

SENATE BILL NO. 287—SENATOR WIENER

MARCH 16, 2009

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning the personal financial administration. (BDR 13-658)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.  
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 personal financial administration; revising provisions concerning the appointment of a guardian; providing for the classification of trusts; providing for the administration of directed trusts; adopting provisions governing the administration of trusts; revising provisions concerning spendthrift trusts; exempting certain property of a trust from execution and attachment; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

**Section 1** of this bill revises existing law to allow a court to appoint a person convicted of a felony as a guardian if the court determines such conviction should not disqualify that person. (NRS 159.059)

**Section 2** of this bill revises existing law to allow any interested person to petition a court for an order authorizing a guardian to take certain actions. (NRS 159.078)

**Sections 4-37** of this bill adopt provisions relating to trusts. (Chapter 163 of NRS) **Sections 13-19** provide for the classification of certain trusts. **Section 13** provides that: (1) a creditor may not exercise and a court may not order a beneficiary or a trustee to exercise certain powers or discretion; (2) trust property is not subject to the personal obligations of the trustee; and (3) a settlor may provide in a trust instrument for limitations on a beneficiary's power to transfer his interests. **Section 15** sets forth the factors for determining when a settlor or beneficiary may be exercising undue influence over a trust. **Section 16** provides factors for determining when a settlor is the alter ego of a trustee. **Section 17** provides the classifications of a distribution interest and how such interests are divided in a trust. **Section 18** provides that a beneficiary has an enforceable right to distribution of a support interest. **Section 19** describes the discretion a trustee may exercise with regard to the distribution of certain interests.



**Sections 20-37** of this bill adopt provisions concerning directed trusts. **Section 30** limits the liability of certain fiduciaries. **Section 32** provides when an adviser to a trust is also considered a fiduciary. **Section 33** prescribes the powers and duties of a protector of a trust. **Section 34** requires certain persons who help facilitate a trust to submit to the jurisdiction of this State. **Section 35** sets forth the powers and discretion that certain persons who assist in facilitating the administration of a trust may execute. **Section 36** limits the claims a creditor can bring against a settlor or beneficiary. **Section 37** provides for the transfer of trust assets to another trust under certain circumstances.

**Sections 38-42** of this bill amend existing law regarding trusts to provide greater ability of a settlor or beneficiary to modify or terminate a trust and to account for changes in a trust related to federal or state taxes. (NRS 163.030, 163.050, 163.185, 163.260)

**Sections 44-50** of this bill adopt provisions governing the administration of trusts. (Chapter 164 of NRS) **Section 44** provides a process to contest an irrevocable trust. **Section 45** provides that certain persons, if not already represented, may be represented by certain other persons with similar interests in proceedings concerning the administration of a trust. **Section 46** grants a trustee the power to convert a trust into a unitrust. **Sections 47-49** provide for the administration of a unitrust. **Section 50** provides for the distribution of community property in a nontestamentary trust established by married settlors.

**Section 51** of this bill amends existing procedures for proceedings against a nontestamentary trust. (NRS 164.015)

**Sections 58-60** of this bill amend existing law concerning the powers and responsibilities of a settlor or trustee for a spendthrift trust. (NRS 166.040, 166.120, 166.170)

**Sections 61, 63 and 64** of this bill provide for the exemption of certain trust property, interests or powers from execution or attachment. (NRS 21.075, 21.090, 31.045)

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

**Section 1.** NRS 159.059 is hereby amended to read as follows:  
159.059 Except as otherwise provided in NRS 159.0595, any qualified person or entity that the court finds suitable may serve as a guardian. A person is not qualified to serve as a guardian who:

1. Is an incompetent.
2. Is a minor.
3. Has been convicted of a felony, ~~[relating to the position of a guardian,]~~ unless the court ~~[finds that it is in the best interests of the ward to appoint the convicted felon]~~ *determines that such conviction should not disqualify the person from serving* as the guardian of the ward.
4. Has been suspended for misconduct or disbarred from:
  - (a) The practice of law;
  - (b) The practice of accounting; or
  - (c) Any other profession which:



(1) Involves or may involve the management or sale of money, investments, securities or real property; and

(2) Requires licensure in this State or any other state, during the period of the suspension or disbarment.

5. Is a nonresident of this State and:

(a) Is not a foreign guardian of a nonresident proposed ward pursuant to subsection 2 of NRS 159.049;

(b) Has not associated as a coguardian, a resident of this State or a banking corporation whose principal place of business is in this State; and

(c) Is not a petitioner in the guardianship proceeding.

6. Has been judicially determined, by clear and convincing evidence, to have committed abuse, neglect or exploitation of a child, spouse, parent or other adult, unless the court finds that it is in the best interests of the ward to appoint the person as the guardian of the ward.

**Sec. 2.** NRS 159.078 is hereby amended to read as follows:

159.078 1. Before taking any of the following actions, the guardian shall petition the court for an order authorizing the guardian to:

(a) Make or change the last will and testament of the ward.

(b) Except as otherwise provided in this paragraph, make or change the designation of a beneficiary in a will, trust, insurance policy, bank account or any other type of asset of the ward which includes the designation of a beneficiary. The guardian is not required to petition the court for an order authorizing the guardian to utilize an asset which has a designated beneficiary, including the closure or discontinuance of the asset, for the benefit of a ward if:

(1) The asset is the only liquid asset available with which to pay for the proper care, maintenance, education and support of the ward;

(2) The asset, or the aggregate amount of all the assets if there is more than one type of asset, has a value that does not exceed \$5,000; or

(3) The asset is a bank account, investment fund or insurance policy and is required to be closed or discontinued in order for the ward to qualify for a federal program of public assistance.

(c) Create for the benefit of the ward or others a revocable or irrevocable trust of the property of the estate.

(d) Except as otherwise provided in this paragraph, exercise the right of the ward to revoke or modify a revocable trust or to surrender the right to revoke or modify a revocable trust. The court shall not authorize or require the guardian to exercise the right to revoke or modify a revocable trust if the instrument governing the trust:



(1) Evidences an intent of the ward to reserve the right of revocation or modification exclusively to the ward;

(2) Provides expressly that a guardian may not revoke or modify the trust; or

(3) Otherwise evidences an intent that would be inconsistent with authorizing or requiring the guardian to exercise the right to revoke or modify the trust.

2. *Any other interested person may also petition the court for an order authorizing or directing the guardian to take any action described in subsection 1.*

3. The court may authorize the guardian to take any action described in subsection 1 if, after notice to any person who is adversely affected by the proposed action and an opportunity for a hearing, the ~~guardian proves~~ *court finds* by clear and convincing evidence that:

(a) A *reasonably prudent person or the ward, if competent, would take the proposed action and that a* person has committed or is about to commit any act, practice or course of conduct which operates or would operate as a fraud or act of exploitation upon the ward or estate of the ward and that person:

(1) Is designated as a beneficiary in or otherwise stands to gain from an instrument which was executed by or on behalf of the ward; or

(2) Will benefit from the lack of such an instrument; ~~and~~ *or*  
(b) ~~A reasonably prudent person or the ward, if competent, would take the proposed action.~~ *The proposed action is otherwise in the best interests of the ward for any other reason not listed in this section.*

~~[3.]~~ 4. The petition must ~~be signed by the guardian and contain:~~ *contain, to the extent known by the petitioner:*

(a) The name, date of birth and current address of the ward;

(b) A concise statement as to the condition of the ward's estate; and

(c) A concise statement as to the necessity for the proposed action.

~~[4.]~~ 5. As used in this section:

(a) "Exploitation" means any act taken by a person who has the trust and confidence of a ward or any use of the power of attorney of a ward to:

(1) Obtain control, through deception, intimidation or undue influence, over the money, assets or property of the ward with the intention of permanently depriving the ward of the ownership, use, benefit or possession of the ward's money, assets or property.



(2) Convert money, assets or property of the ward with the intention of permanently depriving the ward of the ownership, use, benefit or possession of his money, assets or property.

➤ As used in this paragraph, “undue influence” does not include the normal influence that one member of a family has over another.

(b) “Fraud” means an intentional misrepresentation, deception or concealment of a material fact known to the person with the intent to deprive the ward of the ward’s rights or property or to otherwise injure the ward.

*(c) “Interested person” has the meaning ascribed to it in NRS 132.185 and also includes a named beneficiary under a trust or other instrument if the validity of the trust or other instrument may be in question.*

**Sec. 3.** Chapter 163 of NRS is hereby amended by adding thereto the provisions set forth as sections 4 to 37, inclusive, of this act.

**Sec. 4.** *As used in sections 4 to 19, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 5 to 11, inclusive, of this act have the meanings ascribed to them in those sections.*

**Sec. 5.** *“Beneficial interest” means a distribution interest or a remainder interest, but does not include a power of appointment or a power reserved by the settlor.*

**Sec. 6.** *“Beneficiary” means a person that has a present or future beneficial interest in a trust, vested or contingent, but does not include the holder of a power of appointment.*

**Sec. 7.** *“Distribution beneficiary” means a beneficiary who is eligible or permitted to receive trust income or principal.*

**Sec. 8.** *“Distribution interest” means a present or future interest in trust income or principal, which may be a mandatory, support or discretionary interest, held by a distribution beneficiary.*

**Sec. 9.** *“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. 10.** *“Remainder interest” means an interest where a trust beneficiary will receive the property from a trust outright at some time in the future.*

**Sec. 11.** *“Reserved power” means a power concerning a trust held by the settlor.*

**Sec. 12.** *The provisions of sections 4 to 19, inclusive, of this act do not abrogate or limit any principle or rule of the common law, unless the common law principle or rule is inconsistent with the provisions of sections 4 to 19, inclusive, of this act.*



**Sec. 13. 1.** *A creditor may not exercise, and a court may not order the exercise of:*

*(a) A power of appointment or any other power concerning a trust that is held by a beneficiary;*

*(b) Any power listed in section 33 of this act that is held by a trust protector as defined in section 29 of this act or any other person;*

*(c) A trustee's discretion to:*

*(1) Distribute any discretionary interest;*

*(2) Distribute any mandatory interest which is past due directly to a creditor; or*

*(3) Take any other authorized action in a specific way; or*

*(d) A power to distribute a beneficial interest of a trustee solely because the beneficiary is a trustee.*

**2.** *Trust property is not subject to the personal obligations of the trustee, even if the trustee is insolvent or bankrupt.*

