

CHAPTER.....

AN ACT relating to personal financial administration; revising provisions relating to the distribution and administration of the estate of a deceased person; revising provisions governing certain nonprobate transfers; revising provisions relating to the creation and administration of trusts; providing for the creation and administration of public benefit trusts; revising the powers that may be exercised by a trustee; revising provisions relating to directed trusts; revising provisions relating to the jurisdiction of a court in cases concerning the administration of the estate of a deceased person and the administration of trusts; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Sections 1 and 2 of this bill provide methods for recording the termination of a life estate in a manner similar to existing law for terminating a joint tenancy.

Section 3 of this bill establishes the effective date for the existing law concerning the effect of divorce on certain instruments.

Existing law provides that, with one exception, a domestic partner has the identical rights and responsibilities as those granted to or imposed upon a spouse. (NRS 122A.200) **Sections 5, 7 and 10** of this bill clarify that any reference to a spouse in title 12 of NRS is equally a reference to a domestic partner. **Sections 35.3-35.7** of this bill provide that same clarification with respect to title 13 of NRS.

Existing law defines the term “interested person” for the purpose of determining who is entitled to receive notice of, and participate in, a proceeding relating to the estate of a deceased person. (NRS 132.185) **Sections 9 and 11** of this bill amend this definition to include all persons whose interest in an estate or trust will be materially affected by a decision of a fiduciary or a decision of the court and that a person’s status as an interested person is determined according to the particular purposes of, and the matter involved in, each proceeding.

Existing law provides that if a decedent executed a will before his or her marriage, the will is revoked as to the surviving spouse of the decedent unless the spouse is provided for in the will or is mentioned in the will in such a way that indicates an intent not to make a provision for the spouse. (NRS 133.110) **Section 12** of this bill revises this provision so that such a will is not revoked if the will refers to a future spouse by name.

Section 13 of this bill 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 13** does not prohibit an action to establish that the will was revoked or that the decedent executed a valid later will.

Existing law establishes the qualifications for a person to serve as executor or administrator of a decedent’s estate. (NRS 138.020, 139.010) **Sections 14 and 16** of this bill authorize a court to disqualify a person from acting as the executor or administrator of a decedent’s estate upon proof of any compelling reason.

Existing law establishes the authority of administrators with the will annexed and the order of appointment for such administrators. (NRS 138.090) **Section 15** of this bill provides certain discretionary powers to administrators with the will



annexed. **Section 15** also provides that a person who is expressly excluded as a beneficiary or as a fiduciary in a will is ineligible to serve as an administrator with the will annexed and that the court has discretion to disregard the order of priority for the appointment of an administrator under existing law to favor the appointment of certain beneficiaries of the will as administrators with the will annexed.

Section 17 of this bill provides a technical correction to NRS 143.380 concerning the sale of property held in an estate after the personal representative is granted full authority under the Independent Administration of Estates Act.

Existing law requires an appraisal of certain property of the estate of a deceased person and an inventory of all estate property. (NRS 144.010, 144.020, 144.040) **Sections 18 and 19** of this bill authorize the waiver of such an appraisal or inventory in certain circumstances.

Existing law provides that if a person dies leaving an estate the gross value of which, after deducting encumbrances, is \$100,000 or less, the estate must not be administered and must be assigned and set apart, after directing such payments as the court deems just, for the support of the surviving spouse or any minor children of the decedent. (NRS 146.070) **Section 20** of this bill authorizes the court to reduce the amount assigned and set apart for the surviving spouse or any minor children of the decedent by the amount of certain nonprobate transfers to those persons.

Sections 25 and 63 of this bill enact provisions governing personal jurisdiction over certain persons in proceedings related to the estate of a deceased person and the administration of a trust and governing the law to be applied in certain proceedings related to trusts.

Existing law creates a presumption that certain transfers at death are void due to fraud, undue influence or coercion. (NRS 155.097, 155.0975) **Sections 33 and 34** of this bill create the same presumption for certain transfers that occur during the lifetime of the transferor and further define the applicability of when the presumption of undue influence arises. Existing law authorizes the court to impose certain sanctions on a person whom the court finds to be a vexatious litigant in a proceeding related to the administration of the estate of a deceased person or a trust. (NRS 155.165) **Section 35** of this bill includes a trustee or a personal representative as a person who may be a vexatious litigant.

Existing law enumerates the powers of a trustee. (Chapter 163 of NRS) **Sections 40 and 41** of this bill add to the powers of a trustee the power to combine or divide trusts and the power to change the name of a trust in certain circumstances. **Section 46.5** of this bill authorizes certain trustees to terminate certain trusts that have a value less than \$100,000 or are uneconomical to administer if the trustee concludes that the value of the property held by the trust is insufficient to justify the cost of administering the trust. Existing law governs the administration of directed trusts, which are trusts under which someone other than the trustee has the authority to direct the trustee to take certain actions. (NRS 163.553-163.556) **Sections 42, 43, 55 and 56** of this bill amend provisions governing directed trusts. **Section 55** provides that a trustee of a directed trust is not liable individually or as a fiduciary for a loss resulting from the trustee's compliance with certain directions or failure to take any proposed action that required an approval which was not given or was contingent upon a condition that was not satisfied. **Section 44** of this bill provides for the creation and administering of public benefit trusts, which are trusts without identifiable beneficiaries that are not charitable trusts and are established to further one or more specifically declared religious, scientific, literary, educational, community development, personal improvement or philanthropic purpose that is not illegal or against public policy. Existing law provides that a trust may be created by a declaration by the owner of



property that he or she holds the property as trustee. (NRS 163.002, 163.004, 163.006) **Section 48** of this bill provides that regardless of the formal title to the property, in the absence of a contrary declaration by the owner or a transfer of the property to a third party: (1) property declared to be trust property and all the income and reinvestment thereof remains trust property; and (2) any additions or contributions to accounts or certain other property declared to be trust property are also trust property. **Section 49** of this bill clarifies the powers a settlor has in creating terms of a trust and establishes a default position that a trust is irrevocable unless and to the extent a settlor specifically reserves the right to amend such trust.

Section 45 of this bill provides for the appointment of a successor trustee where a trust contains no provision for such appointment. **Section 46** of this bill authorizes a fiduciary to classify gains from the sale or exchange of trust assets as income for tax purposes. **Section 53** of this bill provides that a beneficiary holding a discretionary interest in a trust has no enforceable right to a distribution. **Section 50** of this bill provides for the creation of charitable and public benefit trusts. **Sections 55 and 56** of this bill further extend the provisions establishing the situations in which a directed fiduciary is not liable for actions taken on behalf of the trust. Existing law permits a trustee with discretion or authority to distribute trust income or principal to decant such income or principal to a second trust. (NRS 163.556) **Section 59** of this bill provides choice of law provisions applicable to the construction and administration of trusts. **Section 60** of this bill allows a settlor to include language in the trust requiring that disputes arising thereunder are subject to arbitration and provides a method for such arbitration. Under existing law, in order for a court to assume jurisdiction over a case involving a trust, a petition to confirm a trustee must be filed. (NRS 164.010) **Sections 61 and 62** of this bill provide for the creation and enforcement of nonjudicial settlement agreements between all indispensable parties to a trust. **Section 63** of this bill provides for a petition requesting the court to assume jurisdiction without confirming the trustee.

Section 64 of this bill provides a court with exclusive jurisdiction to determine whether property not formally titled in the name of the trust constitutes trust property and where a person contests the validity of the trust in a declaratory judgment action. **Section 64** further defines the circumstances and situations in which a trustee may decant a trust to a second trust in light of federal taxation laws. **Section 66** of this bill authorizes a trustee presenting a certification of trust to include a declaration of a trust's domicile and governing law. Under the Uniform Prudent Investor Act, as adopted by this State, a trustee is authorized to take certain action without court approval if all interested persons consent or acquiesce in such action. (NRS 164.725) **Section 67** of this bill authorizes a trustee, trust protector or trust advisor to use that same procedure for any aspect of trust administration. Existing law provides that a trustee who invests and manages trust property owes a duty to the beneficiaries to comply with the prudent investor rule set forth in existing law, but that a trustee is not liable to a beneficiary to the extent the trustee acted in reasonable reliance on the terms of the trust. (NRS 164.740) **Section 68** of this bill provides that such a trustee is not liable to a beneficiary if the trustee determined in good faith not to diversify the investments of the trust in accordance with existing law.

Existing law governs the duty of a trustee to inform and account to a trust's beneficiaries. (Chapter 165 of NRS) **Sections 70-85** of this bill revise chapter 165 of NRS to restructure the trust accounting rules applicable to testamentary and nontestamentary trusts. Nevada's current law provides different requirements for accountings applicable to testamentary trusts and nontestamentary trusts; these revisions establish one set of accounting rules for both types of trusts.



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

Section 1. NRS 40.515 is hereby amended to read as follows:

40.515 ***1.*** If any person has died, or shall hereafter die, who at the time of the person's death was the owner of a life estate which terminates by reason of the person's death, any person interested in the property, or in the title thereto, in which such life estate was held, may file in the district court of the county in which the property is situated, the person's verified petition, setting forth such facts, and thereupon and after such notice by publication or otherwise, as the court or judge may order, the court or judge shall hear such petition and the evidence offered in support thereof, and if upon such hearing it shall appear that such life estate of such deceased person absolutely terminated by reason of the person's death, the court or judge shall make an order to that effect, and thereupon a certified copy of such order may be recorded in the office of the county recorder.

2. *As an alternative method of terminating the interest of any person who has died, or will hereafter die, and who at the time of the person's death was the owner of a life estate which terminates by reason of the person's death, any person who has knowledge of the facts may record in the office of the county recorder in the county where the property is situated an affidavit meeting the requirements of NRS 111.365, accompanied by a certified copy of the death certificate of the deceased person.*

Sec. 2. NRS 111.365 is hereby amended to read as follows:

111.365 ***1.*** In the case of real property owned by two or more persons as joint tenants or as community property with right of survivorship, it is presumed that all title or interest in and to that real property of each of one or more deceased joint tenants or the deceased spouse has terminated, and vested solely in the surviving joint tenant or spouse or vested jointly in the surviving joint tenants, if there has been recorded in the office of the recorder of the county or counties in which the real property is ~~situate~~ ***situated*** an affidavit, subscribed and sworn to by a person who has knowledge of the facts required in this subsection, which ***is accompanied by a certified copy of the death certificate of each deceased joint tenant or deceased spouse and*** sets forth the following:

(a) The family relationship, if any, of the affiant to each deceased joint tenant or the deceased spouse;



(b) A description of the instrument or conveyance by which the joint tenancy or right of survivorship was created;

(c) A description of the property subject to the joint tenancy or right of survivorship; and

(d) The date and place of death of each deceased joint tenant or the deceased spouse.

2. *In the case of real property owned by a person as a life tenant, with the ownership of the real property passing to the owner of the remainder interest upon the death of the life tenant, it is presumed that all title or interest in and to that real property of the life tenant has terminated, and vested solely in the owner of the remainder interest, if there has been recorded in the office of the recorder of the county or counties in which the real property is situated, an affidavit, subscribed and sworn to by a person who has knowledge of the facts required in this subsection, which is accompanied by a certified copy of the death certificate of the deceased life tenant and which sets forth the following:*

(a) The relationship of the affiant to each deceased life tenant;

(b) A description of the instrument or conveyance by which the life estate was created;

(c) A description of the property subject to the life estate; and

(d) The date and place of death of each deceased life tenant.

3. Each month, a county recorder shall send all the information contained in each affidavit received by the county recorder pursuant to subsection 1 *or* 2 during the immediately preceding month to the Department of Health and Human Services in any format and by any medium approved by the Department.

Sec. 3. NRS 111.781 is hereby amended to read as follows:

111.781 1. Except as otherwise provided by the express terms of a governing instrument, a court order or a contract relating to the division of the marital estate made between the divorced persons before or after the marriage, divorce or annulment, the divorce or annulment of a marriage:

(a) Revokes any revocable:

(1) Disposition or appointment of property made by a divorced person to his or her former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced person's former spouse;

(2) Provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced person's former spouse or on a relative of the divorced person's former spouse; and



(3) Nomination in a governing instrument that nominates a divorced person's former spouse or a relative of the divorced person's former spouse to serve in any fiduciary or representative capacity, including a personal representative capacity, including a personal representative, executor, trustee, conservator, agent or guardian; and

(b) Severs the interest of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship or as community property with a right of survivorship and transforms the interests of the former spouses into equal tenancies in common.

2. A severance under paragraph (b) of subsection 1 does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed or recorded in records appropriate to the kind and location of the property which records are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

3. The provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

4. Any provisions revoked solely by this section are revived by the divorced person's remarriage to the former spouse or by a nullification of the divorce or annulment.

5. Unless a court in an action commenced pursuant to chapter 125 of NRS specifically orders otherwise, a restraining order entered pursuant to NRS 125.050 does not preclude a party to such an action from making or changing beneficiary designations that specify who will receive the party's assets upon the party's death.

6. A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by the provisions of this section or for having taken any other action in good faith reliance on the validity of the governing instrument before the payor or other third party received written or actual notice of any event affecting a beneficiary designation. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written or actual notice of a claimed forfeiture or revocation under this section.



7. Written notice of the divorce, annulment or remarriage or written notice of a complaint or petition for divorce or annulment must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

8. A person who purchases property from a former spouse, relative of a former spouse or any other person for value and without notice, or who receives from a former spouse, relative of a former spouse or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. A former spouse, relative of a former spouse or other person who, not for value, received a payment, item of property or any other benefit to which that person is not entitled under this section is obligated to return the payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who is entitled to it under this section.

9. If this section or any part of this section is preempted by federal law with respect to a payment, an item of property or any other benefit covered by this section, a former spouse, relative of the former spouse or any other person who, not for value, received a payment, item of property or any other benefit to which that person is not entitled under this section is obligated to return that payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the



person who would have been entitled to it were this section or part of this section not preempted.

10. *This section applies only to nonprobate transfers which become effective because of the death of a person on or after October 1, 2011, regardless of when the divorce or annulment occurred.*

11. As used in this section:

(a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(b) "Divorce or annulment" means any divorce or annulment or any dissolution or declaration of invalidity of a marriage. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(c) "Divorced person" includes a person whose marriage has been annulled.

(d) "Governing instrument" means a governing instrument executed by a divorced person before the divorce or annulment of the person's marriage to the person's former spouse.

(e) "Relative of the divorced person's former spouse" means a person who is related to the divorced person's former spouse by blood, adoption or affinity and who, after the divorce or annulment, is not related to the divorced person by blood, adoption or affinity.

(f) "Revocable," with respect to a disposition, appointment, provision or nomination, means one under which the divorced person, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the person's former spouse or former spouse's relative, whether or not the divorced person was then empowered to designate himself or herself in place of his or her former spouse or in place of his or her former spouse's relative and whether or not the divorced person then had the capacity to exercise the power.

