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AN ACT

RELATING TO PROPERTY; ENACTING THE UNIFORM PARTITION OF HEIRS  
PROPERTY ACT AND MAKING CONFORMING AMENDMENTS TO THE UNIFORM  
PROBATE CODE; AMENDING PROCEDURES FOR SELF-PROVING WILLS IN  
THE UNIFORM PROBATE CODE; MAKING A TECHNICAL AMENDMENT TO THE  
UNIFORM TRUST DECANTING ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. SHORT TITLE.--Sections 1 through 13 of this  
act may be cited as the "Uniform Partition of Heirs Property  
Act".

SECTION 2. DEFINITIONS.--As used in the Uniform  
Partition of Heirs Property Act:

A. "ascendant" means an individual who precedes  
another individual in lineage, in the direct line of ascent  
from the other individual;

B. "collateral" means an individual who is related  
to another individual under the law of intestate succession  
of this state but who is not the other individual's ascendant  
or descendant;

C. "descendant" means an individual who follows  
another individual in lineage, in the direct line of descent  
from the other individual;

D. "determination of value" means a court order  
determining the fair market value of heirs property under

1 Section 6 or 10 of the Uniform Partition of Heirs Property  
2 Act or adopting the valuation of the property agreed to by  
3 all cotenants;

4 E. "heirs property" means real property held in  
5 tenancy in common, but does not include undivided mineral  
6 interests, and that satisfies all of the following  
7 requirements as of the filing of a partition action:

8 (1) there is no agreement in a record  
9 binding all the cotenants that governs the partition of the  
10 property;

11 (2) one or more of the cotenants acquired  
12 title from a relative, whether living or deceased; and

13 (3) any of the following applies:

14 (a) twenty percent or more of the  
15 interests are held by cotenants who are relatives;

16 (b) twenty percent or more of the  
17 interests are held by an individual who acquired title from a  
18 relative, whether living or deceased; or

19 (c) twenty percent or more of the  
20 cotenants are relatives;

21 F. "partition by sale" means a court-ordered sale  
22 of the entire heirs property, whether by auction, sealed bids  
23 or open-market sale, conducted under Section 10 of the  
24 Uniform Partition of Heirs Property Act;

25 G. "partition in kind" means the division of heirs HB 181  
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1 property into physically distinct and separately titled  
2 parcels;

3 H. "record" means information that is inscribed on  
4 a tangible medium or that is stored in an electronic or other  
5 medium and is retrievable in perceivable form; and

6 I. "relative" means an ascendant, descendant or  
7 collateral or an individual otherwise related to another  
8 individual by blood, marriage, adoption or law of this state  
9 other than the Uniform Partition of Heirs Property Act.

10 **SECTION 3. APPLICABILITY--RELATION TO OTHER LAW.--**

11 A. The Uniform Partition of Heirs Property Act  
12 applies to partition actions filed on or after July 1, 2017.

13 B. In an action to partition real property under  
14 Chapter 42, Article 5 NMSA 1978, the court shall determine  
15 whether the property is heirs property. If the court  
16 determines that the property is heirs property, the property  
17 shall be partitioned under the Uniform Partition of Heirs  
18 Property Act unless all of the cotenants otherwise agree in a  
19 record.

20 C. The Uniform Partition of Heirs Property Act  
21 supplements Chapter 42, Article 5 NMSA 1978 and, if an action  
22 is governed by the Uniform Partition of Heirs Property Act,  
23 replaces provisions of Chapter 42, Article 5 NMSA 1978 that  
24 are inconsistent with the Uniform Partition of Heirs Property  
25 Act.

1           **SECTION 4. SERVICE--NOTICE BY POSTING.--**

2           A. The Uniform Partition of Heirs Property Act  
3 does not limit or affect the method by which service of a  
4 complaint in a partition action may be made.

5           B. If the plaintiff in a partition action seeks an  
6 order of notice by publication and the court determines that  
7 the property may be heirs property, the plaintiff, not later  
8 than ten days after the court's determination, shall post and  
9 maintain while the action is pending a conspicuous sign on  
10 the property that is the subject of the action. The sign  
11 must state that the action has commenced and identify the  
12 name and address of the court and the common designation by  
13 which the property is known. The court may require the  
14 plaintiff to publish on the sign the name of the plaintiff  
15 and the known defendants.

