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FIRST REPRINT

S.B. 33

SENATE BILL NO. 33—COMMITTEE ON JUDICIARY

PREFILED JANUARY 24, 2001

Referred to Committee on Judiciary

SUMMARY—Revises various provisions governing probate. (BDR 12-853)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to probate; providing for a declaration of attesting witnesses to a will; revising provisions governing the appeal of a contest of a will; revising provisions governing the summary administration of an estate; providing for the application of certain provisions governing estates to provisions governing trusts; revising various other provisions governing probate; and providing other matters properly relating thereto.

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

- 1 **Section 1.** NRS 133.050 is hereby amended to read as follows:
2 133.050 1. Any ~~for all of the attesting witnesses to any~~ *attesting*
3 *witness to a* will may sign *a declaration under penalty of perjury or* an
4 affidavit before any person authorized to administer oaths in or out of the
5 state, stating such facts as ~~they~~ *the witness* would be required to testify to
6 in court to prove the will. The *declaration or* affidavit must be written on
7 the will or, if that is impracticable, on some paper attached thereto. The
8 sworn statement of any witness so taken must be accepted by the court as if
9 it had been taken before the court.
10 2. The affidavit described in subsection 1 may be *in* substantially ~~the~~
11 ~~form as follows:~~ *the following form:*
12 STATE OF NEVADA }
13 } ss.
14 COUNTY OF }
15 (Date)
16 Then and there personally appeared and, who,
17 being duly sworn, depose and say: That they witnessed the execution of the
18 foregoing will of the testator,; that the testator subscribed the
19 will and declared it to be his last will and testament in their presence; that
20 they thereafter subscribed the will as witnesses in the presence of the



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1 testator and in the presence of each other and at the request of the testator;
2 and that the testator at the time of the execution of the will appeared to
3 them to be of full age and of sound mind and memory.

4 Affiant

5 Affiant

6 Subscribed and sworn to before me this

7 day of the month of of the year

8 Notary Public

9 **3. The declaration described in subsection 1 may be in substantially**
10 **the following form:**

11 ***Under penalty of perjury pursuant to the law of the State of Nevada, the***
12 ***undersigned, and, declare that the following is***
13 ***true of their own knowledge: That they witnessed the execution of the***
14 ***foregoing will of the testator,; that the testator subscribed***
15 ***the will and declared it to be his last will and testament in their presence;***
16 ***that they thereafter subscribed the will as witnesses in the presence of the***
17 ***testator and in the presence of each other and at the request of the***
18 ***testator; and that the testator at the time of the execution of the will***
19 ***appeared to them to be of full age and of sound mind and memory.***

20 ***Dated this day of,***

21 ***..... Declarant***

22 ***..... Declarant***

23 **Sec. 2.** NRS 134.070 is hereby amended to read as follows:

24 134.070 If the decedent leaves no issue, surviving spouse, or father or
25 mother, and no brother or sister living at the time of death, the estate goes
26 to the next of kin in equal degree, except that if there are two or more
27 collateral kindred in equal degree, but claiming through different ancestors,
28 those who claim through the nearest ancestors are preferred to those who
29 claim through ancestors more remote. ~~If any person dies leaving several~~
30 ~~children, or leaving a child and issue of one or more children, and any such~~
31 ~~surviving child dies under age and not having been married, all the estate~~
32 ~~that came to the deceased child by inheritance from the deceased parent~~
33 ~~descends in equal shares to the other children of the same parent, and to the~~
34 ~~issue of any other children who may have died, by right of representation.]~~

35 **Sec. 3.** NRS 134.080 is hereby amended to read as follows:

36 134.080 **1.** At the death of a child who is under age , ***who is without***
37 ***issue*** and ***who*** has not been married, all the other children of the parent
38 being also dead, if any of the other children left issue, the estate that came
39 to the child by inheritance from the parent descends to all the issue of the
40 other children of the same parent, and if all the issue are in the same degree
41 of kindred to the child , they are entitled to share the estate equally;
42 otherwise, they are entitled to take according to the right of representation.

