

Informational Brochure



PROBATE AND ADMINISTRATION OF ESTATES

What is Probate?

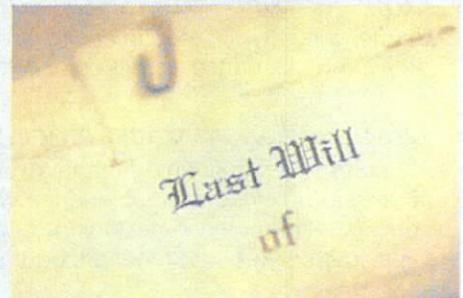
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When should a Probate be opened?

As soon as practical following the person's death. In Nevada, if the total amount of the deceased person's assets exceeds \$20,000, or if real estate is involved, probate (or administration) will be required and there is normally no reason to delay starting the process. Nevada law requires a person in possession of the deceased person's will must "deliver it to the clerk of the district court" within 30 days of the death.

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NRS 146.080 Estates not exceeding \$20,000: Transfer of assets without issuance of letters of administration or probate of will; affidavit showing right to assets.

1. If a decedent leaves no real property, nor interest therein, nor mortgage or lien thereon, in this State, and the 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 \$20,000, a person who has a right to succeed to the property of the decedent pursuant to the laws of succession for a decedent who died intestate or pursuant to the valid will of a decedent who died testate, on behalf of all persons entitled to succeed to the property claimed, or the Director of the Department of Health and Human Services or public administrator on behalf of the State or others entitled to the property, may, 40 days after the death of the 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 the claimant upon furnishing the person, representative, corporation, officer or body owing the money, having custody of the property or acting as registrar or transfer agent of the evidences of interest, indebtedness or right, with an affidavit showing the right of the affiant or affiants to receive the money or property or to have the evidence transferred.

2. An affidavit made pursuant to this section must state:

- (a) The affiant's name and address, and that the affiant is entitled by law to succeed to the property claimed;
- (b) The date and place of death of the decedent;
- (c) That the gross value of the decedent's property in this State, except amounts due the decedent for services in the Armed Forces of the United States, does not exceed \$20,000, and that the property does not include any real property nor interest therein, nor mortgage or lien thereon;
- (d) That at least 40 days have elapsed since the death of the decedent, as shown in a certified copy of the certificate of death of the decedent attached to the affidavit;
- (e) That no petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;
- (f) That all debts of the decedent, including funeral and burial expenses, and money owed to the Department of Health and Human Services as a result of the payment of benefits for Medicaid, have been paid or provided for;
- (g) A description of the personal property and the portion claimed;
- (h) That the affiant has given written notice, by personal service or by certified mail, identifying the affiant's claim and describing the property claimed, to every person whose right to succeed to the decedent's property is equal or superior to that of the affiant, and that at least 14 days have elapsed since the notice was served or mailed;
- (i) That the affiant is personally entitled, or the Department of Health and Human Services is entitled, to full payment or delivery of the property claimed or is entitled to payment or delivery on behalf of and with the written authority of all other successors who have an interest in the property; and
- (j) That the affiant acknowledges an understanding that filing a false affidavit constitutes a felony in this State.

3. If the affiant:

- (a) Submits an affidavit which does not meet the requirements of subsection 2 or which contains statements which are not entirely true, any money or property the affiant receives is subject to all debts of the decedent.
- (b) Fails to give notice to other successors as required by subsection 2, any money or property the affiant receives is held by the affiant in trust for all other successors who have an interest in the property.

4. A person who receives an affidavit containing the information required by subsection 2 is entitled to rely upon that information, and if the person relies in good faith, the person is immune from civil liability for actions based on that reliance.

5. Upon receiving proof of the death of the decedent and an affidavit containing the information required by this

section:

(a) A transfer agent of any security shall change the registered ownership of the security claimed from the decedent to the person claiming to succeed to ownership of that security.

(b) A governmental agency required to issue certificates of title, ownership or registration to personal property shall issue a new certificate of title, ownership or registration to the person claiming to succeed to ownership of the property.