Sec. 4. Chapter 132 of NRS is hereby amended by adding thereto the provisions set forth as sections 5 to 9, inclusive, of this act.

Sec. 5. *"Domestic partners" has the meaning ascribed to it in NRS 122A.030.*

Sec. 6. *"Foreign jurisdiction" means any jurisdiction other than this State.*

Sec. 7. *"Spouse" includes a domestic partner as set forth in NRS 122A.200.*



Sec. 8. “Testamentary trust” means a trust created by the terms of the will of a person.

Sec. 9. 1. For the purposes of this title, a person is an interested person with respect to:

(a) A judicial proceeding, a notice of a proposed action or a nonjudicial settlement, if the person has or claims to have an enforceable right or interest that may be materially affected by the outcome of that proceeding, proposed action or nonjudicial settlement. While living, a settlor or a testator shall be deemed to have an enforceable right with respect to any trust or will that he or she created. For the purposes of this paragraph, a person may not claim to have a right or interest under an estate or trust after the entry of an order of the court declaring the right or interest invalid.

(b) An estate of a decedent, if the person:

(1) Is an heir, devisee, child, spouse, creditor, settlor or beneficiary;

(2) Has a property right in or claim against the estate of a decedent, including, without limitation, the Director of the Department of Health and Human Services in any case in which money is owed to the Department of Health and Human Services as a result of the payment of benefits for Medicaid;

(3) Has priority for appointment as a personal representative; or

(4) Is any other fiduciary representing an interested person.

(c) A trust, if the person:

(1) Is a living settlor or, if a court has appointed a guardian of the estate of the settlor, the guardian of the estate appointed by the court;

(2) Is the trustee, including, without limitation, each acting cotrustee;

(3) Holds the presently exercisable right to remove or replace the trustee or a cotrustee;

(4) Asserts the right to serve as the trustee or as a cotrustee;

(5) Is a current beneficiary or a remainder beneficiary of that trust;

(6) Holds a presently exercisable power of appointment that permits the holder to designate or change the designation of a current beneficiary or a remainder beneficiary of that trust;

(7) Holds a presently exercisable power that permits the holder to designate, remove or otherwise change the designation of a person who, pursuant to this paragraph, would be an interested person;



(8) Is a creditor of the settlor who has a claim which has been accepted by the trustee or who has asserted the trustee's liability therefor in a probate proceeding or in a civil action under subsection 8 or 9 of NRS 111.779; or

(9) Is a creditor of the trust who has given the trustee written notice of its claim.

(d) A revocable trust that is the subject of a petition under NRS 164.015 relating to the validity of the trust or any trust-related document, if the person, after the death of the settlor, under the terms of any version of the trust documents in dispute, would be:

(1) A current beneficiary or a remainder beneficiary of that trust; or

(2) A trustee or a successor trustee, including, without limitation, a cotrustee.

(e) A will that, while the testator is still living, is the subject of a petition under subsection 2 of NRS 30.040, if the person, after the death of the testator, would be:

(1) A beneficiary of that will; or

(2) A fiduciary designated in or pursuant to the terms of that will.

2. For the purposes of this title, the following persons are not interested persons:

(a) With respect to a motion, petition or proceeding, any person holding or claiming an interest or right that is not affected by the motion, petition or proceeding.

(b) The Director of the Department of Health and Human Services after any money owed to the Department has been paid in full or with respect to the estate or trust of a decedent who did not receive any benefits from Medicaid.

(c) A vexatious litigant with regard to a motion, petition or proceeding for which the vexatious litigant has been denied standing pursuant to NRS 155.165.

(d) As to the estate of a decedent:

(1) After a will has been admitted to probate, an heir, child or spouse who is not a beneficiary of the will, except for the purposes of NRS 133.110, 133.160 and 137.080.

(2) A creditor whose claim has not been accepted by the personal representative, if the enforcement of the claim of the creditor is barred under the provisions of chapter 11 or 147 of NRS or any other applicable statute of limitations.

(e) As to a trust:



(1) The guardian of the person of an interested person, unless the guardian is expressly permitted to act for the interested person under the terms of the trust instrument;

(2) A beneficiary or creditor whose right or claim is barred by any applicable statute of limitations, including, without limitation, the statute of limitations found in chapter 11 of NRS 164.021, 164.025 or 166.170;

(3) Any beneficiary of a revocable trust, except as expressly provided in paragraph (d) of subsection 1; or

(4) Any disclaimant as to a disclaimed interest, except with respect to the enforcement of the disclaimer.

3. As used in this section:

(a) "Current beneficiary" has the meaning ascribed to it in NRS 165.128.

(b) "Remainder beneficiary" has the meaning ascribed to it in NRS 165.132.

Sec. 10. NRS 132.025 is hereby amended to read as follows:

132.025 As used in this title, unless the context otherwise requires, the words and terms defined in NRS 132.030 to 132.370, inclusive, *and sections 5 to 8, inclusive, of this act* have the meanings ascribed to them in those sections.

Sec. 11. NRS 132.185 is hereby amended to read as follows:

132.185 ~~{1.} "Interested person" includes, without limitation, an heir, devisee, child, spouse, creditor, settlor, beneficiary and any other person having a property right in or claim against a trust estate or the estate of a decedent, including, without limitation, the Director of the Department of Health and Human Services in any case in which money is owed to the Department of Health and Human Services as a result of the payment of benefits for Medicaid. The term includes a person having priority for appointment as a personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons must be determined~~ *means a person whose right or interest under an estate or trust may be materially affected by a decision of a fiduciary or a decision of the court. The fiduciary or court shall determine who is an interested person* according to the particular purposes of, and matter involved in, a proceeding.

~~{2.} The term does not include:~~

~~—(a) After a will has been admitted to probate, an heir, child or spouse who is not a beneficiary of the will, except for purposes of NRS 133.110, 133.160 and 137.080.~~

~~—(b) A person with regard to a motion, petition or proceeding that does not affect an interest of that person.~~



~~—(c) A creditor whose claim has not been accepted by the personal representative if the enforcement of the claim of the creditor is barred under the provisions of chapter 11 or 147 of NRS or any other applicable statute of limitation.]~~

Sec. 12. NRS 133.110 is hereby amended to read as follows:

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

(a) Provision has been made for the spouse by marriage contract;

(b) The spouse is provided for in the will, or in such a way mentioned therein as to show an intention not to make such provision ~~H~~, ***including, without limitation, by a reference in the will to a future spouse by name;*** or

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

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

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

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

Sec. 13. Chapter 136 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in this section, if a declaratory judgment is entered under subsection 2 of NRS 30.040 during the lifetime of a decedent, declaring a document to be the valid will of the decedent, the validity of that will is not subject to challenge after the death of the decedent.

2. Nothing in this section shall be construed to:

(a) Prevent the appeal of a declaratory judgment entered pursuant to subsection 1; or

(b) Prohibit evidence that the will has been revoked or that the decedent executed a valid later will.

Sec. 14. NRS 138.020 is hereby amended to read as follows:

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

(a) Is under the age of majority;



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

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

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

2. If a disqualified person is named as the sole executor in a will, or if all persons so named are disqualified or renounce their right to act, or fail to appear and qualify, letters of administration with the will annexed must issue.

Sec. 15. NRS 138.090 is hereby amended to read as follows:

138.090 1. ~~Administrators~~ *Except as otherwise provided in this section, administrators* with the will annexed have the same authority as the executor named in the will would have had if the executor had qualified, and their acts are as effectual for every purpose. ~~but if the~~ *If a* power or authority conferred upon the executor is discretionary, and is not ~~conferred by law,~~ *expressly excluded by the will,* it is ~~not~~ conferred upon an administrator with the will annexed.

2. *Except to the extent expressly provided for by the will, a provision of the will waiving the bond of a personal representative does not apply to an administrator with the will annexed.*

3. Persons and their nominees and appointees are entitled to appointment as administrators with the will annexed in the same order of priority as in the appointment of administrators, except that ~~foreign letters, an interested person has priority over one who is not.~~ :

(a) An heir who has been eliminated as a beneficiary or as a fiduciary under the terms of the will is not qualified to serve as an administrator with the will annexed; and

(b) The court has the discretion to disregard the order of priority set forth in subsection 1 of NRS 139.040 to favor the appointment of a beneficiary of the will who is given a larger share of the estate over a beneficiary, or his or her nominee, who is given a lesser share, and the court may exercise this discretion to appoint two or more beneficiaries, or their nominees, who have



similar interests in the estate of the decedent as coadministrators with the will annexed.

Sec. 16. NRS 139.010 is hereby amended to read as follows:

139.010 No person is entitled to letters of administration if the person:

1. Is under the age of majority;
2. Has been convicted of a felony, unless the court determines that such a conviction should not disqualify the person from serving in the position of an administrator;
3. Upon proof, is adjudged by the court disqualified by reason of conflict of interest, drunkenness, improvidence, ~~or~~ lack of integrity or understanding ~~or~~ *or other compelling reason*;
4. Is not a resident of the State of Nevada, unless the person:
 - (a) Associates as coadministrator a resident of the State of Nevada or a banking corporation authorized to do business in this State; or
 - (b) Is named as personal representative in the will if the will is the subject of a pending petition for probate, and the court in its discretion believes it would be appropriate to make such an appointment; or
5. Is a banking corporation that is not authorized to do business in this State, unless the banking corporation:
 - (a) Associates as coadministrator a resident of the State of Nevada or a banking corporation authorized to do business in this State; or
 - (b) Is named as personal representative in the will if the will is the subject of a pending petition for probate, and the court in its discretion believes it would be appropriate to make such an appointment.

Sec. 17. NRS 143.380 is hereby amended to read as follows:

143.380 1. Subject to the limitations and requirements of NRS ~~143.300 to 143.815, inclusive,~~ *143.370*, when the personal representative exercises the authority to sell property of the estate *after being granted full authority* pursuant to NRS 143.300 to 143.815, inclusive, the personal representative may sell the property at public auction or private sale, and with or without notice, for cash or on credit, for such price and upon such terms and conditions as the personal representative may determine.

2. The requirements applicable to court confirmation of sales of real property referenced in subsection 1 include, without limitation:

- (a) Publication of the notice of sale;
- (b) Court approval of agents' and brokers' commissions;



(c) The sale being not less than 90 percent of appraised value of the real property;

(d) An examination by the court into the necessity for the sale of the real property, including, without limitation, any advantage to the estate and benefit to interested persons; and

(e) The efforts of the personal representative to obtain the highest and best price for the property reasonably attainable.

3. The requirements applicable to court confirmation of sales of real property and sales of personal property do not apply to a sale pursuant to this section.

Sec. 18. NRS 144.010 is hereby amended to read as follows:

144.010 1. ~~Every~~ *Except as otherwise provided in this subsection, every* personal representative shall make and file with the clerk, within 60 days after appointment, unless the court extends the time, a true inventory and appraisal or record of value of all the estate of the decedent that has come to the possession or knowledge of the personal representative. *The requirement of filing an inventory or the requirement of filing an appraisal or verified record of value, or both, may be waived by the unanimous written consent of all interested persons.*

2. The personal representative, within 10 days after filing the inventory with the clerk, shall mail a copy to all the interested heirs of an intestate estate, or to the devisees of a testate estate, or to both interested heirs and devisees, if a contest of the will of the decedent is pending. Proof of the mailing of the copies must be made and filed in the proceeding.

Sec. 19. NRS 144.020 is hereby amended to read as follows:

144.020 1. A personal representative may engage a qualified and disinterested appraiser to ascertain the fair market value, as of the decedent's death, of any asset the value of which is subject to reasonable doubt. Different persons may be engaged to appraise different kinds of assets included in the estate.

2. Any such appraiser is entitled to a reasonable compensation for the appraisal and may be paid the compensation by the personal representative out of the estate at any time after completion of the appraisal.

3. ~~But~~ *Except as otherwise provided in NRS 144.010, if* there is no reasonable doubt as to the value of assets, such as money, deposits in banks or credit unions, bonds, policies of life insurance, or securities for money or evidence of indebtedness, and the asset is equal in value to cash, the personal representative shall file a verified record of value in lieu of the appraisalment.



4. If it appears beyond reasonable doubt that there will be no need to sell assets of the estate to pay the debts of the estate or expenses of administration, or to divide assets for distribution in kind to the devisees or heirs, the personal representative may petition the court for an order allowing a verified record of value to be filed in lieu of the appraisal ~~};~~ *or, if no interested person is prejudiced thereby, an order waiving the requirement for filing an appraisal or verified record of value,* and the court may enter such an order with or without notice.

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

146.070 1. If ~~fa person dies leaving an estate the gross value of which, after deducting any encumbrances, does not exceed \$100,000, and there is a surviving spouse or minor child or minor children of the decedent, the estate must not be administered upon, but the whole estate, after directing such payments as may be deemed just, must be, by an order for that purpose, assigned and set apart for the support of the surviving spouse or minor child or minor children, or for the support of the minor child or minor children, if there is no surviving spouse. Even if there is a surviving spouse, the court may, after directing such payments, set aside the whole of the estate to the minor child or minor children, if it is in their best interests.~~

~~— 2. If there is no surviving spouse or minor child of the decedent and the gross} the value of a decedent's estate {, after deducting any encumbrances,} does not exceed \$100,000, {upon good cause shown, the court shall order that the estate not be administered upon, but the} the estate may be set aside without administration by the order of the court.~~

2. *Except as otherwise provided in subsection 3, the whole estate must be assigned and set apart in the following order:*

(a) *To the payment of the petitioner's attorney's fees and costs incurred relative to the proceeding under this section;*

(b) *To the payment of funeral expenses, expenses of last illness, money owed to the Department of Health and Human Services as a result of payment of benefits for Medicaid and creditors, if there are any; and*

~~— (b)}~~ (c) *To the payment of other creditors, if any; and*

(d) *Any balance remaining to the claimant or claimants entitled thereto pursuant to a valid will of the decedent, and if there is no valid will, pursuant to intestate succession { in accordance with chapter 134 of NRS.*

3. *If the decedent is survived by a spouse or one or more minor children, the court must set aside the estate for the benefit*



of the surviving spouse or the minor child or minor children of the decedent, subject to any reduction made pursuant to subsection 4 or 5. The court may allocate the entire estate to the surviving spouse, the entire amount to the minor child or minor children, or may divide the estate among the surviving spouse and minor child or minor children.

4. As to any amount set aside to or for the benefit of the surviving spouse or minor child or minor children of the decedent pursuant to subsection 3, the court must set aside the estate without the payment of creditors except as the court finds necessary to prevent a manifest injustice.

5. To prevent an injustice to creditors when there are nonprobate transfers that already benefit the surviving spouse or minor child or minor children of the decedent, the court has the discretion to reduce the amount set aside under subsection 3 to the extent that the value of the estate, when combined with the value of nonprobate transfers, as defined in NRS 111.721, from the decedent to or for the benefit of the surviving spouse or minor child or minor children of the decedent exceeds \$100,000.