43 **2.** ***If any person dies leaving several children, or leaving a child and***
44 ***issue of one or more children, and any such surviving child dies under***
45 ***age, without issue and not having been married, all the estate that came***
46 ***to the deceased child by inheritance from the deceased parent descends***
47 ***in equal shares to the other children of the same parent, and to the issue***
48 ***of any other children of the same parent who may have died, by right of***
49 ***representation.***



1 **Sec. 4.** NRS 137.140 is hereby amended to read as follows:
2 137.140 An appeal from a final order determining the contest of a will
3 is governed by the Nevada Rules of Appellate Procedure ~~H~~ , *and the*
4 *notice of appeal must be filed with the clerk of the district court not later*
5 *than 30 days after the date of service of written notice of entry of a final*
6 *order.* A party may make any motion after the determination that is
7 provided by the Nevada Rules of Civil Procedure.

8 **Sec. 5.** NRS 139.010 is hereby amended to read as follows:
9 139.010 No person is entitled to letters of administration who:
10 1. Is under the age of majority;
11 2. Has been convicted of a felony;
12 3. Upon proof, is adjudged by the court disqualified by reason of
13 *conflict of interest*, drunkenness, improvidence or lack of integrity or
14 understanding; or
15 4. Is not a resident of the State of Nevada *and who does not associate*
16 *as coadministrator a resident of the State of Nevada* or which, in the case
17 of a banking corporation, is not authorized to do business in this state ~~or~~
18 *and does not associate as coadministrator a resident of the State of Nevada*
19 *or* a banking corporation authorized to do business in this state.

20 **Sec. 6.** NRS 139.040 is hereby amended to read as follows:
21 139.040 1. Administration of the intestate estate of a decedent must
22 be granted to one or more of the persons mentioned in this section, and
23 they are respectively entitled to priority for appointment in the following
24 order:
25 (a) The surviving spouse.
26 (b) The children.
27 (c) The father or the mother.
28 (d) The brother or the sister.
29 (e) The grandchildren.
30 (f) Any other of the kindred entitled to share in the distribution of the
31 estate.
32 (g) ~~Creditors who have become such during the lifetime of the~~
33 ~~decedent.~~
34 ~~(h)~~ The public administrator.
35 *(h) Creditors who have become such during the lifetime of the*
36 *decedent.*
37 (i) Any of the kindred not above enumerated, within the fourth degree
38 of consanguinity.
39 (j) Any person or persons legally qualified.
40 2. A person in each of the foregoing classes is entitled:
41 (a) To appointment, if ~~he is a~~ *the person is:*
42 (1) *A* resident of the State of Nevada or ~~is a~~ *associates as*
43 *coadministrator a resident of the State of Nevada; or*
44 (2) *A* banking corporation which is authorized to do business in this
45 state or which associates as coadministrator *a resident of the State of*
46 *Nevada or* a banking corporation authorized to do business in this state.
47 (b) To nominate a resident of the State of Nevada or a qualified banking
48 corporation for appointment, whether or not the nominator is a resident of
49 the State of Nevada or a qualified banking corporation. The nominee has



1 the same priority as the nominator. That priority is independent of the
2 residence or corporate qualification of the nominator.

3 *3. If any heir who is otherwise entitled to appointment is a minor or*
4 *an incompetent person for whom a guardian has been appointed, the*
5 *court may appoint the guardian of the minor or incompetent person as*
6 *administrator.*

7 **Sec. 7.** NRS 143.037 is hereby amended to read as follows:

8 143.037 1. Except as otherwise provided in this section, a personal
9 representative shall close an estate within 18 months after appointment.

