



Pacific Law Journal Review of Selected Nevada Legislative

Volume 1979 | Issue 1

Article 5

1-1-1979

Administration of Estates: Powers of Fiduciaries

Rosalie Lazzarotto

Follow this and additional works at: <https://scholarlycommons.pacific.edu/nlr>



Part of the [Legislation Commons](#)

Recommended Citation

Rosalie Lazzarotto, *Administration of Estates: Powers of Fiduciaries*, 1979 U. PAC. L. REV. (1979).
Available at: <https://scholarlycommons.pacific.edu/nlr/vol1979/iss1/5>

This Legislative Review is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in Pacific Law Journal Review of Selected Nevada Legislative by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

ADMINISTRATION OF ESTATES; POWERS OF FIDUCIARIES

Adds to NRS Chapters 162, 163 and 164

SB 368 (Committee on Judiciary); STATS 1979, Ch 303

SB 353 (Ashworth); STATS 1979, Ch 284

Chapter 303 provides that fiduciaries¹ and their successors are to have certain codified powers relating to their estates or trusts.

Chapter 303 provides that unless it is contrary to an express provision of the instrument creating the power, the survivor of two or more fiduciaries may continue to administer the property without the necessary appointment of a successor or substitute.² When a successor fiduciary is appointed, he will succeed to all of the powers of the original fiduciary unless contrary to the express provisions of the instrument creating the powers.³ Apparently, these provisions are a codification of the general common law.⁴

Chapter 303 also provides that a fiduciary may withhold distribution of any amount of the trust property that is subject to conflicting claims, tax deficiencies, or other liabilities.⁵ This is also a codification of the general common law.⁶

Finally, Chapter 303 provides a fiduciary may join with a decedent's surviving spouse, the executor of the decedent's will, or the administrator of the decedent's estate in the filing of a joint income or gift tax return on any gifts made by the surviving spouse prior to the decedent's death.⁷ The trustee may consent to treat such gift as having been made one-half by the decedent, paying the taxes that are chargeable to the decedent's estate.⁸ Most likely, a trustee will use this provision in taking advantage of federal gift tax provisions (e.g., gift of \$3,000 to each donee in a calendar year is excluded from taxation).⁹ Under existing tax laws, a spouse may consent¹⁰ to treat a gift made by the other spouse as having been made one-half by each.¹¹ Chapter 303 allows the personal representative of the deceased spouse's estate to make such an election.¹²

Chapter 284 provides that a trustee shall have the power to sell, convey, or encumber real or personal property when it is taken in the trustee's name, unless the instrument specifically limits his power to do so.¹³ Modernly, courts have recognized that trustees have the power to sell the trust property unless the

language of the instrument is contrary.¹⁴ However, the trustee's powers will be limited by existing statutory law.¹⁵

Chapter 284 applies only to property acquired by a trustee on or after July 1, 1979.¹⁶

Rosalie Lazzarotto

FOOTNOTES

1. NRS 162.020 ("fiduciary" includes trustee, executor, administrator, guardian, conservator, curator, receiver).
2. 1979 Nev. Stats. ch. 303 (hereinafter "Ch. 303") §3 (adding to NRS Ch. 162).
3. Id. §2 (adding to NRS Ch. 162).
4. Wilson v. Snow, 228 U.S. 217, 224 (1913) cited in 2 A. SCOTT, THE LAW OF TRUSTS §103 (3d ed., 1967) (trustees hold as joint tenants with right of survivorship).
5. Ch. 303 §4 (adding to NRS Ch. 162).
6. Compare Ch. 303 with Feldmeier v. Superior Court of Santa Barbara County, 12 Cal.2d 302, 306, 83 P.2d 929, 931 (1938) (trustee not required to pay out funds when there are conflicting claims).
7. Ch. 303 §5 ¶1 (adding to NRS Ch. 163).
8. Id. §5 ¶ ¶ 2, 3 (adding to NRS Ch. 163).
9. I.R.C. §2503(b).
10. I.R.C. §2513(b)(2).
11. I.R.C. §2513.
12. Ch. 303 §5 ¶ 2 (adding to NRS Ch. 163).
13. 1979 Nev. Stats. ch. 284 (hereinafter "Ch. 284") §1 ¶1 (adding to NRS Ch. 164).
14. 3 A. SCOTT, THE LAW OF TRUSTS §190 (3d ed. 1967).
15. See NRS 164.050 (fiduciary must exercise such care as one of prudence, discretion, and intelligence would use in the acquiring, investing, reinvesting, exchanging, retaining, selling and managing of the trust property).
16. Ch. 284 §1 ¶ 2 (adding to NRS Ch. 164).