



# Pacific Law Journal Review of Selected Nevada Legislative

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Volume 1981 | Issue 1

Article 4

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1-1-1981

## Administration of Estates; Substitute Executors

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### Recommended Citation

Univeristy of the Pacific, McGeorge School of Law, *Administration of Estates; Substitute Executors*, 1981  
U. PAC. L. REV. (2019).

Available at: <https://scholarlycommons.pacific.edu/nlr/vol1981/iss1/4>

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# Administration of Estates

## Administration of Estates; substitute executors

N.R.S. §138.045 (amended).

SB 223 (Committee on Judiciary); STATS 1981, Ch 121

Chapter 121 extends the power of an executor named in a will to select a substitute executor or a coexecutor.<sup>1</sup> Under existing law, a person named as an executor under a will who is not incompetent<sup>2</sup> may appoint a substitute if the named executor is unable to undertake the execution of the will<sup>3</sup> and the testator either has not designated an alternate to serve in place of the named executor or the alternate is unable to serve.<sup>4</sup> Chapter 121 adds that an executor named in a will also may select a substitute if the executor is *unwilling* to undertake the execution of the will or is unwilling or unable to continue in the execution of the will<sup>5</sup> and any alternate selected by the testator is unwilling to serve.<sup>6</sup>

Prior to the enactment of Chapter 121, a person named as an alternate executor could appoint a substitute alternate executor if the named alternate was unable to serve,<sup>7</sup> and the named executor had not designated a substitute.<sup>8</sup> Chapter 121 specifies that the alternate executor may appoint a substitute alternate if he or she is unwilling or unable to undertake or continue the execution of the will,<sup>9</sup> and the named executor is incompetent or has not designated a substitute within thirty days after receiving notice that the named alternate will not or cannot serve.<sup>10</sup>

Finally, Chapter 121 authorizes a person named as sole executor by a will to appoint a coexecutor.<sup>11</sup> A coexecutor may be selected if the named executor is unwilling or unable to undertake or continue the

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1. Compare N.R.S. §138.045 with STATUTES OF NEVADA 1969, c. 272, §1, at 484.
  2. See generally N.R.S. §138.020 (grounds of incompetency).
  3. N.R.S. §138.045 1(a).
  4. *Id.* §138.045 1(b).
  5. *Id.* §138.045 1(a).
  6. *Id.* §138.045 1(b).
  7. STATUTES OF NEVADA 1969, c. 272, §1, at 484 (enacting N.R.S. §138.045).
  8. *Id.*
  9. N.R.S. §138.045 2(a).
  10. *Id.* §138.045 2(b).
  11. See *id.* §138.045 3.

sole execution of the will<sup>12</sup> and no alternate executor is named in the will or, if one is named, that alternate is unwilling or unable to serve.<sup>13</sup> The coexecutor, unless incompetent to serve, is entitled to letters testamentary<sup>14</sup> as if he or she had been named by the testator.<sup>15</sup>

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12. *Id.* §138.045 3(a).

13. *Id.* §138.045 3(b).

14. *See Milner v. Dudley*, 77 Nev. 256, 264, 362 P.2d 439, 443 (1961); BLACK'S LAW DICTIONARY 815 (5th ed. 1979) (definitions of letters testamentary).

15. *See N.R.S.* §138.045 4.

### **Administration of Estates; procedures for appeal**

N.R.S. §§151.230, 155.190 (amended).

SB 321 (Committee on Judiciary); STATS 1981, Ch 236

Existing law allows the probate court to issue a decree discharging an executor or administrator of an estate and his or her surety from all further liability if it is shown that all sums of money due have been paid, all property has been distributed according to the decree of the court, and all other duties have been performed.<sup>1</sup> Chapter 236 permits persons who have appealed successfully from a decree of distribution to recover any property distributed to an heir, devisee, or legatee, notwithstanding the prior discharge of the administrator or executor.<sup>2</sup>

In general, appeals of estate matters to the Nevada Supreme Court are governed by the procedural rules applicable to civil cases.<sup>3</sup> Thus, prior to the enactment of Chapter 236, an appeal to the supreme court, from an order or decree regarding specified matters<sup>4</sup> within the jurisdiction of the probate court, had to be filed within thirty days after service of written notice of the appeal.<sup>5</sup> Chapter 236 now requires that these appeals be filed within thirty days after the entry of the particular order or decree.<sup>6</sup>

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1. N.R.S. §151.230 1. *See generally id.* §§143.010-143.210 (enumerating the powers and duties of executors and administrators).

2. *See id.* §151.230 2.

3. *See id.* §155.180. *See generally Quinn v. Quinn*, 27 Nev. 156, 74 P. 5 (1903).

4. *See N.R.S.* §155.190 1-13 (some of the matters subject to the revised filing date are orders or decrees: (1) granting or revoking letters testamentary or letters of administration, (2) setting apart property as a homestead or claimed to be exempt from execution, (3) granting or modifying a family allowance, (4) distributing property).

5. *Compare NEV. R. APP. PROC. 4 with STATUTES OF NEVADA 1941, c. 107, §293, at 228 (enacting N.R.S. §155.190).*

6. *Compare N.R.S. §155.190 with N.R. APP. PROC. 4.*