10 2. If a claim against the estate is in litigation or in summary
11 determination pursuant to subsection ~~44~~ 5 of NRS 145.060 or subsection 2
12 of NRS 147.130 or the amount of federal estate tax has not been
13 determined, the court, upon petition of a devisee, creditor or heir, shall
14 order that:

15 (a) A certain amount of money, or certain other assets, be retained by
16 the personal representative to:

17 (1) Satisfy the claim or tax; and

18 (2) Pay any fees or costs related to the claim or tax, including fees for
19 appraisals, attorney's fees and court costs; and

20 (b) The remainder of the estate be distributed.

21 3. If a contest of the will or a proceeding to determine heirship is
22 pending, the court which appointed the personal representative:

23 (a) Shall order that a certain amount of money, or certain other assets,
24 be retained and the remainder of the estate distributed; or

25 (b) May, for good cause shown, order that the entire distributable estate
26 be retained pending disposition of the contest or proceeding.

27 **Sec. 8.** NRS 143.170 is hereby amended to read as follows:

28 143.170 ~~1A~~ *Unless approved in advance by a court after application,*
29 *notice and a hearing on the matter, a* personal representative shall not
30 directly or indirectly purchase any property of the estate represented by the
31 personal representative.

32 **Sec. 9.** NRS 145.010 is hereby amended to read as follows:

33 145.010 The provisions of this chapter ~~shall~~ apply only to estates of
34 which summary administration ~~shall be~~ is ordered. *Upon the granting of*
35 *summary administration, all regular proceedings and further notices*
36 *required by this Title are waived, except for the notices required by NRS*
37 *144.010, 145.060, 145.070 and 145.075.*

38 **Sec. 10.** NRS 145.060 is hereby amended to read as follows:

39 145.060 1. *A personal representative shall publish and mail notice*
40 *to creditors in the manner provided in NRS 155.020.*

41 2. Creditors of the estate must file their claims, due or to become due,
42 with the clerk, within 60 days after the mailing to the creditors for those
43 required to be mailed, or 60 days after the first publication of the notice to
44 creditors pursuant to NRS 155.020, and within 10 days thereafter the
45 personal representative shall allow or reject the claims filed.

46 ~~12~~ 3. Any claim which is not filed within the 60 days is barred
47 forever, except that if it is made to appear, by the affidavit of the claimant
48 or by other proof to the satisfaction of the court, that the claimant did not



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1 have notice as provided in NRS 155.020, the claim may be filed at any
2 time before the filing of the final account.

3 ~~3-4~~ 4. Every claim which is filed as provided in this section and
4 allowed by the personal representative, must then, and not until then, be
5 ranked as an acknowledged debt of the estate and be paid in the course of
6 administration, except that payment of small debts in advance may be
7 made pursuant to subsection 3 of NRS 150.230.

8 ~~4-4~~ 5. If a claim filed by the welfare division of the department of
9 human resources is rejected by the personal representative, the state
10 welfare administrator may, within 20 days after receipt of the written
11 notice of rejection, petition the court for summary determination of the
12 claim. A petition for summary determination must be filed with the clerk,
13 who shall set the petition for hearing, and the petitioner shall give notice
14 for the period and in the manner required by NRS 155.010. Allowance of
15 the claim by the court is sufficient evidence of its correctness, and it must
16 be paid as if previously allowed by the personal representative.

17 **Sec. 11.** NRS 146.080 is hereby amended to read as follows:

18 146.080 1. If a decedent leaves no real property, nor interest therein,
19 nor mortgage or lien thereon, in this state, and the gross value of the
20 decedent's property in this state, over and above any amounts due to the
21 decedent for services in the Armed Forces of the United States, does not
22 exceed \$20,000, a person who has a right to succeed to the property of the
23 decedent ~~under~~ *pursuant to* the laws of succession for a decedent who
24 died intestate or ~~under~~ *pursuant to* the valid will of a decedent who died
25 testate, on behalf of all persons entitled to succeed to the property claimed,
26 or the state welfare administrator or public administrator on behalf of the
27 state or others entitled to the property, may, 40 days after the death of the
28 decedent, without procuring letters of administration or awaiting the
29 probate of the will, collect any money due the decedent, receive the
30 property of the decedent, and have any evidences of interest, indebtedness
31 or right transferred to the claimant upon furnishing the person,
32 representative, corporation, officer or body owing the money, having
33 custody of the property or acting as registrar or transfer agent of the
34 evidences of interest, indebtedness or right, with an affidavit showing the
35 right of the affiant or affiants to receive the money or property or to have
36 the evidence transferred.