**3.** *A settlor may provide in the terms of the trust instrument that a beneficiary's beneficial interest may not be transferred, voluntarily or involuntarily, before the trustee has delivered the interest to the beneficiary.*

**Sec. 14.** *Except as otherwise provided in the trust instrument, the trustee is not required to consider a beneficiary's assets or resources in determining whether to make a distribution of trust assets.*

**Sec. 15.** *If a party asserts that a beneficiary or settlor is exercising improper dominion or control over a trust, the following factors, alone or in combination, must not be considered exercising improper dominion or control over a trust:*

*1. A beneficiary is serving as a trustee.*

*2. The settlor or beneficiary holds unrestricted power to remove or replace a trustee.*

*3. The settlor or beneficiary is a trust administrator, general partner of a partnership, manager of a limited-liability company, officer of a corporation or any other manager of any other type of entity and all or part of the trust property consists of an interest in the entity.*

*4. The trustee is a person related by blood or adoption to the settlor or beneficiary.*

*5. The trustee is the settlor or beneficiary's agent, accountant, attorney, financial adviser or friend.*

*6. The trustee is a business associate of the settlor or beneficiary.*

**Sec. 16.** *Absent clear and convincing evidence, a settlor of an irrevocable trust shall not be deemed to be the alter ego of a trustee of an irrevocable trust. If a party asserts that a settlor of an*



1 *irrevocable trust is alter ego of a trustee of the trust, the following*  
2 *factors, alone or in combination, are not sufficient evidence for a*  
3 *court to find that the settlor controls or is the alter ego of a trustee:*

4 1. *The settlor has signed checks, made disbursements or*  
5 *executed other documents related to the trust as the trustee and*  
6 *the settlor is not a trustee, if the settlor has done so in isolated*  
7 *incidents.*

8 2. *The settlor has made requests for distributions on behalf of*  
9 *a beneficiary.*

10 3. *The settlor has made requests for the trustee to hold,*  
11 *purchase or sell any trust property.*

12 4. *The settlor has engaged in any one of the activities, alone*  
13 *or in combination, listed in section 15 of this act.*

14 **Sec. 17.** 1. *A distribution interest may be classified as:*

15 (a) *A mandatory interest if the trustee has no discretion to*  
16 *determine whether a distribution should be made, when a*  
17 *distribution should be made or the amount of the distribution.*

18 (b) *A support interest if the distribution of a support interest*  
19 *contains a standard for distribution for the support of a person*  
20 *which may be interpreted by the trustee or a court, as necessary. A*  
21 *provision in a trust which provides a support interest may contain*  
22 *mandatory language which a trustee must follow.*

23 (c) *A discretionary interest if the trustee has discretion to*  
24 *determine whether a distribution should be made, when a*  
25 *distribution should be made and the amount of the distribution.*

26 2. *If a trust contains a combination of a mandatory interest, a*  
27 *support interest or a discretionary interest, the trust must be*  
28 *separated as:*

29 (a) *A mandatory interest only to the extent of the mandatory*  
30 *language provided in the trust;*

31 (b) *A support interest only to the extent of the support*  
32 *language provided in the trust; and*

33 (c) *A discretionary interest for any remaining trust property.*

34 3. *If a trust provides for a support interest that also includes*  
35 *mandatory language but the mandatory language is qualified by*  
36 *discretionary language, the support interest must be classified and*  
37 *separated as a discretionary interest.*

38 **Sec. 18.** 1. *A beneficiary of a support interest has an*  
39 *enforceable right to distribution thereof and may petition a court*  
40 *for review of the distribution.*

41 2. *A court may review a trustee's decision to distribute a*  
42 *support interest for unreasonableness, dishonesty, improper*  
43 *motivation or failure to act.*



1     **Sec. 19. 1.** *A court may review a trustee's exercise of*  
2 *discretion concerning a discretionary interest only if the trustee*  
3 *acts dishonestly, with improper motive or fails to act.*

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

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

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

17     **Sec. 20.** *As used in sections 20 to 37, inclusive, of this act,*  
18 *unless the context otherwise requires, the words and terms defined*  
19 *in sections 21 to 29, inclusive, of this act have the meanings*  
20 *ascribed to them in those sections.*

21     **Sec. 21.** *"Custodial account" means an account:*

22     **1.** *Established by a person with a bank, as defined in 26*  
23 *U.S.C. § 408(n), or with a person approved by the Internal*  
24 *Revenue Service as satisfying the requirements to be a nonbank*  
25 *trustee or nonbank passive trustee pursuant to regulations*  
26 *established by the United States Treasury pursuant to 26 U.S.C. §*  
27 *408; and*

28     **2.** *Governed by an instrument concerning the establishment*  
29 *or maintenance of an individual retirement account, qualified*  
30 *retirement plan, an Archer medical savings account, health*  
31 *savings account, a Coverdell education savings account or any*  
32 *similar retirement or savings account permitted under the Internal*  
33 *Revenue Code of 1986.*

34     **Sec. 22.** *"Custodial account owner" means any person who:*

35     **1.** *Establishes a custodial account;*

36     **2.** *Has the power to designate the beneficiaries or appoint the*  
37 *custodian of the custodial account;*

38     **3.** *Has the power to direct the investment, disposition or*  
39 *retention of any assets in the custodial account; or*

40     **4.** *Can name an authorized designee to perform the actions*  
41 *described in subsection 3.*

42     **Sec. 23.** *"Distribution trust adviser" means a fiduciary given*  
43 *authority by an instrument to exercise any or all powers and*  
44 *discretion set forth in section 35 of this act.*





1     **Sec. 24.** *“Excluded fiduciary” means any fiduciary excluded*  
2 *from exercising certain powers under the instrument and those*  
3 *powers may be exercised by the settlor, custodial account owner,*  
4 *investment trust adviser, trust protector, trust committee or other*  
5 *person designated in the instrument.*

6     **Sec. 25.** *“Fiduciary” means a trustee or custodian under any*  
7 *instrument, or an executor, administrator or personal*  
8 *representative of a decedent’s estate or any other person,*  
9 *including an investment trust adviser, trust protector or a trust*  
10 *committee which is acting in a fiduciary capacity for any person,*  
11 *trust or estate.*

12     **Sec. 26.** *“Instrument” means any revocable or irrevocable*  
13 *trust instrument created inter vivos or testamentary or any*  
14 *custodial account agreement.*

15     **Sec. 27.** *“Investment trust adviser” means a fiduciary given*  
16 *authority by the instrument to exercise any or all of the powers*  
17 *and discretion set forth in section 35 of this act.*

18     **Sec. 28.** *“Trust adviser” means a distribution trust adviser or*  
19 *investment trust adviser.*

20     **Sec. 29.** *“Trust protector” means any person whose*  
21 *appointment is provided for in the instrument.*

22     **Sec. 30.** *1. An excluded fiduciary is not liable, individually*  
23 *or as a fiduciary for any loss which results from:*

24         *(a) Complying with a direction of a trust adviser, custodial*  
25 *account owner or authorized designee of a custodial account*  
26 *owner;*

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

31         *(c) Any action taken at the direction of a trust protector.*

32     *2. An excluded fiduciary is not liable for any obligation to*  
33 *perform an investment or suitability review, inquiry or*  
34 *investigation or to make any recommendation or evaluation with*  
35 *respect to any investment, to the extent that the trust adviser,*  
36 *custodial account owner or authorized designee of a custodial*  
37 *account owner had authority to direct the acquisition, disposition*  
38 *or retention of such investment.*

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

42     **Sec. 31.** *If the instrument provides, an excluded fiduciary*  
43 *may continue to follow the direction of a trust adviser upon the*  
44 *incapacity or death of the settlor of the trust.*



1     **Sec. 32.** *If one or more trust advisers are given authority, by*  
2 *the terms of an instrument, to direct, consent to or disapprove a*  
3 *fiduciary's investment decisions, the investment trust advisers*  
4 *shall be considered fiduciaries when exercising that authority*  
5 *unless the instrument provides otherwise.*

6     **Sec. 33.** 1. *A trust protector may exercise the powers*  
7 *provided to him in the instrument in the best interests of the trust.*  
8 *The powers exercised by a trust protector are at his sole discretion*  
9 *and are binding on all other persons. The powers granted to a*  
10 *trust protector may include, without limitation, the power to:*

11     (i) *Modify or amend the instrument to achieve a more*  
12 *favorable tax status or to respond to changes in federal or state*  
13 *law.*

14     (b) *Modify or amend the instrument to take advantage of*  
15 *changes in the rule against perpetuities, restraints on alienation or*  
16 *other state laws restricting the terms of a trust, the distribution of*  
17 *trust property or the administration of the trust.*

18     (c) *Increase or decrease the interests of any beneficiary under*  
19 *the trust.*

20     (d) *Modify the terms of any power of appointment granted by*  
21 *the trust. A modification or amendment may not grant a beneficial*  
22 *interest to a person which was not specifically provided for under*  
23 *the trust instrument.*

24     (e) *Remove and appoint a trustee, trust adviser, investment*  
25 *committee member or distribution committee member.*

26     (f) *Terminate the trust.*

27     (g) *Direct or veto trust distributions.*

28     (h) *Change the location or governing law of the trust.*

29     (i) *Appoint a successor trust protector or trust adviser.*

30     (j) *Interpret terms of the instrument at the request of the*  
31 *trustee.*

32     (k) *Advise the trustee on matters concerning a beneficiary.*

33     (l) *Review and approve a trustee's reports or accounting.*

34     2. *The powers provided pursuant to subsection 1 may be*  
35 *incorporated by reference to this section at the time a testator*  
36 *executes a will or a settlor signs a trust instrument. The powers*  
37 *provided pursuant to subsection 1 may be incorporated in whole or*  
38 *in part.*

39     **Sec. 34.** *If a person accepts an appointment to serve as a*  
40 *trust protector or a trust adviser of a trust subject to the laws of*  
41 *this State, the person submits to the jurisdiction of the courts of*  
42 *this State, regardless of any term to the contrary in an agreement*  
43 *or instrument. A trust protector or a trust adviser may be made a*  
44 *party to an action or proceeding arising out of a decision or action*  
45 *of the trust protector or trust adviser.*



1     **Sec. 35. 1.** *An instrument may provide for the appointment*  
2 *of a person to act as an investment trust adviser or a distribution*  
3 *trust adviser with regard to investment decisions or discretionary*  
4 *distributions.*