6. In exercising the discretion granted in this section, the court shall consider the needs and resources of the surviving spouse and minor child or minor children, including any assets received by or for the benefit of the surviving spouse or minor child or minor children from the decedent by nonprobate transfers.

7. For the purpose of this section, a nonprobate transfer from the decedent to one or more trusts or custodial accounts for the benefit of the surviving spouse or minor child or minor children shall be considered a transfer for the benefit of such spouse or minor child or minor children.

8. Proceedings taken under this section ~~whether or not the decedent left a valid will,~~ must not begin until at least 30 days after the death of the decedent and must be originated by a petition containing:

*(a) A specific description of all **property in** the decedent's ~~property,~~ **estate;***

*(b) A list of all ~~the~~ **known** liens and ~~mortgages of record~~ **encumbrances against estate property** at the date of the decedent's death ~~,~~ **, with a description of any that the petitioner believes may be unenforceable;***

*(c) An estimate of the value of the property ~~,~~ **, together with an explanation of how the estimated value was determined;***



(d) A statement of the debts of the decedent so far as known to the petitioner ; †

(e) The names and residences of the heirs and devisees of the decedent and the age of any who is a minor and the relationship of the heirs and devisees to the decedent, so far as known to the petitioner †

~~—4.† ; and~~

(f) If the decedent left a will, a statement concerning all evidence known to the petitioner that tends to prove that the will is valid.

9. If the petition seeks to have the estate set aside for the benefit of the decedent's surviving spouse or minor child or minor children without payment to creditors, the petition must also contain:

(a) A specific description and estimated value of property passing by one more nonprobate transfers from the decedent to the surviving spouse or minor child or minor children; or

(b) An allegation that the estimated value of the property sought to be set aside, combined with the value of all nonprobate transfers from the decedent to the surviving spouse or minor child or minor children who are seeking to receive property pursuant to this section is less than \$100,000.

10. When property is distributed pursuant to an order granted under this section, the court may allocate the property on a pro rata basis or a non-pro rata basis.

11. The clerk shall set the petition for hearing and the petitioner shall give notice of the petition and hearing in the manner provided in NRS 155.010 to the decedent's heirs and devisees and to the Director of the Department of Health and Human Services. If a complete copy of the petition is not enclosed with the notice, the notice must include a statement setting forth to whom the estate is being set aside.

~~†5.†~~ *12.* No court or clerk's fees 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 \$2,500 in value.

~~†6.— If the court finds that the gross value of the estate, less encumbrances, does not exceed the sum of \$100,000, the court may direct that the estate be distributed to the father or mother of a minor heir or devisee, with or without the filing of any bond, or to a custodian under chapter 167 of NRS, or may require that a general guardian be appointed and that the estate be distributed to the guardian, with or without bond, as in the discretion of the court is deemed to be in the best interests of the minor. The court may direct~~



~~the manner in which the money may be used for the benefit of the minor.]~~

13. *At the hearing on a petition under this section, the court may require such additional evidence as the court deems necessary to make the findings required under subsection 14.*

14. *The order granting the petition shall include:*

(a) *The court's finding as to the validity of any will presented;*
(b) *The court's finding as to the value of the estate and, if relevant for the purposes of subsection 5, the value of any property subject to nonprobate transfers;*

(c) *The court's determination of any property set aside under subsection 2;*

(d) *The court's determination of any property set aside under subsection 3, including, without limitation, the court's determination as to any reduction made pursuant to subsection 4 or 5; and*

(e) *The name of each distributee and the property to be distributed to the distributee.*

15. *As to the distribution of the share of a minor child set aside pursuant to this section, the court may direct the manner in which the money may be used for the benefit of the minor child as is deemed in the court's discretion to be in the best interests of the minor child, and the distribution of the minor child's share shall be made as permitted for the minor child's share under the terms of the decedent's will or to one or more of the following:*

(a) *A parent of such minor child, with or without the filing of any bond;*

(b) *A custodian under chapter 167 of NRS; or*

(c) *A court-appointed guardian of the estate, with or without bond.*

16. *For the purposes of this section, the value of property must be the fair market value of that property, reduced by the value of all enforceable liens and encumbrances. Property values and the values of liens and encumbrances must be determined as of the date of the decedent's death.*

Sec. 21. NRS 153.031 is hereby amended to read as follows:

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

(a) Determining the existence of the trust;

(b) Determining the construction of the trust instrument;

(c) Determining the existence of an immunity, power, privilege, right or duty;

(d) Determining the validity of a provision of the trust;



- (e) Ascertaining beneficiaries and determining to whom property is to pass or be delivered upon final or partial termination of the trust, to the extent not provided in the trust instrument;
- (f) Settling the accounts and reviewing the acts of the trustee, including the exercise of discretionary powers;
- (g) Instructing the trustee;
- (h) Compelling the trustee to report information about the trust or account, to the beneficiary;
- (i) Granting powers to the trustee;
- (j) Fixing or allowing payment of the trustee's compensation, or reviewing the reasonableness of the trustee's compensation;
- (k) Appointing or removing a trustee;
- (l) Accepting the resignation of a trustee;
- (m) Compelling redress of a breach of the trust;
- (n) Approving or directing the modification or termination of the trust;
- (o) Approving or directing the combination or division of trusts;
- (p) Amending or conforming the trust instrument in the manner required to qualify the estate of a decedent for the charitable estate tax deduction under federal law, including the addition of mandatory requirements for a charitable-remainder trust;
- (q) Compelling compliance with the terms of the trust or other applicable law; and
- (r) Permitting the division or allocation of the aggregate value of community property assets in a manner other than on a pro rata basis.

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

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

- (a) Order a reduction in the trustee's compensation.
- (b) Order the trustee to pay to the petitioner or any other party all reasonable costs incurred by the party to adjudicate the affairs of the trust pursuant to this section, including, without limitation, reasonable attorney's fees. ~~Except as otherwise provided in~~



~~NRS 165.139, the~~ *The* trustee may not be held personally liable for the payment of such costs unless the court determines that the trustee was negligent in the performance of or breached his or her fiduciary duties.

Sec. 22. Chapter 155 of NRS is hereby amended by adding thereto the provisions set forth as sections 23, 24 and 25 of this act.

Sec. 23. *“Dependent adult” means a person who at the time of executing a transfer instrument pursuant to this chapter is 18 years of age or older and:*

1. Is unable, without assistance, to provide properly for his or her personal needs for physical health, food, clothing or shelter; or

2. Has difficulty managing his or her own financial resources without assistance or resisting fraud or undue influence.

Sec. 24. *“Health and social services” means services provided to a dependent adult because of his or her dependent condition, including, without limitation, the administration of medicine, medical testing, wound care, assistance with hygiene, companionship, housekeeping, shopping, cooking or assistance with finances.*

Sec. 25. *1. In a proceeding involving the estate of a decedent or a testamentary trust, the court has jurisdiction over the assets of the estate or trust as a proceeding in rem.*

2. In addition to any other basis for claiming jurisdiction over a person, the court has personal jurisdiction over each person:

(a) Who is appointed as a personal representative by the court;

(b) Whose appointment as a trustee is confirmed by the court;

(c) Who files with the court a petition, a motion, other than a motion for dismissal for lack of jurisdiction, an objection or a joinder to a petition or motion;

(d) Who makes an appearance at a hearing of a proceeding involving the estate of a decedent or a testamentary trust, unless the appearance is made solely for the purpose of objecting to the jurisdiction of the court; or

(e) Who is a party to a proceeding commenced by a petition filed pursuant to NRS 153.031 if notice is given pursuant to NRS 155.010.

3. Sanctions against a person that are imposed by the court pursuant to any provision of law or the terms of a will or testamentary trust are limited to that person’s interest in the estate or trust unless the court has personal jurisdiction over that person.



Sec. 26. NRS 155.010 is hereby amended to read as follows:

155.010 1. Except as otherwise provided in *this section or* a specific statute relating to the kind of notice required or otherwise ordered by the court in a particular instance, a petitioner shall cause notice of the time and place of the hearing of a petition to be given to each interested person and to every other person entitled to notice pursuant to this title or his or her attorney if the person has appeared by attorney or requested that notice be sent to his or her attorney. Notice must be given:

(a) By mailing a copy thereof at least 10 days before the time set for the hearing by certified, registered or ordinary first-class mail addressed to the person being notified at the post office address given in the person's demand for notice, if any, or at his or her office or place of residence, if known, or by personally delivering a copy thereof to the person being notified at least 10 days before the time set for the hearing; or

(b) If the address or identity of the person is not known and cannot be ascertained with reasonable diligence, by publishing at least once a week for 3 consecutive weeks a copy thereof in a newspaper having general circulation in the county where the hearing is to be held, the last publication of which must be at least 10 days before the date set for the hearing.

2. *A person who, for the purposes of the matter to be considered at a hearing, is not an interested person is not entitled to notice of that hearing.*

3. The court, for good cause shown, may provide for a different method or time of giving notice for any hearing, or may dispense with the notice otherwise required to be given to a person under this title.

~~3.1~~ 4. Proof of the giving of notice must be made on or before the hearing and filed in the proceeding.

~~4.1~~ 5. A person entitled to notice may, in writing, waive notice of the hearing of a petition.

Sec. 27. NRS 155.093 is hereby amended to read as follows:

155.093 As used in NRS 155.093 to 155.098, inclusive, *and sections 23, 24 and 25 of this act*, unless the context otherwise requires, the words and terms defined in NRS 155.0935 to 155.0965, inclusive, *and sections 23 and 24 of this act* have the meanings ascribed to them in those sections.

Sec. 28. NRS 155.0935 is hereby amended to read as follows:

155.0935 "Caregiver" means ~~any~~ a person who ~~has provided significant assistance or services to or for a person, regardless of whether the person is incompetent, incapacitated or of limited~~



~~capacity and regardless of whether the person is being compensated for the assistance or services provided.~~ *provides health or social services to a dependent adult for remuneration other than a donative transfer pursuant to this chapter or the reimbursement of expenses.*

Sec. 29. NRS 155.094 is hereby amended to read as follows:

155.094 “Independent attorney” means an attorney, other than an attorney who:

1. Is *a transferee* described in subsection 2 of NRS 155.097; or
2. ~~Has served~~ *Served* as an attorney for a person who is described in subsection 2 of NRS 155.097 ~~+~~ *at the time of the execution of the transfer instrument.*

Sec. 30. NRS 155.0945 is hereby amended to read as follows:

155.0945 “Related to, affiliated with or subordinate to any person” includes, without limitation:

1. The person’s spouse;
2. A relative of the person within the third degree of consanguinity ; ~~for the spouse of such a relative;~~
3. A co-owner of a business with the person;
4. An employee of a business if the person:
 - (a) Has an ownership interest in the business; or
 - (b) Holds a supervisory position with the business;
5. An attorney or employee of a law firm for which the person is or was a client; ~~and~~
6. *The spouse of any person described in subsections 2 to 5, inclusive; and*
7. Any entity owned or controlled by a person described in subsections 1 to ~~5,~~ *6, inclusive.*

Sec. 31. NRS 155.0955 is hereby amended to read as follows:

155.0955 “Transfer instrument” means ~~the~~ *a* legal document intended to effectuate a transfer *of property for less than fair market value, whether such transfer becomes effective during the life of the transferor or* on or after the transferor’s death and includes, without limitation ~~+~~ *:*

1. *A will* ~~+~~ *;*
2. *A trust* ~~+~~ *;*
3. *A deed* ~~+~~ *; and*
4. *Any form ,* ~~designated as payable on death,~~ *contract or other* ~~beneficiary designation form.~~ *document which:*
 - (a) *Creates, conveys or transfers any interest in property;*
 - (b) *Creates any type of joint ownership;*
 - (c) *Establishes a right of survivorship;*
 - (d) *Designates a beneficiary;*



(e) Adds an authorized signer on any bank or brokerage account;

(f) Creates or attempts to effectuate a nonprobate transfer to be effective upon the death of the transferor; or

(g) Is intended to amend, modify, eliminate, supersede or revoke any other transfer instrument.

Sec. 32. NRS 155.096 is hereby amended to read as follows:

155.096 “Transferee” means a devisee, a beneficiary of trust, a grantee of a deed, including a grantee of a deed pursuant to NRS 111.655 to 111.699, inclusive, and any other person designated in a transfer instrument to receive a nonprobate transfer ~~†~~ *or other interest in property for less than fair market value.*

Sec. 33. NRS 155.097 is hereby amended to read as follows:

155.097 1. ~~††~~ *Regardless of when a transfer instrument is made, to* the extent the court finds that a transfer was the product of fraud, duress or undue influence, the transfer is void and each transferee who is found responsible for the fraud, duress or undue influence shall bear the costs of the proceedings, including, without limitation, reasonable attorney’s fees.

2. Except as otherwise provided in *subsection 4 and* NRS 155.0975, a transfer is presumed to be void if the transfer is ~~effective on or after a transferor’s death and the transfer is~~ to a transferee who is:

(a) The person who drafted the transfer instrument;

(b) A caregiver of the transferor ~~†~~ *who is a dependent adult;*

(c) A person who ~~arranged for~~ *materially participated in formulating the dispositive provisions of the transfer instrument* or paid for the drafting of the transfer instrument; or

(d) A person who is related to, affiliated with or subordinate to any person described in paragraph (a), (b) or (c).

3. *The presumption created by this section is a presumption concerning the burden of proof and may be rebutted by proving, by clear and convincing evidence that the donative transfer was not the product of fraud, duress or undue influence.*

4. *The provisions of subsection 2 do not apply to a transfer instrument that is intended to effectuate a transfer:*

(a) After the transferor’s death, unless the transfer instrument is made on or after October 1, 2011; or

(b) During the transferor’s lifetime, unless the transfer instrument is made on or after October 1, 2015.

Sec. 34. NRS 155.0975 is hereby amended to read as follows:

155.0975 The presumption established by NRS 155.097 does not apply:



1. *To the spouse of the transferor;*
2. To a transfer of property ~~under a will~~ *which is triggered by the transferor's death* if the transferee is an heir of the ~~testator whose share in the estate of the testator under the terms of the testator's will~~ *transferor and the combined value of all transfers received by that transferee* is not greater than the share the transferee would be entitled to pursuant to chapter 134 of NRS if the testator had died intestate ~~+~~ *—2.1 and the transferor's estate included all nonprobate transfers which are triggered by the death of the transferor.*
3. Except as otherwise provided in this subsection, if the court determines, upon clear and convincing evidence, that the transfer was not the product of fraud, duress or undue influence. The determination of the court pursuant to this subsection must not be based solely upon the testimony of a person described in subsection 2 of NRS 155.097.
- ~~3.1~~ 4. If the transfer instrument is reviewed by an independent attorney who:
 - (a) Counsels the transferor about the nature and consequences of the intended transfer;
 - (b) Attempts to determine if the intended consequence is the result of fraud, duress or undue influence; and
 - (c) Signs and delivers to the transferor an original certificate of that review in substantially the following form:

CERTIFICATE OF INDEPENDENT REVIEW

I, (attorney's name), have reviewed (name of transfer instrument) and have counseled my client, (name of client), on the nature and consequences of the transfer or transfers of property to (name of transferee) contained in the transfer instrument. I am disassociated from the interest of the transferee to the extent that I am in a position to advise my client independently, impartially and confidentially as to the consequences of the transfer. On the basis of this counsel, I conclude that the transfer or transfers of property in the transfer instrument that otherwise might be invalid pursuant to NRS 155.097 are valid because the transfer or transfers are not the product of fraud, duress or undue influence.

