AB 314
Executive Summary

Offered by: Legislative Committee of the Probate and Trust Section of the State Bar of Nevada, Julia S. Gold, Co-Chair; phone: (775) 826-5599; email: julia@juliagoldlaw.com
Alan D. Freer, Co-Chair; phone (702) 589-3555; email: afreer@sdfnvlaw.com

Overview: This Executive Summary is intended to provide additional detail over and beyond the Legislative Counsel’s Digest.

This bill primarily amends Titles 12 and 13 of the Nevada Revised Statutes - Nevada’s laws pertaining to the administration of trusts and estates. This bill is intended to clarify the laws relating to estate planning, trust administration, probate and property transfers. The bill text of AB 314 was compiled by the Legislative Committee of the Probate and Trust Section of the State Bar of Nevada. The bill text was circulated for review and comment to each of the state bar sections, and the proposed amendments received no objections. The Section’s proposals were unanimously approved by the Nevada State Bar Board of Governors. Additionally, Sections 4 and 5 of this bill, were expressly approved and jointly proposed by the Family Law Section.

Section 1: Amends NRS 21.090 to increase the exemption amount of money held in retirement or pension accounts from $500,000 to $1,000,000 and to provide state law creditor protection for inherited retirement accounts.

Section 2: Amends NRS 111.721 to clarify the application of nonprobate transfer statutes. This amendment clarifies that property transferred from an estate or trust through a power of appointment does not constitute a non-probate transfer.

Section 3: Amends NRS 111.779 to expressly identify the procedural steps to be taken when attempting to impose liability on nonprobate transferee. Since the enactment of NRS 111.779 in 2011, probate and trust practitioners have recognized a lack of clarity in the procedural operation of NRS 111.779 due to the different situations that can occur with the presentation and payment of creditor’s claims, such as where a claim is accepted by the personal representative; where a claim is partially accepted by the personal representative and the creditor can then either accept or reject the partial acceptance; or where a creditor’s claim is rejected in its entirety. Overlaying these differing situations is an additional procedural aspect of whether the probate court or the district court adjudicates the validity of a creditor’s claim rejected by the personal representative. This amendment addresses those differing situations in the amendments to subsections 8 and 10 of NRS 111.779.

Additionally, confusion has arisen as to when and how a creditor may pursue a nonprobate transferee independent of the personal representative. This amendment also provides clarity in that regard in the amendment to subsection 8(c) of NRS 111.779 to clarify the process in which a creditor must first make a demand on the personal representative and must be able to specifically identify nonprobate transfers prior to engaging in independent litigation outside of the probate proceeding.
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Lastly, additional provisions are proposed to be added as subsections 12(f) and 12(g) to expressly identify that a decedent’s beneficial interest in a trust created by a third party or in an irrevocable trust are not nonprobate transfers for purposes of NRS 111.779.

**Section 4**: Creates a new section to NRS 123 to authorize a trust instrument to provide that community property that is transferred into an irrevocable trust of which both spouses are current permissible beneficiaries, remains community property during the marriage. Community property, including any income or appreciation, that is distributed or withdrawn from the trust remains community property unless the spouses agree otherwise in writing at or after the time of distribution or withdrawal from the trust.

**Section 5**: Amends NRS 125.150 to expressly permit a court in a divorce proceeding to make equal disposition of spouses’ community property interests that have been transferred in trust pursuant to Section 4 of AB 314.

**Section 6**: Amends NRS 132.135 to expressly include in the definition of “expenses of administration” expenditures properly incurred by the personal representative for the maintenance or preservation of estate assets.

**Section 7**: Clarifies the definition of “fiduciary” in NRS 132.145 for Titles 12 and 13 by providing additional examples and definitions.

**Section 8**: Clarifies the scope of application of NRS 133.130 and allows extrinsic evidence to be introduced concerning the manner in which the testator revoked a will to ascertain whether the testator intended to revive a prior will.

**Section 9**: Clarifies NRS 136.240 and conforms this section to common law regarding the information needed to probate a lost or destroyed will. The section clarifies the information that must be presented in a petition to prove a lost or stolen will.