5     2. *An investment trust adviser may exercise the powers*  
6 *provided to him in the instrument in the best interests of the trust.*  
7 *The powers exercised by an investment trust adviser are at his sole*  
8 *discretion and are binding on all other persons. The powers*  
9 *granted to an investment trust adviser may include, without*  
10 *limitation, the power to:*

11     (a) *Direct the trustee with respect to the retention, purchase,*  
12 *sale or encumbrance of trust property and the investment and*  
13 *reinvestment of principal and income of the trust.*

14     (b) *Vote proxies for securities held in trust.*

15     (c) *Select one or more investment advisers, managers or*  
16 *counselors, including the trustee, and delegate to such persons*  
17 *any of the powers of the investment trust adviser.*

18     3. *A distribution trust adviser may exercise the powers*  
19 *provided to him in the instrument in the best interests of the trust.*  
20 *The powers exercised by a distribution trust adviser are at his sole*  
21 *discretion and are binding on all other persons. Except as*  
22 *otherwise provided in the instrument, the distribution trust adviser*  
23 *shall direct the trustee with regard to all discretionary*  
24 *distributions to a beneficiary.*

25     **Sec. 36. 1.** *Except as otherwise provided in subsection 2, a*  
26 *creditor of a settlor may not seek to satisfy a claim against the*  
27 *settlor from the assets of a trust if the settlor's sole interest in the*  
28 *trust is the existence of a discretionary power granted to a person*  
29 *other than the settlor by the terms of the trust or by operation of*  
30 *law or to reimburse the settlor for any tax on trust income or*  
31 *principal which is payable by the settlor under the law imposing*  
32 *such tax.*

33     2. *The provisions of subsection 1 do not apply to trust*  
34 *property transferred by the settlor to the extent a creditor can*  
35 *prove the transfer was fraudulent pursuant to chapter 112 of NRS*  
36 *or was otherwise wrongful as to that creditor.*

37     3. *A beneficiary of a trust shall not be considered a settlor of*  
38 *a trust because of a lapse, waiver or release of the beneficiary's*  
39 *right to withdraw part of the trust property if the property could*  
40 *have been withdrawn by exercising a power of withdrawal and the*  
41 *value of the property in the calendar year at the time of the lapse,*  
42 *waiver or release does not exceed the amount provided in 26*  
43 *U.S.C. § 2041(b)(2), 26 U.S.C. § 2503(b) or 26 U.S.C. § 2514(e), as*  
44 *amended.*



1     **Sec. 37. 1. Unless the terms of a testamentary instrument**  
2 *or irrevocable trust provide otherwise, a trustee with discretion or*  
3 *authority to distribute trust income or principal to or for a*  
4 *beneficiary of the trust may exercise such discretion or authority*  
5 *by appointing the property subject to such discretion or authority*  
6 *in favor of a second trust for the benefit of one or more of those*  
7 *beneficiaries.*

8     **2. Notwithstanding subsection 1, a trustee may not appoint**  
9 *property of the original trust to a second trust if:*

10     **(a) The second trust includes a beneficiary who is not a**  
11 *beneficiary of the original trust. For purposes of this paragraph,*  
12 *a permissible appointee of a power of appointment exercised by a*  
13 *beneficiary of the second trust is not considered a beneficiary of*  
14 *the second trust.*

15     **(b) Appointing the property will reduce any current fixed**  
16 *income interest, annuity interest or unitrust interest of a*  
17 *beneficiary of the original trust. As used in this paragraph,*  
18 *“unitrust” has the meaning ascribed to it in NRS 164.700.*

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

25     **(d) The property to be appointed is subject to a power of**  
26 *withdrawal which is held by a beneficiary of the original trust and*  
27 *may be executed at the time of the proposed appointment.*

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

31     **(f) Property held for the benefit of one or more beneficiaries**  
32 *under both the original and the second trust has a lower value*  
33 *than the value of the property held for the benefit of the same*  
34 *beneficiaries under only the original trust, unless:*

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

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

40     **(g) Under the second trust:**

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

43         **(2) Distributions are not limited by an ascertainable**  
44 *standard; and*



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

5       3. *Notwithstanding the provisions of subsection 1, a trustee*  
6 *who is a beneficiary of the original trust may not exercise the*  
7 *authority to appoint property of the original trust to a second trust*  
8 *if:*

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

11       (1) *The trustee does not have discretion to make*  
12 *distributions to himself;*

13       (2) *The trustee's discretion to make distributions to himself*  
14 *is limited by an ascertainable standard; or*

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

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

26       4. *Before appointing property pursuant to subsection 1, a*  
27 *trustee may give notice of a proposed action pursuant to NRS*  
28 *164.725 or may petition a court for approval pursuant to NRS*  
29 *153.031, 164.015 or 164.725. Any notice of a proposed action or a*  
30 *petition for a court's approval must include the trustee's opinion*  
31 *of how the appointment of property will affect the trustee's*  
32 *compensation and the administration of other trust expenses.*

33       5. *Notwithstanding the provisions of subsection 2 or 3, the*  
34 *trust instrument of the second trust may:*

35       (a) *Grant a power of appointment to one or more of the*  
36 *beneficiaries of the second trust who are proper objects of the*  
37 *exercise of the power in the original trust. The power of*  
38 *appointment includes, without limitation, the power to appoint*  
39 *trust property to the holder of the power, the holder's creditors, the*  
40 *holder's estate, the creditors of the holder's estate or any other*  
41 *person.*

42       (b) *Provide that, at a time or occurrence of an event specified*  
43 *in the trust instrument, the remaining trust assets in the second*  
44 *trust must be held for the beneficiaries of the original trust upon*



1 *terms and conditions that are substantially identical to the terms*  
2 *and conditions of the original trust.*

3 6. *The power to appoint the property of the original trust*  
4 *pursuant to subsection 1 must be exercised by a writing, signed by*  
5 *the trustee and filed with the records of the trust.*

6 7. *The exercise of the power to invade principal of the*  
7 *original trust pursuant to subsection 1 is considered the exercise*  
8 *of a power of appointment, other than power to appoint the*  
9 *property to the trustee, the trustee's creditors, the trustee's estate*  
10 *or the creditors of the trustee's estate and the provisions of NRS*  
11 *111.1031 apply to such power of appointment.*

12 8. *The provisions of this section do not abridge the right of*  
13 *any trustee who has the power to appoint property which arises*  
14 *under any other law.*

15 9. *The provisions of this section do not impose upon a trustee*  
16 *a duty to exercise the power to appoint property pursuant to*  
17 *subsection 1.*

18 10. *The power to appoint property to another trust pursuant*  
19 *to subsection 1 is not a power to amend the trust and a trustee is*  
20 *not prohibited from appointing property to another trust pursuant*  
21 *to subsection 1 if the original trust is irrevocable or provides that it*  
22 *may not be amended.*

23 11. *A trustee's power to appoint property to another trust*  
24 *pursuant to subsection 1 is not limited by the existence of a*  
25 *spendthrift provision in the original trust.*

26 12. *A trustee exercising any power granted pursuant to this*  
27 *section may designate himself or any other person permitted to act*  
28 *as a trustee as the trustee of the second trust.*

29 13. *The trustee of a second trust, resulting from the exercise*  
30 *of the power to appoint property to another trust pursuant to*  
31 *subsection 1, may also exercise the powers granted pursuant to*  
32 *this section with respect to the second trust.*

33 14. *As used in this section, "ascertainable standard" means a*  
34 *standard relating to an individual's health, education, support or*  
35 *maintenance within the meaning of section 2041(b)(1)(A) or*  
36 *2514(c)(1) of the Internal Revenue Code and any regulations of*  
37 *the United States Treasury promulgated thereunder.*

38 **Sec. 38.** NRS 163.002 is hereby amended to read as follows:

39 163.002 Except as otherwise provided by specific statute, a  
40 trust may be created by any of the following methods:

41 1. A declaration by the owner of property that he holds the  
42 property as trustee.

43 2. A transfer of property by the owner during his lifetime to  
44 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 ~~[to another person as trustee.]~~ *in trust.*

5. An enforceable promise to create a trust.

**Sec. 39.** NRS 163.030 is hereby amended to read as follows:

163.030 *1.* Except as provided in NRS 163.040, no corporate trustee shall lend trust funds to itself or an affiliate, or to any director, officer, or employee of itself or of an affiliate. ~~[nor shall any]~~

*2. Except as otherwise provided in a trust instrument and consented to by all beneficiaries of the trust, no* noncorporate trustee *shall* lend trust funds to himself, or to his relative, employer, employee, partner, or other business associate.

**Sec. 40.** NRS 163.050 is hereby amended to read as follows:

163.050 *1.* Except as otherwise provided in subsection 2, no trustee may directly or indirectly buy or sell any property for the trust from or to itself or an affiliate, or from or to a director, officer or employee of the trustee or of an affiliate, or from or to a relative, employer, partner or other business associate of a trustee, except with the prior approval of the court having jurisdiction of the trust estate.

*2.* If authorized by the trust instrument or consented to by all beneficiaries of the trust, a ~~[corporate]~~ trustee may directly or indirectly buy or sell any property ~~[other than real property,]~~ for the trust from or to itself or an affiliate, or from or to a director, officer or employee of the trustee or of an affiliate, or from or to a relative, employer, partner or other business associate of the trustee.

**Sec. 41.** NRS 163.185 is hereby amended to read as follows:

163.185 *1.* Upon such terms and conditions as are just and proper, the court may order termination and distribution of a trust before the time provided in the trust instrument, if administration or continued administration of the trust is no longer feasible or economical. A petition for such an order may be filed by an interested person under NRS 164.010 and 164.015.