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

38 (a) The affiant's name and address, and that the affiant is entitled by law
39 to succeed to the property claimed;

40 (b) ~~[That the decedent was a resident of Nevada at the time of death;]~~
41 *The date and place of death of the decedent;*

42 (c) That the gross value of the decedent's property in this state, except
43 amounts due to the decedent for services in the Armed Forces of the United
44 States, does not exceed \$20,000, and that the property does not include any
45 real property nor interest therein, nor mortgage or lien thereon;

46 (d) That at least 40 days have elapsed since the death of the decedent ~~4-4~~
47 *, as shown in a certified copy of the certificate of death of the decedent*
48 *attached to the affidavit;*



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- 1 (e) That no petition for the appointment of a personal representative is
2 pending or has been granted in any jurisdiction;
- 3 (f) That all debts of the decedent, including funeral and burial expenses,
4 and money owed to the department of human resources as a result of the
5 payment of benefits for Medicaid, have been paid or provided for;
- 6 (g) A description of the personal property and the portion claimed;
- 7 (h) That the affiant has given written notice, by personal service or by
8 certified mail, identifying the affiant's claim and describing the property
9 claimed, to every person whose right to succeed to the decedent's property
10 is equal or superior to that of the affiant, and that at least 14 days have
11 elapsed since the notice was served or mailed;
- 12 (i) That the affiant is personally entitled, or the department of human
13 resources is entitled, to full payment or delivery of the property claimed or
14 is entitled to payment or delivery on behalf of and with the written
15 authority of all other successors who have an interest in the property; and
- 16 (j) That the affiant acknowledges an understanding that filing a false
17 affidavit constitutes a felony in this state.
- 18 3. If the affiant:
- 19 (a) Submits an affidavit which does not meet the requirements of
20 subsection 2 or which contains statements which are not entirely true, any
21 money or property the affiant receives is subject to all debts of the
22 decedent.
- 23 (b) Fails to give notice to other successors as required by subsection 2,
24 any money or property the affiant receives is held by the affiant in trust for
25 all other successors who have an interest in the property.
- 26 4. A person who receives an affidavit containing the information
27 required by subsection 2 is entitled to rely upon that information, and if the
28 person relies in good faith, the person is immune from civil liability for
29 actions based on that reliance.
- 30 5. Upon receiving proof of the death of the decedent and an affidavit
31 containing the information required by this section:
- 32 (a) A transfer agent of any security shall change the registered
33 ownership of the security claimed from the decedent to the person claiming
34 to succeed to ownership of that security.
- 35 (b) A governmental agency required to issue certificates of ownership
36 or registration to personal property shall issue a new certificate of
37 ownership or registration to the person claiming to succeed to ownership of
38 the property.
- 39 6. If any property of the estate not exceeding \$20,000 is located in a
40 state which requires an order of a court for the transfer of the property, or if
41 the estate consists of stocks or bonds which must be transferred by an agent
42 outside this state, any person qualified ~~under~~ *pursuant to* the provisions
43 of subsection 1 to have the stocks or bonds or other property transferred
44 may do so by obtaining a court order directing the transfer. The person
45 desiring the transfer must file a petition, which may be ex parte,
46 containing:
- 47 (a) A specific description of all the property of the decedent.
- 48 (b) A list of all the liens and mortgages of record at the date of the
49 decedent's death.



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1 (c) An estimate of the value of the property of the decedent.
2 (d) The names, ages of any minors, and residences of the decedent's
3 heirs and devisees.

