

Amendment No. 935

Senate Amendment to Senate Bill No. 229 First Reprint

(BDR 13-87)

Proposed by: Senate Committee on Finance

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

VG/NCA



Date: 5/25/2017

S.B. No. 229—Revises provisions relating to guardianships. (BDR 13-87)



SENATE BILL NO. 229—SENATOR HARRIS

FEBRUARY 28, 2017

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to guardianships. (BDR 13-87)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

~

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

AN ACT relating to guardians; establishing a form by which a person may request to nominate another person to serve as his or her guardian; revising provisions governing registered agents to authorize a person to serve as a registered agent for a nonresident guardian; revising provisions relating to the Nevada Lockbox; ~~to include forms requesting to nominate a guardian;~~ and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law generally provides that in a proceeding to appoint a guardian for an adult, a court is required to give preference to a nominated person or relative, in that order of preference. Existing law defines a "nominated person" as a person whom an adult: (1) nominates for the appointment as guardian for the adult in a will, trust or other written instrument that is part of the adult's established estate plan and was executed by the adult while he or she was competent; or (2) requests for the appointment as guardian of the adult in a written instrument that is not part of the adult's established estate plan and was executed by the adult while he or she was competent. (NRS 159.0613) **Section 2** of this bill provides that any person who wishes to request to nominate another person to be appointed as his or her guardian may do so by completing a form requesting to nominate a guardian, which must be signed by the person and two impartial adult witnesses and notarized. **Section 2** sets forth a model form for such a request and requires the Secretary of State to make the form available on the Internet website of the Secretary of State.

Existing law establishes provisions relating to the Nevada Lockbox, which is a registry authorized to be established and maintained on the Secretary of State's Internet website in which a person may register a will or other document. (NRS 225.300-225.440) **Section 11** of this bill revises the definition of the term "other document" to include a form requesting to nominate a guardian that is executed in accordance with **section 2**. **Section 12** of this bill authorizes the Secretary of State to provide access to the lockbox of a registrant if such access is requested by a court, hospital, law enforcement agency or other entity that needs to determine whether a person has designated a guardian. **Section 12** also requires the Secretary of State to ensure that any such person, other than a court, who accesses the lockbox does not have access to any document contained in the lockbox other than a form requesting to nominate a guardian. **Section 3** of this bill provides that if a guardian applies to a court to be designated as the guardian of a person, the court must determine whether a guardian has already been designated for the person by accessing the lockbox. **Section 3** also provides that if the court determines that two or more different designations exist and each designation is

valid, the most recent designation shall be deemed to be the controlling designation. **Section 3** further provides that if a guardian has already been designated, the application for guardianship cannot proceed unless the court revokes the designation.

Existing law authorizes the Secretary of State to charge fees and accept contributions to establish and maintain the Nevada Lockbox. (NRS 225.410) Section 12.5 of this bill authorizes a person who makes such a contribution to designate a specific purpose for which the contribution must be used.

Existing law provides that if a court appoints a nonresident guardian for an adult, the court is required to order the guardian to designate a registered agent in this State in the same manner as a represented entity pursuant to chapter 77 of NRS. (NRS 159.0613) **Section 4** of this bill additionally requires the court to: (1) order the guardian to provide notice of the designation of a registered agent to the court; and (2) after such notice is provided, monitor the information of the registered agent using the records of the Secretary of State. **Sections 5-9** of this bill revise provisions of existing law governing registered agents to include the ability of a person to serve as a registered agent for a nonresident guardian.

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

Section 1. Chapter 159 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *1. Any person who wishes to request to nominate another person to be appointed as his or her guardian may do so by completing a form requesting to nominate a guardian in accordance with this section.*

2. A form requesting to nominate a guardian must be:

(a) Signed by the person requesting to nominate a guardian;

(b) Signed by two impartial adult witnesses who have no interest, financial or otherwise, in the estate of the person requesting to nominate a guardian and who attest that the person has the mental capacity to understand and execute the form; and

(c) Notarized.

