



WHAT YOU SHOULD KNOW ABOUT **Nevada Probate**

LAW OFFICES OF
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Experienced counsel guiding you through the legal twists and turns of the probate process.

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A man with a backpack is standing on a wooden walkway in a forest, looking out over the trees. The walkway is made of wooden planks and has a wooden railing. The forest is dense with green trees and foliage.

Proposed New

Our Goal.

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The more you know about the Nevada probate process, the greater your ability to reduce stress for you and your family. The most difficult probate clients are those with unrealistic expectations because they haven't taken the opportunity to meet and discuss the process and they get frustrated when events occur that they didn't expect. They are constantly being questioned by other family members and when they are unable to provide answers, their stress levels undoubtedly rise. The goal of this eBook is to provide an easily understandable "soup to nuts" overview of the process and includes tips to help make the process smoother (and, hopefully, less stressful) for you and your family.

We prepared this eBook for educational purposes only to answer some of the most common questions regarding the Nevada Probate process. It should not be construed as legal advice or a legal opinion as to any specific facts or circumstances. This information is based on general principles of Nevada law at the time it was created and you should be aware laws frequently change. Moreover, the laws affecting you may differ depending on the circumstances. You should consult with a qualified attorney in your own state or jurisdiction concerning your particular situation.

This e-book does not create a client-attorney relationship with Drizin Law.

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Understanding the Terminology

Here are a few common terms with regard to Probate.

Personal Representative

A person or institution appointed to carry out the terms of the will.



Probate

The process of establishing the validity of a will or determining the distribution of assets if there is no will.

Decedent

A person who has died.



Beneficiary

A person or Institution who receives assets or benefits from an estate.

The Estate

All assets, owned by the Probate Estate.



Intestate Succession

When a person dies without a will, a court will distribute your property according to the laws of your state.

Should I hire a probate attorney?

There is no requirement that you must hire an attorney to assist you with the probate process; however, probate can be complex and as the Personal Representative, you are subject to personal liability for any mistakes! One of the most important goals of the attorney is to ensure this does not happen. Other important reasons for retaining a lawyer include:

- Most of the “heavy lifting” will be done by the lawyer including court appearances, filing legal paperwork, contacting creditors, and resolving disputes. The attorney will also ensure all of your actions are in compliance with Nevada Probate laws and statutes.
- An attorney will help guide you in addressing numerous issues which could otherwise result in a will contest or objections by beneficiaries and heirs.
- An experienced probate attorney can usually expedite the process that could otherwise be delayed due to your unfamiliarity with the process and many probate laws.

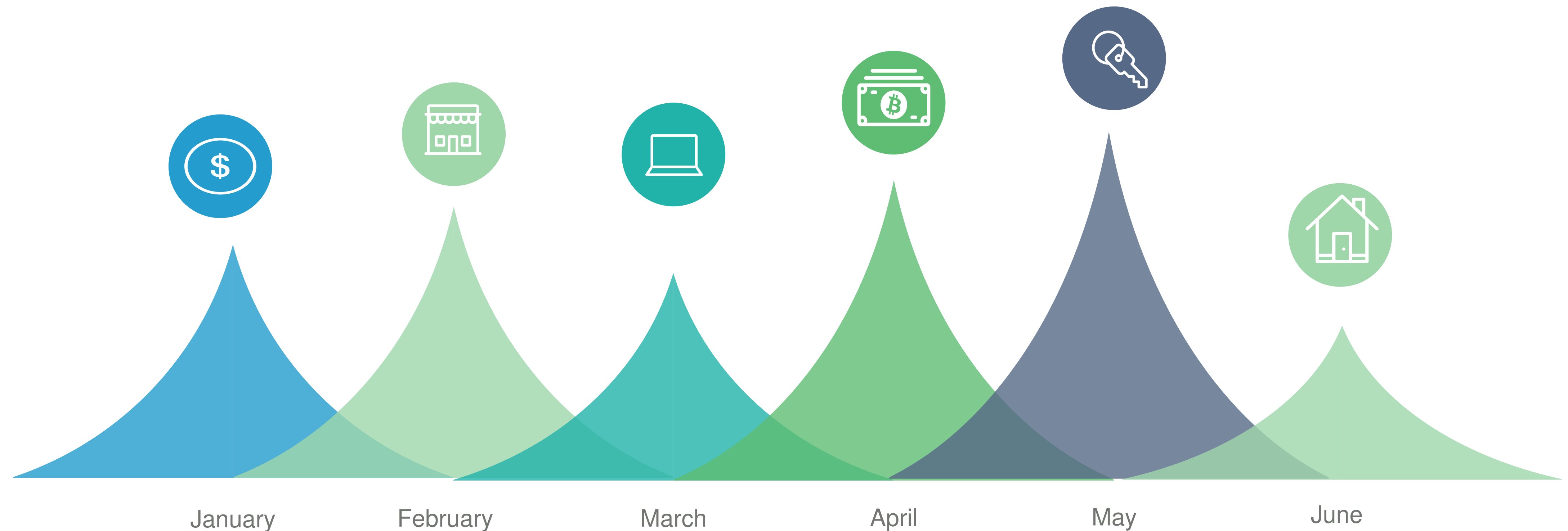
All of the issues have one thing in common, they can easily be a source of additional anxiety in an already stressful situation. Having an experienced attorney to guide you through the process and answer questions can make a big difference. Your lawyer should be a logical, educated sounding board guiding you every step of the way, likely saving you time and money.



