

24



KAREN ELLISON, RECORDER

Assessor's Parcel Number: 1320-31-514-003

Recording Requested By: ROWE HALES YTURBIDE

Name: JOANNE PEREZ

Address: 1544 MADEIRA DR

City/State/Zip Pacific, CA 94044

Real Property Transfer Tax: \$762.45

ORDER Approving First Annual Accounting

(Title of Document)

This page added to provide additional information required by NRS 111.312 Sections 1-2. (Additional recording fee applies)

*This cover page must be typed or legibly hand printed.*

1 CASE NO. 16-PB-0038

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2 DEPT. NO. II

**AUG 29 2016**

**2016 AUG 29 PM 2:06**

3 The undersigned affirms that this document does not contain  
4 a Social Security Number or personal information. Douglas County District Court Clerk

BOBBIE R. WILLIAMS  
**D. HECHMOVICH**  
BY \_\_\_\_\_ DEPUTY

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7 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF DOUGLAS

9  
10 In the Matter of the Estate of  
11 MARGUERITE A. OSWALD,  
12 Deceased.

**ORDER APPROVING FIRST ANNUAL  
ACCOUNTING; APPROVING  
EXECUTRIX'S ACTIONS; APPROVING  
PAYMENT OF ATTORNEY'S FEES;  
APPROVING EXECUTRIX'S WAIVER OF  
COMPENSATION; AND APPROVING  
PARTIAL DISTRIBUTION AND PARTIAL  
SETTLEMENT**

Rowe Hales Yturbide  
Attorneys At Law

13 \_\_\_\_\_ /  
14 **THIS MATTER** came on before the Court of the 29<sup>th</sup> day of August 2016 on the Verified  
15 Petition for Approval of First Annual Accounting; Approval of Executrix's Actions; for Approval of  
16 Payment of Attorney's Fees; for Approval of Executrix's Waiver of Compensation; for Partial  
17 Distribution and for Partial Settlement ("Petition") filed by Joanne Perez ("Petitioner"), the Court  
18 appointed Executrix of the Estate of Marguerite Oswald, Deceased ("Decedent"). Present in Court on  
19 29 August 2016 were Michael Smiley Rowe, Esq., of Rowe Hales Yturbide, LLP, together with the  
20 Petitioner.  
21

22 Based upon the Verified Petition, and all pleadings on file herein, and good cause appearing,  
23 the Court FINDS, CONCLUDES, AND ORDERS AS FOLLOWS:

24 1. The Court has previously found that the Decedent, age 89 at the time of her death, died  
25 at Brookdale Senior Living located in Gardnerville, Douglas County, Nevada, on 2 March 2016. A copy  
26 of the Death Certificate of the Decedent was attached to the originating Petition as Exhibit A, and a  
27 certified copy of the Certificate of Death was filed with the Court on 8 April 2016.  
28

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1 The Court has also found that the Decedent was a resident of Douglas County, Nevada.  
2 Prior to her residence at Brookdale Senior Living in Gardnerville, Nevada, the Decedent resided in her  
3 home located at 1624 County Road, Minden, Douglas County, Nevada.

4 The Court has previously found that the Court died testate, with the original Last Will  
5 and Testament and the original Codicil to Last Will and Testament received by the Court Clerk on 31  
6 March 2016 and assigned Will #16-PB-0038. The Court has previously ordered that the Last Will and  
7 Testament and Codicil to the Last Will and Testament executed by the Decedent would be opened,  
8 published and admitted to probate.