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

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

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

12 **Sec. 12.** NRS 147.110 is hereby amended to read as follows:

13 147.110 1. Within 15 days after the time for filing claims has
14 expired, as provided in this chapter, the personal representative shall
15 examine all claims filed and shall either endorse on each claim an
16 allowance or rejection, with the day and the year thereof, or shall file a
17 notice of allowance or rejection with the date and the year thereof, and the
18 notice of allowance or rejection must be attached to the claim allowed or
19 rejected and filed with the clerk.

20 2. If a personal representative refuses or neglects to endorse on a claim
21 an allowance or rejection within 15 days, as specified in this section, or
22 does not file a notice of allowance or rejection, the claim shall be deemed
23 rejected, but the personal representative may, nevertheless, allow the claim
24 at any time before the filing of the final account.

25 3. ~~If a claim is deemed rejected pursuant to subsection 2, the personal~~
26 ~~representative must, not more than 10 days after the rejection, provide~~
27 ~~written notice of the rejection by registered mail to all affected creditors.~~

28 ~~4.~~ A personal representative need not allow or reject a claim that was
29 not timely filed unless the court otherwise orders.

30 **Sec. 13.** NRS 148.220 is hereby amended to read as follows:

31 148.220 1. Notice of the time and place of sale of real property must
32 be published in a newspaper published in the county in which the property,
33 or some portion of the property, is located, if there is one so published, and
34 if not, then in such paper as the court directs, for 2 weeks, being three
35 publications, 1 week apart, before the day of sale or, in the case of a private
36 sale, before the day on or after which the sale is to be made. For good
37 cause shown, the court may decrease the number of publications to one and
38 shorten the time for publication to a period not less than 8 days.

39 2. *If the personal representative is the sole devisee or heir of the*
40 *estate, or if all devisees or heirs of the estate consent in writing, the court*
41 *may waive the requirement of publication.*

42 3. If it appears from the inventory and appraisalment that the value of
43 the property to be sold does not exceed \$5,000, the personal representative
44 may ~~dispense with~~ *waive* the *requirement of* publication and, in lieu
45 thereof, post a notice of the time and place of sale in three of the most
46 public places in the county in which the property, or some portion of the
47 property, is located, for 2 weeks before the day of the sale or, in the case of
48 a private sale, before the day on or after which the sale is to be made.



1 ~~13.1~~ 4. The property proposed to be sold must be described with
2 common certainty in the notice.

3 **Sec. 14.** Chapter 150 of NRS is hereby amended by adding thereto a
4 new section to read as follows:

5 *Notwithstanding any other provision of this chapter, the court may*
6 *waive the requirement of any accounting if all interested persons agree*
7 *in writing to the waiver.*

8 **Sec. 15.** NRS 150.180 is hereby amended to read as follows:

9 150.180 1. If a minor is interested in the estate who has no legally
10 appointed guardian, the court may appoint a disinterested attorney to
11 represent him who may contest the account as any other interested person
12 might contest it.

13 2. The court may also appoint an attorney to represent unborn,
14 incapacitated or absent heirs and devisees.

15 3. ~~All matters, including allowed claims not addressed in the~~
16 ~~settlement of any former account, or in entering an order of sale, may be~~
17 ~~contested by interested persons for cause shown.~~

18 ~~4.1~~ An attorney so appointed must be paid as provided in NRS
19 150.060.

20 **Sec. 16.** NRS 155.190 is hereby amended to read as follows:

21 155.190 In addition to any order from which an appeal is expressly
22 permitted by this Title, an appeal may be taken to the supreme court within
23 30 days after ~~its entry from~~ *the notice of entry of* an order:

24 1. Granting or revoking letters testamentary or letters of
25 administration.

26 2. Admitting a will to probate or revoking the probate thereof.

27 3. Setting aside an estate claimed not to exceed \$50,000 in value.

28 4. Setting apart property as a homestead, or claimed to be exempt from
29 execution.

