

## CHAPTER 139 - APPOINTMENT OF ADMINISTRATORS

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### COMPETENCY AND PRIORITY

**SECTION 139.010 Qualifications.** No person is entitled to letters of administration who:

1. Is under the age of majority;
2. Has been convicted of a **Category A offense** relating to the position of an administrator;
3. Upon proof, is adjudged by the court disqualified by reason of conflict of interest, drunkenness, improvidence, or lack of integrity or understanding; or

**SECTION 139.030 Surviving partner.** The surviving partner of a decedent must not be appointed administrator of the estate if any interested person objects to the appointment.

**SECTION 139.040 Order of priority for right to appointment; priority of nominee.**

1. Administration of the intestate estate of a decedent must be granted to one or more of the persons mentioned in this section, and they are respectively entitled to priority for appointment in the following order:

- (a) The surviving spouse.
- (b) The children.
- (c) The father or the mother.
- (d) The brother or the sister.
- (e) The grandchildren.
- (f) Any other of the kindred entitled to share in the distribution of the estate.
- (g) The public administrator.

- (h) Creditors who have become such during the lifetime of the decedent.
- (i) Any of the kindred not above enumerated, within the fourth degree of consanguinity.
- (j) Any person or persons legally qualified.
- 2. A person in each of the foregoing classes is entitled:
  - (a) To appointment, a member of the Ely Shoshone Tribe.
- 3. If any heir who is otherwise entitled to appointment is a minor or an incompetent person for whom a guardian has been appointed, the court may appoint the guardian of the minor or incompetent person as administrator.

**SECTION 139.050 Nomination.** Administration may be granted upon petition to one or more qualified persons, although not otherwise entitled to serve, at the written request of the person entitled, filed in the court.

**SECTION 139.060 Relatives of whole blood preferred to those of half blood.** When there shall be several persons claiming and equally entitled to the administration, relatives of the whole blood are preferred to those of the half blood.

**SECTION 139.070 Discretion of the court.** When there are several persons equally entitled to the administration, the court may, in its discretion, grant letters to one or more of them.

**SECTION 139.080 Failure to claim letters.** Letters of administration may be granted to any petitioner, even if it appears that there are other persons having priority for appointment, if the latter fail to appear and claim the issuance of letters to themselves after receiving due notice of the proceeding.

#### **PETITION FOR LETTERS OF ADMINISTRATION**

**SECTION 139.090 Contents of petition; effect of defect.**

- 1. A petition for letters of administration must be in writing, signed by the petitioner or the attorney for the petitioner and filed with the clerk of the court, and must state:
  - (a) The jurisdictional facts;
  - (b) The names and addresses of the heirs of the decedent and their relationship to the decedent, so far as known to the petitioner, and the age of any who is a minor;
  - (c) The character and estimated value of the property of the estate; and
  - (d) That the person to be appointed as administrator has never been convicted of a felony/**Category A offense.**
- 2. No defect of form or in the statement of jurisdictional facts actually existing voids an order appointing an administrator or any of the subsequent proceedings.

**SECTION 139.100 Clerk to set petition for hearing; notice of hearing.** The clerk shall set the petition for hearing, and notice must be given to the heirs of the decedent. The notice must state the filing of the petition, the object and the time for hearing.

**SECTION 139.110 Right of contest: Filing of counterpetition; notice and hearing.** An interested person may contest the petition by filing a written opposition on the ground that the petitioner is not qualified or may assert the contestant's own right to the administration and request that letters be issued to the contestant. In the latter case, the contestant must file a petition and give the notice required for the original petition, and the court must hear the two petitions together.

**SECTION 139.120 Facts to be proved.** Before letters are granted, the fact of death and that the decedent died intestate, and that notice has been given as required in this chapter, must be proved by the evidence of the petitioner or others. The court may also examine the petitioner or any other person concerning the time, place and manner of

death, the place of the decedent's residence at the time of death, the character and value of his property, and whether or not the decedent left a will, and the court may compel any person to attend as a witness for that purpose.

**SECTION 139.130 Entry in minutes or written order conclusive evidence of notice.** An entry in the minutes or in the written order appointing the administrator that proof was made and that notice had been given according to law is conclusive evidence of the fact of such notice.

### **REVOCATION OF LETTERS OF ADMINISTRATION**

**SECTION 139.140 Right of person with priority to petition for revocation and reissuance of letters.** When letters of administration have been granted to any person other than the surviving spouse or the spouse's nominee, or the child, father, mother, brother or sister of the decedent, any one of them, if otherwise qualified, may obtain the revocation of the letters by presenting to the court a petition requesting the revocation, and that letters of administration be issued to the petitioner.

**SECTION 139.150 Procedure.**

1. If a petition for revocation is filed, notice must be given as in the case of an original petition, and the petitioner shall serve a citation on the administrator to appear and answer the petition at the time appointed for the hearing. The citation must be served on the administrator in accordance with [SECTION 155.050](#) at least 10 days before the date of the hearing.

2. At the time appointed, upon proof that the citation, together with a copy of the petition, has been duly served and notice given as required in subsection 1, the court shall take evidence upon the petition, and if the right of the petitioner is established, and he is qualified, letters of administration must be granted to him and the letters of the former administrator revoked. The former administrator shall promptly file an accounting in accordance with [SECTION 150.080](#).

**SECTION 139.160 Assertion of prior right.** The surviving spouse, or nominee of the surviving spouse, when letters of administration have been granted to a child, parent, brother or sister of the decedent, or any of those relatives, when letters have been granted to any other of them, may assert the prior right of the spouse or nominee, and obtain letters of administration, and have the previous letters revoked in the manner prescribed in [SECTION 139.150](#).

**SECTION 139.170 Discretion of court.** The court may refuse to grant letters of administration as provided in this chapter to any person or to the nominee of any person who had actual notice of the first petition and an opportunity to contest it.