How long will the probate process take?

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It depends. Some probates settle in as little as four to six months or it can drag out for years. There could be challenges to a will, difficult business issues to resolve or outstanding lawsuits at the time of death. Delays may also be incurred in determining if there are any unpaid taxes. That's why staying organized and hiring the right probate law firm is important to your success. While everyone wants to receive their distribution as soon as possible, understanding the probate process reduces your stress and enables you to advise heirs and beneficiaries about realistic expectations.





How do I start the probate process?

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The first step is to obtain a copy of the Death Certificate. A copy will be filed with the court but you may need other originals for a variety of purposes. We generally recommend ordering no less than seven (7) certificates.

In the event there is a Will, a Petition to Admit the Will is filed along with a copy of the Death Certificate.¹ This petition will request the appointment of the person nominated as the Personal Representative. In the event the nominee is unwilling or unable to accept the position, an alternate Successor Personal Representative can be appointed. If there are no alternates named in the probate, the beneficiaries can nominate someone to serve.

What happens if the original Will can't be located?

There is a procedure for “proving up” a lost will. However, this process can be difficult and reasonable efforts should always be made to locate the original.

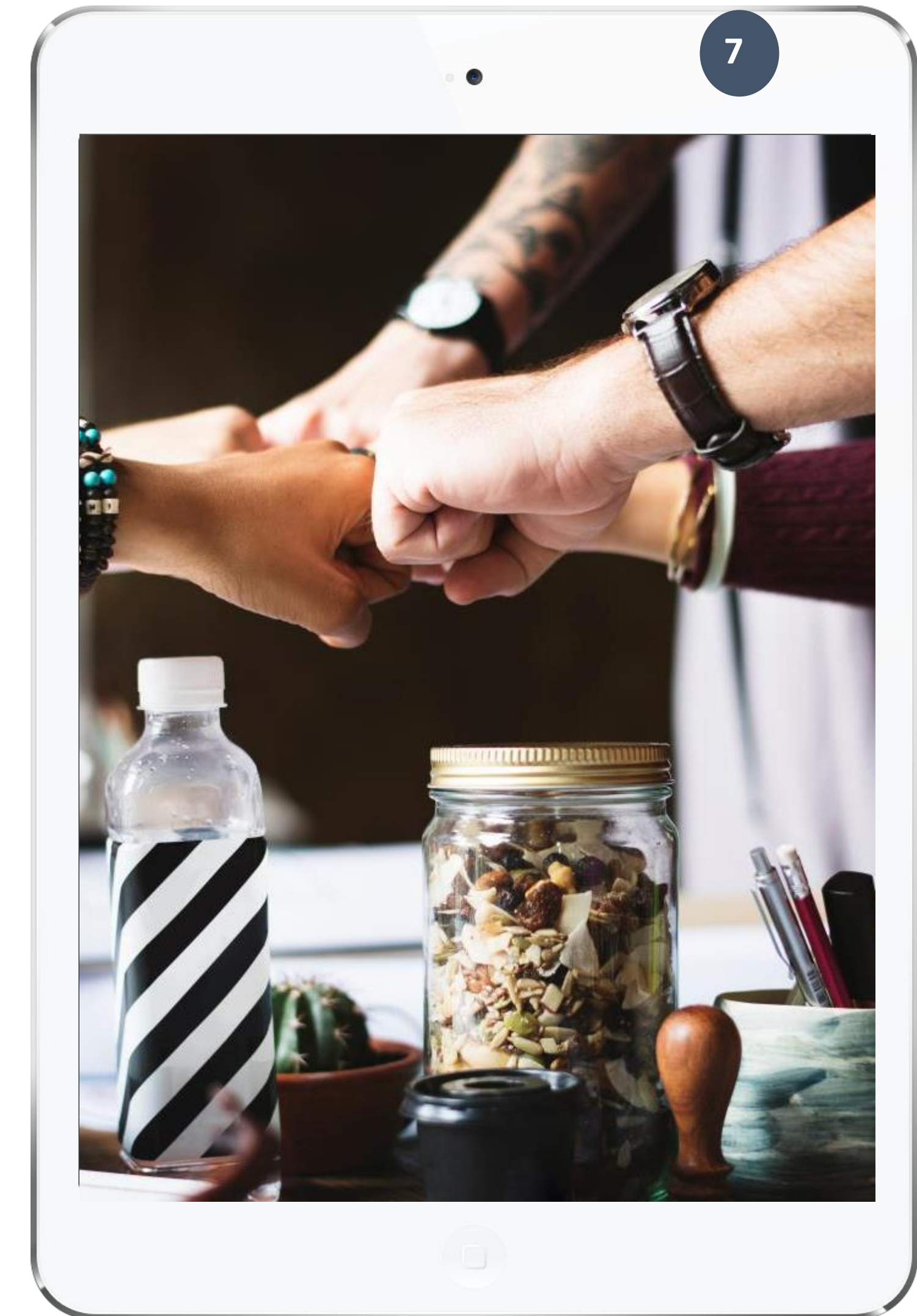
¹ The original Will is required to be filed with the Clark County Clerk's Office within 10 days of the date of death.