9  
10 2. The Court has previously found that the Decedent was a single woman at the time of her  
11 death, but is survived by her three step-children, the identified beneficiaries in the Decedent's Will. The  
12 Decedent nominated Petitioner as her Personal Representative, and nominated the Petitioner, Jeanette  
13 Oswald and Tony A. Oswald as the beneficiaries of her Estate. The names, ages and residences of the  
14 next of kin, or persons otherwise interested in the estate of the Decedent are as follows:

<u>NAME AND ADDRESS</u>	<u>AGE</u>	<u>RELATIONSHIP</u>
15 Joanne Perez 16 1544 Madeira Drive 17 Pacifica, CA 94044	Adult	Step-daughter
18 Jeannette Oswald 19 5519 Old Redwood Highway 20 Santa Rosa, CA 95403	Adult	Step-daughter
21 Tony A. Oswald 22 1401 Purple Sage Drive 23 Gardnerville, NV 89460	Adult	Step-son

24 4. The names, residences and next of kin of the Decedent who are interested in the estate  
25 of the Decedent are set forth above in Paragraph 3 above. Additional persons who may be interested in  
26 the estate are:

<u>NAME AND ADDRESS</u>	<u>AGE</u>	<u>RELATIONSHIP</u>
27 Medicaid Estates Recovery 28 1100 East William Street, Suite 109 Carson City, NV 89701	N/A	N/A

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1           5.       The Court finds and concludes that all persons interested in this Estate, including  
2 Medicaid Estate Recovery, have been provided with proper notice of the hearing conducted on the  
3 Petition. Filed on 15 August 2016 was a Notice of Hearing for 29 August 2016 which was properly  
4 served by mail on those interested in the Estate. Attached to the Notice of Hearing was a copy of the  
5 Petition, as well as a Certificate of Service by mail.

6                       The Court finds, concludes and orders that notice of the hearing on the Petition was  
7 properly provided by the Petitioner.

8  
9           6.       The Court finds, concludes and orders that Petitioner properly filed, posted and  
10 published a 90-day Notice to Creditors pursuant to NRS 147.010 for the purpose of notifying potential  
11 creditors of the Estate of the Decedent. Petitioner has alleged, and the Court so finds, that no creditor's  
12 claims have been filed with the Court or with the Petitioner. The creditor's claim period has now lapsed,  
13 and the creditor's claim bar date has passed. Filed on 3 June 2016 was the Proof and Statement of  
14 Publication of the Notice to Creditors which indicates that the Notice to Creditors was properly published  
15 on 18, 25 and 27 May 2016. The creditor's claim bar date expired on 18 August 2016 with no creditors  
16 filing claims in this Estate.

17  
18           7.       The Court finds as a matter of fact, and concludes as a matter of law, that the Petition  
19 was brought pursuant to the relevant provisions of Chapter 151 NRS. The Court concludes that a partial  
20 distribution may occur at any time after the lapse of 3 months from the issuing of Letters. At such time,  
21 the Executrix may petition the Court to distribute a share of the Estate to any person entitled thereto  
22 pursuant to NRS 151.010. Pursuant to this section, the Court may grant a petition for partial distribution  
23 upon the "giving of a bond, with approved security, for the payment of the person's proportion of the  
24 debts of the estate." NRS 151.010(1). However, the Court may dispense with the bond if it is made to  
25 appear that a bond is unnecessary. NRS 151.010(2).

26  
27                       The Court finds, pursuant to NRS 151.010, that the Court may approve of a partial  
28 distribution in this Estate because such a distribution may be made without injury to the creditors of the

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1 Estate. With no creditors of the estate remaining unpaid, the Court hereby orders that a bond or other  
2 security is unnecessary. The Court further orders that it is not necessary for the beneficiaries to sign an  
3 acknowledged agreement assuming personal liability for any contingent or disputed debt inasmuch as  
4 there are no contingent or disputed debts of this estate.

5 8. The Court finds that the Decedent's Estate consisting of real and personal property  
6 located in the state of Nevada may be distributed to the Decedent's nominated beneficiaries. As noted  
7 in the Petition, Petitioner is unable to petition the Court for approval of a first and final accounting due  
8 to the fact that the Decedent owned an interest in real property located in the State of California.  
9 Petitioner has alleged, and the Court so finds, that the Decedent's interest in a condominium located at  
10 401 Pebble Creek Lane, Palm Desert, California, must be sold after approval of such sale by the Court  
11 in the State of California in an ancillary probate proceeding. Petitioner has alleged that she has retained  
12 California counsel to assist in the ancillary probate proceedings, and that such proceedings may take a  
13 period of time to run its course. Thereafter, and due to the unsuccessful sales' efforts of the Petitioner  
14 to sell the condominium, it may take even further time for the Petitioner to sell the Decedent's California  
15 real property. In the meanwhile, Petitioner has requested that the Court ratify, confirm and approve of  
16 partial distribution of this Estate to the beneficiaries pending the completion of the California ancillary  
17 probate proceedings and the sale of the Decedent's condominium.

