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### In re Estate of Horst Revocable Tr., 136 Nev. Adv. Op. 90 (Dec. 31, 2020)

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NOTICE TO BENEFICIARIES: “ANY” MEANS “ALL”

**Summary**

Under NRS 164.021(2)(c), a trustee’s notice to beneficiaries is required to include “[a]ny provision of the trust instrument which pertains to the beneficiary.” Patricia Horst, a trustee to her grandmother Ella E. Horst’s Trust, served notice to beneficiaries, heirs, and interested persons regarding the Trust’s irrevocability. At the time she issued notice, the Trust contained three amendments. No beneficiaries objected within the allotted 120-day period. When Patricia later sought to recognize a purported fourth amendment, Brian Holiday, Ella E. Horst’s son, filed an objection to all the Trust’s amendments. Patricia argued that Holiday was time-barred from objecting to the second and third amendments. Holiday disagreed and contended that the word “any” in the statute was properly interpreted to mean “all.” The Court found that based on the principles of statutory construction, the word “any” in NRS 164.021(2)(c) means “all.” Thus, Holiday was not time-barred from objecting to the second and third amendments of the Trust when Patricia sought to recognize the fourth amendment.

**Background**

The Trust’s settlor, Ella E. Horst, established the Trust to benefit her children and grandchildren. The trust originally provided a specific gift to one of her grandchildren, Patricia, with the remainder divided amongst Ella’s two grandchildren. Ella executed the first amendment of the Trust to reflect the death of her daughter and add specific gifts to her son, Brian Holiday.

Ella eventually bought a home with Patricia and Patricia’s partner, with the Trust paying 50 percent of the purchase price in cash and retaining a 50-percent interest in the home. Ella executed the second amendment to the Trust a few years later, annulling Patricia’s initial specified gift, providing her with a specific gift of the Trust’s interest in the home, and naming Patricia successor trustee. The following year, Ella executed the third amendment to the Trust, which provided an additional gift of real property to Patricia. Patricia’s partner later conveyed her 25-percent interest in the home to the Trust. It was at that point that Ella purportedly executed the fourth amendment to the Trust, where she added a specific gift of the Trust’s recently acquired 25-percent interest in the home to Patricia.

Upon Ella’s death, the Trust became irrevocable and Patricia accepted her appointment as successor trustee. She then served notice to beneficiaries, heirs, and interested persons regarding the Trust’s irrevocability, as required by NRS 164.021(1). The notice included the full text of the original Trust and the first three amendments but did not include the purported fourth amendment. None of residuary beneficiaries timely objected to the notice.

Over a year later, Patricia petitioned the district court to confirm the purported fourth amendment as a valid amendment to the Trust. That same month she sent a notice to all Trust beneficiaries. Two months later, Holiday filed an objection, arguing that the purported fourth amendment was not valid and that the second and third amendments were the product of undue influence. The district court concluded that NRS 164.021(4) barred Holiday’s objection to the second and third amendments because he filed it more than 120 days after Patricia served the

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<sup>1</sup> By Ashley Schobert.

initial notice of the Trust's irrevocability, in which she included the first three amendments. The district court, however, permitted Holiday's objection to the purported fourth amendment. Holiday then appealed.

## **Discussion**

The question presented to the Court was what a trustee must include in a notice to beneficiaries under NRS 164.021 to trigger the 120-day limitation period for challenging the validity of a trust. The Court specifically considered whether Patricia's initial notice to the beneficiaries complied with NRS 164.021(2)(c), thereby triggering the 120-day limitation under NRS 164.021(4) and precluding Holiday's challenge to the second and third amendments to the Trust.

In order to answer this question, the Court employed a statutory interpretation analysis. The Court explained that the language of a statute is considered ambiguous if the plain language is "subject to more than one reasonable interpretation."<sup>2</sup> Once the Court determines that a statute is in fact ambiguous, it may consider "reason and public policy" to discern the Legislature's intent.<sup>3</sup> The Court concluded that NRS 164.021(2)(c) is ambiguous, so employed a full statutory interpretation evaluation.

Under NRS 164.021(4), a beneficiary has 120 days from service of notice to contest the validity of the trust. Additionally, NRS 164.021(2)(c) requires the notice to include "[a]ny provision of the trust instrument" that pertains to a beneficiary. Here, the parties disputed the meaning of the word "any." Holiday argued that "any" equated to "all," and that Patricia's initial notice did not trigger the 120-day limitation period because it did not include the purported fourth amendment, which is a trust provision pertaining to him.

Patricia, on the other hand, contended that the statute instead used discretionary terms, noting that the trustee "may" provide notice, and by using the term "any," the Legislature intended to give a trustee discretion in selecting which provisions to include in the notice. Patricia furthered argued that NRS 164.021 was voluntary and optional, rather than a mandatory notice statute. Accordingly, Patricia argued that Holiday's challenge to the second and third amendments to the Trust were time-barred because Holiday objected more than 120 days after the initial notice.

The Court first looked to the plain meaning of the word "any," and determined the *Merriam-Webster's Collegiate Dictionary* contemplated both parties' proffered definitions of "any." The Court reasoned that because both parties' proffered constructions were plausible, the word "any" in NRS 164.021(2)(c) is ambiguous.<sup>4</sup>

Because the plain meaning rendered the term "any" ambiguous, the Court next turned to an analysis of the legislative history. The Court began by noting that courts generally ascribe the same meaning to "[i]dential words used in different parts of the same... statute."<sup>5</sup> The Court found that the Legislature used the term "any" multiple times throughout NRS 164.021(2), specifically in subsections (b), (c), and (d). Accordingly, the Court held that the Legislature intended "any" to have the same meaning throughout the entirety of NRS 164.021(2).

