SOLOMON | DWIGGINS | FREER LTD
TRUST AND ESTATE ATTORNEYS

NEWSLETTER

SUMMER 2016

HIGHLIGHTS

- Mark A. Solomon, Dana A. Dwiggins, and Alan D. Freer were again recognized as Super Lawyers
- April 27, 2016 – Mark A. Solomon presented at a STEP seminar entitled "Developments in Nevada Estate Planning Legislation"
- Brian K. Steadman and Alexander G. LeVeque were each selected as Rising Stars by Super Lawyers
- Jeffrey P. Luszeck was named to the 2016 Nevada Legal Elite by the Nevada Business Magazine and presented at a seminar entitled "Estate Administration from Start to Finish" on June 14, 2016
- Alexander G. LeVeque and Steven E. Hollingworth attended a meet and greet with John Ralston
- April 6, 2016 & April 29, 2016 - Steven E. Hollingworth was interviewed by Channel 8 regarding tax matters and Prince's estate

UPCOMING EVENTS

- SDF will be hosting BNY Mellon on July 12, 2016 for a Cannon Teleconference entitled "Preserving the Integrity of the Estate Plan"

IN THIS ISSUE

New Tax Basis Reporting and Disclosure Requirements for Executors and Beneficiaries……1

Probate Basics……2

A NOTE FROM SDF

Solomon, Dwiggins and Freer, LTD. (SDF) is pleased to announce that it will begin to publish a quarterly Newsletter, the purpose of which is to provide cutting edge and informative articles pertaining to trust and estate litigation and administration, estate planning, tax matters, and general civil litigation to assist the general public, business owners, and legal and accounting professionals. SDF hopes the Newsletter will become a valuable resource for the State of Nevada.

ARTICLES

New Tax Basis Reporting and Disclosure Requirements for Executors and Beneficiaries

Steven E. Hollingworth, Esq.

Under Section 6035 of the Internal Revenue Code, all executors who have filed or are required to file a federal estate tax return after July 31, 2015 must file an additional informational return with the IRS and with the estate beneficiaries. Form 8971 – Information Regarding Beneficiaries Acquiring Property from a Decedent – must be filed no later than the earlier of (a) 30 days after the date the estate tax return is filed or (b) 30 days after the due date (including any extensions) for the estate tax return.

As a special transition rule, any Form 8971 ordinarily due before June 30, 2016 need not be filed with the IRS and furnished to a beneficiary until June 30, 2016. *See* Notice 2016-27. Although final regulations interpreting the executor's filing obligations have not yet been promulgated, IRS officials have stated that the IRS does not intend to further extend the filing deadline. Because failure to timely file a Form 8971 can expose the executor to penalties, executors should be prepared to file Form 8971 based on the existing form and the proposed regulations.

The purpose of this new reporting obligation is to enforce the mandate under Section 1014(f) of the Internal Revenue Code, which provides that the tax basis of any property that is included in a decedent's estate and increases an estate tax liability cannot exceed its finally determined estate tax value.

The new filing obligations are imposed only on executors of estates that are required to file a Form 706 estate tax return. Basis reporting is not necessary if the estate falls under the Form 706 filing threshold or if the executor is filing an estate tax return only to elect portability or make a GST election.

If, by the due date of the Form 8971, the executor has determined how the estate assets are to be distributed among the beneficiaries, the executor must list and disclose to each beneficiary on Schedule A those items from the estate tax return that the respective beneficiary will receive. If the actual distribution varies from the Schedule A, the executor must file a supplemental Form 8971 and schedules with the IRS and each affected beneficiary. See Prop. Reg. §1.6035-1(e)(1).

On the other hand, if by the filing due date the executor has not yet determined how the estate assets are to be allocated between beneficiaries, the executor must report on the Schedule A for each beneficiary an itemized list of all of the property that could be used to satisfy the beneficiary's allocation. See Prop. Reg. §1.6035-1(c)(3). After the executor has determined the exact distribution, the executor may, but is not required to, file a supplemental Form 8971 and schedules with the IRS and each affected beneficiary. See Prop. Reg. §1.6035-1(c)(3).

If the beneficiary receiving the estate assets is a trust or another estate, the statement should be sent to the respective fiduciary of the estate or trust. However, the IRS has taken the position that if the trust, estate, or any beneficiary later transfers the inherited asset to a related person, by gift or other transaction in which the recipient's basis is carried over from the transferor in whole or in part, the transferor must, no later than 30 days after the transfer, file a Form 8971 with the IRS and furnish a copy to the transferee.