.....
 (Name of Attorney) (Date)



~~4~~ 5. To a transferee that is:

- (a) A federal, state or local public entity; or
- (b) An entity that is recognized as exempt under section 501(c)(3) or 501(c)(19) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3) or 501(c)(19), or a trust holding an interest for such an entity but only to the extent of the interest of the entity or the interest of the trustee of the trust.

~~5. A~~

6. *To a transfer of property if the fair market value of the property does not exceed \$3,000. The exclusion provided by this subsection does not apply more than once in each calendar year to transfers made during the transferor's lifetime. For the purposes of this subsection, regardless of the number of transfer instruments involved, the value of property transferred to a transferee pursuant to a transfer that is triggered by the transferor's death must include the value of all property transferred to that transferee or for such transferee's benefit after the transferor's death.*

Sec. 35. NRS 155.165 is hereby amended to read as follows:

155.165 1. The court may find that a person , *including, without limitation, a personal representative or trustee*, is a vexatious litigant if the person files a petition, objection, motion or other pleading which is without merit , ~~or~~ *intended to harass or annoy the personal representative or a trustee ~~or~~ or intended to unreasonably oppose or frustrate the efforts of an interested person who is acting in good faith to enforce his or her rights. The court may find that a personal representative or trustee is a vexatious litigant if the personal representative or trustee has expended the funds of the estate or trust to unreasonably oppose the good faith efforts of an interested person to enforce his or her rights.* In determining whether the person is a vexatious litigant, the court may take into consideration whether the person has previously filed pleadings in a proceeding that were without merit , ~~or~~ *intended to harass or annoy a fiduciary ~~or~~ or intended to unreasonably oppose or frustrate the efforts of an interested person who is acting in good faith to enforce his or her rights.*

2. If a court finds that a person is a vexatious litigant pursuant to subsection 1, the court may impose sanctions on the person in an amount sufficient to reimburse the estate or trust for all or part of the expenses , *including, without limitation, reasonable attorney's fees*, incurred by the estate or trust to respond to the petition, objection, motion or other pleading and for any other pecuniary losses which are associated with the actions of the vexatious litigant.



If a court finds that a personal representative or trustee is a vexatious litigant, the court may remove the personal representative or trustee and any sanctions imposed by the court must be imposed against the personal representative or trustee personally and not against the estate or trust. The court may make an order directing entry of judgment for the amount of such sanctions.

3. The court may deny standing to an interested party to bring a petition or motion if the court finds that:

(a) The subject matter of the petition or motion is unrelated to the interests of the interested party;

(b) The interests of the interested party are minimal as it relates to the subject matter of the petition or motion; or

(c) The interested party is a vexatious litigant pursuant to subsection 1.

4. If a court finds that a person is a vexatious litigant pursuant to subsection 1, that person does not have standing to:

(a) Object to the issuance of letters; or

(b) Request the removal of a personal representative or a trustee.

Sec. 35.1. Title 13 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 35.3, 35.5 and 35.7 of this act.

Sec. 35.3. *As used in this title, unless the context otherwise requires, the words and terms defined in sections 35.5 and 35.7 of this act have the meanings ascribed to them in those sections.*

Sec. 35.5. *“Domestic partners” has the meaning ascribed to it in NRS 122A.030.*

Sec. 35.7. *“Spouse” includes a domestic partner as set forth in NRS 122A.200.*

Sec. 36. Chapter 163 of NRS is hereby amended by adding thereto the provisions set forth as sections 37 to 46.5, inclusive, of this act.

Sec. 37. *“Nontestamentary trust” means a trust that is created and takes effect during the lifetime of the settlor.*

Sec. 38. *“Testamentary trust” means a trust that is created by the terms of the will of a person.*

Sec. 39. *“Trust instrument” means a will, trust agreement, declaration, or other instrument that creates or defines the duties and powers of a trustee and shall include a court order or any instrument that modifies a trust instrument or, in effect, alters the duties and powers of a trustee or other terms of a trust instrument.*

Sec. 40. 1. *Except as otherwise provided by the terms of the trust instrument, a trustee may combine two or more trusts into a*



single trust or divide a trust into two or more separate trusts if the combination or division does not:

- (a) Impair the rights of any beneficiary;*
- (b) Substantially affect the accomplishment of the purposes of the trust or trusts; or*
- (c) Violate the rule against perpetuities applicable to the trust or trusts.*

2. The combination or division of trusts must be made only after giving notice of the proposed action and following the procedure set forth in NRS 164.725. The notice of the proposed action must include a summary of the anticipated tax consequences, if any, of the proposed combination or division.

Sec. 41. *Except as otherwise specifically provided in the trust instrument and except to the extent it would be materially detrimental to the administration of the trust or to the furtherance of its purposes, a trustee may change the name of an irrevocable trust or give a name to an irrevocable trust that does not have one.*

Sec. 42. *“Directing trust adviser” means a trust adviser, trust protector or other person designated in the trust instrument who has the authority to give directives that must be followed by the fiduciary. The term does not include a trust adviser, trust protector or other person who gives recommendations, counsel or advice that the fiduciary is not required to follow under the terms of the trust instrument.*

Sec. 43. *For the purposes of NRS 163.553 to 163.556, inclusive, and sections 42 and 43 of this act, a fiduciary is a “directed fiduciary” with respect to any action that the fiduciary:*

- 1. Has no power to take under the terms of the governing instrument;*
- 2. Is mandated by the governing instrument and for which the fiduciary has no discretion to act otherwise; and*
- 3. Is directed to take or prohibited from taking by a directing trust adviser.*

Sec. 44. *1. A public benefit trust must be administered in accordance with the terms of the trust instrument. Except to the extent otherwise provided for in the trust instrument:*

- (a) Any person appointed by the terms of the trust instrument may enforce the terms of the public benefit trust or, if there is no such person or if such a person is no longer willing or able to serve as a person appointed to enforce the trust, the terms of the trust may be enforced by the Attorney General, the district attorney of the county in which the trust is domiciled or a person*



appointed by the district court in the county in which the trust is domiciled.

(b) A petition for an order that appoints a person to enforce the terms of the public benefit trust or to remove the person who has been appointed to enforce the terms of the trust may be filed with the district court in the county in which the trust is domiciled by the Attorney General, by the district attorney in the county in which the trust is domiciled or by any person who has an interest, other than a general public interest, in the declared purpose of the trust.

(c) The principal and income of the public benefit trust may be applied only to its intended use.

(d) Upon the termination of the public benefit trust, any assets of the trust and any undistributed income must be distributed in accordance with the terms of the trust or, in the absence of such terms, to the estate of the settlor.

(e) If a specific purpose of the public benefit trust becomes illegal under the United States Constitution or the Nevada Constitution, the trust must continue in force as if the illegal purpose was not included in the trust instrument. If no purpose of the public benefit trust is lawful, the district court in the county in which the trust is domiciled may, upon the petition of an interested person or upon its own motion, reform the trust to continue for lawful purposes similar to those intended by the settlor. If the court determines that a reformation of the public benefit trust is not practical or will not accomplish the objectives of the settlor, the trust must terminate and its assets and undistributed income must be distributed pursuant to paragraph (d).

(f) Except as ordered by the district court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment or fee is required by reason of the existence of the fiduciary relationship of the trustee or trustees of the public benefit trust.

(g) If no trustee is designated or no designated trustee is willing or able to act, the district court in the county in which the trust is domiciled shall name one or more trustees and may make such other orders and determinations as are advisable to carry out the interest of the settlor and the purposes of the public benefit trust.

2. As used in this section, "public benefit trust" means a valid trust without identifiable beneficiaries that is not a charitable trust, but which:



(a) Is established to further one or more specifically declared religious, scientific, literary, educational, community development, personal improvement or philanthropic purposes that is not illegal or against public policy;

(b) Provides that the trust principal or income, or both, will provide a benefit, but not necessarily principal or income, to the general public or to one or more classes or groups of persons, including, without limitation, a government, a governmental agency and any political subdivision of a government, that are to be identified in the trustee's discretion;

(c) Does not allow any benefit to the trustee or any cotrustee, except as to the payment of reasonable compensation and the reimbursement of expenses incurred for the benefit of the trust; and

(d) Does not violate the rule against perpetuities as set forth in NRS 111.103 to 111.1039, inclusive.

Sec. 45. If a trust has no serving trustee because of the death, incapacity or resignation of the last serving trustee of the trust, and if the provisions of the trust instrument do not include any provisions which can be effectively used to appoint a successor trustee, then the current beneficiaries of the trust, by unanimous vote, may name and appoint a successor trustee of the trust without the approval of the court so long as the successor trustee of the trust is not a person described in NRS 138.020 and is not a "related or subordinate person" with respect to the settlor of the trust or any beneficiary thereof within the meaning of section 672(c) of the Internal Revenue Code, 26 U.S.C. § 672(c), as amended. If a current beneficiary is a minor, the minor's guardian or guardian ad litem may vote on the minor's behalf. NRS 164.038 shall apply with respect to the appointment of a trustee under this section. For the purposes of this section, the person entitled to vote with respect to a beneficiary which is another trust, which has a serving trustee, is the trustee or trustees of such trust.

Sec. 46. A fiduciary may take such actions as are necessary to cause gains from the sale or exchange of trust assets, as determined for federal income tax purposes, to be taxed for federal income tax purposes as part of a distribution of income, including, without limitation, income which has been increased by an adjustment from principal to income under NRS 164.795, a unitrust distribution or a distribution of principal to a beneficiary.

Sec. 46.5. 1. After notice to the beneficiaries, the trustee of a trust that consists of trust property having a total value of less



than \$100,000 or that is uneconomical to administer may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration. This subsection does not apply to an interested trustee.

2. The court may modify or terminate a trust, in accordance with NRS 163.185, or remove the trustee and appoint a different trustee if the court determines that the value of the trust property is insufficient to justify the cost of administration.

3. On termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

4. This section does not apply to a trust whose trust property includes an easement for conservation.

5. As used in this section:

(a) "Easement for conservation" has the meaning ascribed to it in NRS 111.410.

(b) "Interested trustee" means:

(1) An individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed.

(2) Any trustee who may be removed and replaced by an interested distributee.

(3) An individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

Sec. 47. NRS 163.001 is hereby amended to read as follows:

163.001 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 163.0011 to 163.0017, inclusive, *and sections 37, 38 and 39 of this act* have the meanings ascribed to them in those sections.

Sec. 48. NRS 163.002 is hereby amended to read as follows:

163.002 Except as otherwise provided by specific statute, a trust may be created by any of the following methods:

1. A declaration by the owner of property that he or she holds the property as trustee. *In the absence of a contrary declaration by the owner of the property or of a transfer of the property to a third party and regardless of formal title to the property:*

(a) Property declared to be trust property, together with all income therefrom and the reinvestment thereof, must remain trust property; and

(b) If the property declared to be trust property includes an account, contract, certificate, note, judgment, business interest, contents of a safe deposit box or other property interest that is



subject to additions or contributions, all subsequent additions and contributions to the property are also trust property.

2. A transfer of property by the owner during his or her lifetime to another person as trustee.

3. A testamentary transfer of property by the owner to another person as trustee.

4. An exercise of a power of appointment in trust.

5. An enforceable promise to create a trust.

Sec. 49. NRS 163.004 is hereby amended to read as follows:

163.004 1. ~~1. A trust may be created for any purpose that is not illegal or against public policy.~~

~~2.~~ Except as otherwise provided by ~~a specific statute, federal law or common~~ law, the terms of a trust instrument may *expand, restrict, eliminate or otherwise* vary the rights and interests of beneficiaries in any manner that is not illegal or against public policy, including, without limitation : ~~1. specifying:~~

(a) *The right to be informed of the beneficiary's interest for a period of time;*

(b) The grounds for ~~removing~~ *the removal of* a fiduciary;

~~(b)~~ (c) The circumstances, if any, in which the fiduciary must diversify investments; ~~and~~

~~(c)~~ (d) A fiduciary's powers, duties, standards of care, rights of indemnification and liability to persons whose interests arise from the trust instrument ~~1.~~

~~3.~~ ; and

(e) *The provisions of general applicability to trusts and trust administration.*

2. *A trust is irrevocable by the settlor except to the extent that a right to amend the trust or a right to revoke the trust is expressly reserved by the settlor.*

3. Nothing in this section shall be construed to:

(a) Authorize the exculpation or indemnification of a fiduciary for the fiduciary's own willful misconduct or gross negligence; or

(b) Preclude a court of competent jurisdiction from removing a fiduciary because of the fiduciary's willful misconduct or gross negligence.

4. The rule that statutes in derogation of the common law are to be strictly construed has no application to this section. This section must be liberally construed to give maximum effect to the principle of freedom of disposition and to the enforceability of trust instruments.



Sec. 50. NRS 163.006 is hereby amended to read as follows:

163.006 A trust ~~[, other than a charitable trust,]~~ is created only if there is a beneficiary. This requirement is satisfied if the trust instrument provides for:

1. A beneficiary or class of beneficiaries that is ascertainable with reasonable certainty or that is sufficiently described so that it can be determined whether a person meets the description or is within the class; ~~[or]~~

2. A grant of power to the trustee or some other person to select the beneficiary based on a standard or in the discretion of the trustee or other person ~~[;]~~;

3. *A charitable trust as defined in NRS 163.460;*

4. *A trust for the care of one or more animals created pursuant to NRS 163.0075; or*

5. *A public benefit trust as defined in section 44 of this act.*

Sec. 51. NRS 163.020 is hereby amended to read as follows:

163.020 As used in NRS 163.010 to 163.200, inclusive, *and sections 40, 41 and 46.5 of this act*, unless the context or subject matter otherwise requires:

1. "Affiliate" means any person directly or indirectly controlling or controlled by another person, or any person under direct or indirect common control with another person. It includes any person with whom a trustee has an express or implied agreement regarding the purchase of trust investments by each from the other, directly or indirectly, except a broker or stock exchange.

2. "Relative" means a spouse, ancestor, descendant, brother or sister.

3. "Trust" means an express trust only.

4. "Trustee" means the person holding property in trust and includes trustees, a corporate as well as a natural person and a successor or substitute trustee.

Sec. 52. NRS 163.4157 is hereby amended to read as follows:

163.4157 "Power of appointment" means an inter vivos or testamentary power ~~[, held by a person other than the settlor,]~~ to direct the disposition of trust property, other than a distribution decision by a trustee to a beneficiary.