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<sup>2</sup> *In re Estate of Black*, 132 Nev. 73, 75 367 P.3d 416, 417 (2016).

<sup>3</sup> *In re Contrevo*, 123 Nev. 20, 23, 153 P.3d 652, 653–54 (2007).

<sup>4</sup> *Id.*; *cf. Casteneda v. State*, 132 Nev. 434, 438, 373 P.3d 108, 111 (2016).

<sup>5</sup> 3A Shambie Singer, *Sutherland Statutes and Statutory Construction* § 67:2 (8th ed. 2019 update).

Under NRS 164.021(2)(d), a trustee’s notice to beneficiaries must include “[a]ny information required to be included in the notice expressly provided by the trust instrument.” The Court found that under this subsection, the trustee has no discretion to determine what to include and what to omit. Instead, the trustee must comply with the terms of the trust instrument and send *all* the required information. The Court found that, because “any” meant “all” in this subsection, the rules of statutory construction require construing the term “any” in NRS 164.021(2)(c) to mean “all.”

The Court also found that in procedural statutes, “any” typically is interpreted to mean “any and all.”<sup>6</sup> Additionally, the term “any” under NRS 164.021(2)(c) modifies a singular noun and is used in an affirmative context. This approach, the Court concluded, indicates that the Legislature intended the term “any” to mean “all.”

The Court also undertook an examination of the legislative history and determined that it supported construing the term “any” to mean “all.” The Court specifically analyzed testimony before the legislature by Mr. Matthew Gray with the Trust and Estate Section. In his testimony, Mr. Gray emphasized that the bill was aimed at “expedit[ing] the process of [] trust administration.”<sup>7</sup> He further noted that the statute was aimed at modernizing Nevada’s trust and estate law by making it more efficient and user-friendly.<sup>8</sup> Another member of the Trust and Estate Section, Mr. Layne Rushforth, also testified that under the statute, there would be 120 days to file a contest and the whole purpose of this is “to not have trust contests arise after the fact.”<sup>9</sup>

Based on the legislative history, the Court found that Patricia was correct that the trustee has the discretion whether to send notice to beneficiaries in order to trigger the 120-day limitation period and cut off all challenges to the trust. But, the Court held, her contention that NRS 164.021’s legislative history suggests a trustee also has the discretion to confirm trust instruments in a piecemeal fashion is incorrect. This interpretation, the Court found, would not promote the Legislature’s desire for efficiency because it could allow for multiple contests to various trust provisions. The Court further held that Patricia’s proffered construction would not promote judicial economy and could increase the costs of trust administration due to successive contests. The Court found that Holiday’s proffered construction, on the other hand, is consistent with the Legislature’s intent because it requires a trustee to include every trust provision that pertains to a beneficiary within the notice. This interpretation, in turn, facilitates a single deadline for trust contests, as the beneficiaries will have all the information they need to review the terms of the trust and decide whether they wish to litigate. Thus, the Court found, the term “any” in NRS 164.021(2)(c) must mean “all” in order to be consistent with the rules of statutory construction.

After concluding that “any” means “all,” the Court then turned to whether NRS 164.021(2)(c) requires strict or substantial compliance. The Court noted that “time and manner” requirements are strictly construed, whereas substantial compliance may be sufficient for “form and content” requirements.<sup>10</sup> To determine whether substantial compliance was sufficient for NRS 162.041(2)(c), the Court examined whether the purpose of the statute could adequately be

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<sup>6</sup> *Id.*

<sup>7</sup> Hearing on S.B. 287 Before the Senate Judiciary Comm., 75th Leg. (Nev., Mar. 24, 2009).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Leven v. Frey*, 123 Nev. 399, 408, 168 P.3d 712, 718. (2007).

served in a manner other than by technical compliance with the statutory language.<sup>11</sup> The Court found that the statute uses mandatory language to describe the obligation of a trustee when he or she provides notice to beneficiaries. Thus, NRS 164.021(2)(c) requires strict compliance, because only a complete disclosure of all provisions of a trust instrument pertaining to a beneficiary will further the Legislature’s goals and give a beneficiary all the information she needs to decide whether to contest a trust.

Based on these findings, the Court found that Holiday’s challenge to the second and third amendments was timely. Patricia’s initial notice did not include the purported fourth amendment to the Trust, and therefore did not trigger the 120-day limitation period. Because Holiday filed his objection to the second and third amendments within this limitation period, the district court erred when it determined that Holiday’s challenge was time-barred under NRS 164.021(4).

### **Conclusion**

The Court held that the term “any” in the language of NRS 164.021(2)(c) means “all.” Because the statute’s goals of adequately informing beneficiaries can only be accomplished by disclosure of all pertinent trust provisions, the Court also found that NRS 164.021(2)(c) is subject to strict compliance.

Thus, by failing to include the purported fourth amendment to the Trust in her initial disclosure to beneficiaries, Patricia did not strictly comply with NRS 164.021(2)(c). Her initial disclosure, therefore, did not trigger the 120-day deadline for challenging the validity of the trust. Consequently, Holiday’s challenge to the second and third amendments to the Trust—which was filed within 120 days of complete disclosure—was timely.

Accordingly, the Court reversed the district court’s order that concluded that Holiday was time-barred from challenging the second and third amendments to the Trust and remanded the case for proceedings consistent with the Court’s holding.

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<sup>11</sup> *Leyva v. Nat’l Default Servicing Corp.*, 127 Nev. 470, 476, 255 P.3d 1275, 1278 (2011).