18 As set forth below, the Court ratifies, confirms and approves of a partial distribution of  
19 this Estate to the Decedent's nominated beneficiaries.

20 9. Attached as Exhibit B to the Petition is the Petitioner's accounting of the assets,  
21 liabilities and income of the Estate as of 2 August 2016. She has requested that the Court approve of  
22 Exhibit B as her first annual accounting of this Estate. After a review of Exhibit B to the Petition,  
23 together with the Petition itself and the other exhibits attached to it, it is hereby the order of the Court  
24 that Petitioner's accounting of the assets, liabilities and income of the estate, attached as Exhibit B to the  
25 Petition, is ratified, confirmed and approved.  
26  
27  
28

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1           10.     Petitioner filed a Supplement to her Petition on 22 August 2016 wherein Petitioner  
2 revised her "Addendum #1" (attached as Exhibit C to the Petition), which described the remaining asset  
3 division of personal property. Primarily, the Supplement to the Petition sets forth that the Wells Fargo  
4 Bank estate savings account has a value on deposit of \$305,846.34. Petitioner has requested that the  
5 Court ratify, confirm and approve of her retention of \$35,846.34 as an amount to pay the future costs of  
6 administration of this Estate, including attorney's fees in Nevada and California, her accountant's fees,  
7 and any other expenses of administration which may arise until such time as the Decedent's  
8 condominium is sold.

9  
10           The Court ratifies, confirms and approves of Petitioner's retention of \$35,846.34 in the  
11 Wells Fargo Bank estate savings account for her use in payment of the future costs of administration of  
12 this Estate either in Nevada or in California.

13           11.     Petitioner has alleged, and the Court so finds, that she and her siblings have conferred  
14 and have agreed to the division of the liquid and illiquid assets of the Decedent's Estate, and a method  
15 by which the assets will be divided. As to the cash assets, they will simply be divided into equal shares  
16 based on the value on deposit as of the accounting. As to the illiquid assets, the initial division will be  
17 based upon the valuation of those illiquid assets as established by the various appraisers retained by the  
18 Petitioner to provide opinions of value. As to the value of the two motor vehicles owned by the  
19 Decedent, Petitioner and her siblings have agreed to use the Kelley Blue Book valuation for each of the  
20 vehicles.

21           After proper service of notice of the hearing on the Petition, no one has objected in  
22 writing or at the time of the hearing to the requests made in the Petition. Accordingly, the Court finds  
23 and concludes that the beneficiaries of this Estate have agreed on the method by which this Estate shall  
24 be distributed, and the Court ratifies, confirms and approves of the beneficiaries' agreement as to the  
25 division and partial distribution of this Estate.

26  
27           12.     The Court finds and concludes that the methodology employed by the beneficiaries,  
28 including Petitioner, to distribute this Estate is appropriate in these circumstances. With regard to the



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1 Merrill Lynch account consisting of stocks and bonds, Merrill Lynch will divide the amount on deposit  
2 into three separate accounts to be distributed equally to each beneficiary upon entry of this Order.

3 Similarly, with regard to the Wells Fargo Bank estate savings account, after the retention  
4 of \$35,846.34, the beneficiaries have agreed to divide the amount on deposit into thirds, in the initial  
5 instance. The beneficiaries then proceeded to select various personal property assets to be distributed  
6 to them, after deduction of one-third of the value of each asset (each beneficiary is entitled to one-third  
7 of the value of each asset). The beneficiaries created a “due to/due from” to fairly and evenly compensate  
8 each other for the distribution of a personal property asset “in kind.”

