and administration of the Trust. This Section also provides factors for the court to consider to assume jurisdiction of a Trust.

Section 60 Provides a new section to NRS Chapter 164 to allow a trust or a will to include a binding arbitration provision in the document in the event that there are disputes, other than disputes concerning the validity of the will or trust.

Sections 61-62 Provide for a new law under Chapter 164 to allow for Non-judicial settlements if certain requirements are met, such as all indispensable parties, as defined, are parties to the agreement and the matter resolved is one that is set forth in Section 61. This section likewise gives an alternative to obtaining a court order, when the requirements set forth in these sections are met and all interested beneficiaries are in agreement as to the proposed action.

Section 63 Amends NRS 164.010 to allow a petition to request for the court to assume jurisdiction of a trust without confirming the trustee. This statute is also amended to coordinate with the other amendments provided under this bill concerning *in rem* and *in personam* (as set forth in Section 20) jurisdiction and it sets forth the types of petitions that may be brought pursuant to this Chapter.

Section 64 Amends NRS 164.015 to better coordinate with NRS Chapter 30, which relates to declaratory judgments. This section also allows the court to determine whether property not formally titled in the name of the trust constitutes trust property so as to avoid a formal probate

Section 65 Is a technical amendment to NRS 164.025, which pertains to providing notice to creditors of a non-testamentary trust. This modification references the definition of a Non-testamentary trust as set forth in this bill.

Section 66 Amends NRS 164.410, which relates to the contents of a certification of trust. This section protects the privacy of the trust and its beneficiaries by removing any requirement that a tax identification number is included in the certification of trust and further allows for the declaration of the trust's domicile and governing law.

Section 67 Amends NRS 164.725 which pertains to notices of proposed action given by Trustees. Under the Uniform Principal and Income Act a trustee may avoid going to court for permission to take certain actions when all interested persons consent to such action. This section allows the Notice of Proposed Action procedure to apply to any aspect of the trust administration, and not just issues related to trust investments and allocation of receipts and disbursements to income and principal. This section further allows the notice of proposed action to be given by the Trustee, trust protector or trust advisor. This section lessens the burden on the court system because under existing law a trustee must obtain an order (despite unanimous beneficiary approval) in order to be discharged for taking an action.

Section 68 Amends NRS 164.740, which concerns the duty of a trustee to comply with the prudent investor rule, and relieves the trustee from liability for not following the prudent investor rule if the trustee (1) relied on the trust's terms, (2) relied on a court order; or (3) determined in good faith not to diversify the trust pursuant to NRS 164.750.

Section 164.750 provides a "trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying."

Section 69 Provides for a technical amendment to NRS 164.950, pertaining to the authority of the Trustee to divide trust assets of a married couple on the death of one spouse. This amendment provides a cross reference to the definition of "non-testamentary Trust" as provided in section 46.

Sections 70-84 These sections amend Chapter 165 and completely revise and restructure the trust accounting rules applicable to testamentary and non-testamentary trusts. Nevada's current law provides different requirements for accountings applicable to testamentary trusts and non-testamentary trusts. The purpose of this amendment is to clarify when a Trustee has a duty to account, to whom the Trustee must account and the format for the accounting for both testamentary and non-testamentary trusts. These sections further provide when a trustee will be liable for failing to account and when a beneficiary is entitled to receive an account and when a beneficiary may receive a copy of the trust instrument.