Sec. 53. NRS 163.419 is hereby amended to read as follows:

163.419 *Except as otherwise provided in the trust instrument, with respect to a discretionary interest as described in NRS 163.4185:*

1. *A beneficiary who has a discretionary interest in a trust does not have an enforceable right to a distribution from the trust, and a court may review a trustee's exercise of discretion concerning*



a discretionary interest only if the trustee acts dishonestly, with ~~improper motive or fails to act.~~ **bad faith or willful misconduct.**

2. A trustee given discretion in a trust instrument that is described as sole, absolute, uncontrolled, unrestricted or unfettered discretion, or with similar words, has no duty to act reasonably in the exercise of that discretion.

3. Absent express language in a trust to the contrary, if a discretionary interest permits unequal distributions between beneficiaries or to the exclusion of other beneficiaries, the trustee may distribute all of the undistributed income and principal to one beneficiary in the trustee's discretion.

4. Regardless of whether a beneficiary has an outstanding creditor, a trustee of a discretionary interest may directly pay any expense on the beneficiary's behalf and may exhaust the income and principal of the trust for the benefit of such beneficiary.

Sec. 54. NRS 163.553 is hereby amended to read as follows:

163.553 As used in NRS 163.553 to 163.556, inclusive, **and sections 42 and 43 of this act**, unless the context otherwise requires, the words and terms defined in NRS 163.5533 to 163.5547, inclusive, **and section 42 of this act** have the meanings ascribed to them in those sections.

Sec. 55. NRS 163.5549 is hereby amended to read as follows:

163.5549 1. ~~An excluded~~ **A directed** fiduciary is not liable, individually or as a fiduciary for any loss which results from:

(a) Complying with a direction of a **directing** trust adviser, ~~custodial account owner or authorized designee of a custodial account owner;~~ **whether the direction is to act or to not act; or**

(b) ~~A failure~~ **Failing** to take any action proposed by ~~an excluded~~ **a directed** fiduciary ~~which requires prior authorization of the trust adviser if the excluded fiduciary timely sought but failed to obtain such authorization; or~~

~~—(c) Any action taken at the direction of a trust protector.~~ **if the action:**

(1) Required the approval, consent or authorization of a person who did not provide the approval, consent or authorization; or

(2) Was contingent upon a condition that was not met or satisfied.

2. ~~An excluded~~ **A directed** fiduciary is not liable for any obligation to perform an investment or suitability review, inquiry or investigation or to make any recommendation or evaluation with respect to any investment, to the extent that the **investment is made by a directing** trust adviser . ~~;~~ ~~custodial account owner or~~



~~authorized designee of a custodial account owner had authority to direct the acquisition, disposition or retention of such investment.~~

3. The provisions of this section do not impose an obligation or liability on a custodian of a custodial account for providing any authorization.

Sec. 56. NRS 163.555 is hereby amended to read as follows:

163.555 If the instrument provides, ~~an excluded~~ *a directed* fiduciary may continue to follow the direction of a *directing* trust adviser upon the incapacity or death of the settlor of the trust.

Sec. 57. NRS 163.556 is hereby amended to read as follows:

163.556 1. ~~Unless~~ *Except as otherwise provided in this section, unless* the terms of a testamentary instrument or irrevocable trust provide otherwise, a trustee with discretion or authority to distribute trust income or principal to or for a beneficiary of the trust may exercise such discretion or authority by appointing the property subject to such discretion or authority in favor of a second trust ~~for the benefit of one or more of those beneficiaries.~~ *as provided in this section.*

2. ~~Notwithstanding subsection 1, a~~ *The second trust to which a trustee appoints property of the first trust may only have as beneficiaries one or more of the beneficiaries of the original trust:*

(a) To or for whom a distribution of income or principal may be made from the original trust;

(b) To or for whom a distribution of income or principal may be made in the future from the original trust at a time or upon the happening of an event specified under the first trust; or

(c) Both paragraphs (a) and (b).

↪ For purposes of this subsection, a permissible appointee of a power of appointment exercised by a beneficiary of the second trust is not considered a beneficiary of the second trust.

3. A trustee may not appoint property of the original trust to a second trust if:

(a) ~~The second trust includes a beneficiary who is not a beneficiary of the original trust. For purposes of this paragraph, a permissible appointee of a power of appointment exercised by a beneficiary of the second trust is not considered a beneficiary of the second trust.~~

~~(b)~~ *Appointing the property will reduce any ~~current fixed~~ income interest ~~annuity interest or unitrust interest of a beneficiary of the original trust.~~ of any income beneficiary of the original trust if the original trust is:*

(1) A trust for which a marital deduction has been taken for federal or state income, gift or estate tax purposes;



(2) A trust for which a charitable deduction has been taken for federal or state income, gift or estate tax purposes; or

(3) A grantor-retained annuity trust or unitrust under 27 C.F.R. § 25.2702-3(b) and (c).

↳ As used in this paragraph, “unitrust” has the meaning ascribed to it in NRS 164.700.

~~[(c)]~~ ~~A contribution made to the original trust qualified for a marital or charitable deduction for federal or state income, gift or estate taxes or qualified for a gift tax exclusion for federal or state tax purposes and the terms of the second trust include a provision which if included in the original trust would prevent the original trust from qualifying for the tax deduction or exclusion.~~

~~—(d)]~~ *(b)* The property to be appointed is subject to a power of withdrawal which is held by a beneficiary of the original trust and may be executed at the time of the proposed appointment, unless after the exercise of such appointment, the beneficiary of the original trust’s power of withdrawal is unchanged with respect to the trust property.

~~[(e)]~~ *(c)* Property specifically allocated for one beneficiary of the original trust is no longer allocated for that beneficiary under either or both trusts, unless the beneficiary consents in writing.

~~[(f)]~~ *(d)* Property held for the benefit of one or more beneficiaries under both the original and the second trust has a lower value than the value of the property held for the benefit of the same beneficiaries under only the original trust, unless:

(1) The benefit provided is limited to a specific amount or periodic payments of a specific amount; and

(2) The value of the property held in either or both trusts for the benefit of one or more beneficiaries is actuarially adequate to provide the benefit.

~~[(g)]~~ ~~Under the second trust:~~

~~—(1) Discretionary distributions may be made by the trustee to a beneficiary or group of beneficiaries of the original trust;~~

~~—(2) Distributions are not limited by an ascertainable standard; and~~

~~—(3) A beneficiary or group of beneficiaries has the power to remove and replace the trustee of the second trust with a beneficiary of the second trust or with a trustee that is related to or subordinate to a beneficiary of the second trust.~~

~~—(h)]~~ *(e)* A contribution made to the original trust qualified for a gift tax exclusion as described in section 2503(b) of the Internal Revenue Code, 26 U.S.C. § 2503(b), by reason of the application of section 2503(c) of the Internal Revenue Code, 26 U.S.C. § 2503(c),



unless the second trust provides that the beneficiary's remainder interest must vest not later than the date upon which such interest would have vested under the terms of the original trust.

~~3. Notwithstanding the provisions of subsection 1, a)~~

4. A trustee who is a beneficiary of the original trust may not exercise the authority to appoint property of the original trust to a second trust if:

(a) Under the terms of the original trust or pursuant to law governing the administration of the original trust:

(1) The trustee does not have discretion to make distributions to himself or herself;

(2) The trustee's discretion to make distributions to himself or herself is limited by an ascertainable standard, and under the terms of the second trust, the trustee's discretion to make distributions to himself or herself is not limited by the same ascertainable standard; or

(3) The trustee's discretion to make distributions to himself or herself can only be exercised with the consent of a cotrustee or a person holding an adverse interest and under the terms of the second trust the trustee's discretion to make distributions to himself or herself is not limited by an ascertainable standard and may be exercised without consent; or

(b) Under the terms of the original trust or pursuant to law governing the administration of the original trust, the trustee of the original trust does not have discretion to make distributions that will discharge the trustee's legal support obligations but under the second trust the trustee's discretion is not limited.

~~4.~~ 5. *Notwithstanding the provisions of subsection 1, a trustee who may be removed by the beneficiary or beneficiaries of the original trust and replaced with a trustee that is related to or subordinate, as described in section 672 of the Internal Revenue Code, 26 U.S.C. § 672(c), to a beneficiary, may not exercise the authority to appoint property of the original trust to a second trust to the extent that the exercise of the authority by such trustee would have the effect of increasing the distributions that can be made from the second trust to such beneficiary or group of beneficiaries that held the power to remove the trustee of the original trust and replace such trustee with a related or subordinate person, unless the distributions that may be made from the second trust to such beneficiary or group of beneficiaries described in paragraph (a) of subsection 4 are limited by an ascertainable standard.*



6. The provisions of ~~subsection 3~~ *subsections 4 and 5* do not prohibit a trustee who is not a beneficiary of the original trust *or who may not be removed by the beneficiary or beneficiaries and replaced with a trustee that is related to or subordinate to a beneficiary* from exercising the authority to appoint property of the original trust to a second trust pursuant to the provisions of subsection 1.

~~5~~ 7. Before appointing property pursuant to subsection 1, a trustee may give notice of a proposed action pursuant to NRS 164.725 or may petition a court for approval pursuant to NRS 153.031, 164.015 or 164.725. Any notice of a proposed action or a petition for a court's approval must include the trustee's opinion of how the appointment of property will affect the trustee's compensation and the administration of other trust expenses.

~~6~~ 8. The trust instrument of the second trust may:

(a) Grant a *general or limited* power of appointment to one or more of the beneficiaries of the second trust who are ~~proper objects of the exercise of the power in~~ *beneficiaries of* the original trust. ~~The power of appointment includes, without limitation, the power to appoint trust property to the holder of the power, the holder's creditors, the holder's estate, the creditors of the holder's estate or any other person.~~

(b) Provide that, at a time or occurrence of an event specified in the trust instrument, the remaining trust assets in the second trust must be held for the beneficiaries of the original trust upon terms and conditions that are substantially identical to the terms and conditions of the original trust.

~~7~~ 9. The power to appoint the property of the original trust pursuant to subsection 1 must be exercised by a writing, signed by the trustee and filed with the records of the trust.

~~8~~ 10. The exercise of the power to invade principal of the original trust pursuant to subsection 1 is considered the exercise of a power of appointment, other than power to appoint the property to the trustee, the trustee's creditors, the trustee's estate or the creditors of the trustee's estate and the provisions of NRS 111.1031 apply to such power of appointment.

~~9~~ 11. The provisions of this section do not abridge the right of any trustee who has the power to appoint property which arises under any other law.

~~10~~ 12. The provisions of this section do not impose upon a trustee a duty to exercise the power to appoint property pursuant to subsection 1.



~~111~~ 13. The power to appoint property to another trust pursuant to subsection 1 is not a power to amend the trust and a trustee is not prohibited from appointing property to another trust pursuant to subsection 1 if the original trust is irrevocable or provides that it may not be amended.

~~112~~ 14. A trustee's power to appoint property to another trust pursuant to subsection 1 is not limited by the existence of a spendthrift provision in the original trust.

~~113~~ 15. A trustee exercising any power granted pursuant to this section may designate himself or herself or any other person permitted to act as a trustee as the trustee of the second trust.

~~114~~ 16. The trustee of a second trust, resulting from the exercise of the power to appoint property to another trust pursuant to subsection 1, may also exercise the powers granted pursuant to this section with respect to the second trust.

~~115~~ 17. *For the purposes of this section, "second trust" means an irrevocable trust that receives trust income or principal appointed by the trustee of the original trust, and may be established by any person, including, without limitation, a new trust created by the trustee, acting in that capacity, of the original trust. If the trustee of the original trust establishes the second trust, then for purposes of creating the new second trust, the requirement of NRS 163.008 that the instrument be signed by the settlor shall be deemed to be satisfied by the signature of the trustee of the second original trust. The second trust may be a trust created under the same trust instrument as the original trust or under a different trust instrument.*

18. As used in this section, "ascertainable standard" means a standard relating to an individual's health, education, support or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code, 26 U.S.C. § 2041(b)(1)(A) or 2514(c)(1), and any regulations of the United States Treasury promulgated thereunder.

19. *This section applies to a trust that is governed by, situated in or administered under the laws of this State, whether the trust is initially governed by, situated in or administered under the laws of this State pursuant to the terms of the trust instrument or whether the governing law, situs or administration of the trust is moved to this State from another state or foreign jurisdiction.*

Sec. 58. Chapter 164 of NRS is hereby amended by adding thereto the provisions set forth as sections 59 to 62, inclusive, of this act.



Sec. 59. 1. The laws of this State govern the validity and construction of a trust if:

- (a) The trust instrument so provides;**
- (b) Designated by a person who, under the terms of the trust instrument, has the right to designate the laws that govern the validity and construction of the trust, at the time the designation is made; or**
- (c) The trust instrument does not provide for the law that governs the validity and construction of the trust, a person designated under the terms of the trust instrument to designate the law that governs the validity and construction of the trust, if any, has not made such a designation and the settlor or the trustee of the trust was a resident of this State at the time the trust was created or at the time the trust became irrevocable.**

2. A person not domiciled in this State may have the right to designate the laws that govern the validity and construction of a trust if properly designated under the trust instrument.

3. If the district court, as defined in NRS 132.116, determines that there is a clear and sufficient nexus between a trust and this State, the court may assume jurisdiction during a proceeding conducted pursuant to NRS 164.010 unless:

- (a) Another court has properly assumed jurisdiction in accordance with the laws of that jurisdiction;**
- (b) The trust instrument expressly provides that the situs of the trust is outside of this State or that a court of a jurisdiction other than this State has jurisdiction over the trust; or**
- (c) A person has designated for the trust a situs or jurisdiction other than this State, if such person made the designation at a time during which he or she held the power to make such a designation under the express terms of the trust instrument.**

4. For the purposes of this section, there is a clear and sufficient nexus between a trust and this State if:

- (a) The trust owns an interest in real property located in this State;**
- (b) The trust owns personal property, wherever situated, if the trustee or cotrustee is:**
 - (1) A resident of this State;**
 - (2) Incorporated or authorized to do business in this State;**
 - (3) A trust company licensed under chapter 669 of NRS;**
 - (4) A family trust company, as defined in NRS 669A.080;**

or

- (5) A national association having an office in this State;**



(c) One or more beneficiaries of the trust reside in this State;
or

(d) At least part of the administration of the trust occurs in this State.

5. For paragraphs (c) and (d) of subsection 4 to apply with respect to a cotrustee, such cotrustee must have the authority to maintain records for the trust and to prepare income tax returns for the trust, even if such authority may also be exercised by another cotrustee.

6. Notwithstanding the provisions of this section, if a court of a jurisdiction other than this State has jurisdiction over a trust and grants an order authorizing a transfer of jurisdiction over the trust to this State, the district court has the power to assume jurisdiction over that trust and to otherwise supervise the administration of that trust in accordance with the procedures set forth in this title if the requirements of subsection 4 are satisfied.