9  
10 As set forth below, the beneficiaries agreed to a similar methodology for distribution of  
11 the Decedent’s real property located at 1624 County Road, Minden, Nevada. Their agreement is that the  
12 Decedent’s real property would be distributed to Petitioner, in kind, with an adjustment of her cash share  
13 from either the Merrill Lynch account or the Wells Fargo Bank savings account paid to each of the other  
14 two beneficiaries after taking into account the fact that Petitioner is entitled, as an equal beneficiary, to  
15 one-third of the value of the real property.

16 The Court ratifies, confirms and approves of the beneficiaries’ agreement as to the  
17 division of the real and personal property assets; save and except for the Palm Desert, California  
18 condominium which is the subject of the California ancillary probate proceedings.

19  
20 13. In her Petition, Petitioner has accurately set forth that she, as the Personal  
21 Representative, would be entitled to compensation for her service as Executrix pursuant to the statutory  
22 formula stated in NRS 150.020. However, rather than claim the statutory compensation, Petitioner has  
23 agreed with her siblings that the appraised value of the Decedent’s real property located at 1624 County  
24 Road, Minden, Nevada, would be reduced by the amount of her statutory compensation. Petitioner would  
25 be entitled to claim compensation in the amount of \$27,150. After deducting the statutory compensation  
26 from the appraised value of the County Road property, the beneficiaries agreed that it possessed a value  
27 of \$292,850. As noted throughout this Order, each beneficiary is entitled to one-third of the value of each  
28 asset, and Petitioner is entitled to one-third of the adjusted value of the County Road property.

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1           Petitioner has set forth that to compensate her siblings for the distribution to Petitioner,  
2 “in kind”, of the 1624 County Road Property, she would credit, or “pay” \$97,610 to each of Jeanette  
3 Oswald and Tony Oswald to acquire an undivided interest in the County Road property.

4           The Court ratifies, confirms and approves of the methodology used by Petitioner and her  
5 siblings to allow Petitioner to acquire 1624 County Road, Minden, Nevada, and the Court approves of  
6 the issuance of an Executrix’s Deed to the County Road property to Joanne Perez upon her distribution  
7 of an additional amount of \$97,617 to each of Jeanette Oswald and Tony Oswald.

8  
9           14.    In her Petition, and in open court, the Court was advised that the record of title for 1624  
10 County Road, Minden, Nevada, indicated that the Decedent and her predeceasing husband, Antoine J.  
11 Oswald, are the current record owners of the County Road property. The Decedent and her husband held  
12 title to the County Road property as community property with right of survivorship. No instrument was  
13 recorded to terminate the interest of Antoine J. Oswald.

14           In open court, the Court was advised by Petitioner’s counsel that Antoine J. Oswald died  
15 on 12 May 2014, and counsel offered a certified copy of the Certificate of Death of Antoine J. Oswald  
16 to demonstrate that the Decedent had succeeded to his interest by virtue of the right of survivorship.

17           It is hereby the order of the Court that, due to the death of Antoine J. Oswald prior to  
18 the Decedent’s death, the interests of Antoine J. Oswald in 1624 County Road, Minden, Nevada, shall  
19 be, and the same are hereby, terminated. A certified copy of this Order shall be recorded to provide  
20 notice that, at the time of her death, the Decedent owned the real property and improvements located at  
21 1624 County Road, Minden, Nevada, as her sole and separate property.

22           15.    The Court ratifies, confirms and approves of the distribution of the two vehicles owned  
23 by the Decedent upon the additional distribution to Jeanette Oswald in the amount of \$4,256.33 from  
24 each of the shares of Joanne Perez and Tony Oswald. Joanne Perez would pay Tony Oswald an  
25 additional \$1,009 for the difference in value of the vehicle which is set aside to her by this Order.  
26  
27

28    ///



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1 16. It is hereby the order of the Court that the 2005 Chevrolet Colorado, VIN  
2 1GCCS136658176394, shall be distributed to Tony Oswald.