3. A request to nominate a guardian may be in substantially the following form, and must be witnessed and executed in the same manner as the following form:

REQUEST TO NOMINATE GUARDIAN

I,..... (insert your name), residing at..... (insert your address), am executing this notarized document as my written declaration and request for the person(s) designated below to be appointed as my guardian should it become necessary. I am advising the court and all persons and entities as follows:

1. As of the date I am executing this request to nominate a guardian, I have the mental capacity to understand and execute this request.

2. This request pertains to a (circle one): (guardian of the person)/(guardian of the estate)/(guardian of the person and estate).

3. Should the need arise, I request that the court give my preference to the person(s) designated below to serve as my appointed guardian.

4. I request that my..... (insert relation),..... (insert name), serve as my appointed guardian.

5. If..... (insert name) is unable or unwilling to serve as my appointed guardian, then I request that my..... (insert relation)..... (insert name), serve as my appointed guardian.

6. I do not, under any circumstances, desire to have any private, for-profit guardian serve as my appointed guardian.

(YOU MUST DATE AND SIGN THIS DOCUMENT)

I sign my name to this document on..... (date)

.....
(Signature)

(YOU MUST HAVE TWO QUALIFIED ADULT WITNESSES DATE AND SIGN THIS DOCUMENT)

I declare under penalty of perjury that the principal is personally known to me, that the principal signed this request to nominate a guardian in my presence, that the principal appears to be of sound mind, has the mental capacity to understand and execute this document and is under no duress, fraud or undue influence, and that I have no interest, financial or otherwise, in the estate of the principal.

.....
(Signature of first witness)

.....
(Print name)

.....
(Date)

.....
(Signature of second witness)

.....
(Print name)

.....
(Date)

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

State of Nevada }

County of }

On this..... day of....., in the year....., before me,..... (insert name of notary public), personally appeared..... (insert name of principal),..... (insert name of first witness) and..... (insert name of second witness), personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to this instrument, and acknowledged that they have signed this instrument. I declare under penalty of perjury that the persons whose names are subscribed to this instrument appear to be of sound mind and under no duress, fraud or undue influence.

.....
(Signature of notarial officer)

(Seal, if any)

1 4. *The Secretary of State shall make the form established in subsection 3*
2 *available on the Internet website of the Secretary of State.*

3 5. *The Secretary of State may adopt any regulations necessary to carry out*
4 *the provisions of this section.*

5 **Sec. 3.** *1. If a guardian applies to a court to be designated as the*
6 *guardian of a person, the court must determine whether a guardian has already*
7 *been designated for the person by accessing the Nevada Lockbox established by*
8 *the Secretary of State pursuant to NRS 225.360 in accordance with the provisions*
9 *of NRS 225.380.*

10 *2. When determining whether a guardian has already been designated for*
11 *the person, if the court determines that two or more different designations exist*
12 *and each designation is valid, the most recent designation shall be deemed to be*
13 *the controlling designation.*

14 *3. If the court determines that a guardian has already been designated for*
15 *the person, the application for guardianship cannot proceed unless the court*
16 *revokes the designation.*

17 **Sec. 4.** NRS 159.0613 is hereby amended to read as follows:

18 159.0613 1. Except as otherwise provided in subsection 3, in a proceeding
19 to appoint a guardian for an adult, the court shall give preference to a nominated
20 person or relative, in that order of preference:

21 (a) Whether or not the nominated person or relative is a resident of this State;
22 and

23 (b) If the court determines that the nominated person or relative is qualified
24 and suitable to be appointed as guardian for the adult.

25 2. In determining whether any nominated person, relative or other person
26 listed in subsection 4 is qualified and suitable to be appointed as guardian for an
27 adult, the court shall consider, if applicable and without limitation:

28 (a) The ability of the nominated person, relative or other person to provide for
29 the basic needs of the adult, including, without limitation, food, shelter, clothing
30 and medical care;

31 (b) Whether the nominated person, relative or other person has engaged in the
32 habitual use of alcohol or any controlled substance during the previous 6 months,
33 except the use of marijuana in accordance with the provisions of chapter 453A of
34 NRS;

35 (c) Whether the nominated person, relative or other person has been judicially
36 determined to have committed abuse, neglect, exploitation, isolation or
37 abandonment of a child, his or her spouse, his or her parent or any other adult,
38 unless the court finds that it is in the best interests of the ward to appoint the person
39 as guardian for the adult;

40 (d) Whether the nominated person, relative or other person is incompetent or
41 has a disability; and

42 (e) Whether the nominated person, relative or other person has been convicted
43 in this State or any other jurisdiction of a felony, unless the court determines that
44 any such conviction should not disqualify the person from serving as guardian for
45 the adult.