7. A trust, the situs of which is outside this State, that moves its situs to this State is valid whether or not the trust complies with the laws of this State at the time of its creation or after its creation.

Sec. 60. *1. A provision in a will or trust instrument requiring the arbitration of disputes other than disputes of the validity of all or a part of a will or trust, between or among the beneficiaries and a fiduciary under the will or trust, or any combination of such persons or entities, is enforceable.*

2. Unless otherwise specified in the will or trust, a will or trust provision requiring arbitration shall be presumed to require binding arbitration under NRS 38.206 to 38.248, inclusive. If an arbitration enforceable under this section is governed under NRS 38.206 to 38.248, inclusive, the arbitration provision in the will or trust shall be treated as an agreement for the purposes of applying the provisions of NRS 38.206 to 38.248, inclusive.

3. The court is authorized to appoint a guardian ad litem at any time during the arbitration procedure to represent the interests of a minor or a person who is incapacitated, unborn, unknown or unascertained, or a designated class of persons who are not ascertained or are not in being. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The guardian ad litem is entitled to reasonable compensation for services with such compensation to be paid from the principal of the estate or trust whose beneficiaries are represented. The provisions of NRS 164.038 and the common law relating to the doctrine of virtual representation apply to the dispute resolution procedure unless the



common law rule or doctrine is inconsistent with the provisions of NRS 164.038, and any action taken by a court enforcing the judgment is conclusive and binding upon each person receiving actual or constructive notice or who is otherwise virtually represented.

4. Such arbitration in a provision in a will or trust may include, without limitation:

(a) The number, method of selection and minimum qualifications of arbitrators;

(b) The selection and establishment of arbitration procedures, including, without limitation, the incorporation of the arbitration rules for wills and trusts adopted by the American Arbitration Association;

(c) The county in which the dispute resolution will take place;

(d) The scope of discovery;

(e) The burden of proof;

(f) Confidentiality of the arbitration process and the evidence produced during arbitration and discovery;

(g) The awarding of attorney's fees, expert fees and costs;

(h) The time period in which the arbitration must be conducted and deciding an award;

(i) The method of allocating the appointed person's fees and expenses among the parties;

(j) The required appointment of guardians ad litem;

(k) The consequences to a party who fails to act in accordance with such provisions or contests such provisions; and

(l) Other matters which are not inconsistent with NRS 38.206 to 38.248, inclusive.

Sec. 61. *1. Except as otherwise provided in this section, a settlement agreement entered into by all indispensable parties, as described in subsection 1 of section 62 of this act is enforceable with respect to the administration of a trust without approval by the court, as defined in NRS 132.116.*

2. A nonjudicial settlement agreement is void to the extent it violates a material purpose of the trust and to the extent it includes terms and conditions that could not be properly approved by the court, as defined in NRS 132.116, under the law governing the trust instrument.

3. Matters that may be resolved by a nonjudicial settlement agreement include, without limitation:

(a) The investment or use of trust assets;

(b) The lending or borrowing of money;



- (c) The addition, deletion or modification of a term or condition of the trust;*
- (d) The interpretation or construction of a term of the trust;*
- (e) The designation or transfer of the principal place of administration of the trust;*
- (f) The approval of a trustee's report or accounting;*
- (g) The choice of law governing the construction of the trust instrument or administration of the trust, or both;*
- (h) Direction to a trustee to perform or refrain from performing a particular act;*
- (i) The granting of any necessary or desirable power to a trustee;*
- (j) The resignation or appointment of a trustee and the determination of a trustee's compensation;*
- (k) The merger or division of trusts;*
- (l) The granting of approval or authority, for a trustee to make charitable gifts from a noncharitable trust;*
- (m) The transfer of a trust's principal place of administration;*
- (n) Negating the liability of a trustee for an action relating to the trust and providing indemnification therefor; and*
- (o) The termination of the trust.*

Sec. 62. *1. Except as otherwise provided in this section, a nonjudicial settlement agreement is effective when the agreement has been signed by all indispensable parties. A party who is represented by another person pursuant to NRS 164.038 shall be deemed to have signed an agreement when the person who represents that party has signed the agreement.*

2. Except as otherwise provided in this section, if an indispensable party neither signs the agreement nor provides the trustee with a written objection, the trustee may follow the procedure provided in NRS 164.725 by giving a notice of proposed action to all indispensable parties who have not signed the settlement agreement, where the proposed action is to accept and comply with the nonjudicial settlement agreement.

3. Failure to object to the notice of proposed action constitutes acceptance of the settlement agreement. If the trustee is personally aware that an indispensable party, or a person representing that indispensable party under NRS 164.038, has not received the notice of proposed action, the trustee may not proceed to honor the agreement pursuant to subsection 6 of NRS 164.725, but may proceed under subsection 7 of NRS 164.725 as if that indispensable party had objected. Once all indispensable parties



have agreed to a settlement agreement as provided in subsection 1 or 2, it is irrevocable.

4. Any indispensable party may petition the court for an order approving a nonjudicial settlement agreement under the procedure set forth in NRS 164.015. In order to approve a nonjudicial settlement, the court must find that the agreement complies with the requirements of this section and section 61 of this act.

5. For the purposes of this section, "indispensable parties" refers to all interested persons, as defined in NRS 132.185, whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

Sec. 63. NRS 164.010 is hereby amended to read as follows:

164.010 1. Upon petition of any person appointed as trustee of an express trust by any written instrument other than a will, or upon petition of a settlor or beneficiary of the trust, the district court of the county in which the trustee resides or conducts business, or in which the trust has been domiciled, shall consider the application to ~~confirm the appointment of the trustee and specify the manner in which the trustee must qualify. Thereafter the court has~~ *assume* jurisdiction of the trust as a proceeding in rem.

2. If the court grants the petition ~~it may consider at the same time any petition for instructions filed with the petition for confirmation.~~ *, the court:*

(a) Has jurisdiction of the trust as a proceeding in rem;

(b) Shall be deemed to have personal jurisdiction over any person pursuant to section 59 of this act;

(c) May confirm at the same time the appointment of the trustee and specify the manner in which the trustee must qualify; and

(d) May consider at the same time granting orders on other matters relating to the trust, including, without limitation, matters that might be addressed in a declaratory judgment relating to the trust under subsection 2 of NRS 30.040 or petitions filed pursuant to NRS 153.031 or 164.015 whether such matters are raised in the petition to assume jurisdiction pursuant to this section or in one or more separate petitions that are filed concurrently with the petition to assume jurisdiction.

3. At any time, the trustee may petition the court for removal of the trust from continuing jurisdiction of the court.

4. *For the purposes of this section, a trust is domiciled:*



(a) In this State if there is a clear and sufficient nexus between the trust and this State pursuant to subsection 4 of section 59 of this act.

(b) In a county of this State that provides the nexus required pursuant to paragraph (a) giving preference:

(1) First, to the situs or domicile most recently declared by a person granted the power to make such a declaration under the terms of the trust instrument;

(2) Second, to the situs or domicile declared in the trust instrument; and

(3) Finally, to the situs or domicile declared by the trustee in a certification of the trust which complies with subsection 2 of NRS 164.400 and subsection 2 of NRS 164.410 and which contains a declaration of the trust's situs or domicile as authorized in subsection 1 of NRS 164.410.

5. As used in this section, "written instrument" includes, without limitation, an electronic trust as defined in NRS 163.0015.

Sec. 64. NRS 164.015 is hereby amended to read as follows:

164.015 1. The court has exclusive jurisdiction of proceedings initiated by the petition of an interested person concerning the internal affairs of a nontestamentary trust, including a revocable living trust while the settlor is still living if the court determines that the settlor cannot adequately protect his or her own interests or if the interested person shows that the settlor is incompetent or susceptible to undue influence. Proceedings which may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights and the determination of other matters involving trustees and beneficiaries of trusts, including petitions with respect to a nontestamentary trust for any appropriate relief provided with respect to a testamentary trust in NRS 153.031 **H** *and petitions for a ruling that property not formally titled in the name of a trust or its trustee constitutes trust property pursuant to NRS 163.002.*

2. A petition under this section *or subsection 2 of NRS 30.040 that relates to a trust* may be filed in conjunction with a petition under NRS 164.010 or at any time after the court has assumed jurisdiction under that section.

3. If an interested person contests the validity of a revocable nontestamentary trust, the interested person is the plaintiff and the trustee is the defendant. The written grounds for contesting the validity of the trust constitutes a pleading and must conform with any rules applicable to pleadings in a civil action. *This subsection applies whether the person contesting the validity of the trust is the*



petitioner or the objector and whether or not the opposition to the validity of the trust is asserted under this section or subsection 2 of NRS 30.040.

4. In a proceeding pursuant to subsection 3, the competency of the settlor to make the trust, the freedom of the settlor from duress, menace, fraud or undue influence at the time of execution of the will, the execution and attestation of the trust instrument, or any other question affecting the validity of the trust is a question of fact and must be tried by the court, subject to the provisions of subsection 5.

5. A court may consolidate the cases if there is a contest of a revocable nontestamentary trust and a contest relating to a will executed on the same date. If a jury is demanded pursuant to NRS 137.020 for the contest of the will, the court may instruct the jury to render an advisory opinion with respect to an issue of fact pursuant to subsection 4 in the contest of the trust.

6. Upon the hearing, the court shall enter such order as it deems appropriate. The order is final and conclusive as to all matters determined and is binding in rem upon the trust estate and upon the interests of all beneficiaries, vested or contingent, except that appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution may be taken from the order within 30 days after notice of its entry by filing notice of appeal with the clerk of the district court. The appellant shall mail a copy of the notice to each person who has appeared of record. If the proceeding was brought pursuant to subsection 3, 4 or 5, the court must also award costs pursuant to chapter 18 of NRS.

7. ~~1. The~~ ***Except as otherwise ordered by the court, a*** proceeding under this section does not result in continuing supervisory proceedings ~~1. The~~ ***, and the*** administration of the trust must proceed expeditiously in a manner consistent with the terms of the trust, without judicial intervention or the order, approval or other action of any court, unless the jurisdiction of the court is invoked by an interested person or exercised as provided by other law.

8. As used in this section, "nontestamentary trust" has the meaning ascribed to it in section 37 of this act.

Sec. 65. NRS 164.025 is hereby amended to read as follows:

164.025 1. The trustee of a nontestamentary trust may after the death of the settlor of the trust cause to be published a notice in the manner specified in paragraph (b) of subsection 1 of NRS 155.020 and mail a copy of the notice to known or readily ascertainable creditors.



2. The notice must be in substantially the following form:

NOTICE TO CREDITORS

Notice is hereby given that the undersigned is the duly appointed and qualified trustee of the trust., the settlor of that trust died on A creditor having a claim against the trust estate must file a claim with the undersigned at the address given below within 90 days after the first publication of this notice.

Dated

.....
Trustee
.....
Address

3. A person having a claim, due or to become due, against a settlor or the trust must file the claim with the trustee within 90 days after the mailing, for those required to be mailed, or 90 days after publication of the first notice to creditors. Any claim against the trust estate not filed within that time is forever barred. After the expiration of the time, the trustee may distribute the assets of the trust to its beneficiaries without personal liability to any creditor who has failed to file a claim with the trustee.

4. If the trustee knows or has reason to believe that the settlor received public assistance during the lifetime of the settlor, the trustee shall, whether or not the trustee gives notice to other creditors, give notice within 30 days after the death to the Department of Health and Human Services in the manner provided in NRS 155.010. If notice to the Department is required by this subsection but is not given, the trust estate and any assets transferred to a beneficiary remain subject to the right of the Department to recover public assistance received.

5. If a claim is rejected by the trustee, in whole or in part, the trustee must, within 10 days after the rejection, notify the claimant of the rejection by written notice forwarded by registered or certified mail to the mailing address of the claimant. The claimant must bring suit in the proper court against the trustee within 60 days after the notice is given, whether the claim is due or not, or the claim is barred forever and the trustee may distribute the assets of



the trust to its beneficiaries without personal liability to any creditor whose claim is barred forever.

6. As used in this section, “nontestamentary trust” has the meaning ascribed to it in section 37 of this act.

Sec. 66. NRS 164.410 is hereby amended to read as follows:

164.410 1. A certification of trust may confirm the following facts or contain the following information:

(a) The existence of the trust and date of execution of any trust instrument;

(b) The identity of the settlor and each currently acting trustee;

(c) The powers of the trustee and any restrictions imposed upon the trustee in dealing with assets of the trust;

(d) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke it;

(e) If there is more than one trustee, whether all of the currently acting trustees must or less than all may act to exercise identified powers of the trustee;

(f) ~~[(The identifying number of the trust and whether it is a social security number or an employer identification number;)]~~ ***A declaration regarding the situs or domicile of the trust and regarding the law that governs the validity, construction and administration of the trust;*** and

(g) The form in which title to assets of the trust is to be taken.

2. The certification must contain a statement that the trust has not been revoked or amended to make any representations contained in the certification incorrect, and that the signatures are those of all the currently acting trustees.

Sec. 67. NRS 164.725 is hereby amended to read as follows:

164.725 1. As used in this section, “action” includes a course of action and a decision on whether or not to take action.

2. A trustee may provide a notice of proposed action regarding any matter governed by NRS 163.556 or 164.700 to 164.925, inclusive. ***Except as otherwise provided in the trust instrument, a trustee, trust protector or trust adviser may provide a notice of proposed action regarding any aspect of the trust administration of the trust within his or her scope of authority.***

3. If a trustee, ***trust protector or trust adviser*** provides a notice of proposed action, the trustee, ***trust protector or trust adviser*** shall mail the notice of proposed action to every adult beneficiary who, at the time the notice is provided, receives, or is entitled to receive, income under the trust or who would be entitled to receive a distribution of principal if the trust were terminated. A notice of proposed action need not be provided to a person who consents in



writing to the proposed action. A consent to a proposed action may be executed before or after the proposed action is taken.

4. The notice of proposed action must state:

(a) That the notice is provided pursuant to this section;

(b) The name and mailing address of the trustee;

(c) The name and telephone number of a person with whom to communicate for additional information regarding the proposed action;

(d) A description of the proposed action and an explanation of the reason for taking the action;

(e) The time within which objection to the proposed action may be made, which must be not less than 30 days after the notice of proposed action is mailed; and

(f) The date on or after which the proposed action is to be taken or is to be effective.

5. A beneficiary may object to the proposed action by mailing a written objection to the ~~trustee~~ *person providing notice of the proposed action* at the address and within the time stated in the notice.

6. If no beneficiary entitled to receive notice of a proposed action objects to the proposed action and the other requirements of this section are met, the trustee is not liable to any present or future beneficiary with respect to that proposed action.