16           **SECTION 5. COMMISSIONERS.--**If the court appoints  
17 commissioners pursuant to Section 42-5-6 NMSA 1978, each  
18 commissioner, in addition to the requirements and  
19 disqualifications applicable to commissioners in Section  
20 42-5-6 NMSA 1978, shall be disinterested and impartial and  
21 not a party to or a participant in the action.

22           **SECTION 6. DETERMINATION OF VALUE.--**

23           A. Except as otherwise provided in Subsections B  
24 and C of this section, if the court determines that the  
25 property that is the subject of a partition action is heirs

1 property, the court shall determine the fair market value of  
2 the property by ordering an appraisal pursuant to Subsection  
3 D of this section.

4 B. If all cotenants have agreed to the value of  
5 the property or to another method of valuation, the court  
6 shall adopt that value or the value produced by the agreed  
7 method of valuation.

8 C. If the court determines that the evidentiary  
9 value of an appraisal is outweighed by the cost of the  
10 appraisal, the court, after an evidentiary hearing, shall  
11 determine the fair market value of the property and send  
12 notice to the parties of the value.

13 D. If the court orders an appraisal, the court  
14 shall appoint a disinterested real estate appraiser licensed  
15 in this state to determine the fair market value of the  
16 property assuming sole ownership of the fee simple estate.  
17 On completion of the appraisal, the appraiser shall file a  
18 sworn or verified appraisal with the court.

19 E. If an appraisal is conducted pursuant to  
20 Subsection D of this section, not later than ten days after  
21 the appraisal is filed, the court shall send notice to each  
22 party with a known address stating:

23 (1) the appraised fair market value of the  
24 property;

25 (2) that the appraisal is available at the

1 clerk's office; and

2 (3) that a party may file with the court an  
3 objection to the appraisal not later than thirty days after  
4 the notice is sent, stating the grounds for the objection.

5 F. If an appraisal is filed with the court  
6 pursuant to Subsection D of this section, the court shall  
7 conduct a hearing to determine the fair market value of the  
8 property not sooner than thirty days after a copy of the  
9 notice of the appraisal is sent to each party under  
10 Subsection E of this section, whether or not an objection to  
11 the appraisal is filed under Paragraph (3) of Subsection E of  
12 this section. In addition to the court-ordered appraisal,  
13 the court may consider any other evidence of value offered by  
14 a party.

15 G. After a hearing under Subsection F of this  
16 section, but before considering the merits of the partition  
17 action, the court shall determine the fair market value of  
18 the property and send notice to the parties of the value.

19 **SECTION 7. COTENANT BUYOUT.--**

20 A. If any cotenant requests partition by sale,  
21 after the determination of value under Section 6 of the  
22 Uniform Partition of Heirs Property Act, the court shall send  
23 notice to the parties that any cotenant except a cotenant  
24 that requests partition by sale may buy all the interests of  
25 the cotenants that request partition by sale.

1           B. Not later than forty-five days after the notice  
2 is sent under Subsection A of this section, any cotenant  
3 except a cotenant that requests partition by sale may give  
4 notice to the court that it elects to buy all the interests  
5 of the cotenants that request partition by sale.

6           C. The purchase price for each of the interests of  
7 a cotenant that requests partition by sale is the value of  
8 the entire parcel determined under Section 6 of the Uniform  
9 Partition of Heirs Property Act multiplied by the cotenant's  
10 fractional ownership of the entire parcel.

11           D. After expiration of the period in Subsection B  
12 of this section, the following rules apply:

13                 (1) if only one cotenant elects to buy all  
14 the interests of the cotenants that request partition by  
15 sale, the court shall notify all the parties of that fact;

16                 (2) if more than one cotenant elects to buy  
17 all the interests of the cotenants that request partition by  
18 sale, the court shall allocate the right to buy those  
19 interests among the electing cotenants based on each electing  
20 cotenant's existing fractional ownership of the entire parcel  
21 divided by the total existing fractional ownership of all  
22 cotenants electing to buy and send notice to all the parties  
23 of that fact and of the price to be paid by each electing  
24 cotenant; and

25                 (3) if no cotenant elects to buy all the

1 interests of the cotenants that request partition by sale,  
2 the court shall send notice to all the parties of that fact  
3 and resolve the partition action under Subsections A and B of  
4 Section 8 of the Uniform Partition of Heirs Property Act.