46 3. If the court finds that two or more nominated persons are qualified and
47 suitable to be appointed as guardian for an adult, the court may appoint two or more
48 nominated persons as co-guardians or shall give preference among them in the
49 following order of preference:

50 (a) A person whom the adult nominated for the appointment as guardian for the
51 adult in a will, trust or other written instrument that is part of the adult's established
52 estate plan and was executed by the adult while competent.

(b) A person whom the adult requested for the appointment as guardian for the adult in a ~~written instrument that is not part of the adult's established estate plan and was executed by the adult while competent.~~ *request to nominate a guardian that is executed in accordance with section 2 of this act.*

4. Subject to the preferences set forth in subsections 1 and 3, the court shall appoint as guardian the qualified person who is most suitable and is willing to serve. In determining which qualified person is most suitable, the court shall, in addition to considering any applicable factors set forth in subsection 2, give consideration, among other factors, to:

(a) Any nomination or request for the appointment as guardian by the adult.

(b) Any nomination or request for the appointment as guardian by a relative.

(c) The relationship by blood, adoption, marriage or domestic partnership of the proposed guardian to the adult. In considering preferences of appointment, the court may consider relatives of the half blood equally with those of the whole blood. The court may consider any relative in the following order of preference:

(1) A spouse or domestic partner.

(2) A child.

(3) A parent.

(4) Any relative with whom the adult has resided for more than 6 months before the filing of the petition or any relative who has a power of attorney executed by the adult while competent.

(5) Any relative currently acting as agent.

(6) A sibling.

(7) A grandparent or grandchild.

(8) An uncle, aunt, niece, nephew or cousin.

(9) Any other person recognized to be in a familial relationship with the adult.

(d) Any recommendation made by a master of the court or special master pursuant to NRS 159.0615.

(e) Any request for the appointment of any other interested person that the court deems appropriate, including, without limitation, a person who is not a relative and who has a power of attorney executed by the adult while competent.

5. The court may appoint as guardian any nominated person, relative or other person listed in subsection 4 who is not a resident of this State. The court shall not give preference to a resident of this State over a nonresident if the court determines that:

(a) The nonresident is more qualified and suitable to serve as guardian; and

(b) The distance from the proposed guardian's place of residence and the adult's place of residence will not affect the quality of the guardianship or the ability of the proposed guardian to make decisions and respond quickly to the needs of the adult because:

(1) A person or care provider in this State is providing continuing care and supervision for the adult;

(2) The adult is in a secured residential long-term care facility in this State; or

(3) Within 30 days after the appointment of the proposed guardian, the proposed guardian will move to this State or the adult will move to the proposed guardian's state of residence.

6. If the court appoints a nonresident as guardian for the adult:

(a) The jurisdictional requirements of NRS 159.1991 to 159.2029, inclusive, must be met. ~~§~~

(b) The court shall order the guardian to designate a registered agent in this State in the same manner as a represented entity pursuant to chapter 77 of NRS ~~§~~

1 and *provide notice of the designation of a registered agent to the court. After the*
2 *court is provided with such notice, the court shall monitor the information of the*
3 *registered agent using the records of the Secretary of State.*

4 (c) The court may require the guardian to complete any available training
5 concerning guardianships pursuant to NRS 159.0592, in this State or in the state of
6 residence of the guardian, regarding:

7 (1) The legal duties and responsibilities of the guardian pursuant to this
8 chapter;

9 (2) The preparation of records and the filing of annual reports regarding the
10 finances and well-being of the adult required pursuant to NRS 159.073;

11 (3) The rights of the adult;

12 (4) The availability of local resources to aid the adult; and

13 (5) Any other matter the court deems necessary or prudent.