*2. If the settlor and all beneficiaries of the trust consent, the settlor and beneficiaries may compel the modification or termination of a trust without the approval of the court.*

*3. If any beneficiary does not consent to the modification or termination of the trust, the other beneficiaries, with consent of the settlor, may petition the court to compel a modification or partial termination of the trust if the interests of the beneficiary who does not consent are not substantially impaired.*

*4. If the trust provides for the distribution of the trust principal to a class of persons described only as heirs or next of*





1 *kin of the settlor, or using other language that describes a class of*  
2 *persons that would take the estate of the settlor under the rules of*  
3 *intestacy, the court may limit the class of beneficiaries whose*  
4 *consent is needed to modify or terminate the trust to the*  
5 *beneficiaries who are reasonably likely to take the principal of the*  
6 *trust.*

7 *5. The consent of a beneficiary who is a minor, incapacitated*  
8 *or unborn or a person whose identity or location is unknown and*  
9 *not reasonably ascertainable may be given pursuant to section 45*  
10 *of this act or in proceedings before the court by a guardian ad*  
11 *litem.*

12 **Sec. 42.** NRS 163.260 is hereby amended to read as follows:

13 163.260 1. ~~{By an expressed intention of the testator or~~  
14 ~~settlor to do so contained in a}~~ *Except as otherwise expressly*  
15 *provided by a testator in a will [ ] or by a settlor in [an] a trust*  
16 *instrument, [in writing whereby a trust estate is created inter vivos,*  
17 *any or] all of the powers [or any portion thereof] enumerated in*  
18 *NRS 163.265 to 163.410, inclusive, as they exist at the time that the*  
19 *testator signs the will or places his electronic signature on the will, if*  
20 *it is an electronic will, or at the time that the first settlor signs the*  
21 *trust instrument or places his electronic signature on the trust*  
22 *instrument, if it is an electronic trust, [may] must be [- by*  
23 *appropriate reference made thereto,] incorporated in such will or*  
24 *[other written] trust instrument [ ] as to the fiduciaries appointed*  
25 *under that will or trust with the same effect as though such*  
26 *language were set forth verbatim in the instrument. Incorporation of*  
27 *[one or more of] the powers contained in NRS 163.265 to 163.410,*  
28 *inclusive, [by reference to the proper section shall] must be in*  
29 *addition to and not in limitation of the common-law or statutory*  
30 *powers of the fiduciary.*

31 2. A fiduciary shall not *have or* exercise any power or  
32 authority conferred as provided in NRS 163.260 to 163.410,  
33 inclusive, in such a manner as, in the aggregate, to deprive the trust  
34 or the estate involved of an otherwise available tax exemption,  
35 deduction or credit, expressly including the marital deduction, or  
36 operate to impose a tax upon a donor or testator or other person as  
37 owner of any portion of the trust or estate involved.  
38 *Notwithstanding any other provision of law, any power*  
39 *purportedly granted to a personal representative or a trustee,*  
40 *either in a will or a trust instrument, is void if having or exercising*  
41 *such power would deprive the will or trust of the intended tax*  
42 *consequences.* "Tax" includes, but is not limited to, any federal  
43 income, gift, estate , *generation skipping transfer* or inheritance  
44 tax.





3. ~~[This section does not prevent the incorporation of the]~~ *The powers enumerated in NRS 163.265 to 163.410, inclusive, may be incorporated by reference as to any fiduciary appointed in any other kind of instrument or agreement [ ] where a fiduciary is appointed.*

4. As used in this section, "electronic will" has the meaning ascribed to it in NRS 132.119.

**Sec. 43.** Chapter 164 of NRS is hereby amended by adding thereto the provisions set forth as sections 44 to 50, inclusive, of this act.

**Sec. 44. 1.** *When a revocable trust becomes irrevocable because of the death of a settlor or by the express terms of the trust, the trustee may, within 90 days after the trust becomes irrevocable, provide notice to any beneficiary of the irrevocable trust, any heir of the settlor or to any other interested person.*

*2. The notice provided by the trustee must contain:*

*(a) The identity of the settlor of the trust and the date of execution of the trust instrument;*

*(b) The name, mailing address and telephone number of any trustee of the trust;*

*(c) Any provision of the trust instrument which pertains to the beneficiary or notice that the heir or interested person is not a beneficiary under the trust;*

*(d) Any information required to be included in the notice expressly provided by the trust instrument; and*

*(e) A statement set forth in a separate paragraph, in 12-point boldface type or an equivalent type which states: "You may not bring an action to contest the trust more than 120 days from the date this notice is served upon you."*

*3. The trustee shall serve the notice pursuant to the provisions of NRS 155.010.*

*4. No person upon whom notice is served pursuant to this section may bring an action to contest the validity of the trust more than 120 days from the date the notice is served upon him, unless he proves that he did not receive actual notice.*

**Sec. 45. 1.** *Unless otherwise represented by counsel, a minor, incapacitated person, unborn person or person whose identity or location is unknown and not reasonably ascertainable may be represented by another person who has a substantially similar interest with respect to the question or dispute.*

*2. A person may only be represented by another person pursuant to subsection 1 if there is no material conflict of interest between the person and the representative with respect to the question or dispute for which the person is being represented. If a person is represented pursuant to subsection 1, the results of that*



1 *representation in the question or dispute will be binding on the*  
2 *person.*

3 3. *A presumptive remainder beneficiary may represent and*  
4 *bind a beneficiary with a contingent remainder for the same*  
5 *purpose, in the same circumstance and to the same extent as an*  
6 *ascertainable beneficiary may bind a minor, incapacitated person,*  
7 *unborn person or person who cannot be ascertained.*

8 4. *If a trust has a minor or incapacitated beneficiary who*  
9 *may not be represented by another person pursuant to this section,*  
10 *the custodial parent or guardian of the estate of the minor or*  
11 *incapacitated beneficiary may represent the minor or*  
12 *incapacitated beneficiary in any judicial proceeding or nonjudicial*  
13 *matter pertaining to the trust. A minor or incapacitated*  
14 *beneficiary may only be represented by a parent or guardian if*  
15 *there is no material conflict of interest between the minor or*  
16 *incapacitated beneficiary and the parent or guardian with respect*  
17 *to the question or dispute. If a minor or incapacitated beneficiary*  
18 *is represented pursuant to this subsection, the results of that*  
19 *representation will be binding on the minor or incapacitated*  
20 *beneficiary. The representation of a minor or incapacitated*  
21 *beneficiary pursuant to this subsection is binding on an unborn*  
22 *person or a person who cannot be ascertained if:*

23 (a) *The unborn person or a person who cannot be ascertained*  
24 *has an interest substantially similar to the minor or incapacitated*  
25 *person; and*

26 (b) *There is no material conflict of interest between the unborn*  
27 *person or a person who cannot be ascertained and the minor or*  
28 *incapacitated person with respect to the question or dispute.*

29 5. *As used in this section, "presumptive remainder*  
30 *beneficiary" means:*

31 (a) *A beneficiary who would receive income or principal of the*  
32 *trust if the trust were to terminate as of that date, regardless of the*  
33 *exercise of a power of appointment; or*

34 (b) *A beneficiary who, if the trust does not provide for*  
35 *termination, would receive or be eligible to receive distributions of*  
36 *income or principal of the trust if all beneficiaries of the trust who*  
37 *were receiving or eligible to receive distributions were deceased.*

38 **Sec. 46. 1.** *Unless expressly prohibited by the trust*  
39 *instrument, a trustee may convert a trust into a unitrust if:*

40 (a) *The trustee determines conversion to a unitrust will better*  
41 *enable the trustee to carry out the intent of the settlor and the*  
42 *purpose of the trust;*

43 (b) *The trustee gives written notice of his intention to convert*  
44 *the trust to a unitrust, including how the unitrust will operate, the*  
45 *income distributions rate established pursuant to subsection 3 of*



1 *section 47 of this act and subsection 1 of section 49 of this act, and*  
2 *what initial decisions the trustee will make pursuant to this*  
3 *section, to all beneficiaries who:*

4 *(1) Are presently eligible to receive income from the trust;*

5 *(2) Would be eligible, if a power of appointment were not*  
6 *exercised, to receive income from the trust if the interest of any*  
7 *beneficiary eligible to receive income terminated immediately*  
8 *before the trustee gives notice; and*

9 *(3) Would receive, if a power of appointment were not*  
10 *exercised, a distribution of principal if the trust terminated*  
11 *immediately before the trustee gives notice;*

12 *(c) There is at least one beneficiary who meets the*  
13 *requirements of subparagraph (1) of paragraph (b) and at least*  
14 *one beneficiary who meets the requirements of subparagraph (2)*  
15 *of paragraph (b); and*

16 *(d) No beneficiary objects, in writing and delivered to the*  
17 *trustee within 60 days of the mailing of the notice, to the*  
18 *conversion of the trust to a unitrust.*

19 *2. If a beneficiary timely objects to converting a trust into a*  
20 *unitrust, or if there are no beneficiaries under either*  
21 *subparagraph (1) or (3) of paragraph (b) of subsection 1, the*  
22 *trustee may petition the court to approve the conversion of*  
23 *the trust into a unitrust. The court shall approve the conversion if*  
24 *the court concludes that the conversion will enable the trustee to*  
25 *better carry out the intent of the settlor and the purpose of the*  
26 *trust.*

27 *3. A beneficiary may request that a trustee convert a trust into*  
28 *a unitrust. If the trustee does not convert the trust, the beneficiary*  
29 *may petition the court to order the conversion. The court shall*  
30 *direct the conversion if the court concludes that the conversion*  
31 *will enable the trustee to better carry out the intent of the settlor*  
32 *and the purpose of the trust.*

33 *4. A trustee, in determining whether and to what extent to*  
34 *convert a trust to a unitrust pursuant to subsection 1, shall*  
35 *consider all factors relevant to the trust and to the beneficiaries,*  
36 *including the factors set forth in subsection 2 of NRS 164.795, as*  
37 *applicable.*

38 *5. A conversion of a trust to a unitrust does not affect a term*  
39 *of the trust directing or authorizing the trustee to distribute*  
40 *principal or authorizing a beneficiary to withdraw all or a portion*  
41 *of the principal.*

42 *6. A trustee may not convert a trust into a unitrust in any*  
43 *circumstance set forth in subsection 3 of NRS 164.795.*

44 *7. If a trustee is prevented from converting a trust because a*  
45 *provision of paragraph (e), (f), (g) or (h) of subsection 3 of*



1 *NRS 164.795 applies to the trustee and if there is a cotrustee to*  
2 *whom such provisions do not apply, the cotrustee may convert the*  
3 *trust unless the exercise of the power by the remaining trustee is*  
4 *not permitted by the terms of the trust. If all trustees are prevented*  
5 *from converting a trust because a provision of paragraph (e), (f),*  
6 *(g) or (h) of subsection 3 of NRS 164.795 applies to all of the*  
7 *trustees, the trustees may petition the court to direct a conversion.*

8 8. *A trustee may permanently, or for a specified period,*  
9 *including a period measured by the life of a person, release the*  
10 *power to convert a trust pursuant to subsection 1 if:*

11 (a) *He is uncertain about whether possessing or exercising the*  
12 *power of conversion will cause a result described in paragraphs*  
13 *(a) to (f), inclusive, or (h) of subsection 3 of NRS 164.795; or*