Who's in charge?

The petition to admit a will should also seek the appointment of a person nominated in the Decedent's will to be in charge of the Estate. He or she is known as the ***Personal Representative***. Even if you live ***out of state***, you can still serve as the Personal Representative. Most issues can be handled through mail, email and phone correspondence. If there is no Will, then the Court will appoint someone to serve as the Administrator to oversee the Estate. However, even if there is a will, it may be that the person(s) nominated as Personal Representative is unwilling or unable to serve and, as a result, an Administrator must still be appointed.

Is a personal representative or administrator entitled to compensation?

Yes, the personal representative is entitled to be reimbursed for expenses and to be compensated as provided for in the Will. However, if the Will does not specifically state the specific amount of compensation, then the Court will allow "general compensation" based upon a percentage of the value of the Estate which is fixed by statute. However, the Court may also permit additional compensation for "extraordinary" services. These types of activities include sales of real estate or the continuation of a business of the Decedent.



Overview of the Duties of a Personal Representative



Identify & Collect Assets



Gather Assets of Decedent



Protect the Estate



Determine if Real Estate is Sold



Ensure Creditors are Paid



Determine Tax Liability



Wrap up business affairs



Distribute Assets

Take care and lock down

Even before you are appointed as the Personal Representative, you should take steps to secure the residence to protect the Estate. Remember, criminals can read obituaries and may try to identify vacant properties.

After a death, family members may have a tendency to stop by the Decedent's house and help themselves to a "keep sake." However, no assets should be released except through the probate process. Once appointed as the Personal Representative, you will be required to account for all assets of the Estate.



What Assets are included in probate?

Assets included in the probate process are referred to as the “Estate”. However, not all assets must be part of the probate. These assets are referred to as “non-probate assets”. You begin the process of addressing the distribution of your loved one’s assets by determining which assets are non-probate assets.

Non-probate assets do not pass pursuant to the terms of a Will or the intestate rules of the State of Nevada. Rather, they contain named beneficiaries or language to determine the identity of the recipient of the non-probate asset. We have included a worksheet at the end of this e-book for you to start an inventory of the probate assets.

Non Probate Assets

These types of assets are not part of the probate process and upon death of a loved one, transfer pursuant to a beneficiary designation or to the joint owner.



Joint Bank Accounts

A bank account shared by two or more individuals.



Payable on Death Accounts

Immediate transfer of assets triggered by death.



Joint Tenancy

The holding of an estate or property jointly by two or more parties.



Life Insurance

Insurance that pays out a sum of money after the death of the insured.



Deeds upon death

A way to transfer real property to a beneficiary that avoids probate.



Pensions/IRAs

These include both Roth and non Roth IRAs as well as pensions.