7. If the trustee, *trust protector or trust adviser* received a written objection to the proposed action within the period specified in the notice, the trustee, *trust protector or trust adviser* or a beneficiary may petition the court for an order to take the action as proposed, take the action with modification or deny the proposed action. A beneficiary who failed to object to the proposed action is not estopped from opposing the proposed action. The burden is on a beneficiary to prove that the proposed action should not be taken or should be modified. If the trustee, *trust protector or trust adviser* takes the proposed action as approved by the court, the trustee, *trust protector or trust adviser* is not liable to any beneficiary with respect to that action.

8. If the trustee, *trust protector or trust adviser* decides not to take a proposed action for which notice has been provided, the trustee, *trust protector or trust adviser* shall notify the beneficiaries of his or her decision not to take the proposed action and the reasons for the decision. The trustee, *trust protector or trust adviser* is not liable to any present or future beneficiary with respect to the decision not to take the proposed action. A beneficiary may petition



the court for an order to take the action as proposed. The burden is on the beneficiary to prove that the proposed action should be taken.

9. If the proposed action for which notice has been proved is an adjustment to principal and income pursuant to NRS 164.795 or 164.796, the sole remedy a court may order, pursuant to subsections 7 and 8, is to make the adjustment, to make the adjustment with a modification or to order the adjustment not to be made.

Sec. 68. NRS 164.740 is hereby amended to read as follows:

164.740 Except as otherwise provided in chapter 669A of NRS, a trustee who invests and manages trust property owes a duty to the beneficiaries of the trust to comply with the prudent investor rule as set forth in NRS 164.700 to 164.775, inclusive, but a trustee is not liable to a beneficiary to the extent that the trustee ~~acted~~ :

1. Acted in reasonable reliance on the terms of the trust ~~or~~ or a court order; and

2. Determined in good faith to not diversify the investments of a trust pursuant to NRS 164.750.

Sec. 69. NRS 164.950 is hereby amended to read as follows:

164.950 *1.* If two settlors who are married establish a nontestamentary trust jointly, and the trust provides for the pecuniary or fractional division of the community property held by the settlors upon the death of one of the settlors, the trustee has the authority to distribute the community property unless the trust instrument expressly provides otherwise. The trustee may distribute the community property on a non-pro rata basis so long as the fair market value of the distribution is, at the time of the distribution, the same as if the distribution were made pro rata. The provisions of this section do not affect the distribution of assets that are specifically allocated in the trust instrument to be distributed in kind.

2. As used in this section, "nontestamentary trust" has the meaning ascribed to it in section 37 of this act.

Sec. 70. Chapter 165 of NRS is hereby amended by adding thereto the provisions set forth as sections 71 to 77, inclusive, of this act.

Sec. 71. *1. Except as otherwise provided in this chapter, the provisions of section 72 of this act apply to a testamentary trust.*

2. Except as otherwise provided by the will creating a testamentary trust or by a court order, until the termination of a testamentary trust, the trustee shall account for the income and principal of a testamentary trust in the same manner as required by a trustee of a nontestamentary trust pursuant to NRS 165.141 to 165.149, inclusive, and sections 72 and 73 of this act.



Sec. 72. 1. *The trustee of a nontestamentary trust has a duty to account for the trust estate in accordance with the provisions of NRS 165.141 to 165.149, inclusive, and sections 72 and 73 of this act.*

2. The trustee of a nontestamentary trust shall satisfy the duty to account by delivery of an account in the form, manner and to the persons as required by the terms and conditions stated in the trust instrument.

Sec. 73. 1. *To the extent that the trust instrument does not provide otherwise, the trustee of a nontestamentary trust shall satisfy the duty to account for the nontestamentary trust estate by delivery of an account which conforms with the requirements of NRS 165.135, and pursuant to the following:*

(a) Except as otherwise limited by paragraph (b), the trustee shall deliver an account, upon demand pursuant to NRS 165.141, to each current beneficiary, and to each remainder beneficiary of the trust. A trustee is not required to provide an account to a remote beneficiary pursuant to this section.

(b) Notwithstanding paragraph (a), a trustee may satisfy the duty to account in accordance with subparagraphs (1) to (6), inclusive, where applicable:

(1) While a trust is revocable by the settlor, the trustee is not required to deliver an account to any person other than the settlor except that a trustee of such a trust shall deliver an account if:

(I) A court-appointed guardian of the estate of the settlor or other person having the right of revocation demands an account on behalf of the settlor; or

(II) The court, in considering a petition filed under NRS 164.015, determines that the settlor or other person holding the right of revocation is incompetent or is susceptible to undue influence and orders the trustee to provide an account, specifying the nature and extent of the account to be provided and the person or persons who are entitled to receive the account.

(2) While the trust is irrevocable in its entirety, but is subject to a broad power of appointment, the trustee is not required to provide an account other than to the power holder for the trust or portion of the trust that is subject to a broad power of appointment.

(3) The trustee is not required to provide an account to a person who has been eliminated as a beneficiary by the effective exercise of a power of appointment.



(4) The trustee is not required to provide an account of any portion of the trust estate to a beneficiary that does not affect the beneficiary's interest in the trust, and the trustee may redact the account as to such portions that do not affect the beneficiary's interest.

(5) A trustee is not required to provide an account to a beneficiary of an irrevocable trust while that beneficiary's only interest in the trust estate is a discretionary interest, as described in NRS 163.4185.

(6) A trustee is not required to provide an account to any beneficiary who has waived or is deemed to have waived the right to receive an account in accordance with section 75 of this act. However, if the waiver is partial or only as to form of the account, the trustee shall satisfy the duty to account in accordance with the terms of the waiver.

2. Nothing in this section shall be interpreted to prohibit a trustee from petitioning the court for instructions as to the persons entitled to receive an account and the procedures required of the trustee to satisfy the requirements of this section pursuant to subsection 2 of section 77 of this act.

Sec. 74. *1. Notwithstanding any provision to the contrary in the trust instrument, but subject to the right of the trustee to petition the court for further instructions pursuant to subsection 2 of section 77 of this act, and subject to the exceptions set forth under paragraph (b) of subsection 1 of section 73 of this act, a trustee shall provide an account conforming with the requirements of NRS 165.135 to a beneficiary pursuant to a demand by such beneficiary pursuant to NRS 165.141.*

2. A trustee, at the expense of the trust, may provide:

(a) An account to one or more beneficiaries at any time, with or without demand; and

(b) More information to beneficiaries, including, without limitation, remote beneficiaries, than is required under the trust instrument or by law.

Sec. 75. *Notwithstanding the provisions of NRS 165.030 to 165.149, inclusive, and sections 71 to 77, inclusive, of this act, any beneficiary may waive the right to receive an account from a trustee by delivering to the trustee a waiver signed by the beneficiary. The waiver may be a limited waiver as to the form of the account, of the right to seek a hearing on the account, or of the right to receive notice of a hearing on the account. Such waiver is applicable to the beneficiary and any other beneficiaries*



who are represented by the waiving beneficiary pursuant to NRS 164.038 or by order of the court.

Sec. 76. *1. Except as may otherwise be required pursuant to the terms of the trust instrument or by order of the court, the trustee shall deliver a required account within 90 days after the end of the period of account, which may be extended by consent of the beneficiary, or by order of the court for good cause shown.*

2. The trustee shall be deemed to have provided an account to any person on whom the trustee delivers a copy of the account as directed by order of the court or, if not so ordered, pursuant to the following:

(a) By mailing a copy of the account by certified, registered or ordinary first-class mail, or by overnight delivery through a recognized delivery service company, addressed to the person being served at the post office address or physical address given in the person's demand for account, if any, or at the person's last place of residence on file with the trustee, if known, or by personally delivering a copy thereof to the person; or

(b) By electronic mail or through a secure website on the Internet. For purposes of this paragraph, a person shall be deemed to have received a copy of an account provided by the trustee to the beneficiary by electronic mail or through a secure website on the Internet if the trustee:

(1) Sent the beneficiary an electronic mail in a manner that complies with subsection 1 of NRS 719.320 and the beneficiary received the electronic mail in a manner that complies with subsection 2 of NRS 719.320; and

(2) Attached the account to the electronic mail as an electronic record or included in the electronic mail a notice to the beneficiary indicating the availability of the account on the secure website.

3. Except as otherwise required by the trust instrument, a trustee is not required to provide an account more than once in any calendar year unless ordered by a court upon good cause shown.

4. An account must be deemed approved and final as follows:

(a) By a beneficiary who received a copy of the account if no written objection is delivered to the trustee in accordance with subsection 2 within 90 days after the date on which the trustee provided the account to that beneficiary; or

(b) By all beneficiaries who are not required to receive an account, such as nonvested and contingent beneficiaries, remote beneficiaries, minor beneficiaries, and unborn or unknown



beneficiaries if the account is deemed approved and final by a beneficiary who has a similar, but preceding interest, in the trust estate, in conformance with NRS 164.038, or as to any beneficiary who has waived an account pursuant to section 75 of this act.

↳ Notwithstanding the foregoing, if an account is submitted to the court for approval under a petition pursuant to chapter 164 of NRS, the account must be deemed final and approved upon by order of the court, subject only to the right of an interested person to appeal.

5. Except as otherwise ordered by the court, the cost of preparing an account must be paid from the trust estate, and allocated to income and principal as provided in the trust instrument, and if the trust instrument is otherwise silent, in accordance with NRS 164.780 to 164.925, inclusive.

6. As used in this section:

(a) "Electronic mail" has the meaning ascribed to it in NRS 41.715.

(b) "Electronic record" has the meaning ascribed to it in NRS 132.117.

Sec. 77. *1. Unless the court determines that the trustee was acting in good faith, a trustee who fails to provide an account pursuant to the terms of the trust instrument, or when required pursuant to the provision of this chapter, is personally liable to each person entitled to receive an account who demanded the account in writing pursuant to this chapter or all costs reasonably incurred by each such person to enforce the terms of the trust or this chapter, including, without limitation, reasonable attorney's fees and court costs. The trustee shall not expend trust funds to satisfy the trustee's personal liability imposed under this subsection.*

2. Notwithstanding subsection 1, if the trustee's failure to account is based upon good cause due to the trustee's reasonable uncertainty as to the beneficiary's right to an account or by a provision in the trust instrument that specifically restricts or prohibits the trustee from providing an account to a beneficiary who is otherwise entitled to an account, then the trustee may, at the expense of the trust estate, bring a petition for instructions before the court to confirm:

(a) The right of the beneficiary to receive an account;

(b) The right of and sufficiency of a demand for an account by a beneficiary; or



(c) The extent of account required to satisfy the trustee's duty to account to such beneficiary, if any, including the sufficiency of a confidential account pursuant to NRS 165.145.

Sec. 78. NRS 165.020 is hereby amended to read as follows:

165.020 1. As used in this chapter:

(a) ~~["Affiliate" means any person directly or indirectly controlling or controlled by another person, or any person under direct or indirect common control by another person. It includes any person with whom a trustee has an express or implied agreement regarding the purchase of trust investments by each from the other, directly or indirectly.]~~ *"Account" means a report of the financial condition of the trust estate prepared by a trustee which:*

(1) Must include the information set forth in NRS 165.135; and

(2) May include information required by court order, the terms of the trust instrument or NRS 165.030 to 165.149, inclusive, and sections 71 to 77, inclusive, of this act.

(b) ~~["Beneficiary" includes a beneficiary under the trust, a person who is entitled to the trust capital at the termination of the trust and a surety on the bond of the trustee.]~~ *"Accounting period" means the period for which the trustee is accounting and, except as otherwise provided in this chapter, commencing with the first day following the previous accounting period and ending on the date specified by the trustee or on the date specified by the court if the account is ordered by the court. If the account is an initial account, the initial account commences on the day the trustee became the trustee.*

(c) ~~["Nontestamentary trustee" means a trustee serving under a trust created in this state otherwise than by a will, or such a trust administered in this state, whether the trustee was appointed by the settlor or by a court or other authority.]~~ *"Broad power of appointment" means a power of appointment held by a person, commonly referred to as a power holder, that can be exercised in favor of:*

(1) The power holder, without any restriction or limitation;

or

(2) Any person other than one or more of the following:

(I) The power holder;

(II) The power holder's estate;

(III) The power holder's creditors; or

(IV) The creditors of the power holder's estate.

(d) ~~["Relative" means a spouse, ancestor, descendant, brother or sister.]~~ *"Current beneficiary" means a distribution beneficiary to*



whom or for whose benefit the trustee is authorized or required to make distributions of income or principal at any time during the accounting period.

(e) *“Distribution beneficiary” has the meaning ascribed to it in NRS 163.415.*

(f) *“Remainder beneficiary” means a beneficiary who will become a current beneficiary upon the death of an existing current beneficiary or upon the occurrence of some other event that may occur during the beneficiary’s lifetime, regardless of whether the beneficiary’s share is subject to elimination, but has not been eliminated, under a power of appointment other than a broad power of appointment.*

(g) *“Remote beneficiary” means a natural person or an entity whose interest in the trust estate is preceded by the priority interest of one or more current beneficiaries and one or more remainder beneficiaries, all of whose interests must be extinguished by death or pursuant to the terms of the trust instrument before the remote beneficiary may become a current beneficiary.*

(h) *“Settlor” ~~includes~~ means the creator of a testamentary as well as a nontestamentary trust.*

~~+~~ *The term includes a trustor and a grantor.*

(i) *“Successor trustee” means a successor to the acting trustee or substitute trustee named or appointed to succeed a predecessor trustee who has not yet assumed the role of trustee. Upon assuming the role, the successor trustee must thereafter be referred to as the trustee.*

(j) *“Testamentary trustee” means a trustee serving under a trust created by a will of a testator domiciled in this state at the time of the testator’s death, whose will has been admitted to probate in this state, whether the trustee was appointed by the testator or by a court or other authority.*

~~+~~ (k) *“Trust” means:*

(1) *A trust as defined in section 51 of this act;*

(2) *A testamentary trust as defined in section 38 of this act;*

and

(3) *A nontestamentary trust as defined in section 37 of this act.*

(l) *“Trustee” includes ~~trustees,~~ a nontestamentary trustee, a testamentary trustee and a corporate trustee, as well as a natural person. ~~+~~ The term does not include a successor or substitute trustee, ~~and the successor in interest of a deceased sole trustee.~~ until the successor trustee or substitute trustee assumes the role of acting trustee.*



2. This chapter does not apply to resulting trusts, constructive trusts, business trusts where certificates of beneficial interest are issued to the beneficiaries, investment trusts, voting trusts, insurance trusts prior to the death of the insured, trusts in the nature of mortgages or pledges, trusts created by judgment or decree of a federal court or a state court other than the district court acting in probate matters, liquidation trusts, or trust for the sole purpose of paying dividends, interest or interest coupons, salaries, wages or pensions.