30 5. Granting or modifying a family allowance.

31 6. Directing or authorizing the sale or conveyance or confirming the
32 sale of property.

33 7. Settling an account of a personal representative or trustee.

34 8. Instructing or appointing a trustee.

35 9. Instructing or directing a personal representative.

36 10. Directing or allowing the payment of a debt, claim, devise or
37 attorney's fee.

38 11. Determining heirship or the persons to whom distribution must be
39 made or trust property must pass.

40 12. Distributing property.

41 13. Refusing to make any order mentioned in this section or any
42 decision wherein the amount in controversy equals or exceeds, exclusive of
43 costs, \$5,000.

44 14. Granting or denying a motion to enforce the liability of a surety
45 filed pursuant to NRS 142.035.

46 15. Granting an order for conveyance or transfer pursuant to NRS
47 148.410.



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1 **Sec. 17.** NRS 53.045 is hereby amended to read as follows:
2 53.045 ~~1. Except as otherwise provided in subsection 2, any~~ **Any**
3 matter whose existence or truth may be established by an affidavit or other
4 sworn declaration may be established with the same effect by an unsworn
5 declaration of its existence or truth signed by the declarant under penalty of
6 perjury, and dated, in substantially the following form:

7 ~~(a)~~ 1. If executed in this state: "I declare under penalty of perjury
8 that the foregoing is true and correct."

9 Executed on
10 (date) (signature)

11 ~~(b)~~ 2. If executed outside this state: "I declare under penalty of
12 perjury under the law of the State of Nevada that the foregoing is true and
13 correct."

14 Executed on
15 (date) (signature)

~~[2.—This section does not dispense with a requirement of a witness to or the authentication of a signature, or the requirements of NRS 133.050 or a similar statute.]~~

19 **Sec. 18.** Chapter 164 of NRS is hereby amended by adding thereto a
20 new section to read as follows:

21 *When not otherwise inconsistent with the provisions of chapters 162 to*
22 *167, inclusive, of NRS, all of the provisions of chapters 132, 153 and 155*
23 *of NRS regulating the matters of estates:*

24 1. Apply to proceedings relating to trusts, as appropriate; or
25 2. May be applied to supplement the provisions of chapters 162 to
26 167, inclusive, of NRS.

27 **Sec. 19.** 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.

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

33 NOTICE TO CREDITORS

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

39 Dated

40
41

Trustee

42
 43 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



1 distribute the assets of the trust to its beneficiaries without personal
2 liability to any creditor who has failed to file a claim with the trustee.

3 4. If the trustee knows or has reason to believe that the settlor received
4 public assistance during his lifetime, the trustee shall, whether or not he
5 gives notice to other creditors, give notice within 30 days after the death to
6 the welfare division of the department of human resources in the manner
7 provided in NRS 155.010. If notice to the welfare division is required by
8 this subsection , but is not given, the trust estate and any assets transferred
9 to a beneficiary remain subject to the right of the welfare division to
10 recover public assistance received.

11 *5. If a claim is rejected by the trustee, in whole or in part, the trustee*
12 *must, within 10 days of the rejection, notify the claimant of the rejection*
13 *by written notice forwarded by registered or certified mail to the mailing*
14 *address of the claimant. The claimant must bring suit in the proper court*
15 *against the trustee within 60 days after the notice is given, whether the*
16 *claim is due or not, or the claim is barred forever and the trustee may*
17 *distribute the assets of the trust to its beneficiaries without personal*
18 *liability to any creditor whose claim is barred forever.*

19 **Sec. 20.** NRS 145.050 is hereby repealed.

TEXT OF REPEALED SECTION

NRS 145.050 Certain regular proceedings and notices dispensed with by order for summary administration. The order for a summary administration of the estate must:

1. Dispense with all regular proceedings and further notices, except for the notices required by NRS 145.030, 145.070, 145.075 and 147.010; and
2. Provide that an inventory and appraisalment or record of value be filed with the clerk.

