What happens here only happens here... *But should it?*

The story thus far-a recap of Parts I, II & III

Prior issues of this publication have introduced strange doings in Clark County Probate Court, and the Nevada state law that enables a stranger to take over estates of dead persons with little supervision and questionable results. One individual in particular, Thomas Moore, has gained control of hundreds of estates in recent years, with homes sold and resold and benefits accruing to the same cast of people. Given a surge in deaths due to coronavirus and the expiration of moratoriums on rent and mortgage payments, more estates may become vulnerable to this sort of hijacking. Here, we further explore Nevada's odd law, and how it came to facilitate a scheme that one expert calls "bananas."

A Vegas Voice Investigative Report

by Judy Polumbaum

PART FOUR: UNRAVELING THE LEGAL MINUTIAE

1. The distressed housing backdrop

A Nevada law enabling a total stranger to assume control of a deceased person's estate seems to have delivered more than state legislators bargained for. Although they actually didn't bargain at all.

As described in earlier installments of this investigation, Nevada's Independent Administration of Estates Act, adopted in 2011, allowed one individual to gain authority over hundreds of homes whose owners had passed away.

Back when the act was proposed, advocates of the change voiced only the best of intentions. Nobody seems to have considered where the road paved with good intentions might lead.

Reno attorney Julia S. Gold, who represented the Nevada State Bar Association at committee hearings, told legislators the independent administration proposal was designed to "expedite the probate process, reduce the burdens on the courts and reduce the administrative costs of probate by allowing a personal representative to act more independently from the court in noncontested matters."

Gold said courts would allow such a representative to proceed under the act only in certain circumstances, and only with concurrence of beneficiaries: "Essentially, everyone has to receive notice and agree."

Unmentioned back then, but certainly on many minds, was the foreclosure frenzy that had peaked in 2009 and had yet to subside. Las Vegas was experiencing what one study described as a "dramatic increase in real estate transactions" driven by investors seeking bargains in the distressed housing market.

The proliferation of mortgage defaults put added stress on the probate courts, increasing the incidence of estates burdened by debt, and swelling the throngs of bargain hunters chasing deals wherever they might be found.

Then-Gov. Sandoval signs a bill into law

Previously in Nevada, any real estate sale within probate required court approval and review. A sales contract, along with a formal appraisal of the property, had to be submitted to the probate court in the appropriate county before a sale could occur, and that anyone could offer a higher bid in an open hearing.

Under the new law, for estates valued at under $300,000, an independent administrator could gain full authority to handle such sales according to rules of "summary administration," without court monitoring. This system, it was thought, would ease pressures on the courts, shorten the time frame for settling estates, and reduce legal expenses.

2. Revisiting the statute a decade on

Of course, the Independent Administration of Estates Act was premised on the absolute honesty of independent administrators and impeccable ethical conduct on the part of their attorneys. These assumptions do not appear to have been questioned as the act took effect.

Nearly a decade later, critics say the law is seriously flawed. They want state legislators to fix it. Their Exhibit A is Thomas Moore, Clark County's most prolific court-approved independent administrator of estates.

Gold, the Reno attorney who helped get the act passed, remains a strong proponent. In a phone interview, she said she believes the legislation generally works as intended, alleviating burdens on the system, reducing time in court, and lowering legal costs. The law serves what has always been her goal, she said: "to get as

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much money as possible to heirs and beneficiaries."

To Gold, Thomas Moore's dealings with hundreds of estates in Clark County sounds like "a complete abuse of the statute," but not cause to thoroughly revamp the law. "One bad actor should not cause the law to change [entirely]," she said.

However, Gold did support amending the statute to provide additional protections, such as a mandate that the public administrator be notified whenever a non-relative seeks authority over an estate of someone who died without a will.

As currently written, the law specifically requires petitioners to send notice of intent to administer an estate to the state's director of Health and Human Services (for purposes of Medicaid recovery) and any identified heirs. More generally, it requires notice to others with an "interest" in the estate. Once appointed, the administrator also must notify creditors, who under summary administration have 60 days to file claims. [NRS 145.030, 145.060, 155.010, 155.020]

In addition, Nevada law mandates notification about any "proposed action," such as real estate sales, requiring that the administrator send "a reasonably specific description of the action" along with contact information to known heirs, others whose interests might be affected, anyone who has filed a request for "special notice" about the case, and, if state interests are involved, the state attorney general's office. [NRS 143.700, 143.705, 143.725]

Dana A. Dwiggins, managing partner in a sizeable Las Vegas trust and estate law firm and also active in the state bar association, affirmed that a move is afoot to "firm up checks and balances" related to independent administration. She said members of the bar's probate section support adding the public administrator to the list of mandatory notifications.

Dwiggins noted that although the act was supposed to alleviate the overload on the state's probate courts, those courts remain backlogged. In her view, the act is "underutilized" – for whatever reason, she said, few attorneys she knows use it, or even have much awareness of it.

3. A not necessarily awful idea gone bad?

Others see deeper problems with the law. Sources familiar with probate proceedings in Clark County, Nevada's most populous, say the Independent Administration of Estate Act actually invites misconduct. The growing number of critics includes attorneys, property investors and realtors, and, of course, individuals faced with a strange kind of hijacking of their deceased relatives' homes.

It's probable that many of the Clark County homes turned over to independent administration actually are behind in mortgage payments, or even underwater. But documentation that would clarify the details of equity and debt does not seem to be obligatory for smaller estates under summary procedures.

It's surely true that some of these homes are in poor condition and require substantial investment to rehab for resale. However, a study of the Vegas housing market in the wake of the last recession states that "the great majority of distress sale properties coming onto the market do not need more than modest, largely cosmetic, repairs to be saleable." There is no reason to believe that the housing stock is in worse shape now.

It's likely that sales and even resales of these properties don't always produce profits in every single case, or that proceeds may be moderate. But collectively, an independent administrator who takes on a volume of cases must have something in mind. Thomas Moore, asserts one observer, has been "running a mill."

In theory, especially in a community with the volatility and transience of Las Vegas, the idea of the independent administrator is not necessarily terrible, according to experts. When houses are underwater and heirs don't want to deal with them or live out of state, independent administration may help get abandoned or neglected properties restored and inhabited.

The problem is that, when it comes to relatively low-value estates, those worth less than $300,000, Nevada's independent administration allows transactions to take place "under the radar, [so] nobody knows what's going on," in the view of one critic. Lacking explicit requirements for documentation and transparency, the act permits what another observer characterizes as "sloppy and greedy and negligent" handling of a subsector of estates.


Sheldon Kurtz. Professor emeritus of law at the University of Iowa

This flies in the face of what veteran probate scholar Sheldon Kurtz, professor emeritus of law at the University of Iowa, says are fundamental expectations in court. "We assume people are telling the truth," he said, "unless someone else shows up to contest it."

Another scholar observes that our legal heritage tolerates deception where no challenges exist. "American courts function on an adversary tradition," this expert said: Courts weigh evidence and arguments on opposing sides, then make a decision. "The Anglo-American paradigm is two parties slugging it out. When there's only one party, they're not likely to question."

Moreover, these tendencies disproportionately afflict the less affluent, those who leave modest estates, and whose surviving family members likewise have limited means. Wealthy people usually are better prepared for the afterlife, putting their plethora of assets in trust, which avoids probate altogether. "These are not wealthy people," said one observer. "They are middle-class people who truly may have nothing but the house."

Stay tuned for-

PART FIVE:

ANTICIPATING REFORMS