4 Tips on How to Search for Assets.

Within 120 days after the appointment of the personal representative, an inventory of the probate assets must be filed with the court containing a description of the assets and their value.



Review

Carefully review the Decedent's personal papers. These will generally identify assets.



Research

Don't forget to look on-line. Many accounts are paperless and you will need to check the Decedent's computer to see if he or she left any clues about their assets.



Gather

Make sure to gather the mail. Many times people discard statements which would explain why they're not found when you search their personal papers but a month or quarterly statement might still show up.



Look

Don't forget to look everywhere. Did the Decedent have a safe deposit box, home safe or offsite storage facility? Sometimes additional information on the asset or the actual asset can be found there.

How is the estate value determined?

Generally, an appraiser must be obtained to determine the value of the assets. When the value of certain assets is known, an appraisal is not required. These items include bank accounts, brokerage accounts, securities and bonds.

If it appears that there will not be a need to sell assets to pay debts of the Decedent or the expenses of administration or to divide assets to be distributed, the personal representative can request the court issue an order permitting the use of a Record of Value instead of appraisement or that the appraisal requirement be waived. If the personal representative fails or refuses to file an inventory, the Court can revoke their appointment.



Do I pay the creditors right away? 14

In most instances, there will be outstanding debts owed by the Decedent at the time of death. These could include medical bills, credit cards and loans. There may also be other creditors you simply don't know about.¹ After the appointment of the Personal Representative by the Court, notice must be mailed to each known creditor. This notice will advise the creditor that you have been appointed as the personal representative of the Estate and that within a certain time (depending on size of the Estate) of the date of the mailing, they must file a claim with the clerk of the court. Otherwise, they are barred from collecting the debt.² In addition to sending notices to known creditors, a notice will be published in a legal periodical so that any creditors you are not aware of will have been considered to have an opportunity to seek payment as well.

1 Tips for determining outstanding creditors: A thorough review of the Decedent's personal papers should be completed to search for obligations you may not have known about. In addition, you should arrange for the mail to be forwarded to you or your attorney as many bills will likely be received within 60 to 90 days after death.

2 A lender is not required to file a claim if they are seeking reimbursement for amounts loaned to the Decedent to purchase a home and they expressly waive their recourse against other property of the Estate.

When can assets be distributed?

Upon completion of the steps previously addressed, the Estate can be closed and assets distributed with the Court’s approval of the Final Account and Petition for Distribution. The account sets forth the assets in the Estate, as well as any income and expenses which have accrued and presents a “snap shot” of the Estate to the Court. An example is as follows:

Beginning Balance (as of date of death)	\$321,500
Income (from assets, i.e. appreciation, dividends etc)	\$1,500
Expenses (from the estate, funeral, burial etc)	\$8,100
Ending Balance	\$314,900
Less: Administrative Expenses (Attorney Fees and Personal Rep Fees)	\$9,300
Less: Approved Creditor Claims (credit cards, mortgages, business debts)	\$4,100
Remaining Balance for Distribution	\$301,500

Who Gets What?

A will may contain different types of devises. A “specific devise” is a bequest of a particular item or amount of money. For example, the Decedent may provide for “my china to my daughter” or “\$25,000 to my brother.” A “residuary beneficiary” is someone who is left all or a portion of the remainder of the Estate. For example, the Decedent’s will provides that “after payment of the specific devises above, the remainder of my estate shall be distributed in equal shares to each of my children.” Specific devises are paid first.

For example, if a Decedent’s Estate contains \$200,000 and the will provided for four (4) specific devises to different charities in the amount of \$50,000 each and the balance to the Decedent’s children, the remainder beneficiaries (the children) would not receive anything.¹

¹ This is the reason why experienced estate planning attorneys may suggest that such bequests be reflected as a percentage of the estate.



What if there is no will?

Intestate succession is the process of distribution when the Decedent dies without a will. Under these circumstances, the first determination that needs to be made is whether the property is classified as “community property” or “separate property.”¹

Community property assets vest in the surviving spouse. Separate property assets are distributed in accordance with the Nevada Revised Statutes. If there is a surviving spouse and one child, the assets are distributed in equal shares. However, if there is more than one child, then the surviving spouse receives one-third of the separate property and the balance is distributed in equal shares to the children. The statutes address different scenarios as well. For example, what if there is no surviving spouse or children, etc. In the event no family members can be located, the Estate may be distributed to the State of Nevada.