6. If any property of the estate not exceeding \$20,000 is located in a state which requires an order of a court for the transfer of the property, or if the estate consists of stocks or bonds which must be transferred by an agent outside this State, any person qualified pursuant to the provisions of subsection 1 to have the stocks or bonds or other property transferred may do so by obtaining a court order directing the transfer. The person desiring the transfer must file a petition, which may be ex parte, containing:

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

(b) A list of all the liens and mortgages of record at the date of the decedent's death.

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

(d) The names, ages of any minors and residences of the decedent's heirs and devisees.

(e) A request for the court to issue an order directing the transfer of the stocks or bonds or other property if the court finds the gross value of the estate does not exceed \$20,000.

(f) An attached copy of the executed affidavit made pursuant to subsection 2.

↪ If the court finds that the gross value of the estate does not exceed \$20,000 and the person requesting the transfer is entitled to it, the court may enter an order directing the transfer.

(Added to NRS by 1957, 130; A 1975, 1773; 1979, 478; 1983, 194; 1995, 2574; 1997, 1250, 1488; 1999, 2306; 2001, 2346; 2003, 476, 882)

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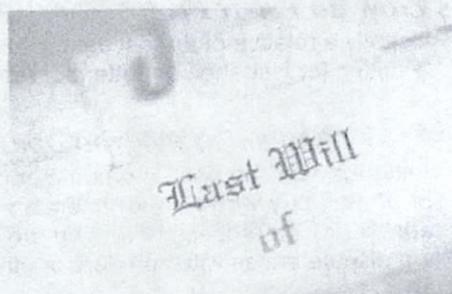
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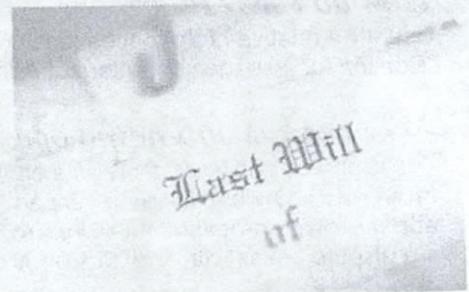
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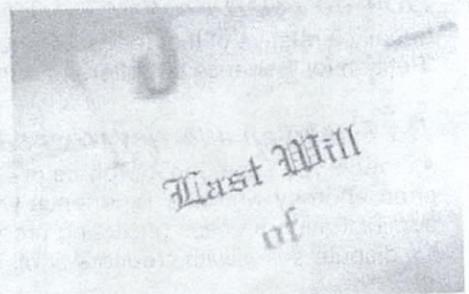
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If there are no real estate holdings and the value of the estate does not exceed \$20,000, certain surviving family member(s) or a person entitled to inherit the property from the estate may initiate proceedings 40 days after the death. Without any court proceeding, these parties may use a form called *Affidavit of Entitlement* permitting the release of the assets from any person or business holding those assets (such as a bank, stock brokerage company or pension plan administrator).



• *What if the estate is worth more than \$20,000?*

If the deceased person's assets exceed \$20,000 or if real estate is part of the estate, probate or administration must be used. However, if the value of the deceased person's assets subject to probate does not exceed \$100,000 exclusive of liens, a special petition to the court by the beneficiary or heirs may allow the estate to be "set aside" and distribution made without further court proceedings. The petitioner will receive a court order directing the distribution of the estate property.

• *What if the estate's net value exceeds \$100,000?*

If the deceased person's estate has a net value exceeding \$100,000, but does not exceed \$200,000, the estate must proceed through probate by "Summary Administration", which provides for a somewhat simplified procedure. If the deceased person's estate has a net value exceeding \$200,000, the estate must proceed through probate by "General Administration," where the procedure is somewhat more extensive. The Administrator or Executor will receive a document called "Letters Testamentary" or "Letters of Administration" which will be issued by the court, and outlines the Administrator's or Executor's authority and responsibility.