14 (b) *He determines that possessing or exercising the power of*  
15 *conversion may or will deprive the trust of a tax benefit or impose*  
16 *a tax burden not described in subsection 3 of NRS 164.795.*

17 9. *A trustee or disinterested person who, in good faith, fails to*  
18 *take any action under this section is not liable to any person*  
19 *affected by such action or inaction, regardless of whether the*  
20 *affected person received notice as provided in this section or was*  
21 *under a legal disability at the time of delivery of notice. An*  
22 *affected person's exclusive remedy is to petition the court for an*  
23 *order directing the trustee to convert the trust into a unitrust, to*  
24 *reconvert a unitrust into a trust or to change the percentage used*  
25 *to calculate the unitrust amount.*

26 10. *This section shall be construed to pertain to the*  
27 *administration of a trust, and the provisions of this section are*  
28 *available to any trust administered in this State or that is governed*  
29 *by the laws of this State, unless:*

30 (a) *The terms of the trust instrument show an intent that a*  
31 *beneficiary is to receive an amount other than a reasonable*  
32 *current return from the trust;*

33 (b) *The trust:*

34 (1) *Has a guaranteed annuity interest or fixed percentage*  
35 *interest as described in section 170(f)(2)(B) of the Internal*  
36 *Revenue Code;*

37 (2) *Is a charitable remainder trust within the meaning of*  
38 *section 664(d) of the Internal Revenue Code;*

39 (3) *Is a qualified subchapter S trust within the meaning of*  
40 *section 1361(c) of the Internal Revenue Code;*

41 (4) *Is a personal residence trust within the meaning of*  
42 *section 2702(a)(3)(A) of the Internal Revenue Code; or*

43 (5) *Is a trust in which one or more settlors retain a*  
44 *qualified interest within the meaning of section 2702(b) of the*  
45 *Internal Revenue Code;*



(c) *One or more persons to whom the trustee could distribute income have a power of withdrawal over the trust that is not subject to an ascertainable standard or that can be exercised to discharge a duty of support; or*

(d) *The terms of the trust instrument expressly prohibit the use of the provisions of this section through reference to this section or the trust instrument expressly states the settlor's intent that net income is not calculated as a unitrust amount.*

11. *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 and any regulations of the United States Treasury promulgated thereunder.*

**Sec. 47.** *After a trust is converted into a unitrust:*

1. *A trustee shall follow an investment policy seeking a total return for the investments held by the trust whether or not the return is derived from appreciation of capital, from earnings and distributions of capital or from a combination thereof.*

2. *A trustee shall make regular distributions in accordance with the trust instrument and the provisions of this section.*

3. *Under the terms of the trust, the term "income" means an annual distribution from the trust equal to not less than 3 percent and not more than 5 percent of the net fair market value of the trust's assets. The value of the trust assets must be determined at the end of the calendar year by averaging, over the preceding 3 years or during the period of the trust's existence, whichever is less, both the income and the principal assets of the trust.*

**Sec. 48.** 1. *A trustee of a unitrust may, in the trustee's discretion, determine:*

(a) *The effective date of a conversion to a unitrust;*

(b) *The provisions for prorating a unitrust distribution for a beneficiary whose right to payments commences or ceases during a calendar year;*

(c) *The frequency of unitrust distributions during a calendar year;*

(d) *The effect of other payments from or contributions to the trust on the trust's value;*

(e) *How frequently to value nonliquid assets and whether to estimate the value of nonliquid assets;*

(f) *Whether to omit from the calculations of the trust property occupied or possessed by a beneficiary; and*

(g) *Any other matters necessary for the proper functioning of the unitrust.*

2. *Expenses which would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust*



1 *distribution. Unless otherwise provided by the trust instrument, the*  
2 *unitrust distribution must be paid from income. To the extent*  
3 *income is insufficient to pay a distribution, the distribution must*  
4 *be paid from realized short-term capital gains. To the extent*  
5 *income and realized short-term capital gains are insufficient, the*  
6 *distribution must be paid from realized long-term capital gains. To*  
7 *the extent none of these funds are sufficient, the distribution must*  
8 *be paid from the principal of the trust.*

9 **Sec. 49.** *A trustee or a beneficiary of a unitrust may petition*  
10 *the court to:*


11 *1. Select an income distribution percentage different from 3*  
12 *to 5 percent.*

13 *2. Provide for a distribution of net income as would be*  
14 *determined if the trust were not a unitrust, in excess of the*  
15 *unitrust distribution if such distribution is necessary to preserve a*  
16 *tax benefit.*

17 *3. Average the value of the trust assets over a period other*  
18 *than 3 years.*

19 *4. Reconvert a unitrust to a trust.*

20 **Sec. 50.** *If two settlors who are married establish a*  
21 *nontestamentary trust jointly, and the trust provides for the*  
22 *pecuniary or fractional division of the community property held by*  
23 *the settlors upon the death of one of the settlors, the trustee has*  
24 *the authority to distribute the community property unless the trust*  
25 *instrument expressly provides otherwise. The trustee may*  
26 *distribute the community property on a non-pro rata basis so long*  
27 *as the fair market value of the distribution is, at the time of the*  
28 *distribution, the same as if the distribution were made pro rata.*  
29 *The provisions of this section do not affect the distribution of*  
30 *assets that are specifically allocated in the trust instrument to be*  
31 *distributed in kind.*

32 **Sec. 51.** *NRS 164.015 is hereby amended to read as follows:*  
33 *164.015 1. The court has exclusive jurisdiction of*  
34 *proceedings initiated by the petition of an interested person*  
35 *concerning the internal affairs of a nontestamentary trust , including a revocable living trust while the settlor is still living if*  
36 *the court determines that the settlor cannot adequately protect his*  
37 *own interests or if the interested person shows that the settlor is*  
38 *incompetent or susceptible to undue influence. Proceedings which*  
39 *may be maintained under this section are those concerning the*  
40 *administration and distribution of trusts, the declaration of rights*  
41 *and the determination of other matters involving trustees and*  
42 *beneficiaries of trusts, including petitions with respect to a*  
43 *nontestamentary trust for any appropriate relief provided with*  
44 *respect to a testamentary trust in NRS 153.031.*



2. A petition under this section 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.*

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 Supreme Court 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 subsections 3, 4 or 5, the court must also award costs pursuant to chapter 18 of NRS.*

~~[4-]~~ 7. A proceeding under this section does not result in continuing supervisory proceedings. 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, "interested person" has the meaning ascribed to it in NRS 132.185 and also includes a named beneficiary under a trust or other instrument and the validity of the trust or other instrument is in question.*

Sec. 52. NRS 164.700 is hereby amended to read as follows:

164.700 As used in NRS 164.700 to 164.925, inclusive ~~[4-]~~ , and sections 46 to 49, inclusive, of this act:





1 1. "Fiduciary" means a trustee or, to the extent that NRS  
2 164.780 to 164.925, inclusive, apply to an estate, a personal  
3 representative.

4 2. "Terms of a trust" means the manifestation of the intent of a  
5 settlor or decedent with respect to the trust, expressed in a manner  
6 that admits of its proof in a judicial proceeding, whether by written  
7 or spoken words or by conduct.

8 *3. "Unitrust" means a trust in which a certain percentage of*  
9 *annually assessed fair market value of trust property is paid to a*  
10 *trust beneficiary.*

11 **Sec. 53.** NRS 164.720 is hereby amended to read as follows:

12 164.720 1. If a trust has two or more beneficiaries, the trustee  
13 shall act impartially in investing and managing the trust property,  
14 taking into account any differing interests of the beneficiaries.

15 2. In exercising the power to adjust under NRS 164.795 ,  
16 *section 46 of this act* or a discretionary power of administration  
17 regarding a matter within the scope of NRS 164.780 to 164.925,  
18 inclusive, whether granted by the terms of a trust, a will or NRS  
19 164.780 to 164.925, inclusive, a fiduciary shall administer a trust or  
20 estate impartially, based on what is fair and reasonable to all the  
21 beneficiaries, except to the extent that the terms of the trust or the  
22 will clearly manifest an intention that the fiduciary shall or may  
23 favor one or more of the beneficiaries. A determination in  
24 accordance with NRS 164.780 to 164.925, inclusive, is presumed to  
25 be fair and reasonable to all the beneficiaries.

26 **Sec. 54.** NRS 164.725 is hereby amended to read as follows:

27 164.725 1. As used in this section, "action" includes a course  
28 of action and a decision on whether or not to take action.

29 2. A trustee may provide a notice of proposed action regarding  
30 any matter governed by *section 37 of this act or* NRS 164.700 to  
31 164.925, inclusive.

32 3. If a trustee provides a notice of proposed action, the trustee  
33 shall mail the notice of proposed action to every adult beneficiary  
34 who, at the time the notice is provided, receives, or is entitled to  
35 receive, income under the trust or who would be entitled to receive a  
36 distribution of principal if the trust were terminated. A notice of  
37 proposed action need not be provided to a person who consents in  
38 writing to the proposed action. A consent to a proposed action may  
39 be executed before or after the proposed action is taken.

40 4. The notice of proposed action must state:

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

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

43 (c) The name and telephone number of a person with whom to  
44 communicate for additional information regarding the proposed  
45 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 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 received a written objection to the proposed action within the period specified in the notice, the trustee 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 takes the proposed action as approved by the court, the trustee is not liable to any beneficiary with respect to that action.*

8. If the trustee decides not to take a proposed action for which notice has been provided, the trustee shall notify the beneficiaries of his decision not to take the proposed action and the reasons for his decision. The trustee 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~~ *or section 46 of this act*, 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. 55.** NRS 164.730 is hereby amended to read as follows:

164.730 1. The provisions of NRS 164.700 to 164.925, inclusive, do not impose or create a duty of a trustee to make an adjustment between principal and income pursuant to the provisions of NRS 164.795 ~~or~~ *or section 46 of this act*.

2. A trustee shall not be liable for:

(a) Not considering whether to make such an adjustment; or



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(b) Deciding not to make such an adjustment.