3 17. It is hereby the order of the Court that the 2006 Chevrolet Silverado, Model 1500 Crew  
4 Cab, with VIN 2GCEC13TH61157944, shall be distributed to Joanne Perez.

5 18. Attached to the Supplement to the Petition is a revised Addendum #1, revising Exhibit C  
6 to the Petition, which sets forth the methodology developed by the beneficiaries of this Estate for the  
7 division of the Nevada real property and personal property located in this state.  
8

9 The Court ratifies, confirms and approves of Addendum #1, as amended pursuant to the  
10 Supplement to the Petition, as the division of the Estate's property between the three beneficiaries of this  
11 Estate.

12 19. As set forth above, the Executrix is authorized to retain \$35,846.34 in the Wells Fargo  
13 Bank estate savings account for the payment of such future expenses of administration, including  
14 attorney's fees and court costs incurred in this matter and in California. The Court approves of the use  
15 of the retained funds to pay, in addition, homeowners' association fees, taxes and insurance which  
16 become due pending the sale of the Decedent's condominium located in Palm Desert, California.  
17

18 Petitioner has alleged, and the Court so finds, that, upon sale of the condominium, she  
19 will prepare and file with the Court a final accounting and request for close of this Estate and for  
20 honorable discharge. Petitioner has alleged, and the Court so finds, that the remaining net proceeds  
21 resulting from the sale of the Palm Desert, California condominium shall be divided into thirds and  
22 distributed one-third each to each of the three beneficiaries of this Estate.

23 20. Petitioner has retained Tahoe Tax & Accounting Services, CPAs, to prepare and file the  
24 necessary tax returns for this Estate, and she has alleged that she has paid the income tax obligations  
25 incurred by the Decedent while Petitioner served as her Guardian. A final tax return for 2016 will be  
26 required to be filed.  
27

28 ///

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1 It is hereby the order of the Court that Petitioner may pay any future accountant's fees  
2 from the amount which she is authorized to retain. The Court ratifies, confirms and approves of  
3 Petitioner's retention of an accountant to prepare and file the necessary tax returns for this Estate.

4 21. The Court finds and concludes that, pursuant to NRS 150.060, an attorney for a Personal  
5 Representative is entitled to receive reasonable compensation for the attorney's services to be paid out  
6 of the Decedent's Estate. Petitioner has alleged that she has paid the firm of Rowe Hales Yturbide, LLP,  
7 \$8,610 in attorney's fees including \$1,327.48 in reimbursable costs, and she has asked that the Court  
8 ratify, confirm and approve of her past payment of her attorney's fees and costs. Petitioner has also asked  
9 that the Court authorize her to continue to pay such attorney's fees and any court costs which may be  
10 advanced by counsel to the close of this Estate, and any attorney's fees and court costs which the  
11 Petitioner may incur in the ancillary probate proceedings in California.

12 It shall be the order of the Court that Petitioner's prior payment of her attorney's fees  
13 and court costs in this matter is ratified, confirmed and approved. It is the further order of this Court that  
14 Petitioner may continue to pay such invoiced attorney's fees and court costs as are incurred by her in  
15 these proceedings and in the California ancillary proceedings.

16 22. At the request of the Petitioner, the Court ratifies, confirms and approves of all of her  
17 actions taken in her administration of the Decedent's Estate, and all those actions which she intends to  
18 take as delineated within the Petition. The Court approves of the intended actions, including, without  
19 limitation, the payment of professional fees and reimbursement of expenses and future expenses of  
20 administration in these proceedings and in the ancillary California probate proceedings.

21 23. The Court ratifies, confirms and approves of the Petitioner's request to execute all  
22 necessary instruments to transfer this Estate to the Decedent's beneficiaries as they have agreed, and as  
23 Petitioner has set forth in her Petition, including, without limitation, the Petitioner's execution of an  
24 Executrix's Deed transferring the real property and improvements located at 1624 County Road, Minden,  
25 Nevada, 89423, to Joanne Perez.  
26  
27  
28

