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## Property; Disclaimers of Interests

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## FOOTNOTES

1. 1979 Nev. Stats. ch. 314 (hereinafter "Ch. 314") §2 ¶ 3 (Adding to NRS Ch. 111).
2. Id. §2 ¶ 4 (adding to NRS Ch. 111).
3. Id. §3 ¶ 2 (adding to NRS Ch. 111).
4. Id.
5. Id. §3 ¶1 (adding to NRS Ch. 111).
6. See R. POWELL & R. ROHAN, POWELL ON REAL PROPERTY ¶ 421 (abr. ed.1968).
7. Ch. 314 §4 (adding to NRS Ch. 111).
8. Id.
9. Boyd v. McDonald, 81 Nev. 641, 651, 408 P.2d 717, 722 (1965).
10. Annot., 142 A.L.R. 467, 48 (1943).

## SEE GENERALLY:

- 1) W. THOMAS, A. MILLER & R. ROBINS, OVERCOMING LEGAL UNCERTAINTIES ABOUT USE OF SOLAR ENERGY SYSTEMS (1978).
- 2) S. KRAEMER, SOLAR LAW (1978).

## PROPERTY; DISCLAIMERS OF INTERESTS

Adds to NRS Title 10

SB 105 (Committee on Judiciary); STATS 1979, Ch 157

Chapter 157 specifies the procedures for disclaimers of property interests and waivers of the right to disclaim. Previously, a person receiving property through a will could accept or refuse the property.<sup>1</sup> However, if he received property by operation of law and not through a will, the property would immediately vest in him.<sup>2</sup> Immediate vesting of the property, which did not give the party receiving the property the opportunity to refuse it, could create problems because the property may be burdened with property taxes<sup>3</sup> or high federal estate taxes.<sup>4</sup>

"Beneficiaries" are defined in this chapter as persons who are entitled to property by: (a) intestate succession; (b) will; (c) succession to a disclaimed interest; (d) an election to take against a will; (e) the exercise or nonexercise of a power of appointment; or (f) inter vivos gift, whether outright or in trust.<sup>5</sup> Chapter 157 provides that beneficiaries who are at least eighteen years of age and competent may either accept the property interest<sup>6</sup>, disclaim the property by filing a written

disclaimer,<sup>7</sup> or file a written waiver of the right to disclaim the property.<sup>8</sup>

The requirement that the beneficiary be at least eighteen years of age and competent may mean that an infant or incompetent must take the property regardless of any associated tax liability.<sup>9</sup> This provision differs from the law in at least one other jurisdiction which allows a guardian to disclaim property on behalf of his ward.<sup>10</sup>

If the beneficiary accepts the interest, he may not disclaim it at a later date.<sup>11</sup> There is a conclusive presumption that the interest is accepted if the beneficiary (a) makes a voluntary assignment or transfer;<sup>12</sup> (b) executes a waiver;<sup>13</sup> (c) sells or encumbers all or any part of it;<sup>14</sup> or (d) allows one year to lapse after creation of the interest without filing a disclaimer.<sup>15</sup> The beneficiary does not lose his right to disclaim any other interest to which he may later become entitled, if he has no knowledge of the interest.<sup>16</sup>

If the beneficiary chooses to disclaim the interest, the disclaimer relates back to the date of its creation.<sup>17</sup> The interest will then descend as though the beneficiary predeceased the person creating the interest.<sup>18</sup> The disclaimer is binding upon the beneficiary and all persons claiming by, through or under him.<sup>19</sup>

The right of the beneficiary to disclaim an interest will exist irrespective of any limitation imposed in the nature of an expressed or implied spendthrift provision.<sup>20</sup>

Chapter 157 requires that the disclaimer identify the decedent or donor,<sup>21</sup> describe the property or interest being disclaimed,<sup>22</sup> declare the extent of the disclaimer,<sup>23</sup> and be signed by the disclaimant.<sup>24</sup> The disclaimer must be filed (a) in case of a will or intestate succession, with the district court in the county in which the estate is administered and a copy must be furnished to the personal representative of the decedent;<sup>25</sup> (b) in case of an inter vivos trust, with the trustee, or if there is none, with the county clerk of the county where the party creating the trust resided or resided;<sup>26</sup> or (c) in other cases, with the person creating the interest or his successor or representative.<sup>27</sup> In order for the disclaimer to be effective, it must be filed within a reasonable time after the beneficiary acquires knowledge of the interest, nine months in most cases.<sup>28</sup> If the disclaimer is not filed within the time established by Chapter 157, the disclaimant will have the burden of showing that it was filed within a reasonable time.<sup>29</sup> For the purpose of determining when a disclaimer is effective, an interest created by the donee of the power.<sup>30</sup>