Sec. 79. NRS 165.030 is hereby amended to read as follows:

165.030 Within 75 days after a ~~{testamentary}~~ trustee receives possession of trust property, the trustee shall ~~{file with the court where the will was admitted to probate}~~ *serve a copy of* an inventory ~~{under oath, showing by items}~~ *setting forth* all the trust property which has come ~~{to}~~ *into* the possession or knowledge of the trustee. *The trustee shall serve the notice in the manner set forth in NRS 155.010 to each interested person and beneficiary to whom the trustee is required to account pursuant to this chapter.*

Sec. 80. NRS 165.135 is hereby amended to read as follows:

165.135 1. ~~{The trustee of a nontestamentary trust shall furnish to each beneficiary an account in accordance with the provisions of NRS 165.122 to 165.149, inclusive.~~

~~— 2. At a minimum, the trustee shall furnish an account to each beneficiary in accordance with the terms and conditions stated in the trust instrument. The cost of each account must be allocated to income and principal as provided in the trust instrument.~~

~~— 3. Except as otherwise provided in this section, an~~ *An* account ~~{provided by a trustee to a beneficiary who is entitled to an account pursuant to NRS 165.122 to 165.149, inclusive,}~~ must include:

(a) A statement indicating the accounting period;

(b) With respect to the trust principal:

(1) The trust principal held at the beginning of the accounting period, and in what form held, and the approximate market value thereof at the beginning of the accounting period;

(2) Additions to the trust principal during the accounting period, with the dates and sources of acquisition;

(3) Investments collected, sold or charged off during the accounting period;

(4) Investments made during the accounting period, with the date, source and cost of each investment;

(5) Any deductions from the trust principal during the accounting period, with the date and purpose of each deduction; and



(6) The trust principal, invested or uninvested, on hand at the end of the accounting period, reflecting the approximate market value thereof at that time;

(c) With respect to trust income, the trust income:

(1) On hand at the beginning of the accounting period, and in what form held;

(2) Received during the accounting period, when and from what source;

(3) Paid out during the accounting period, when, to whom and for what purpose; and

(4) On hand at the end of the accounting period and how invested;

(d) A statement of unpaid claims with the reason for failure to pay them; and

(e) A brief summary of the account ~~†~~

~~—4. In lieu of the information required to be provided by a trustee to a beneficiary pursuant to subsection 3, a trustee may provide to such a beneficiary a statement indicating the accounting period and a financial report of the trust which is prepared by a certified public accountant and which summarizes the information required by paragraphs (b) to (e), inclusive, of subsection 3. Upon request, the trustee shall make all the information used in the preparation of the financial report available to each beneficiary who was provided a copy of the financial report.~~

~~—5. For the purposes of NRS 165.122 to 165.149, inclusive, the information provided by a trustee to a beneficiary pursuant to subsection 4 shall be deemed to be an account.] , which must include:~~

(1) The beginning value of the trust estate:

(I) For the first accounting, the beginning value of the trust estate shall consist of the total of all original assets contained in the beginning inventory.

(II) For accountings other than the first account, the beginning value of the trust estate for the applicable accounting period must be the ending value of the prior accounting.

(2) The total of all receipts received during the accounting period, excluding capital items.

(3) The total of all gains on sales or other disposition of assets, if any, during the accounting period.

(4) The total of disbursements and distributions during the accounting period.

(5) The total of all losses on sales or other disposition of assets, if any, during the accounting period.



(6) *The total value of the trust assets remaining on hand at the end of the accounting period.*

2. *A summary of account pursuant to paragraph (e) of subsection 1 must be in substantially the following form:*

CHARGES

[Add one of the following alternatives]

[Alternative 1: First, or first and final account]

Amount of inventory and appraisal \$.....

Amount of supplemental inventories \$.....

[Alternative 2: Subsequent account]

Property on hand at beginning of account \$.....

Additional property received \$.....

[Continue]

Receipts (Schedule _____) \$.....

Gains on sale or other disposition (Schedule _____) \$.....

Net income from trade or business (Schedule _____) \$.....

Total Charges: \$.....

CREDITS

Disbursements during account period (Schedule _____) \$.....

[If applicable, add the following option]

[Option: Distributions to testamentary trust]

Principal Income (Schedule _____) \$.....

Losses on sale or other disposition (Schedule _____) \$.....

Net loss from trade or business (Schedule _____) \$.....

Distributions (Schedule _____) \$.....

Property on hand at close of account (Schedule _____) \$.....

Total Credits: \$.....

3. *In lieu of segregating the report on income and principal pursuant to subsection 1, the trustee may combine income and principal activity in the account so long as the combined report on income and principal does not materially impede a beneficiary's*



ability to evaluate the charges to or credits against the beneficiary's interest.

4. Notwithstanding the provisions of subsections 1, 2 and 3, an account may instead consist of:

(a) A statement indicating the accounting period and a financial report, which must consist of a compilation or financial statement of the trust prepared by a certified public accountant and include summaries of the information required by subsection 1; or

(b) A statement prepared by the trustee, the contents of which are agreed to by the trustee and the person receiving such report as sufficient to serve as an account.

↳ An account prepared pursuant to this subsection must be in a writing, signed by the person receiving the information and documentation, delivered to the trustee, and may include a waiver of account pursuant to section 75 of this act.

Sec. 81. NRS 165.141 is hereby amended to read as follows:

165.141 A beneficiary *who has not otherwise been provided with an account pursuant to this chapter* may send a written demand for an account ~~pursuant to NRS 165.122 to 165.149, inclusive,~~ to the trustee in accordance with the following procedure:

1. The demand on the trustee must be sent to the trustee or to the trustee's attorney of record and the demand must include, without limitation:

(a) The identity of the demanding beneficiary, including the beneficiary's mailing address or the address of the beneficiary's attorney;

(b) The accounting period for which an account is demanded; and

(c) The nature and extent of the account demanded and the legal basis for the demand.

2. Within 14 days after the trustee has received a demand for an account from a beneficiary, the trustee shall notify the demanding beneficiary of the trustee's acceptance or rejection of the demand ~~or~~ *or that the trustee intends to seek instructions from the court pursuant to subsection 2 of section 77 of this act regarding the sufficiency of the demand or the right of the beneficiary to receive an account.* The trustee shall:

(a) Provide an account within 60 days after receipt of the demand, unless that time is modified by consent of the beneficiary or by order of the court if the trustee accepts the beneficiary's demand for an account; ~~or~~



(b) Set forth the grounds for rejecting the beneficiary's demand for an account in the notice of rejection and inform the beneficiary that the beneficiary has 60 days in which to petition the court to review the rejection if the trustee rejects the beneficiary's demand for an account ~~†~~; or

(c) File a petition with the court pursuant to NRS 164.015 seeking instructions from the court pursuant to subsection 2 of section 77 of this act regarding the sufficiency of the demand or the right of the beneficiary to receive an account within 15 days after the receipt of the demand if the trustee intends to seek instructions from the court.

3. The demand by the beneficiary and the notice of ~~acceptance or rejection of the demand by the trustee~~ *the trustee's action thereon* must be delivered by first-class mail, personal delivery or commercial carrier. If delivery of the demand or of the notice is in dispute, proof of delivery may be established by a return receipt or other proof of delivery provided by the person making the delivery or by affidavit of the person who arranged for the delivery setting forth the delivery address, the method of delivery arranged for and the actions taken by that person to arrange for the delivery.

4. If the trustee fails to accept, ~~†~~ reject *or seek instructions concerning* a beneficiary's demand for an account as required by subsection 2, the beneficiary's demand shall be deemed rejected.

5. A beneficiary is not entitled to demand an account pursuant to this section if the accounting period for which the demand is made is deemed final pursuant to subsection 4 of section 76 of this act.

Sec. 82. NRS 165.143 is hereby amended to read as follows:

165.143 1. A beneficiary whose demand for an account in compliance with NRS 165.141 is rejected or deemed rejected must file a petition seeking the court's review of the trustee's rejection within 60 days after the rejection date as described in subsection 2 ~~†~~ *and is thereafter barred from further right to demand an account for the period subject to the demand.* A petition filed pursuant to this section may also seek additional relief pursuant to NRS 153.031 ~~†~~, *164.015 and 164.031.*

2. If the trustee rejects the beneficiary's demand for an account, the rejection date is the date on which the trustee provides the beneficiary with a notice of rejection. If the trustee fails to accept or reject the beneficiary's demand, the rejection date is deemed to be 14 days after the beneficiary ~~gave~~ *delivered the demand to* the trustee. ~~the demand.~~



3. If the court has not previously accepted jurisdiction over the trust ~~§~~ *pursuant to NRS 164.010*, the beneficiary must petition the court to confirm the appointment of the trustee pursuant to NRS 164.010 ~~§~~ *and to admit the trust to the jurisdiction of the court*. Such a petition may be combined with the petition for the court's review of the trustee's rejection.

4. The clerk shall set the petition for hearing, and the petitioner shall give notice to all interested persons for the period and in the manner provided in NRS 155.010. The notice must state the filing of the petition, the object and the time and place of the hearing.

5. If one or more other beneficiaries with interests substantially similar to the petitioner request to join the petition at or before the hearing, the court shall consider the other beneficiaries to be additional petitioners without requiring those beneficiaries to file separate petitions or to give separate notices of the hearing.

6. At the hearing, as to each petitioner, the court may enter an order:

(a) Compelling the trustee to provide an account to the petitioner and specifying the nature and extent of the account to be provided;

(b) Declaring that the petitioner is not entitled to an account and setting forth the reason or reasons the petitioner is not so entitled; or

(c) Compelling the trustee to provide an account to the petitioner as described in paragraph (a) and authorizing an independent review of the account using the procedure set forth in NRS 165.145.

7. Except as otherwise provided in subsection 3 of NRS 153.031 , ~~and subsection 4 of NRS 165.139,~~ each petitioner shall pay his or her own expenses, including, without limitation, attorney's fees, that arise in conjunction with filing a petition pursuant to this section.

Sec. 83. NRS 165.145 is hereby amended to read as follows:

165.145 If, while considering a petition filed pursuant to NRS 165.143, the court finds that the beneficiary is entitled to an account pursuant to this section and that the trust instrument authorizes or directs the trustee not to provide the account , ~~with the disclosures required by this section,~~ the court shall, upon the beneficiary's request, compel the trustee to confidentially provide an account in accordance with the following procedure:

1. If the beneficiary has not been previously provided with a copy of the trust instrument, the court shall direct the trustee to provide the court and each reviewer selected pursuant to subsection 2 with a copy of the trust instrument, or such portions as the court deems to be pertinent to the determination of the adequacy of the



trustee's account and to the enforcement of the beneficiary's rights under the trust **H instrument.**

2. The court shall direct the account to be provided confidentially to the court and to one or more reviewers selected by the beneficiary. The court may direct that the account be filed with the court clerk under seal or delivered to the court for in camera review. The account provided must contain the information required by this section without regard to any trust provision restricting the information to be provided to the requesting beneficiary.

3. A reviewer must be either a certified public accountant or an attorney.

4. Subject to the provisions of paragraph (b) of subsection 5, the beneficiary requesting the account must pay for the services of each reviewer. The expense of preparing the account must be paid as an expense of the trust.

5. Each reviewer must agree that:

(a) The account provided must be reviewed confidentially and must not be provided to the beneficiary except as otherwise provided in paragraph (b) or in an order of the court; and

(b) The reviewer's duty is to review the account and to prepare a written report, which must be filed with the court clerk under seal or submitted to the court for in camera review, informing the court if there is anything that would indicate that the trust, as it affects the beneficiary's interest, has not been or may not have been properly administered or accounted for in accordance with applicable law, the trust instrument and generally accepted accounting principles applicable to trusts. At the same time a copy of the reviewer's report is provided to the court, a copy of each reviewer's report must be delivered to the trustee or to the trustee's attorney of record.

6. The trustee may submit to the court and to each reviewer an objection to the report of a reviewer within 10 days after the trustee received the reviewer's report. The trustee shall submit the objections to the court and to each reviewer in the same manner as the trustee provided the account. The court may consider each reviewer's report and the objections of the trustee with or without a hearing. If the court, after considering the report of any reviewer and any objection submitted by the trustee, finds that the trust, as it affects the beneficiary's interest, has not been or may not have been properly administered or accounted for in accordance with applicable law, the trust instrument and generally accepted accounting principles applicable to trusts, in addition to any other relief granted by the court pursuant to NRS 153.031 or 165.143, the court shall enter an order granting the relief necessary to protect the



beneficiary's interests or to allow the beneficiary to enforce his or her rights under the trust.

7. An order granting relief described in subsection 6 may include one or more of the following:

(a) A directive to the trustee to provide the beneficiary an account which complies with the provisions of ~~subsection 3 or 4 of~~ NRS 165.135, together with such additional information as the beneficiary may require to properly enforce his or her rights under the trust;

(b) A directive to the trustee to provide further ~~annual~~ accounts required under this section without further court order;

(c) A directive to the trustee to provide the court and each reviewer a more complete account or such additional information as the court deems necessary to determine if the trust is being properly administered in compliance with the trust instrument and applicable law;

(d) A directive to the trustee to take action to remedy or mitigate the effects of any improper administration of the trust;

(e) A declaration relieving each reviewer from any further obligation of confidentiality; and

(f) Any such additional relief as the court deems proper to ensure the trustee's compliance with the trust instrument and applicable law and to allow enforcement of the beneficiary's rights.

8. If the beneficiary is granted any relief by the court on the basis that the trust was not properly administered or accounted for, the provisions of subsection 3 of NRS 153.031 ~~and subsection 4 of NRS 165.139~~ apply with regard to the reimbursement of costs incurred by the beneficiary.

Sec. 84. NRS 165.147 is hereby amended to read as follows:

165.147 1. Upon ~~request~~ **demand** by a beneficiary **pursuant to NRS 165.141** who is entitled to receive an account pursuant to the terms of NRS ~~165.122~~ **165.030** to 165.149, inclusive, **and sections 71 to 77, inclusive, of this act**, a trustee shall provide a copy of the trust instrument to that beneficiary except as expressly provided otherwise in the trust instrument.

2. Notwithstanding the provisions of subsection 1 or any provision to the contrary in the trust instrument, the court may direct the trustee to provide a beneficiary who is entitled to receive an account pursuant to the terms of NRS ~~165.122~~ **165.030** to 165.149, inclusive, **and sections 71 to 77, inclusive, of this act** a copy of the trust instrument, or such portions as the court deems to be pertinent to the determination of the adequacy of the trustee's account and to the enforcement of the beneficiary's rights under the trust.



3. Except as otherwise provided in NRS 165.145 or by order of the court for good cause shown, the trustee must not be compelled to provide a copy of the trust instrument to a person who is not a beneficiary of the trust or a person who is not entitled to an account of the trust pursuant to the provisions of NRS ~~165.122~~ **165.030** to 165.149, inclusive ~~1~~, **and sections 71 to 77, inclusive, of this act.**

Sec. 85. NRS 155.095, 165.040, 165.045, 165.050, 165.055, 165.060, 165.090, 165.100, 165.110, 165.120, 165.122, 165.124, 165.126, 165.128, 165.129, 165.132, 165.134, 165.137 and 165.139 are hereby repealed.