5 E. If the court sends notice to the parties under  
6 Paragraph (1) or (2) of Subsection D of this section, the  
7 court shall set a date, not sooner than sixty days after the  
8 date the notice was sent, by which electing cotenants shall  
9 pay their apportioned price into the court. After this date,  
10 the following rules apply:

11 (1) if all electing cotenants timely pay  
12 their apportioned price into court, the court shall issue an  
13 order reallocating all the interests of the cotenants and  
14 disburse the amounts held by the court to the persons  
15 entitled to them;

16 (2) if no electing cotenant timely pays its  
17 apportioned price, the court shall resolve the partition  
18 action under Subsections A and B of Section 8 of the Uniform  
19 Partition of Heirs Property Act as if the interests of the  
20 cotenants that requested partition by sale were not  
21 purchased; and

22 (3) if one or more but not all of the  
23 electing cotenants fail to pay their apportioned price on  
24 time, the court, on motion, shall give notice to the electing  
25 cotenants that paid their apportioned price of the interest

1 remaining and the price for all that interest.

2 F. Not later than twenty days after the court  
3 gives notice pursuant to Paragraph (3) of Subsection E of  
4 this section, any cotenant that paid may elect to purchase  
5 all of the remaining interest by paying the entire price into  
6 the court. After the twenty-day period, the following rules  
7 apply:

8 (1) if only one cotenant pays the entire  
9 price for the remaining interest, the court shall issue an  
10 order reallocating the remaining interest to that cotenant.  
11 The court shall issue promptly an order reallocating the  
12 interests of all of the cotenants and disburse the amounts  
13 held by it to the persons entitled to them;

14 (2) if no cotenant pays the entire price for  
15 the remaining interest, the court shall resolve the partition  
16 action under Subsections A and B of Section 8 of the Uniform  
17 Partition of Heirs Property Act as if the interests of the  
18 cotenants that requested partition by sale were not  
19 purchased; and

20 (3) if more than one cotenant pays the  
21 entire price for the remaining interest, the court shall  
22 reapportion the remaining interest among those paying  
23 cotenants, based on each paying cotenant's original  
24 fractional ownership of the entire parcel divided by the  
25 total original fractional ownership of all cotenants that

1 paid the entire price for the remaining interest. The court  
2 shall issue promptly an order reallocating all of the  
3 cotenants' interests, disburse the amounts held by it to the  
4 persons entitled to them and promptly refund any excess  
5 payment held by the court.

6 G. Not later than forty-five days after the court  
7 sends notice to the parties pursuant to Subsection A of this  
8 section, any cotenant entitled to buy an interest under this  
9 section may request the court to authorize the sale as part  
10 of the pending action of the interests of cotenants named as  
11 defendants and served with the complaint but that did not  
12 appear in the action.

13 H. If the court receives a timely request under  
14 Subsection G of this section, the court, after hearing, may  
15 deny the request or authorize the requested additional sale  
16 on such terms as the court determines are fair and  
17 reasonable, subject to the following limitations:

18 (1) a sale authorized under this subsection  
19 may occur only after the purchase prices for all interests  
20 subject to sale under Subsections A through F of this section  
21 have been paid into court and those interests have been  
22 reallocated among the cotenants as provided in those  
23 subsections; and

24 (2) the purchase price for the interest of a  
25 nonappearing cotenant is based on the court's determination

1 of value under Section 6 of the Uniform Partition of Heirs  
2 Property Act.