**Sec. 56.** NRS 164.900 is hereby amended to read as follows:

164.900 A trustee shall make the following disbursements from income to the extent that they are not disbursements to which paragraph (b) or (c) of subsection 2 of NRS 164.800 applies:

1. ~~[One-half]~~ *Except as otherwise ordered by the court, one-half* of the regular compensation of the trustee and of any person providing *investment* advisory or custodial services to the trustee ; ~~[concerning investment, except that the amount of the disbursements from income made pursuant to this subsection must not exceed 5 percent of income for the portion of the accounting period on which such regular compensation is based;]~~

2. ~~[One-half]~~ *Except as otherwise ordered by the court, one-half* of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

3. All the other ordinary expenses incurred in connection with the administration, management or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and

4. ~~[Recurring]~~ *All recurring* premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

**Sec. 57.** NRS 165.160 is hereby amended to read as follows:

165.160 ~~[The]~~ *Except for the provisions of NRS 165.135,* provisions of this chapter shall have no application to nontestamentary trusts unless the settlor shall expressly so declare in the instrument creating the trust. But no expression of intent by any settlor shall affect the jurisdiction of the courts of this state over inventories and accounts of trustees, insofar as such jurisdiction does not depend upon the provisions of this chapter.

**Sec. 58.** NRS 166.040 is hereby amended to read as follows:

166.040 1. Any person competent by law to execute a will or deed may, by writing only, duly executed, by will, conveyance or other writing, create a spendthrift trust in real, personal or mixed property for the benefit of:

(a) A person other than the settlor;

(b) The settlor if the writing is irrevocable, does not require that any part of the income or principal of the trust be distributed to the settlor, and was not intended to hinder, delay or defraud known creditors; or

(c) Both the settlor and another person if the writing meets the requirements of paragraph (b).

2. For the purposes of this section, a writing:



(a) Is “irrevocable” even if the settlor may prevent a distribution from the trust or holds a testamentary special power of appointment or similar power.

(b) Does not “require” a distribution to the settlor if the trust instrument provides that he may receive it only in the discretion of another person.

*3. Except for the power of the settlor to make distributions to himself without the consent of another person, the provisions of this section shall not be construed to prohibit the settlor of a spendthrift trust from holding other powers under the trust, whether or not the settlor is a cotrustee, including, without limitation, the power to remove and replace a trustee, direct trust investments and execute other management powers.*

**Sec. 59.** NRS 166.120 is hereby amended to read as follows:

166.120 1. A spendthrift trust as defined in this chapter restrains and prohibits generally the assignment, alienation, acceleration and anticipation of any interest of the beneficiary under the trust by the voluntary or involuntary act of the beneficiary, or by operation of law or any process or at all. ~~[An exception is declared, however, when the trust does not provide for the application for or the payment to any beneficiary of sums out of capital or corpus or out of rents, profits, income, earnings, or produce of property, lands or personalty. In such cases, the corpus or capital of the trust estate, or the interest of the beneficiary therein, may be anticipated, assigned or aliened by the beneficiary voluntarily, but not involuntarily or by operation of law or by any process or involuntarily at all.]~~ The trust estate, or corpus or capital thereof, shall never be assigned, aliened, diminished or impaired by any alienation, transfer or seizure so as to cut off or diminish the payments, or the rents, profits, earnings or income of the trust estate that would otherwise be currently available for the benefit of the beneficiary.

2. Payments by the trustee to the beneficiary ~~[shall]~~, *whether such payments are mandatory or discretionary, must* be made only to ~~[and into]~~ *or for* the ~~[proper hands]~~ *benefit* of the beneficiary and not by way of acceleration or anticipation, nor to any assignee of the beneficiary, nor to or upon any order, written or oral, given by the beneficiary, whether such assignment or order be the voluntary contractual act of the beneficiary or be made pursuant to or by virtue of any legal process in judgment, execution, attachment, garnishment, bankruptcy or otherwise, or whether it be in connection with any contract, tort or duty. *Any action to enforce the beneficiary's rights, to determine if the beneficiary's rights are subject to execution, to levy an attachment or for any other remedy must be made only in a proceeding commenced pursuant to*



*chapter 153 of NRS, if against a testamentary trust, or NRS 164.010, if against a nontestamentary trust. A court has exclusive jurisdiction over any proceeding pursuant to this section.*

3. The beneficiary shall have no power or capacity to make any disposition whatever of any of the income by his order, voluntary or involuntary, and whether made upon the order or direction of any court or courts, whether of bankruptcy or otherwise; nor shall the interest of the beneficiary be subject to any process of attachment issued against the beneficiary, or to be taken in execution under any form of legal process directed against the beneficiary or against the trustee, or the trust estate, or any part of the income thereof, but the whole of the trust estate and the income of the trust estate shall go to and be applied by the trustee solely for the benefit of the beneficiary, free, clear, and discharged of and from any and all obligations of the beneficiary whatsoever and of all responsibility therefor.

4. The trustee of a spendthrift trust is required to disregard and defeat every assignment or other act, voluntary or involuntary, that is attempted contrary to the provisions of this chapter.

**Sec. 60.** NRS 166.170 is hereby amended to read as follows:

166.170 1. A person may not bring an action with respect to a transfer of property to a spendthrift trust:

(a) If he is a creditor when the transfer is made, unless the action is commenced within:

(1) Two years after the transfer is made; or

(2) Six months after he discovers or reasonably should have discovered the transfer,

↳ whichever is later.

(b) If he becomes a creditor after the transfer is made, unless the action is commenced within 2 years after the transfer is made.

2. A person shall be deemed to have discovered a transfer at the time a public record is made of the transfer, including, without limitation, the conveyance of real property that is recorded in the office of the county recorder of the county in which the property is located or the filing of a financing statement pursuant to chapter 104 of NRS.

3. *A creditor may not bring an action with respect to transfer of property to a spendthrift trust unless a creditor can prove that the transfer of property was a fraudulent transfer pursuant to chapter 112 of NRS or was otherwise wrongful as to the creditor. In the absence of such proof, the property transferred is not subject to the claims of the creditor. Proof by one creditor that a transfer of property was fraudulent or wrongful does not constitute proof as to any other creditor and proof of a fraudulent*



1 *or wrongful transfer of property as to one creditor shall not*  
2 *invalidate any other transfer of property.*

3 4. *If property transferred to a spendthrift trust is conveyed to*  
4 *the settlor or to a beneficiary for the purpose of obtaining a loan*  
5 *secured by a mortgage or deed of trust on the property and then*  
6 *reconveyed to the trust, for the purpose of subsection 1, the*  
7 *transfer is disregarded and the reconveyance relates back to the*  
8 *date the property was originally transferred to the trust. The*  
9 *mortgage or deed of trust on the property shall be enforceable*  
10 *against the trust.*

11 5. *A person may not bring a claim against an adviser to the*  
12 *settlor or trustee of a spendthrift trust unless the person can show*  
13 *by clear and convincing evidence that the adviser acted in*  
14 *violation of the laws of this State, knowingly and in bad faith, and*  
15 *the adviser's actions directly caused the damages suffered by the*  
16 *person.*

17 6. As used in this section [~~“creditor”~~]:

18 (a) *“Adviser” means any person, including, without limitation,*  
19 *an accountant, attorney or investment adviser, who gives advice*  
20 *concerning or was involved in the creation of, transfer of property*  
21 *to, or administration of the spendthrift trust or who participated in*  
22 *the preparation of accountings, tax returns or other reports related*  
23 *to the trust.*

24 (b) *“Creditor”* has the meaning ascribed to it in subsection 4 of  
25 NRS 112.150.

26 **Sec. 61.** NRS 21.075 is hereby amended to read as follows:

27 21.075 1. Execution on the writ of execution by levying on  
28 the property of the judgment debtor may occur only if the sheriff  
29 serves the judgment debtor with a notice of the writ of execution  
30 pursuant to NRS 21.076 and a copy of the writ. The notice must  
31 describe the types of property exempt from execution and explain  
32 the procedure for claiming those exemptions in the manner required  
33 in subsection 2. The clerk of the court shall attach the notice to the  
34 writ of execution at the time the writ is issued.

35 2. The notice required pursuant to subsection 1 must be  
36 substantially in the following form:

37  
38 NOTICE OF EXECUTION

39  
40 YOUR PROPERTY IS BEING ATTACHED OR  
41 YOUR WAGES ARE BEING GARNISHED  
42

43 A court has determined that you owe money to  
44 ..... (name of person), the judgment creditor. He has  
45 begun the procedure to collect that money by garnishing your



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wages, bank account and other personal property held by third persons or by taking money or other property in your possession.

Certain benefits and property owned by you may be exempt from execution and may not be taken from you. The following is a partial list of exemptions:

1. Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.

2. Payments for benefits or the return of contributions under the Public Employees' Retirement System.

3. Payments for public assistance granted through the Division of Welfare and Supportive Services of the Department of Health and Human Services or a local governmental entity.

4. Proceeds from a policy of life insurance.

5. Payments of benefits under a program of industrial insurance.

6. Payments received as disability, illness or unemployment benefits.

7. Payments received as unemployment compensation.

8. Veteran's benefits.

9. A homestead in a dwelling or a mobile home, not to exceed \$550,000, unless:

(a) The judgment is for a medical bill, in which case all of the primary dwelling, including a mobile or manufactured home, may be exempt.

(b) Allodial title has been established and not relinquished for the dwelling or mobile home, in which case all of the dwelling or mobile home and its appurtenances are exempt, including the land on which they are located, unless a valid waiver executed pursuant to NRS 115.010 is applicable to the judgment.

10. All money reasonably deposited with a landlord by you to secure an agreement to rent or lease a dwelling that is used by you as your primary residence, except that such money is not exempt with respect to a landlord or his successor in interest who seeks to enforce the terms of the agreement to rent or lease the dwelling.

11. A vehicle, if your equity in the vehicle is less than \$15,000.

12. Seventy-five percent of the take-home pay for any workweek, unless the weekly take-home pay is less than



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50 times the federal minimum hourly wage, in which case the entire amount may be exempt.

13. Money, not to exceed \$500,000 in present value, held in:

(a) An individual retirement arrangement which conforms with the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A;

(b) A written simplified employee pension plan which conforms with the applicable limitations and requirements of section 408 of the Internal Revenue Code, 26 U.S.C. § 408;

(c) A cash or deferred arrangement that is a qualified plan pursuant to the Internal Revenue Code;

(d) A trust forming part of a stock bonus, pension or profit-sharing plan that is a qualified plan pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and

(e) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 529, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.

14. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.

15. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

16. *Regardless of whether a trust contains a spendthrift provision:*

(a) *A present or future interest in the income or principal of a trust, if the interest has not been distributed from the trust;*

(b) *A remainder interest in the trust whereby a beneficiary of the trust will receive property from the trust outright at some time in the future under certain circumstances;*

(c) *A discretionary power held by a trustee to determine whether to make a distribution from the trust, if the interest has not been distributed from the trust;*



(d) *The power to direct dispositions of property in the trust, other than such a power held by a trustee to distribute property to a beneficiary of the trust;*

(e) *Certain powers held by a trust protector or certain other persons;*

(f) *Any power held by the person who created the trust; and*

(g) *Any other property of the trust that has not been distributed from the trust. Once the property is distributed from the trust, the property is subject to execution.*

17. *If a trust contains a spendthrift provision:*

(a) *A mandatory interest in the trust in which the trustee does not have discretion concerning whether to make the distribution from the trust, if the interest has not been distributed from the trust;*

(b) *A support interest in the trust in which the standard for distribution may be interpreted by the trustee or a court, if the interest has not been distributed from the trust; and*

(c) *Any other property of the trust that has not been distributed from the trust. Once the property is distributed from the trust, the property is subject to execution.*

18. A vehicle for use by you or your dependent which is specially equipped or modified to provide mobility for a person with a permanent disability.

~~17.~~ 19. A prosthesis or any equipment prescribed by a physician or dentist for you or your dependent.

~~18.~~ 20. Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss, by the judgment debtor or by a person upon whom the judgment debtor is dependent at the time the payment is received.

~~19.~~ 21. Payments received as compensation for the wrongful death of a person upon whom the judgment debtor was dependent at the time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

~~20.~~ 22. Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

~~21.~~ 23. Payments received as restitution for a criminal act.





~~[22.]~~ 24. Personal property, not to exceed \$1,000 in total value, if the property is not otherwise exempt from execution.

~~[23.]~~ 25. A tax refund received from the earned income credit provided by federal law or a similar state law.

~~[24.]~~ 26. Stock of a corporation described in subsection 2 of NRS 78.746 except as set forth in that section.

→ These exemptions may not apply in certain cases such as a proceeding to enforce a judgment for support of a person or a judgment of foreclosure on a mechanic's lien. You should consult an attorney immediately to assist you in determining whether your property or money is exempt from execution. If you cannot afford an attorney, you may be eligible for assistance through ..... (name of organization in county providing legal services to indigent or elderly persons).

## PROCEDURE FOR CLAIMING EXEMPT PROPERTY

If you believe that the money or property taken from you is exempt, you must complete and file with the clerk of the court a notarized affidavit claiming the exemption. A copy of the affidavit must be served upon the sheriff and the judgment creditor within 8 days after the notice of execution is mailed. The property must be returned to you within 5 days after you file the affidavit unless you or the judgment creditor files a motion for a hearing to determine the issue of exemption. If this happens, a hearing will be held to determine whether the property or money is exempt. The motion for the hearing to determine the issue of exemption must be filed within 10 days after the affidavit claiming exemption is filed. The hearing to determine whether the property or money is exempt must be held within 10 days after the motion for the hearing is filed.

IF YOU DO NOT FILE THE AFFIDAVIT WITHIN THE TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD AND THE MONEY GIVEN TO THE JUDGMENT CREDITOR, EVEN IF THE PROPERTY OR MONEY IS EXEMPT.

**Sec. 62.** NRS 21.080 is hereby amended to read as follows:

21.080 1. All goods, chattels, money and other property, real and personal, of the judgment debtor, or any interest therein of the judgment debtor not exempt by law, and all property and rights of property seized and held under attachment in the action, are liable to execution. Subject to the provisions of chapter 104 of NRS, shares



1 and interests in any corporation or company, and debts and credits  
2 and other property not capable of manual delivery, may be attached  
3 in execution in like manner as upon writs of attachments. Gold dust  
4 and bullion must be returned by the officer as so much money  
5 collected, at its current value, without exposing the same to sale.  
6 Until a levy, property is not affected by the execution.

7 2. This chapter does not authorize the seizure of, or other  
8 interference with, any money, thing in action, lands or other  
9 property held in spendthrift trust *or in a discretionary or support*  
10 *trust governed by chapter 163 of NRS* for a judgment debtor, or  
11 held in such trust for any beneficiary, pursuant to any judgment,  
12 order or process of any bankruptcy or other court directed against  
13 any such beneficiary or his trustee. This subsection does not apply  
14 to the interest of the beneficiary of a trust where the fund so held in  
15 trust has proceeded from the beneficiary unless:

16 (a) The beneficiary is the settlor of the trust; and

17 (b) The trust is a spendthrift trust that was created in compliance  
18 with the provisions of chapter 166 of NRS.

19 **Sec. 63.** NRS 21.090 is hereby amended to read as follows:

20 21.090 1. The following property is exempt from execution,  
21 except as otherwise specifically provided in this section or required  
22 by federal law:

23 (a) Private libraries, works of art, musical instruments and  
24 jewelry not to exceed \$5,000 in value, belonging to the judgment  
25 debtor or a dependent of the judgment debtor, to be selected by the  
26 judgment debtor, and all family pictures and keepsakes.

27 (b) Necessary household goods, furnishings, electronics,  
28 wearing apparel, other personal effects and yard equipment, not to  
29 exceed \$12,000 in value, belonging to the judgment debtor or a  
30 dependent of the judgment debtor, to be selected by the judgment  
31 debtor.

32 (c) Farm trucks, farm stock, farm tools, farm equipment,  
33 supplies and seed not to exceed \$4,500 in value, belonging to the  
34 judgment debtor to be selected by him.

35 (d) Professional libraries, equipment, supplies, and the tools,  
36 inventory, instruments and materials used to carry on the trade or  
37 business of the judgment debtor for the support of himself and his  
38 family not to exceed \$10,000 in value.

39 (e) The cabin or dwelling of a miner or prospector, his cars,  
40 implements and appliances necessary for carrying on any mining  
41 operations and his mining claim actually worked by him, not  
42 exceeding \$4,500 in total value.

43 (f) Except as otherwise provided in paragraph (p), one vehicle if  
44 the judgment debtor's equity does not exceed \$15,000 or the  
45 creditor is paid an amount equal to any excess above that equity.



(g) For any workweek, 75 percent of the disposable earnings of a judgment debtor during that week, or 50 times the minimum hourly wage prescribed by section 6(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. § 206(a)(1), and in effect at the time the earnings are payable, whichever is greater. Except as otherwise provided in paragraphs (o), (s) and (t), the exemption provided in this paragraph does not apply in the case of any order of a court of competent jurisdiction for the support of any person, any order of a court of bankruptcy or of any debt due for any state or federal tax. As used in this paragraph:

(1) "Disposable earnings" means that part of the earnings of a judgment debtor remaining after the deduction from those earnings of any amounts required by law to be withheld.

(2) "Earnings" means compensation paid or payable for personal services performed by a judgment debtor in the regular course of business, including, without limitation, compensation designated as income, wages, tips, a salary, a commission or a bonus. The term includes compensation received by a judgment debtor that is in the possession of the judgment debtor, compensation held in accounts maintained in a bank or any other financial institution or, in the case of a receivable, compensation that is due the judgment debtor.

(h) All fire engines, hooks and ladders, with the carts, trucks and carriages, hose, buckets, implements and apparatus thereunto appertaining, and all furniture and uniforms of any fire company or department organized under the laws of this State.

(i) All arms, uniforms and accouterments required by law to be kept by any person, and also one gun, to be selected by the debtor.

(j) All courthouses, jails, public offices and buildings, lots, grounds and personal property, the fixtures, furniture, books, papers and appurtenances belonging and pertaining to the courthouse, jail and public offices belonging to any county of this State, all cemeteries, public squares, parks and places, public buildings, town halls, markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by the town or city to health, ornament or public use, or for the use of any fire or military company organized under the laws of this State and all lots, buildings and other school property owned by a school district and devoted to public school purposes.

(k) All money, benefits, privileges or immunities accruing or in any manner growing out of any life insurance, if the annual premium paid does not exceed \$15,000. If the premium exceeds that amount, a similar exemption exists which bears the same proportion to the money, benefits, privileges and immunities so accruing or



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growing out of the insurance that the \$15,000 bears to the whole annual premium paid.

(l) The homestead as provided for by law, including a homestead for which allodial title has been established and not relinquished and for which a waiver executed pursuant to NRS 115.010 is not applicable.

(m) The dwelling of the judgment debtor occupied as a home for himself and family, where the amount of equity held by the judgment debtor in the home does not exceed \$550,000 in value and the dwelling is situated upon lands not owned by him.

(n) All money reasonably deposited with a landlord by the judgment debtor to secure an agreement to rent or lease a dwelling that is used by the judgment debtor as his primary residence, except that such money is not exempt with respect to a landlord or his successor in interest who seeks to enforce the terms of the agreement to rent or lease the dwelling.

(o) All property in this State of the judgment debtor where the judgment is in favor of any state for failure to pay that state's income tax on benefits received from a pension or other retirement plan.

(p) Any vehicle owned by the judgment debtor for use by him or his dependent that is equipped or modified to provide mobility for a person with a permanent disability.

(q) Any prosthesis or equipment prescribed by a physician or dentist for the judgment debtor or a dependent of the debtor.

(r) Money, not to exceed \$500,000 in present value, held in:

(1) An individual retirement arrangement which conforms with the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A;

(2) A written simplified employee pension plan which conforms with the applicable limitations and requirements of section 408 of the Internal Revenue Code, 26 U.S.C. § 408;

(3) A cash or deferred arrangement which is a qualified plan pursuant to the Internal Revenue Code;

(4) A trust forming part of a stock bonus, pension or profit-sharing plan which is a qualified plan pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and

(5) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 529, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.



(s) All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.

(t) All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

(u) Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss, by the judgment debtor or by a person upon whom the judgment debtor is dependent at the time the payment is received.

(v) Payments received as compensation for the wrongful death of a person upon whom the judgment debtor was dependent at the time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

(w) Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

(x) Payments received as restitution for a criminal act.

(y) Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.

(z) Any personal property not otherwise exempt from execution pursuant to this subsection belonging to the judgment debtor, including, without limitation, the judgment debtor's equity in any property, money, stocks, bonds or other funds on deposit with a financial institution, not to exceed \$1,000 in total value, to be selected by the judgment debtor.

(aa) Any tax refund received by the judgment debtor that is derived from the earned income credit described in section 32 of the Internal Revenue Code, 26 U.S.C. § 32, or a similar credit provided pursuant to a state law.

