



**Memo from Layne T. Rushforth**

Date: June 10, 2019  
Subject: Summary of AB 286 (2019)

To Whom It May Concern:

Assembly Bill 286 has passed the 2019 Nevada Legislature and was signed into law on June 3, 2019 by Governor Sisolak. Its provisions will be effective October 1, 2019.

1. **Homestead.** Under AB 286, the proceeds from sale of homestead continue to be exempt. The exemption includes the amount payable to a spouse under the law. The cash proceeds of a sale must be reinvested in a new home that is identified within 45 days after the sale, and possession of the home must occur within 180 days after the sale. [Sec. 6.5; NRS Chapters 21 and 115]<sup>1</sup> In a separate bill, the homestead exemption was increased from \$550,000 to \$605,000.

2. **Perpetuities.** For greater flexibility, NRS 164.045 no longer prohibits taking action to extend of the Rule against Perpetuities. In addition, the proposed legislation provides that charitable interests arising from the exercise of a power of appointment can be perpetual. Confusing and unnecessary language in NRS 111.1031 was eliminated. [Secs. 4, 5, 37; NRS Chapters 111 and 164]

3. **Creditors.** Prior to 2017, creditors could not reach the property subject to a general power of appointment of a decedent who had not exercised that power. In 2017, Nevada adopted the Uniform Powers of Appointment Act (UPAA), which provided otherwise in some circumstances, creating a conflict between the statute in the trust law and the UPAA. AB 286 changes the Statute relating to creditors' claims against nonprobate assets to eliminate any claim against power subject to a general power of appointment held by the decedent except to the extent the power of appointment was actually exercised in favor of the decedent or the decedent's estate. [Secs. 6, 21; NRS Chapter 111; 162B]

4. **Community Property.** Before the new enactment, it was not clear whether community property could be owned half by each spouse's separate trust. AB 286 provides that community property interests can be held in separate trusts by the spouses and transmutation is not presumed by such a transfer because transmutation requires clear and convincing evidence of the mutual intent to transmute. Community property includes community property that is transferred to irrevocable trusts to the extent of the spouses' interests in the trust. Community property in a trust cannot be encumbered or transferred without the written consent of both spouses. [Secs. 8 and 9; NRS Chapter 123]

5. **Intestacy.** AB 286 made a minor change in Nevada intestacy law relating to half-blood heirs. [Sec. 10; NRS 134]

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<sup>1</sup> "Sec." refers to a section number in the bill (AB 286). "NRS" refers to the Nevada Revised Statutes.

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6. **Probate Forum.** Selecting the proper court for a probate matter has become more flexible. The convenience of the fiduciary and the parties are relevant factors. [Secs. 11-12; NRS 136]

7. **Lost Wills.** Traditionally, a lost will was presumed to have been destroyed with the intent to revoke. AB 286 reverses that presumption if a copy of the will can be provided and is supported by two witnesses. The presumption that the will is valid can be rebutted by clear and convincing evidence. [Sec. 13; NRS 136]

8. **No-Contest Clause.** AB 286 updates the no-contest clause provisions as to both wills and trusts, primarily because of judicial rulings that seem to find an excuse not to enforce them. [Secs. 14 and 23; NRS 137 and 163]

(a) “[Exceptions], a no-contest clause in a will must be enforced, to the greatest extent possible, by the court according to the terms expressly stated in the no-contest clause without regard to the presence or absence of probable cause for, or the good faith or bad faith of the devisee in, taking the action prohibited by the no-contest clause. A no-contest clause in a will must be enforced by the court because public policy favors enforcing the intent of the testator.”

(b) The executor or trustee may withhold distributions if application of the no-contest is possible. Amounts paid to a beneficiary who is eventually excluded by the application of the no-contest clause must reimburse the estate or it can be offset against amounts otherwise due to that beneficiary.

(c) A no-contest clause in a will or trust continues to be valid after a codicil or amendment as long as it is not expressly modified in the codicil or amendment.

9. **Retraining Executor or Trustee.** The court may grant an *ex parte* order (i.e., a temporary order without a hearing) to restrain acts of a personal representative (executor or administrator) or a trustee, to temporarily halt activities pending further investigation. There are penalties if such an order is obtained without probable cause. [Secs.15, 22, 25, 27-31; NRS 143.165 and NRS 163]

10. **Set Aside.** The probate court may consider a petition to set aside the estate without administration that involves a portion for the surviving spouse or minor child(ren) and the balance to the decedent’s will beneficiaries or heirs. [Sec. 16; NRS 146]

11. **Revocable Trusts.** Under AB 286, the trust instrument can give a non-settlor the power to revoke. This is not prohibited under current law, but this makes it clear that it is permissible. [Sec. 24; NRS 163]

12. **Powers of Appointment.** The Uniform Power of Appointment Act is being modified. [Secs. 17-21 and 24; NRS 162B]

(a) Governing law will be as declared in the document creating the power, or, if none, the law of the power-holder’s domicile;

(b) Until the appointee has received the appointed property, a power of appointment is presumed revocable and amendable unless the document creating the power provides otherwise.

(c) AB 286 removed the requirement that the instrument creating the power must transfer the appointive property.

(d) A power-of-appointment holder may create general or non-general power unless the document creating the power provides otherwise.

(e) Appointive property is not subject to a claim of any creditor, unless the property is actually exercised in favor of the decedent or the decedent's estate.

13. **Removal of a Trustee.** NRS 163.115 was modified to specify conditions under which a trustee may be removed by court order. A person who attempts to remove a trustee without probable cause can be ordered to pay all expenses. [Sec. 26; NRS 163]

14. **Decanting.** AB 286 removed the requirement that the property "decanted" into a second trust cannot have a lower value than in the first trust. [Sec. 32; NRS 163.556]

15. **Memorandum for Distribution of Trust Property.** A memorandum to the trustee directing the dispositive of specific assets is no longer limited to tangible personal property, but the trust instrument can limit its scope. [Sec. 32; NRS 163.590]

16. **Trustee Compensation.** Nevada law now expressly entitles the trustee of a nontestamentary (i.e., *inter vivos*) trust to reasonable compensation and sets forth permissive fee arrangements. (This is the express law for testamentary trusts, but AB 286 makes it expressly apply to nontestamentary trusts.) [Sec. 34; NRS 164]

17. **Notice to Creditors of Trust and Settlor of Trust.** NRS 155.020 has been modified to provide a separate notice to creditors for the Settlor and for the trust itself. [Sec. 35]

18. **Virtual Representation.** A power-of-appointment holder may represent and bind a person who is a permissible appointee or taker in default of appointment. [Sec. 36; NRS 164]

19. **Spendthrift Trusts.** Under AB 286, NRS Chapter 166 had some minor modifications: [Secs. 39-41]

(a) Definitions were added to Nevada's spendthrift trust laws. The term "settlor" applies to any contributor to the trust.

(b) The following provision referring to the federal Bankruptcy Code was added:

*A provision in a trust instrument that provides the 28 restrictions set forth in this section is an enforceable restriction on 29 the transfer of a beneficial interest of the transferor that is 30 enforceable under applicable nonbankruptcy law pursuant to 11 31 U.S.C. § 541(c)(2).*

20. **Other Changes.** This memo summarizes only the major changes.

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