**Section 10 and 41**: Amend the no-contest clause statutes for both wills (NRS 137.005) and for trusts (NRS 163.00195) by providing a public policy statement confirming that public policy favors enforcing the intent of the testator/settlor but does not favor forfeitures. This amendment clarifies that a no contest clause must be strictly construed to carry out the testator’s intent. This section adds a safe harbor provision, from the no contest provisions, for seeking to enforce the fiduciary duties of the trustee/personal representative.

**Section 11**: Clarifies the post-probate will contest procedure in NRS 137.090 and conforms it with procedures for pre-probate will contests (NRS 137.010(1)) regarding the issuance of a citation upon filing a contest.

**Section 12**: Amends NRS 139.135 to allow the court flexibility to extend the 90 day moratorium on heir finders to up to 180 days, upon a showing of good cause, such as situations where the personal representative is actively engaged in locating heirs.
Section 13: Amends NRS 140.010 to expressly allow a special administrator to be appointed to protect the rights and privileges of a decedent in addition to preserving the decedent’s estate.

Section 14: Conforms the express language of NRS 140.030 to current practice by expressly authorizing a court to dispense with a personal representative’s bond in lieu of a blocked account or waive bond with or without other conditions.

Section 15: Clarifies the procedure in NRS 142.020 for depositing estate assets in a blocked account in lieu of posting bond.

Section 16: Clarifies NRS 143.020 to expressly recognize that a personal representative is authorized to maintain and preserve all estate assets (as opposed to real property) under the control of the personal representative.

Section 17: Amends the general time frames for closing an estate set forth in NRS 143.035 to extend the time when litigation or contested proceedings are pending or when filing a federal estate tax return, recognizing that many federal estate tax returns are placed on extension and the personal representative may not yet know whether the estate will be audited by the Internal Revenue Service.

Section 18: Clarifies the time for filing a petition for distribution under NRS 143.037 and prohibits such distribution if it leaves insufficient assets in the estate to enable the personal representative to satisfy liabilities for taxes, creditor’s claims, administrative expenses or other obligations of the estate.

Section 19: Clarifies the provisions of NRS 143.050 to apply to active business operations of the decedent and prohibits the personal representative from receiving separate compensation for operating such business operations absent order of the court or authorized by the terms of the instrument.

Section 20: Clarifies the court’s authority and procedure for entering restraining orders pursuant to NRS 143.165 over personal representatives subject to its appointment and/or property over which it could exercise in rem jurisdiction.

Section 21: Amends NRS 144.010 to afford additional time to file an inventory and appraisement or record of value for estates exceeding $1 million and to clarify use of redacted inventories.

Section 22: Amends NRS 144.020 to reduce administrative expenses by allowing a personal representative to provide a verified record of value in lieu of appraisement for household furniture and furnishings less than $30,000.

Section 23: Amends NRS 144.080 to address the situation where the personal representative failed to file an inventory. This section expressly authorizes the court to order the personal representative to pay the fees and costs of an interested party to enforce the filing of an inventory, when the PR has failed to do so.
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**Section 24:** Amend NRS 147.130 to afford all creditors the option of filing a petition for summary determination of a rejected creditor’s claim in the probate court in lieu of filing a civil lawsuit.

**Section 25:** NRS 147.150 permits a mortgage holder to enforce a mortgage against estate property without filing a creditor’s claim if the holder of the mortgage expressly waives all recourse against any other property of the estate. This Amendment also affords other lienholders the same procedural mechanism.

**Section 26:** Amends NRS 148.220 to expand the scope of permitted waivers of publication of notice of sale of real property to include situations where the property is listed in a multiple listing service or where the property is being sold as a short sale.

**Section 27:** Amend NRS 148.260 to allow the court, for good cause shown, to waive the requirement of an appraisal within one year before the time of a probate sale.

**Section 28:** Amends NRS 148.270 to clarify and conform the overbid process to current practice that in cases where an overbid purchaser is the highest bidder on a sale of real property, the original purchase contract remains in force and effect except for the substitution of the purchase price and the new purchaser. Also amends this subsection to exempt short sale purchases from the overbid process.

**Sections 29:** Amend NRS 153.020 to confirm that testamentary trusts are not subject to ongoing court jurisdiction absent a request by the Trustee or other interested person.