(bb) Stock of a corporation described in subsection 2 of NRS 78.746 except as set forth in that section.

*(cc) Regardless of whether a trust contains a spendthrift provision:*

*(1) A beneficial interest in the trust as defined in section 5 of this act if the interest has not been distributed;*



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1       (2) *A remainder interest in the trust as defined in section 10*  
2 *of this act if the trust does not indicate that the remainder interest*  
3 *is certain to be distributed within 1 year after the date on which*  
4 *the instrument that creates the remainder interest becomes*  
5 *irrevocable;*

6       (3) *A discretionary interest in the trust as described in*  
7 *section 17 of this act if the interest has not been distributed;*

8       (4) *A power of appointment in the trust as defined in*  
9 *section 9 of this act regardless of whether the power has been*  
10 *distributed or transferred;*

11       (5) *A power listed in section 33 of this act that is held by a*  
12 *trust protector as defined in section 29 of this act or any other*  
13 *person regardless of whether the power has been distributed or*  
14 *transferred;*

15       (6) *A reserved power in the trust as defined in section 11 of*  
16 *this act regardless of whether the power has been distributed or*  
17 *transferred; and*

18       (7) *Any other property of the trust, that has not been*  
19 *distributed from the trust. Once the property is distributed from*  
20 *the trust, the property is subject to execution.*

21       (dd) *If a trust contains a spendthrift provision:*

22       (1) *A mandatory interest in the trust as described in section*  
23 *17 of this act if the interest has not been distributed;*

24       (2) *Notwithstanding a beneficiary's right to enforce a*  
25 *support interest, a support interest in the trust as described in*  
26 *section 17 of this act if the interest has not been distributed; and*

27       (3) *Any other property of the trust, that has not been*  
28 *distributed from the trust. Once the property is distributed from*  
29 *the trust, the property is subject to execution.*

30       2. Except as otherwise provided in NRS 115.010, no article or  
31 species of property mentioned in this section is exempt from  
32 execution issued upon a judgment to recover for its price, or upon a  
33 judgment of foreclosure of a mortgage or other lien thereon.

34       3. Any exemptions specified in subsection (d) of section 522 of  
35 the Bankruptcy Act of 1978, 11 U.S.C. § 522(d), do not apply to  
36 property owned by a resident of this State unless conferred also by  
37 subsection 1, as limited by subsection 2.

38       **Sec. 64.** NRS 31.045 is hereby amended to read as follows:

39       31.045 1. Execution on the writ of attachment by attaching  
40 property of the defendant may occur only if:

41       (a) The judgment creditor serves the defendant with notice of  
42 the execution when the notice of the hearing is served pursuant to  
43 NRS 31.013; or



(b) Pursuant to an ex parte hearing, the sheriff serves upon the judgment debtor notice of the execution and a copy of the writ at the same time and in the same manner as set forth in NRS 21.076.

➡ If the attachment occurs pursuant to an ex parte hearing, the clerk of the court shall attach the notice to the writ of attachment at the time the writ is issued.

2. The notice required pursuant to subsection 1 must be substantially in the following form:

## NOTICE OF EXECUTION

### YOUR PROPERTY IS BEING ATTACHED OR YOUR WAGES ARE BEING GARNISHED

Plaintiff, ..... (name of person), alleges that you owe him money. He has begun the procedure to collect that money. To secure satisfaction of judgment, the court has ordered the garnishment of your wages, bank account or other personal property held by third persons or the taking of money or other property in your possession.

Certain benefits and property owned by you may be exempt from execution and may not be taken from you. The following is a partial list of exemptions:

1. Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.

2. Payments for benefits or the return of contributions under the Public Employees' Retirement System.

3. Payments for public assistance granted through the Division of Welfare and Supportive Services of the Department of Health and Human Services or a local governmental entity.

4. Proceeds from a policy of life insurance.

5. Payments of benefits under a program of industrial insurance.

6. Payments received as disability, illness or unemployment benefits.

7. Payments received as unemployment compensation.

8. Veteran's benefits.

9. A homestead in a dwelling or a mobile home, not to exceed \$550,000, unless:

(a) The judgment is for a medical bill, in which case all of the primary dwelling, including a mobile or manufactured home, may be exempt.



\* S B 2 8 7 \*

(b) Allodial title has been established and not relinquished for the dwelling or mobile home, in which case all of the dwelling or mobile home and its appurtenances are exempt, including the land on which they are located, unless a valid waiver executed pursuant to NRS 115.010 is applicable to the judgment.

10. All money reasonably deposited with a landlord by you to secure an agreement to rent or lease a dwelling that is used by you as your primary residence, except that such money is not exempt with respect to a landlord or his successor in interest who seeks to enforce the terms of the agreement to rent or lease the dwelling.

11. A vehicle, if your equity in the vehicle is less than \$15,000.

12. Seventy-five percent of the take-home pay for any workweek, unless the weekly take-home pay is less than 50 times the federal minimum hourly wage, in which case the entire amount may be exempt.

13. Money, not to exceed \$500,000 in present value, held in:

(a) An individual retirement arrangement which conforms with the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A;

(b) A written simplified employee pension plan which conforms with the applicable limitations and requirements of section 408 of the Internal Revenue Code, 26 U.S.C. § 408;

(c) A cash or deferred arrangement that is a qualified plan pursuant to the Internal Revenue Code;

(d) A trust forming part of a stock bonus, pension or profit-sharing plan that is a qualified plan pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and

(e) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 529, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.

14. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.



\* S B 2 8 7 \*



1           15. All money and other benefits paid pursuant to the  
2 order of a court of competent jurisdiction for the support and  
3 maintenance of a former spouse, including the amount of any  
4 arrearages in the payment of such support and maintenance to  
5 which the former spouse may be entitled.

6           16. *Regardless of whether a trust contains a spendthrift*  
7 *provision:*

8           (a) *A present or future interest in the income or*  
9 *principal of a trust, if the interest has not been distributed*  
10 *from the trust;*

11           (b) *A remainder interest in the trust whereby a*  
12 *beneficiary of the trust will receive property from the trust*  
13 *outright at some time in the future under certain*  
14 *circumstances;*

15           (c) *A discretionary power held by a trustee to determine*  
16 *whether to make a distribution from the trust, if the interest*  
17 *has not been distributed from the trust;*

18           (d) *The power to direct dispositions of property in the*  
19 *trust, other than such a power held by a trustee to distribute*  
20 *property to a beneficiary of the trust;*

21           (e) *Certain powers held by a trust protector or certain*  
22 *other persons;*

23           (f) *Any power held by the person who created the trust;*  
24 *and*

25           (g) *Any other property of the trust that has not been*  
26 *distributed from the trust. Once the property is distributed*  
27 *from the trust, the property is subject to execution.*

28           17. *If a trust contains a spendthrift provision:*

29           (a) *A mandatory interest in the trust in which the trustee*  
30 *does not have discretion concerning whether to make the*  
31 *distribution from the trust, if the interest has not been*  
32 *distributed from the trust;*

33           (b) *A support interest in the trust in which the standard*  
34 *for distribution may be interpreted by the trustee or a court,*  
35 *if the interest has not been distributed from the trust; and*

36           (c) *Any other property of the trust that has not been*  
37 *distributed from the trust. Once the property is distributed*  
38 *from the trust, the property is subject to execution.*

39           18. A vehicle for use by you or your dependent which is  
40 specially equipped or modified to provide mobility for a  
41 person with a permanent disability.

42           ~~17.~~ 19. A prosthesis or any equipment prescribed by a  
43 physician or dentist for you or your dependent.

44           ~~18.~~ 20. Payments, in an amount not to exceed  
45 \$16,150, received as compensation for personal injury, not



including compensation for pain and suffering or actual pecuniary loss, by the judgment debtor or by a person upon whom the judgment debtor is dependent at the time the payment is received.

~~[19.]~~ 21. Payments received as compensation for the wrongful death of a person upon whom the judgment debtor was dependent at the time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

~~[20.]~~ 22. Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

~~[21.]~~ 23. Payments received as restitution for a criminal act.

~~[22.]~~ 24. Personal property, not to exceed \$1,000 in total value, if the property is not otherwise exempt from execution.

~~[23.]~~ 25. A tax refund received from the earned income credit provided by federal law or a similar state law.

~~[24.]~~ 26. Stock of a corporation described in subsection 2 of NRS 78.746 except as set forth in that section.

↳ These exemptions may not apply in certain cases such as proceedings to enforce a judgment for support of a child or a judgment of foreclosure on a mechanic's lien. You should consult an attorney immediately to assist you in determining whether your property or money is exempt from execution. If you cannot afford an attorney, you may be eligible for assistance through ..... (name of organization in county providing legal services to the indigent or elderly persons).

## PROCEDURE FOR CLAIMING EXEMPT PROPERTY

If you believe that the money or property taken from you is exempt or necessary for the support of you or your family, you must file with the clerk of the court on a form provided by the clerk a notarized affidavit claiming the exemption. A copy of the affidavit must be served upon the sheriff and the judgment creditor within 8 days after the notice of execution is mailed. The property must be returned to you within 5 days after you file the affidavit unless the judgment creditor files a motion for a hearing to determine the issue of exemption. If



1 this happens, a hearing will be held to determine whether the  
2 property or money is exempt. The hearing must be held  
3 within 10 days after the motion for a hearing is filed.  
4

5 IF YOU DO NOT FILE THE AFFIDAVIT WITHIN THE  
6 TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD  
7 AND THE MONEY GIVEN TO THE JUDGMENT  
8 CREDITOR, EVEN IF THE PROPERTY OR MONEY IS  
9 EXEMPT.  
10

11 If you received this notice with a notice of a hearing for  
12 attachment and you believe that the money or property which  
13 would be taken from you by a writ of attachment is exempt or  
14 necessary for the support of you or your family, you are  
15 entitled to describe to the court at the hearing why you  
16 believe your property is exempt. You may also file a motion  
17 with the court for a discharge of the writ of attachment. You  
18 may make that motion any time before trial. A hearing will be  
19 held on that motion.  
20

21 IF YOU DO NOT FILE THE MOTION BEFORE  
22 THE TRIAL, YOUR PROPERTY MAY BE SOLD AND  
23 THE MONEY GIVEN TO THE PLAINTIFF, EVEN IF THE  
24 PROPERTY OR MONEY IS EXEMPT OR NECESSARY  
25 FOR THE SUPPORT OF YOU OR YOUR FAMILY.