Probate Basics

Jeremy M. Welland, Esq.

What is probate?

Probate refers to the court proceeding required to effectuate the transfer of assets of a deceased person (hereinafter referred to as "decedent") to the person or entity entitled to receive those assets. The property owned by the decedent at death is referred to as the "probate estate" or simply the "estate." Nevada's probate law has different requirements based on the value of the probate estate. During the probate process, the decedent's debts, including any estate taxes, must first be paid from the estate (and debts owed *to the decedent* must be paid into the estate), and the remainder is divided in accordance with the decedent's wishes as set forth in the Last Will and Testament or *via* Nevada's intestate succession law as set forth in NRS 134.

What Happens To A Will After The Death Of A Decedent?

Following the death of a decedent, "any person having possession of a will shall, within 30 days after knowledge of the death of the person who executed the will, deliver it to the clerk of the district court which has jurisdiction of the case or to the personal representative named in the will." NRS 136.050(1).

Once the Will is filed, and the personal representative is confirmed by the court, the personal representative has broad powers to collect all property of the probate estate, to collect debts due to the testator, and to pay debts owed by the testator. This process can be simple for small estates, or complex and lengthy if the testator owned significant property or businesses. Once all of the estate property is collected and the decedent's debts (including estate taxes, if applicable) are paid, the administrator(s) will distribute the estate among the beneficiaries pursuant to the terms of the Will.

What is the Penalty for Failing to Deliver the Will as Required by NRS 136.050?

If the person in possession of the Will fails to deliver the same to the clerk of the district court or the personal representative named in the will without "reasonable cause," that person may be liable to "every person interested in the will for the damages the interested person may sustain by reason of the neglect." NRS 136.050(3).

How Can I Compel a Third-Person in Possession of the Will to Deliver the Same?

The remedy is to file a petition with the district court which has jurisdiction over the case and advise the court who has possession of the will. If the "court is satisfied that the allegation is correct, an order must be issued and served upon the person having possession of the will, requiring that person to produce it at a time to be named in the order." NRS 136.060(1).

"Any person having the possession of a Will who neglects or

refuses to produce it in obedience to such an order may, by warrant from the court, be committed to the county jail, and be kept in close confinement until the person produces the will. The court may make all other necessary orders at chambers to enforce the production of the will." NRS 136.060(2).

Can a Will be contested?

Yes. Although in Nevada a Will is presumed to be valid, a Will can be contested, inter alia, on grounds that: (1) the will lacks proper formalities (e.g., not properly signed or witnessed); (2) the decedent lacked mental capacity; and (3) the decedent was coerced or unduly influenced to execute the Will. *See* NRS 137.020(2).

If after evidence is heard regarding the circumstances surrounding the preparation and execution of the Will, it is found that the Will was "executed by the testator, who was at the time of sound and disposing mind and not under duress, menace, undue influence or fraudulent representation, the court, by order in writing, shall admit the will in probate." NRS 137.060.

After the Will has been admitted to probate, an interested person may still dispute the validity of the will, the court's jurisdiction, who should serve as personal representative, the proper administration of the Will, dispute over the meaning provisions, etc. *See* NRS 137.080.

I have been named as an administrator or heir in a will. How can an attorney help me?

An attorney can help you navigate the probate process and make sure your legal rights are protected. Whether you have been designated as a personal representative, you want to contest a Will, or you simply want to ensure that you receive what you are owed as an heir, retaining an attorney may ensure that you comply with the law and that you receive the distribution that you are entitled to.

Recent Revisions to NRS 159

Jeffrey P. Luszeck, Esq.

Nevada No Longer Requires A Non-Resident Guardian To Associate With A Nevada Resident

One of the major changes to the guardianship statutes that became effective July 1, 2015, is that NRS 159.059, which required a non-resident to associate in a Nevada resident, was repealed. That being said, the revisions made by SB 262, Section 1(6)(b), now codified in NRS 159.0613, require a Non-Resident Guardian to meet certain requirements, one of which is to register with the Nevada Secretary of State and designate a resident agent.

Further, pursuant to the new NRS 159.0613(6)(c), the court may require a Non-Resident Guardian to complete training concerning guardianships regarding:

(1) The legal duties and responsibilities of the guardian…;
(2) The preparation of records and the filing of annual reports regarding the finances and well-being of the adult required pursuant to NRS 159.073;
(3) The rights of the adult;
(4) The availability of local resources to aid the adult; and
(5) Any other matter the court deems necessary or prudent.

SDF Newsletter is published quarterly by Solomon, Dwiggins and Freer, LTD.