14 7. If the court finds that there is not any suitable nominated person, relative or
15 other person listed in subsection 4 to appoint as guardian, the court may appoint as
16 guardian:

17 (a) The public guardian of the county where the adult resides if:

18 (1) There is a public guardian in the county where the adult resides; and

19 (2) The adult qualifies for a public guardian pursuant to chapter 253 of
20 NRS;

21 (b) A private fiduciary who may obtain a bond in this State and who is a
22 resident of this State, if the court finds that the interests of the adult will be served
23 appropriately by the appointment of a private fiduciary; or

24 (c) A private professional guardian who meets the requirements of NRS
25 159.0595.

26 8. A person is not qualified to be appointed as guardian for an adult if the
27 person has been suspended for misconduct or disbarred from any of the professions
28 listed in this subsection, but the disqualification applies only during the period of
29 the suspension or disbarment. This subsection applies to:

30 (a) The practice of law;

31 (b) The practice of accounting; or

32 (c) Any other profession that:

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

35 (2) Requires licensure in this State or any other state in which the person
36 practices his or her profession.

37 9. As used in this section:

38 (a) "Adult" means a person who is a ward or a proposed ward and who is not a
39 minor.

40 (b) "Domestic partner" means a person in a domestic partnership.

41 (c) "Domestic partnership" means:

42 (1) A domestic partnership as defined in NRS 122A.040; or

43 (2) A domestic partnership which was validly formed in another
44 jurisdiction and which is substantially equivalent to a domestic partnership as
45 defined in NRS 122A.040, regardless of whether it bears the name of a domestic
46 partnership or is registered in this State.

47 (d) "Nominated person" means a person, whether or not a relative, whom an
48 adult:

49 (1) Nominates for the appointment as guardian for the adult in a will, trust
50 or other written instrument that is part of the adult's established estate plan and was
51 executed by the adult while competent.

52 (2) Requests for the appointment as guardian for the adult in a ~~written~~
53 ~~instrument that is not part of the adult's established estate plan and was executed by~~

~~the adult while competent~~ request to nominate a guardian that is executed in accordance with section 2 of this act.

(e) "Relative" means a person who is 18 years of age or older and who is related to the adult by blood, adoption, marriage or domestic partnership within the third degree of consanguinity or affinity.

Sec. 5. Chapter 77 of NRS is hereby amended by adding thereto a new section to read as follows:

"Nonresident guardian" means a person who is not a resident of this State and who is appointed as guardian for an adult pursuant to NRS 159.0613. As used in this section, "guardian" has the meaning ascribed to it in NRS 159.017.

Sec. 6. NRS 77.020 is hereby amended to read as follows:

77.020 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 77.030 to 77.270, inclusive, **and section 5 of this act** have the meanings ascribed to them in those sections.

Sec. 7. NRS 77.030 is hereby amended to read as follows:

77.030 "Appointment of agent" means a statement appointing an agent for service of process filed by a ~~domestic~~:

1. Domestic entity that is not a filing entity or a nonqualified foreign entity under NRS 77.380 ~~or~~; **or**

2. Nonresident guardian.

Sec. 8. NRS 77.060 is hereby amended to read as follows:

77.060 "Entity" means a person that has a separate legal existence or has the power to acquire an interest in real property in its own name. ~~other than~~ **The term does not include:**

1. ~~Any~~ **Any** individual ~~other than a nonresident guardian~~;

2. A testamentary, inter vivos or charitable trust, with the exception of a business trust, statutory trust or similar trust;

3. An association or relationship that is not a partnership by reason of NRS 87.070, subsection 3 of NRS 87.4322 or similar provisions of the law of any other jurisdiction;

4. A decedent's estate; or

5. A public corporation, government or governmental subdivision, agency or instrumentality or a quasi-governmental instrumentality.

Sec. 9. NRS 77.250 is hereby amended to read as follows:

77.250 "Represented entity" means:

1. A domestic filing entity;

2. A domestic or qualified foreign limited-liability partnership that does not have an office in this State;

3. A qualified foreign entity;

4. A domestic or foreign unincorporated nonprofit association for which an appointment of agent has been filed;

5. A domestic entity that is not a filing entity for which an appointment of agent has been filed; ~~or~~

6. A nonqualified foreign entity for which an appointment of agent has been filed ~~or~~; **or**

7. A nonresident guardian.

Sec. 10. (Deleted by amendment.)