• *Can I become the Executor or Administrator of an estate if I do not live in Nevada?*

Nevada does not impose restrictions on residency of an Executor named in a will, but does require a non-resident Administrator of an estate where there is no will to associate with a Nevada resident as co-administrator.

• *How long does Probate or Administration normally take?*

In a routine probate proceeding, you can expect a minimum probate period of from 120 to 180 days. This allows for publication of creditor notices and gives creditors time to file claims. However, probate and estate administration often take much longer if complications arise.

Over for more →

PROBATE AND ADMINISTRATION OF ESTATES (continued from other side)

*** Who can withdraw funds from a deceased person's bank account?**

Normally, if the account is held jointly, with rights of survivorship, the surviving owner is entitled to withdraw the money or delete the deceased person's name from the account. The financial institution will probably require a certified copy of the death certificate and proof that the deceased is the same person who owned the account. If the bank account was owned individually by the deceased person, normally only the person appointed as Executor or Administrator of the estate may withdraw funds.

*** Will the Executor or Administrator need to obtain a separate Tax Identification Number for the estate?**

Yes. A Tax Identification Number for an estate normally is required. You should not use the deceased person's social security number in most cases. A Tax Identification Number for the estate can be obtained from the Internal Revenue Service.

*** Is the Executor or Administrator of an estate personally liable for the deceased person's debts?**

No, not normally. However, the Executor or Administrator is obligated to act in the best interests of the estate and its beneficiaries. It is advisable to consult with an attorney regarding the duties and obligations of an Executor or Administrator prior to accepting the responsibility.

*** How do I start Probate or Administration proceedings?**

Usually a relative of the deceased submits to the District Court a "Petition for Issuance of Letters Testamentary" or a "Petition for Issuance of Letters of Administration."

*** Do I need an attorney to open a Probate or Administration?**

Although you can open a probate or administration yourself, it is strongly recommended that you seek the assistance of an attorney who has experience with estate matters. A qualified attorney can guide you through the probate or administration process (including proper notification of other potential beneficiaries of the estate) and can be helpful if a dispute arises with creditors or other potential heirs.

*** How much will it cost to hire an attorney to process a Probate or Administration?**

The cost of probate or administration will vary depending upon the complexity of the estate. You will need to compare rates and experience of attorneys in your area. Some attorneys charge a small percentage of the estate value at the end of the case, some charge an hourly rate as the case proceeds and some charge a flat rate.

*** How do I find an attorney with experience in estate matters?**

You can contact the State Bar of Nevada's **Lawyer Referral & Information Service** at **702-382-0504** (toll-free in Nevada at **1-800-789-5747**) or look in the yellow pages of your telephone directory. You can also ask friends and/or relatives if they can recommend a good lawyer. The State Bar's main office (see numbers listed below) can tell you whether or not an attorney is licensed in Nevada and in good standing.

Written and/or Edited by:

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State Bar of Nevada Las Vegas Office

600 E. Charleston Blvd., Las Vegas, NV 89104
Ph: 702-382-2200 or toll-free 1-800-254-2797
Fax: 702-385-2878 or toll-free 1-888-660-6767

Reno Office

9456 Double R Blvd., Suite B, Reno, NV 89521
Ph: 775-329-4100 Fax: 775-329-0522

<http://www.nvbar.org>



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NRS 146.080 Estates not exceeding certain amounts: Transfer of assets without issuance of letters of administration or probate of will; affidavit showing right to assets.

1. If a decedent leaves no real property, nor interest therein, nor mortgage or lien thereon, in this State, and the 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 and the value of any motor vehicles registered to the decedent, does not exceed the applicable amount, a person who has a right to succeed to the property of the decedent pursuant to the laws of succession for a decedent who died intestate or pursuant to the valid will of a decedent who died testate, on behalf of all persons entitled to succeed to the property claimed, or the Director of the Department of Health and Human Services or public administrator on behalf of the State or others entitled to the property, may, 40 days after the death of the 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 the claimant upon furnishing the person, representative, corporation, officer or body owing the money, having custody of the property or acting as registrar or transfer agent of the evidences of interest, indebtedness or right, with an affidavit showing the right of the affiant or affiants to receive the money or property or to have the evidence transferred.

