BLACK & LOBELLO NEWSLETTER

YOU HAVE BEEN SERVED!

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Nevada Probate Basics

Christopher J. Phillips, Esq.

What would happen to your assets if you died today? A proper estate plan can be the difference between an efficient, expeditious, and inexpensive distribution of your estate and an administration that takes years and costs tens of thousands of dollars. In Nevada, there are several mechanisms that can be implemented to avoid the expense of probate entirely.

When people do not establish a trust or take other steps to avoid probate, the Probate Court will then supervise all activities relating to the payment of the final expenses of the decedent, determine who is entitled to inherit the deceased person's assets, and charge for those services.

Nevada has four levels of probate or estate administration.

Affidavit of Entitlement or Affidavit of Small Estate

If the deceased owned $20,000 or less and had no real property and no debts, the heirs can present a simple affidavit with a death certificate to a bank, DMV, or other entity in order to transfer title. In this case there is no need to file anything in Court.

Set Aside without Administration

If the deceased owned $100,000 or less, the heirs or beneficiaries under the Will can petition the District Court to distribute the decedent's assets to the heirs or beneficiaries without any Court supervised administration. This procedure is relatively simple and economical.

Summary Administration

If the deceased owned assets valued between $100,000 and $200,000, either the deceased's next of kin or the person the decedent designated in a Last Will and Testament as the Executor/Executrix must conduct a formal, Probate Court supervised

procedure to administer the estate, pay the debts and distribute the remaining assets to the beneficiaries. If the deceased did not have a Will, a relative or other interested person may petition to administer the estate. The assets go to the relatives of the deceased in accordance with Nevada's laws of intestate succession. This process cannot be completed in less than four (4) months and the administrative and attorneys' fees associated therewith can be determined by a percentage of the total estate.

General Administration

If the deceased dies with assets in excess of $200,000, the estate must be administered under Probate Court supervision, as in a Summary Administration. The only difference between the two is that, in a General Administration, there is a longer period of time creditors have to file claims against the estate and the filing fees are almost double that of a Summary Administration. This process cannot be completed in less than five (5) months and it is not uncommon for an uncontested General Administration to take longer than one (1) year.

Probate Court can be avoided with an estate plan designed by a competent attorney. The costs for establishing mechanisms for avoiding the intervention of the Probate Court are generally much less expensive than conducting a Probate administration and generally lead to much fewer problems such as will contests, trust contests and other litigation which can lead to additional fees and delays. &

What Can't They Get At?

Using State and Federal Exemptions as Part of an Asset Protection Strategy

Tiffany N. Ballenger, Esq.

Exemptions Provided by Federal Law

Under Federal Law, specifically the ERISA Anti-Alienation Provision (29 U.S.C. § 1056(d)(1)), qualified retirement plans are protected from judgment creditors (this protection typically does not apply to spouses and/or the IRS). The law states"[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." This means that assets held in an ERISA pension plan are not available to creditors. Therefore, ERISA qualified asset protection planning gives a method for business owners and individuals to shelter assets that may otherwise be available to creditors, while at times generating a sizeable tax deduction in the process.

Exemptions Provided by Nevada Law

The Nevada Legislature has enumerated several "exempt" assets via NRS § 21.090.

Nevada Homestead Protection

Under $550,000 NRS § 21.090(1)(l) and NRS § 115.01, the equity interest in a properly claimed homestead will be protected from judgment creditors. However, there are limitations to this exemption that should be noted. Most significant is the limitation of the state homestead exemption in bankruptcy to $125,000, regardless of state law providing for a larger or unlimited exemption. This limitation

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Special Edition: Asset Protection and Probate

This edition of *You Have Been Served!* focuses on estate planning, probate, and asset protection services offered by Black & LoBello. We have acquired some of the finest legal minds in these areas.

Schedule an appointment with us today to make sure your assets and your loved one's are properly planned for and protected.

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Tweet us your questions or legal subjects you would like us to discuss at: *twitter.com/blacklobellolaw.*

Attorney Spotlight

Amy M. Friedlander, Esq.

Abe Geller, Editor for the *YHBS! Newsletter, sits down with Ms. Friedlander for an exclusive interview.*

AG: Amy, what are your primary areas of legal practice?

AMF: I practice mostly family law, but also work on court-appointed child abuse and neglect cases.

AG: What inspired you to practice law?

AMF: I would say that I was never really "inspired" to practice law. Ever since I was little, my parents told me that I could "argue the paint off of walls," and everyone always teased me about being a lawyer. Plus, I've always loved to read and write, so being a lawyer just seemed like the right fit!

AG: What is the most difficult aspect of being a lawyer?

AMF: Right now, I practice mostly family law, which is super emotional and usually very intense. So, I'd have to say that, for me, dealing with people who are in very difficult situations is the most challenging aspect of being a lawyer. At the same time though, helping people out of those types of situations – divorces and custody battles- is also very rewarding.

AG: How do you unwind from stress at work?

