



## EXPLAINING ADVANCEMENTS

### *Calculating The Shares of a Will or Trust When Advancements Are Involved*

#### A. GENERALLY

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A.1 An “advancement” is a lifetime gift to a person who is a beneficiary under a will or trust that is treated as a pre-payment of what they would receive under the will or trust after the death of the person making the will or trust.

A.2 Assume that Yolanda’s estate is \$640,000, and she has for children: Ron, Sue, Tom, and Bea.

(a) If she dies leaving everything equally to the children, they each get \$160,000 (1/4 of \$640,000).

(b) If she gives Ron \$40,000 during her lifetime without formally declaring it to be an advancement and dies with \$600,000, each child gets \$150,000 (one fourth of \$600,000) from her estate, but Ron ends up with \$190,000 because of the lifetime gift.

A.3 To avoid an unequal distribution like the result in paragraph A.2(b), the amount to be divided must include the value of the lifetime gift.

(a) The total of the lifetime advancements and the estate at death is sometimes referred to the “aggregate amount”.

(b) Each beneficiary gets his or her share of the “aggregate amount” reduced by the total value of advancements received by that beneficiary.

(c) Unless a will or trust provides otherwise, if a beneficiary’s advancement exceeds his or her share, the beneficiary who received the advancements gets nothing but owes nothing back to the estate or trust. The remaining beneficiary(ies) divide up the remaining balance on a pro rata basis.

A.4 For a will, the computation of advancements is governed under NRS 151.130,<sup>1</sup> but this could be modified in a provision of the will. There is no equivalent statutory provision for trusts, but the court apply the same principles unless the trust instrument provides otherwise.

#### B. ILLUSTRATIONS

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##### B.1 Illustration One

(a) Fred has a will that provides for his children, Sally, Sarah, and John, to receive equal shares of his assets at the time of his death.

(b) While Fred is living, Sally asks for \$25,000 for a down payment on a home, with the understanding that it will count as part of her share. Fred gives her the \$25,000,

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<sup>1</sup> See <http://www.leg.state.nv.us/nrs/nrs-151.html#NRS151Sec130>.

and Fred signs a document declaring that this is a gift that is to be treated as an advancement of Sally's share under Fred's will.

(c) When Fred dies, he has an estate of \$500,000 after all taxes and other expenses are paid.

(d) We add the advancement to the value of the trust assets to determine the "aggregate amount" that is being shared equally. Thus, we add \$25,000, representing the gift to Sally during Fred's lifetime, to the estate's assets, resulting in an aggregate amount of \$525,000. Each beneficiary is entitled to \$175,000, which is one third of 525,000. Using this approach calculates the shares using the same figures that would have applied if the lifetime gift had not occurred.

(e) Sally is entitled to \$175,000, but she has already received \$25,000, so her net distribution from Fred's estate is \$150,000.

(f) Sarah and John each get \$175,000.

## B.2 Illustration Two

(a) Jennifer has a trust that provides for four beneficiaries to receive equal shares.

(b) Jennifer makes a gift to Brandon of \$50,000, and Brandon acknowledges in writing that it is an advancement of his share.

(c) When Jennifer dies, and all taxes and other expenses are paid, the trust has \$1,050,000. Subsequently, each beneficiary is entitled to receive a 1/4 interest in assets valued at \$1,050,000.

(d) We add the advancement to the value of the trust assets to determine the "aggregate amount" that is being shared (which is calculated, in essence, as it would have been had the lifetime gift not occurred). In this case, the "aggregate amount" would be \$1,050,000 [\$50,000 advancement + \$1,000,000]. Each beneficiary is thus entitled to 1/4 of that amount or \$262,500.

(e) Brandon gets \$262,500 minus \$50,000 or \$212,500

(f) Each other beneficiary gets \$262,500.

## B.3 Illustration Three

(a) Assume the same facts as in Illustration Two (subsection B.2) except that the value of trust assets after Jennifer's death are \$150,000.

(b) The "aggregate amount" is \$200,000, which combines the advancement amount of \$50,000 with the net assets remaining after death. Each beneficiary is entitled

to \$50,000, but since Brandon already got that amount, he is entitled to nothing further, and the remaining three beneficiaries receive equal amounts of what is left.

(c) If the remaining assets were less than \$150,000, Brandon would still get nothing from the estate, and the three beneficiaries would receive equal amounts of what is left. Even though the \$50,000 gift to Brandon's share would exceed his share of the aggregate amount, the law does not make him pay anything back.

#### B.4 Other Examples

(a) A trust or will may provide that assets received outside of the trust or will by reason of Fred's death are to be treated as advancements. So, if the facts are the same as in Illustration One except that instead of Sally getting \$25,000 during Fred's lifetime, she received \$25,000 from a life insurance policy on Fred's life, the results would be the same as in Illustration One.

(b) Sometimes clients include a declaration in their will or trust that a beneficiary shall be deemed to have received an advancement of their share in a specified amount. So, if the facts in Illustration Two are modified to reflect that Jennifer declared in her trust that Brandon's share was to be calculated as if he had received an advancement of \$50,000, the results would be the same as in Illustration Two, even though there is no documentation of an actual advancement.

### C. CONCLUSION

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C.1 A lifetime gift is not an advancement unless the donor declares it to be such or the recipient acknowledges it as such.

C.2 The calculation of an advancement is determined by application of the terms of the will or trust, but if the will or trust is silent, the principles of NRS 151.130 are usually applied. Under those principles, the amounts advanced are added to the value of the property remaining to determine each beneficiary's share of the aggregate amount. After each share is determined, the value of the advancements reduce the shares of those receiving the advancements, but not below zero.

#### **RUSHFORTH FIRM LTD.**

5550 Painted Mirage Road, Suite 320, Las Vegas, NV 89149-4584

702-255-4552 (Office) | 702-255-4677 (Fax)

[office@rushforthfirm.com](mailto:office@rushforthfirm.com)

<https://rushforthfirm.com> | <https://rushforthfirm.info>

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