**Sections 30-31:** Amends Chapter 153 to cross reference 2015 revisions to Chapter 165 regarding trust accountings for both testamentary and non-testamentary accountings.

**Sections 32:** Amends NRS 153.070 to clarify that the expenses and compensation of a trustee of a testamentary trust must be governed by the terms of the Will or as otherwise ordered by the court and thereafter, the court shall allow the Trustee proper expenses and compensation that are just and reasonable. This section provides further guidance on apportioning fees among several trustees.

**Section 33:** Amends NRS 153.090 to clarify how a Trustee of a testamentary trust may resign when the Trust is no longer subject to on-going court jurisdiction.

**Section 34:** Adds new section to NRS 155 providing the probate court with authority to shorten or extend any deadline in this title upon a showing of good cause.

**Section 35:** Amends NRS 155.050 to permit service of citation (that is described in NRS 155.040) by certified mail, with a return receipt requested, similar to NRS 159.0475.

**Section 36:** Amends NRS 162.280 to codify the common law doctrine of offset as a basis for a fiduciary withholding property from a beneficiary.
Section 37: Amends NRS 162.300 to expand the ability of a fiduciary to form successor entities by expressly including the ability to establish a trust in addition to a limited-liability company, corporation or other entity.

Section 38-39: Recognizes and permits the creation of purpose trusts, and adds to NRS Chapter 163 a specific definition of “valid purpose” as being “any purpose that is not illegal or against public policy.” This language tracks the language that is found throughout Chapter 163 (see, e.g., NRS 163.004, 163.551 and NRS 163.558). A “purpose trust” is an irrevocable trust that does not have an ascertainable beneficiary and is not created for charitable purposes. They are generally used for maintenance of grave sites, the maintenance of family property such as art, memorabilia and similar collections, the maintenance of a family home, property or other land, digital assets or family trust companies.

Section 40: Adds new section to NRS 163 to ensure that, similar to provisions governing a former spouse or domestic partner of a settlor, a former spouse or domestic partner of a settlor’s descendant does not have a beneficial interest or other role in the administration of a decedent’s trust.

Section 41: Was discussed earlier – addresses no contest clauses for Trusts.

Section 42: Amend 163.002(1) to allow a declaration by a property owner that someone else owns the property as trustee, clarifies type of declarations acceptable for the formation of a trust, and codifies common law to clarify the types of declarations acceptable for the transfer of property into a trust.

Section 43: Amend 163.006 to allow for cross reference to the new section regarding purpose trusts.

Section 44: Amends 163.008 to clarify the operation of the statute of frauds as applied to a declaration that real property is held in trust.

Section 45: Amends NRS 163.027 to recognize situations where the law may permit non-pro rata distributions, such as in instances contemplated under NRS 162.280.

Section 46: Clarifies the court’s authority and procedure for entering restraining orders pursuant to NRS 163.115 over trustees subject to its jurisdiction and/or property over which it could exercise in rem jurisdiction.

Section 47: Amends NRS 163.130 to expressly recognize that a trustee may be exonerated, indemnified or reimbursed for tort from trust property where authorized by the trust instrument and the trustee has not acted with malice, gross negligence, or intentional misconduct.
Section 48: Amends NRS 163.4185 to amend definitions regarding trust beneficiary distribution standards to ensure that such standards remain in line with federal tax law provisions for tax planning purposes (26 U.S.C. 2041(b)(1)(A) and 2514(c)(1)).

Section 49: Amends NRS 163.556 to add a section expressly authorizing decanting for the creation of a special needs, pooled or third-party trust.

Section 50: Amends NRS 163.610 to authorize a fiduciary to classify gains from the sale or exchange of trust assets as income for tax purposes.

Sections 51 and 52: Amend NRS 164.010 and NRS 164.045 to clarify situations in which a trust is domiciled in Nevada and instances where a court acquires in rem jurisdiction.

Section 53: Amends 165.030 to provide additional time for Trustees to provide an initial inventory of the trust estate.

Section 54: Amends NRS 451.024 to expressly provide that a provision for cremation in a valid durable power of attorney or last will and testament is enforceable.