If the disclaimer affects real property, it must be recorded in the same manner as a property deed.<sup>31</sup> Once the disclaimer is properly recorded, failure to file it will not affect the validity of any transaction with respect to the property.<sup>32</sup>

If the beneficiary does not wish to disclaim the property, he may file a written waiver of the right to disclaim.<sup>33</sup> The waiver will prevent the beneficiary from disclaiming the property at any later date and will be binding upon all persons claiming by, through or under him.<sup>35</sup>

Any interest created before the effective date of this chapter which has not already been accepted may be disclaimed in the manner outlined above.<sup>36</sup>

Don H. Gallian

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#### FOOTNOTES

1. Annot., 155 A.L.R. 1420 (1945).
2. Riverside Fixture Co. v. Quigley, 35 Nev. 17, 28-29, 126 P. 545, 548 (1912).
3. See NRS Chapter 361 (property taxes).
4. See 26 U.S.C. §§ 2001 to 2207 (federal estate taxes).
5. 1979 NEV. Stats. ch. 157 (hereinafter "Ch. 157") §2 (adding to NRS Ch. 10).
6. Id. §8 (adding to NRS Ch. 10).
7. Id. §3 (adding to NRS Ch.10).
8. Id. §6 ¶ 2 (adding to NRS Ch. 100).
9. But cf., Riverside Fixture Co. v. Quigley, 35 Nev. at 29, 126 P. at 548 (minor not subject to liens for labor and material on property that the minor inherits).
10. CAL. PROB. CODE § 190.2.
11. Ch. 157 §8 ¶1 (adding to NRS Ch. 10).
12. Id. §8 ¶ 2(a) (adding to NRS Ch. 10).
13. Id. §8 ¶ 2(b) (adding to NRS Ch. 10).
14. Id. §§4 ¶ 3(a), 8 ¶ 2(c) (adding to NRS Ch. 10).
15. Id. §4 ¶ 3(b) (adding to NRS Ch. 10).
16. Id. §8 ¶1 (adding to NRS Ch. 10).
17. Id. §7 (adding to NRS Ch. 10).

18. Id.
19. Id. §6 ¶1 (adding to NRS Ch. 10).
20. Id. §9 (adding to NRS Ch. 10).
21. Id. §3 ¶1 (adding to NRS Ch. 10).
22. Id. §3 ¶2 (adding to NRS Ch. 10).
23. Id. §3 ¶3 (adding to NRS Ch. 10).
24. Id. §3 ¶4 (adding to NRS Ch. 10).
25. Id. §5 ¶1(a) (adding to NRS Ch. 10).
26. Id. §5 ¶1(b) (adding to NRS Ch. 10).
27. Id. §5 ¶1(c) (adding to NRS Ch. 10).
28. Id. §4 (adding to NRS Ch. 10).
29. Id. §4 ¶2 (adding to NRS Ch. 10).
30. Id. §4 ¶1(e) (adding to NRS Ch. 100).
31. Id. §5 ¶2 (adding to NRS Ch. 10). See also, NRS §§111.310 to 111.365 (recording property deeds).
32. Id. §5 ¶2 (adding to NRS Ch. 10).
33. Id. §6 ¶2 (adding to NRS Ch. 10).
34. Id.
35. Id.
36. Id. §10 (adding to NRS Ch. 10).

### PROPERTY; LANDLORD-TENANT

Adds sections to NRS Chapter 118

SB 204 (Committee on Taxation); STATS 1979, Ch 593

Chapter 593 places statutory limits on state and local expenditures<sup>1</sup> and on the general tax rate<sup>2</sup> and requires rent reductions in proportion to property tax reduction.<sup>3</sup> This analysis is limited to the landlord-tenant aspects of Chapter 593.

Any landlord who fails to reduce the periodic rent will be liable to the rent for an amount three times the amount overpaid by the tenant.<sup>4</sup> Although Chapter 593 requires the landlord to reduce rent by an amount equal to any reduction in property taxes,<sup>5</sup> it does not attempt to regulate the total amount of rent payable.<sup>6</sup>

Chapter 593 requires that landlords give their tenants an annual statement disclosing the amount of their periodic rent used to pay property taxes and the