Sec. 11. NRS 225.330 is hereby amended to read as follows:

225.330 "Other document" means a document registered with the Secretary of State pursuant to NRS 225.370 and may include, without limitation, a passport, a birth certificate, ~~or~~ a marriage license ~~or a form requesting to nominate a guardian that is executed in accordance with section 2 of this act.~~

Sec. 11.5. NRS 225.370 is hereby amended to read as follows:

225.370 If the Nevada Lockbox is established pursuant to NRS 225.360:
1. A person who wishes to establish a lockbox and thereby register a will or other document in the Nevada Lockbox must submit to the Secretary of State:

- (a) An application in the form prescribed by the Secretary of State;
- (b) A copy of the will or other document to be registered; and
- (c) The fee, if any, established by the Secretary of State pursuant to subsection 1 of NRS 225.410.

2. If the person satisfies the requirements of subsection 1, the Secretary of State shall:

(a) Make an electronic reproduction of the will or other document and post it within the registrant's lockbox;

(b) Assign to the registrant a registration number and access code for the lockbox; and

(c) Provide to the registrant a registration card that includes, without limitation:

- (1) The name of the registrant;
- (2) The registration number assigned to the registrant pursuant to paragraph (b); and
- (3) The access code assigned to the registrant pursuant to paragraph (b).

3. The Secretary of State shall establish procedures for, without limitation:

(a) The registration of a will or other document which replaces a will or other document that has been registered previously and posted within the Nevada Lockbox;

(b) The removal from the Nevada Lockbox of a will or other document that has been revoked at the request of the registrant; and

(c) The issuance of a duplicate registration card or the provision of other access by a registrant to his or her registration number and access code if a registration card issued pursuant to this section is lost, stolen, mutilated, destroyed or otherwise unavailable.

Sec. 12. NRS 225.380 is hereby amended to read as follows:

225.380 If the Nevada Lockbox is established pursuant to NRS 225.360:

1. Except as otherwise provided in this section, the Secretary of State shall not provide access to the lockbox of a registrant unless:

(a) The person requesting access provides the registration number and access code of the registrant;

(b) The Secretary of State determines that providing access to the lockbox is in the best interest of the registrant;

(c) Access to the lockbox is required pursuant to the lawful order of a court of competent jurisdiction; ~~for~~

(d) Access to the lockbox is requested by the registrant or his or her personal representative ~~for~~ ; or

(e) Access to the lockbox is requested by a court, hospital, law enforcement agency or other entity that needs to determine whether a person has designated a guardian. Except as otherwise provided in subsection 2, the Secretary of State shall ensure that a person who needs access to the lockbox pursuant to this paragraph does not have access to any document contained in the lockbox other than a form requesting to nominate a guardian that is executed in accordance with section 2 of this act.

2. A court that requests access to the lockbox pursuant to paragraph (e) of subsection 1 may access any other document contained in the lockbox as is necessary to determine whether a person has made more than one designation of a guardian.

3. A registrant or his or her personal representative may access the lockbox of the registrant for any purpose.

1 **Sec. 12.5. NRS 225.410 is hereby amended to read as follows:**

2 225.410 1. If the Nevada Lockbox is established pursuant to NRS 225.360,

3 the Secretary of State may charge and collect fees for the registration of a will or

4 other document pursuant to NRS 225.370.

5 2. The Secretary of State may accept gifts, grants, bequests and other

6 contributions from any source for the purpose of carrying out the provisions of

7 NRS 225.300 to 225.440, inclusive. A person who gives a gift, grant, bequest or

8 other contribution may designate a specific purpose for the gift, grant, bequest or

9 other contribution to carry out the provisions of NRS 225.300 to 225.440,

10 inclusive.

11 **Sec. 13.** This act becomes effective:

12 1. Upon passage and approval for the purpose of adopting regulations or

13 performing any other preparatory administrative tasks that are necessary to carry

14 out the provisions of this act; and

15 2. On January 1, 2018, for all other purposes.