2. An affidavit made pursuant to this section must state:

- (a) The affiant's name and address, and that the affiant is entitled by law to succeed to the property claimed;
- (b) The date and place of death of the decedent;
- (c) That the gross value of the decedent's property in this State, except amounts due the decedent for services in the Armed Forces of the United States or the value of any motor vehicles registered to the decedent, does not exceed the applicable amount, and that the property does not include any real property nor interest therein, nor mortgage or lien thereon;
- (d) That at least 40 days have elapsed since the death of the decedent, as shown in a certified copy of the certificate of death of the decedent attached to the affidavit;
- (e) That no petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;
- (f) That all debts of the decedent, including funeral and burial expenses, and money owed to the Department of Health and Human Services as a result of the payment of benefits for Medicaid, have been paid or provided for;
- (g) A description of the personal property and the portion claimed;
- (h) That the affiant has given written notice, by personal service or by certified mail, identifying the affiant's claim and describing the property claimed, to every person whose right to succeed to the decedent's property is equal or superior to that of the affiant, and that at least 14 days have elapsed since the notice was served or mailed;
- (i) That the affiant is personally entitled, or the Department of Health and Human Services is entitled, to full payment or delivery of the property claimed or is entitled to payment or delivery on behalf of and with the written authority of all other successors who have an interest in the property;
- (j) That the affiant has no knowledge of any existing claims for personal injury or tort damages against the decedent; and
- (k) That the affiant acknowledges an understanding that filing a false affidavit constitutes a felony in this State.

3. If the affiant:

- (a) Submits an affidavit which does not meet the requirements of subsection 2 or which contains statements which are not entirely true, any money or property the affiant receives is subject to all debts of the decedent.
- (b) Fails to give notice to other successors as required by subsection 2, any money or property the affiant receives is held by the affiant in trust for all other successors who have an interest in the property.

4. A person who receives an affidavit containing the information required by subsection 2 is entitled to rely upon that information, and if the person relies in good faith, the person is immune from civil liability for actions

based on that reliance.

5. Upon receiving proof of the death of the decedent and an affidavit containing the information required by this section:

(a) A transfer agent of any security shall change the registered ownership of the security claimed from the decedent to the person claiming to succeed to ownership of that security.

(b) A governmental agency required to issue certificates of title, ownership or registration to personal property shall issue a new certificate of title, ownership or registration to the person claiming to succeed to ownership of the property. The governmental agency may not refuse to accept an affidavit containing the information required by this section, regardless of the form of the affidavit.

6. If any property of the estate not exceeding the applicable amount is located in a state which requires an order of a court for the transfer of the property, or if the estate consists of stocks or bonds which must be transferred by an agent outside this State, any person qualified pursuant to the provisions of subsection 1 to have the stocks or bonds or other property transferred may do so by obtaining a court order directing the transfer. The person desiring the transfer must file a petition, which may be ex parte, containing:

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

(b) A list of all the liens and mortgages of record at the date of the decedent's death.

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

(d) The names, ages of any minors and residences of the decedent's heirs and devisees.

(e) A request for the court to issue an order directing the transfer of the stocks or bonds or other property if the court finds the gross value of the estate does not exceed the applicable amount.

(f) An attached copy of the executed affidavit made pursuant to subsection 2.

↳ If the court finds that the gross value of the estate does not exceed the applicable amount and the person requesting the transfer is entitled to it, the court may enter an order directing the transfer.

7. As used in this section, "applicable amount" means:

(a) If the claimant is the surviving spouse of the decedent, \$100,000.

(b) For any other claimant, \$25,000.

(Added to NRS by 1957, 130; A 1975, 1773; 1979, 478; 1983, 194; 1995, 2574; 1997, 1250, 1488; 1999, 2306; 2001, 2346; 2003, 476, 882; 2015, 789)

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