¹ Property acquired by either spouse prior to the marriage or property acquired by gift or devise or an award for personal injury damages after the marriage is separate property of that spouse. All other assets are considered community property.





What happens if a beneficiary identified in the will dies before the Decedent?

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If a person named as a beneficiary in the will dies before the Decedent, their distribution will lapse. However, if the predeceased beneficiary was a descendant and he or she is survived by living descendants, then their share is to be distributed in equal shares to the living descendants.

For example, if the will provides for the remainder of the Estate to be divided equally to the Decedent's four children but Child A died before the Decedent and is survived by children, his or her one-fourth interest would be distributed in equal shares to his or her children. If there were no children, the share would lapse and the Estate would be distributed equally between the surviving three children.

Selecting an Attorney

Retaining the right attorney for you is more art than science. There is no magic formula but certainly experience counts. There are many skilled practitioners that regularly practice in the Nevada probate courts and finding someone who has extensive experience in dealing with probate matters should be easy.

However, the truth is that even the most experienced, brilliant probate attorney may not be a good fit. That's why there's chocolate, strawberry and vanilla – not everyone likes the same flavor. Consider the following suggestions on the next page for hiring a Probate Attorney.



Tips on hiring a probate attorney

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Meet the attorney face to face. This is the best way to get a “gut feeling” if you are comfortable with this person. Don’t forget that you will likely have to share family history, concerns about the process, and discuss outstanding problems the Decedent may have had.



Prepare for the meeting. Don’t waste your time or that of the attorney. Make a list of questions ahead of time.



Meet the probate paralegal or legal assistant. This person will assist the attorney to gather the information and work on many steps of the probate. He or she is an important part of the legal team being retained to assist you and you should feel comfortable with them as well.



Consider how the attorney addresses your questions. Do you feel rushed? Does he or she talk down to you or provide answers in an easily understandable manner?



Is the attorney and his assistant accessible? Were you able to talk to them at your initial phone call? If you left a message how long did it take to get a call back or return email?

While there are many more factors to consider in the selection of counsel, the ability to communicate with your attorney will be imperative to help you deal with the stressful situations that often arise in the probate process.

Drizin Law

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The Drizin Firm offers its clients over 45 years of experience in Probate, Real Estate, Estate Planning, Divorce, Custody, Business Law, Guardianship and Litigation. We are committed to providing our clients compassionate and quality attention to all matters. We place a high value on responsiveness, both in its timely help to clients and how well it meets their needs and objectives.

For over twenty years, Lee A. Drizin has been an advocate for families during times of uncertainty. He is an experienced Nevada probate, real estate, and estate planning attorney who has made it his life's work to advocate for families in their time of need. "It's not always easy work, but I am passionate about assisting my clients through the legal twists and turns of the probate process. I want them to know they don't have to walk this path alone. We will be there every step of the way."



Lee A. Drizin, Esq.

List of Probate Assets and Liabilities

(attach separate sheet if necessary)

Assets	Value
Bank account (list each separately by account number)	
Brokerage accounts	
Stocks and Bonds	
Real Estate (including time shares)	
Cars, Trailers, Motorcycles (make, model, year)	
Household goods, Furniture, Tools, Artwork	
Boats	
Ownership in corporations (limited liability company, partnerships or sole proprietorship)	
Jewelry/Clothing and Personal Items	
IRS or deposit refunds due	
Any non-probate assets that omit beneficiary or names predeceased beneficiary	
Frequent flyer programs	
Reward club memberships	
Other (please specify)	

List of Probate Assets and Liabilities (attach separate sheet if necessary)

Liabilities	Value
Debt ¹ (list each separately)	
Credit cards (list each separately)	
Medical Expenses	
Mortgages	
Federal Income Taxes	
Loans (other than mortgages)	
Funeral expenses	
Utilities	
Social Security paid after death	
Other (please specify)	

.¹ Provide name of each creditor, account information and amount owed. It is helpful to also bring any recent statements relating to each debt.

Items to bring for your initial consultation

Documents	Date located
Will or Trust	
Birth Certificate	
Death Certificate (request multiple copies)	
Marriage Certificate (from all marriages)	
Divorce Decree (if applicable)	
Credit card statements	
Social Security Card	
Bank account statements	
Retirement statements (401K, IRA, Annuities)	
Tax returns (previous year)	
Mortgages and loans	
Life insurance policies	
Safety deposit box information	

When you need us, we'll be there.

Navigating the complexities of Wills, Trusts & Probate for over two decades.

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