AMF: I read a lot. It sounds weird, because I read at work all day long, but I am a huge fan of the NY Times Fiction Best Sellers List. After reading laws all day, it's fun to read stuff that is completely made up! &

To learn more about Ms. Friedlander and other Black & LoBello attorneys, visit our website and click on the **TEAM PROFILES** tab.

Asset Protection from Bankruptcy

Randy M. Creighton, Esq.

As part of an asset protection plan, people may place certain assets into a single member limited liability company (LLC) with the belief that these assets are protected from their individual creditors. However, in the bankruptcy context, a single member LLC will not provide any asset protection for a person from their individual creditors. In multiple jurisdictions, bankruptcy courts held that, where the debtor was the sole member and manager of the subject LLC, the Chapter 7 Trustee could seize control of the LLC and may cause the LLC to sell the assets of the LLC.

Nevertheless, in each of these cases, the bankruptcy court treated the single member LLC differently than an LLC with multiple members. In cases where a single member files for bankruptcy while other members of a multi-member LLC do not, and where the non-debtor members do not consent to a substitute member status for a member interest transferee, the bankruptcy estate is only entitled to receive the share of profits or other compensation by way of income and the return of contributions to which that member would otherwise be entitled.

However, before adding a second member to an LLC, be aware of the "peppercorn" membership interest. A "peppercorn" membership interest is when the LLC owner gives a third party a small interest in the LLC for the sole purpose of avoiding or hindering a creditor from collecting. In this context, a bankruptcy court will avoid the transfer of any ownership interest in the LLC to the third party, which would create a single member LLC again, and then subsequently allow the Chapter 7 Trustee to seize control of the LLC and liquidate its assets.

In closing, before transferring all personal assets to an LLC, make sure the LLC has more than one member and that all members acquired their membership interests for equitable consideration. If these steps are followed, than even in bankruptcy, an LLC can shield personal assets from individual creditors. &

What Can't They Get At?

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applies to homestead interests that are acquired within a 1215-day (3 years and 4 months) period prior to the filing of the bankruptcy petition. Consulting a qualified Bankruptcy Attorney regarding these issues could be helpful as these issues can be complex and must be handled on a case by case basis.

Other Exemptions Provided by Nevada Law

Nevada also provides for protection of up to $500,000 worth of non-qualified Retirement assets (NRS § 21.090(1)(r)). Please note that many of the limitations under ERISA law apply to this exemption as well.

NRS 21.090 provides for additional exemptions, such as the cash value associated with whole life insurance policies (limited to an amount prorated to annual premium payments of $15,000 per year).

Other useful NRS 21.090 exemptions include (please note, this list is not exhaustive):

- Social Security Payments;
- Payments from the Division of Welfare and Supportive Services of the Department of Health and Human Services;
- Proceeds from a life insurance policy;
- Payments received as disability, illness or unemployment benefits, unemployment compensation and Veteran's benefits;
- A vehicle, if your equity in the vehicle is less than $15,000;
- Child support and alimony received;
- Personal property up to $1,000 in value;
- Personal injury payments, in an amount not to exceed $16,150, received as compensation for personal injury (not including compensation for pain and suffering or actual pecuniary loss);
- Seventy-five percent of the take-home pay (with qualifications); and
- Wrongful death settlements (with qualifications).

No discussion of asset protection is complete without a thorough analysis and understanding of Fraudulent Transfer law. For example, a transfer to defeat the rights of existing of anticipated creditors that would violate fraudulent transfer laws is illegal. Additionally, hiding assets in an offshore account (and not disclosing the account in a bankruptcy schedule), and hiding funds from the IRS is illegal. &

Why Should You Create A Trust?

Tiffany N. Ballenger, Esq.

Everyone who wants to accomplish complete estate planning objectives should consider and implement a living trust-centered plan. A living trust-centered plan is the only type of estate planning that can meet all of the elements of our "definition" of effective estate planning.

Reason 1: Control

The most important element of Black & LoBello's definition of estate planning is control and the most important step to gain control of your assets is to create an effective estate plan. If you do not write your own plan, the state will write it for you. If you die without an estate plan, you are deemed to have died intestate. In this case, state laws direct how your assets are to be inventoried, valued, and distributed. If you should become incapacitated without affecting formal planning for that event, adult guardianship laws direct what will happen to you and your property.

State laws also control other aspects of one's life and property. For example, joint tenancy property may be tied up in the courts if one of the joint tenants becomes incapacitated or if there are creditor problems. To exercise estate-planning control, you must take responsible action to implement and use your own estate plan to dictate your wishes, rather than leaving it to the state.

Reason 2: Incapacity

After control, the definition of estate planning addresses incapacity. Statistics show that the odds of suffering a debilitating mental or physical disability are about six times greater than the odds of dying. Due to the greater risk of incapacity, it is imperative to plan for such a life-changing event.

Through proper and effective planning, you can control how you are cared for during incapacity. Additionally, you may purchase long-term health care and/or disability insurance or implement savings plans. It is also possible to leave instructions about physical care in the event of incapacity. Estate plans can clearly direct how property and money should be used for the incapacitated and your loved ones, thereby overruling the state's own mandates. In order to exercise this control, however, one must do so while still deemed competent lest the validity of the arrangements be called into question.

