

ASSEMBLY BILL NO. 78—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA ASSOCIATION OF COUNTIES)

FEBRUARY 17, 2005

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning administration of estates. (BDR 12-592)

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 estates; revising certain provisions relating to the powers and duties of a public administrator; revising provisions governing the sale of personal property of an estate; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, a personal representative may contract with certain agents and brokers to sell any personal property of an estate. (NRS 148.105) A personal representative includes an executor, an administrator, a successor personal representative, a special administrator or any other person performing a similar function. (NRS 132.265) The agents or brokers with whom the personal representative contracts are entitled to receive a commission from the proceeds of the sale of personal property fixed by the court in an amount which may not exceed 10 percent of the proceeds of the sale. (NRS 148.105)

This bill removes the limitation on commission fees for the sale of personal property other than for the sale of a manufactured home. Thus, the limitation applies only to the sale of manufactured homes.

Existing law requires financial institutions to disclose the balance of a deceased person's account to a public administrator only if he presents a death certificate or an affidavit of death. (NRS 239A.075) Financial institutions are banking corporations, trust companies, savings and loan associations, thrift companies and credit unions that are subject to regulation under the laws of this State. (NRS 239A.030)

This bill expands the manner in which a public administrator may prove death so that any proof of death is sufficient for the administrator to obtain the deceased person's account information. This bill further provides that the financial institution must provide the information without charge.



Under existing law, a public administrator may administer an estate worth \$5,000 or less without obtaining letters of administration upon filing an affidavit which meets certain requirements with the court. (NRS 253.0403)

This bill increases the value of such an estate which may be administered by a public administrator without letters of administration to \$20,000.

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

Section 1. NRS 148.105 is hereby amended to read as follows:

148.105 1. The personal representative may enter into a written contract with any bona fide agent, broker, or multiple group of agents or brokers to secure a purchaser for any personal property of the estate, and by that contract, the personal representative may grant an exclusive right to sell and shall provide for the payment to the agent, broker, or multiple group of agents or brokers, out of the proceeds of a sale to any purchaser secured pursuant to the contract, of a commission, the amount of which must be fixed and allowed by the court upon confirmation of the sale. If the sale is confirmed to the purchaser, the contract is binding and valid as against the estate for the amount so allowed by the court.

2. By the execution of any such contract, no personal liability is incurred by the personal representative, and no liability of any kind is incurred by the estate unless a sale is made and confirmed by the court.

3. ~~The~~ *If a manufactured home is sold pursuant to the provisions of this section, the commission for the sale of the manufactured home* must not exceed 10 percent of the proceeds from the sale. ~~of any personal property pursuant to this section.~~

4. *As used in this section, "manufactured home" has the meaning ascribed to it in NRS 118B.015.*

Sec. 2. NRS 239A.075 is hereby amended to read as follows:

239A.075 Upon presentation of a death certificate, ~~for~~ affidavit of death ~~or~~ *or other proof of death*, a financial institution shall provide, *without charge*, a public administrator with a statement which sets forth the identifying number and account balance of any accounts on which only the name of the deceased person appears.

Sec. 3. NRS 253.0403 is hereby amended to read as follows:

253.0403 1. When the gross value of a decedent's property situated in this State does not exceed ~~\$5,000,~~ *\$20,000*, a public administrator may, without procuring letters of administration, administer the estate of that person upon filing with the court an affidavit of his right to do so.

2. The affidavit must provide:



1 (a) The public administrator's name and address, and his
2 attestation that he is entitled by law to administer the estate;

3 (b) The decedent's place of residence at the time of his death;

4 (c) That the gross value of the decedent's property in this State
5 does not exceed ~~[\$5,000;]~~ \$20,000;

6 (d) That at least 40 days have elapsed since the death of the
7 decedent;

8 (e) That no application or petition for the appointment of a
9 personal representative is pending or has been granted in this State;

10 (f) A description of the personal property of the decedent;

11 (g) Whether there are any heirs or next of kin known to the
12 affiant, and if known, the name and address of each such person;

13 (h) If heirs or next of kin are known to the affiant, a description
14 of the method of service he used to provide to each of them notice
15 of the affidavit and that at least 10 days have elapsed since the
16 notice was provided;

17 (i) That all debts of the decedent, including funeral and burial
18 expenses, have been paid or provided for; and

19 (j) The name of each person to whom the affiant intends to
20 distribute the decedent's property.

21 3. Before filing the affidavit with the court, the public
22 administrator shall take reasonable steps to ascertain whether any of
23 the decedent's heirs or next of kin exist. If the administrator
24 determines that heirs or next of kin exist, he shall serve each of them
25 with a copy of the affidavit. Service must be made personally or by
26 certified mail.

27 4. If the affiant:

28 (a) Submits an affidavit which does not meet the requirements
29 of subsection 2 or which contains statements which are not entirely
30 true, any money or property he receives or distributes is subject to
31 all debts of the decedent, based on the priority for payment of debts
32 and charges specified in NRS 147.195.

33 (b) Fails to give notice to heirs or next of kin as required by
34 subsection 3, any money or property he holds or distributes to others
35 shall be deemed to be held in trust for those heirs and next of kin
36 who did not receive notice and have an interest in the property.

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

41 6. Upon receiving proof of the death of the decedent, an
42 affidavit containing the information required by this section and the
43 written approval of the public administrator to do so:



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

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

Sec. 4. NRS 253.044 is hereby amended to read as follows:

253.044 In a county whose population is less than 100,000, the board of county commissioners may, after reviewing each case, direct the public administrator or any other suitable person to:

1. Investigate:

(a) The financial status of any proposed ward for whom a request to serve as guardian has been received to determine whether there is a need for a guardian to be appointed and whether the public administrator or other suitable person designated by the board is able and eligible to serve in that capacity.

(b) Whether there is any qualified person who is willing and able to serve as guardian for a ward or administrator of the estate of an intestate decedent, and to determine whether there is a need for a guardian or an administrator and whether the public administrator or other suitable person designated by the board is eligible to serve in that capacity.

2. Petition the court for appointment as guardian of the person or as guardian of the person and estate of any ward if, after investigation, the public administrator or other suitable person designated by the board finds that there is a need for such an appointment and that he is able and eligible to serve. If no other qualified person having a prior right is willing and able to serve, the public administrator or other suitable person designated by the board shall petition for appointment as guardian regardless of the amount of assets in the estate of the proposed ward.

3. Petition the court for letters of administration of the estate of a person dying intestate if, after investigation, the public administrator or other suitable person designated by the board finds that there is no other qualified person having a prior right who is willing and able to serve.

4. File an affidavit pursuant to NRS 253.0403 to administer the estate if, after investigation, the public administrator or other suitable person designated by the board finds that the gross value of the decedent's property situated in this State does not exceed ~~[\$5,000.]~~ **\$20,000.**

5. Act, upon order of a court, as:

(a) Guardian of the person and estate of an adult ward; or

(b) Administrator of the estate of a person dying intestate,



- 1 ↳ regardless of the amount of assets in the estate of the ward or
- 2 decedent if no other qualified person is willing and able to serve.
- 3 **Sec. 5.** This act becomes effective upon passage and approval.