Reason 3: The Recipient

After controlling your property while you are alive, and planning for any incapacity contingencies, you can now focus on giving your property to others at a time or times of your choosing. The trust maker is able to transfer property during life as well as at death through the use of an effective trust plan. Nevada law allows the trust maker to control his property, and to pass it in the manner he chooses to the beneficiaries with amazing latitude and flexibility. However, you must initiate the process while still capable to do so.

Reason 4: Taxes and Expenses

The final part of Black & LoBello's definition of estate planning addresses taxes, fees, and costs. One of the most famous quotations about taxes comes from Judge Learned Hand who wrote:

"Anyone may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one's taxes." (Gregory v. Helvering, 69-F.2d 809)

While saving on taxes and expenses is an important aspect to effective estate planning, be assured that Black & LoBello will not recommend actions that will compromise the first goal of maintaining control. Even if you do not have a taxable estate, probate costs can run anywhere from between three to twelve percent of the GROSS value of your estate. The secret of good planning is to reduce taxes and costs while always retaining control. &

Nevada's Support Statute For Spouses & Minor Children

Christopher J. Phillips, Esq.

The Nevada Legislature has enacted a very powerful statute designed to provide support to surviving spouses and minor children when the gross estate is less than $100,000 (after deducting encumbrances) and avoid paying most, if not all creditors. NRS 146.070 provides that if a person dies with a spouse and no children, leaving a gross estate less than $100,000, the entire estate must be set aside for the support of the surviving spouse. The statute operates similarly for the support of a minor child in the event the decedent is not married and leaves only a minor child or children. This statute directs the decedent's inheritance to the surviving spouse or minor children even if the decedent left a will leaving the estate to someone else.

This statute can allow heirs to avoid a long and costly probate process in the event that a proper estate plan is not implemented or assets are not titled

appropriately at death. This statute can also be utilized by surviving spouses and guardians of minor heirs to avoid having to satisfy creditors such as credit cards, hospital bills, and other non-secured debt. For example, if a married person with no minor children dies leaving a house titled solely in the decedent's name, the value of which is $400,000, but has an encumbrance of $210,000, and the asset is community property, the equity in the house is $190,000, however only 50% of the value is subject to probate. Therefore, the net estate is only $95,000. Even if the decedent had $100,000 in separate debt such as student loans, NRS 146.070 provides that the entire estate, i.e. the

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Black & LoBello Welcomes

Byron E. Thomas graduated from Hampton University in 1998 with a Bachelor of Arts. Mr. Thomas received his Juris Doctor from the University of Minnesota Law School in 2001. After graduating from law school, Mr. Thomas clerked for the Honorable Peter Michalaski of the Third Judicial District, Anchorage, Alaska.

Mr. Thomas's practice is focused on commercial litigation, insurance defense, personal injury, and bankruptcy law. Byron Thomas joined Black and LoBello in April of 2010. &

Christopher J. Phillips

Christopher J. Phillips joined Black & LoBello in 2010. His practice focuses on probate, trust and guardianship administration and probate, and trust and guardianship litigation. Mr. Phillips has extensive trial experience in will contests, trust contests, and contested minor and adult guardianship matters.

Mr. Phillips graduated from Hillsdale in Psychology and received his Juris Doctor from the University of Toledo College of Law in 2002. Mr. Phillips has been a member of the Nevada State Bar since 2002 and has been licensed to practice in United States District Court for the District of Nevada since 2002. He is a member of the Nevada State Bar Probate and Trust division. &

Traps of Joint Banking Accounts

Byron E. Thomas, Esq.

A common tool used to avoid probate is to own a bank account jointly with the right of survivorship held by a family member or friend. Bank accounts held jointly with the right of survivorship avoid probate because, upon death of a co-owner of the account, the funds in the account immediately transfer ownership to the surviving account holder. However, before adding a child or family friend to a bank account, be aware that if the person added to the account files for bankruptcy, the funds held in such joint bank account could be seized by the Bankruptcy Trustee.

When a person files for bankruptcy, all assets become property of the bankruptcy estate which is all property that the debtor holds a legal or equitable interest, including jointly held accounts. Co-owners of a joint bank account would have a legal interest in the account because, as a co-owner of the account, that person has unfettered access to the account. Therefore, even if the non-debtor was solely responsible for funding the subject's joint account, the co-owner of the bank account who files for bankruptcy may cause the account to be seized by the bankuptcy trustee.

Therefore, be cautious before adding a person to a bank account. &

Nevada's Support Statute

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entire house and all of the equity therein, shall be set aside for the support of the surviving spouse.

By utilizing Nevada's community property laws and applying Nevada's support statute in concert, even when an estate initially appears substantial, and probate seems unavoidable, surviving spouses can avoid lengthy and costly probate proceedings and minor children of the decedent can receive the support intended by the Nevada Legislature. This is yet another benefit in establishing residency in Nevada for estate and tax planning purposes. &

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