3 SECTION 8. PARTITION ALTERNATIVES.--

4 A. If all the interests of all cotenants that  
5 requested partition by sale are not purchased by other  
6 cotenants pursuant to Section 7 of the Uniform Partition of  
7 Heirs Property Act or if, after conclusion of the buyout  
8 under that section, a cotenant remains that has requested  
9 partition in kind, the court shall order partition in kind  
10 unless the court, after consideration of the factors listed  
11 in Section 9 of the Uniform Partition of Heirs Property Act,  
12 finds that partition in kind will result in manifest  
13 prejudice to the cotenants as a group. In considering  
14 whether to order partition in kind, the court shall approve a  
15 request by two or more parties to have their individual  
16 interests aggregated.

17 B. If the court does not order partition in kind  
18 under Subsection A of this section, the court shall order  
19 partition by sale pursuant to Section 10 of the Uniform  
20 Partition of Heirs Property Act, or if no cotenant requested  
21 partition by sale, the court shall dismiss the action.

22 C. If the court orders partition in kind pursuant  
23 to Subsection A of this section, the court may require that  
24 one or more cotenants pay one or more other cotenants'  
25 amounts so that the payments, taken together with the value

1 of the in-kind distributions to the cotenants, will make the  
2 partition in kind just and proportionate in value to the  
3 fractional interests held.

4 D. If the court orders partition in kind, the  
5 court shall allocate to the cotenants that are unknown,  
6 unlocatable or the subject of a default judgment, if their  
7 interests were not bought out pursuant to Section 7 of the  
8 Uniform Partition of Heirs Property Act, a part of the  
9 property representing the combined interests of these  
10 cotenants as determined by the court.

11 **SECTION 9. CONSIDERATIONS FOR PARTITION IN KIND.--**

12 A. In determining under Subsection A of Section 8  
13 of the Uniform Partition of Heirs Property Act whether  
14 partition in kind would result in manifest prejudice to the  
15 cotenants as a group, the court shall consider the following:

16 (1) whether the heirs property practicably  
17 can be divided among the cotenants, including whether  
18 portions of the property once divided would be of sufficient  
19 size, and have adequate access and legal rights, to serve  
20 intended uses;

21 (2) whether partition in kind would  
22 apportion the property in such a way that the aggregate fair  
23 market value of the parcels resulting from the division would  
24 be materially less than the value of the property if it were  
25 sold as a whole, taking into account the condition under

1 which a court-ordered sale likely would occur;

2 (3) evidence of the collective duration of  
3 ownership or possession of the property by a cotenant and one  
4 or more predecessors in title or predecessors in possession  
5 to the cotenant who are or were relatives of the cotenant or  
6 each other;

7 (4) a cotenant's sentimental attachment to  
8 the property, including any attachment arising because the  
9 property has ancestral or other unique or special value to  
10 the cotenant;

11 (5) the lawful use being made of the  
12 property by a cotenant and the degree to which the cotenant  
13 would be harmed if the cotenant could not continue the same  
14 use of the property;

15 (6) the degree to which the cotenants have  
16 contributed their pro rata share of the property taxes,  
17 insurance and other expenses associated with maintaining  
18 ownership of the property or have contributed to the physical  
19 improvement, maintenance or upkeep of the property; and

20 (7) any other relevant factor.

21 B. The court shall not consider any one factor in  
22 Subsection A of this section to be dispositive without  
23 weighing the totality of all relevant factors and  
24 circumstances.

25 C. The court shall not partition property in a

1 manner that would result in subdivision of the property that  
2 would not otherwise be allowable under valid covenants and  
3 restrictions or applicable law."

4 SECTION 10. OPEN-MARKET SALE, SEALED BIDS OR AUCTION.--

5 A. If the court orders a sale of heirs property,  
6 the sale must be an open-market sale unless the court finds  
7 that a sale by sealed bids or an auction would be more  
8 economically advantageous and in the best interest of the  
9 cotenants as a group.

10 B. If the court orders an open-market sale and the  
11 parties, not later than ten days after the entry of the  
12 order, agree on a real estate broker licensed in this state  
13 to offer the property for sale, the court shall appoint the  
14 broker and establish a reasonable commission. If the parties  
15 do not agree on a broker, the court shall appoint a  
16 disinterested real estate broker licensed in this state to  
17 offer the property for sale and shall establish a reasonable  
18 commission. The broker shall offer the property for sale in  
19 a commercially reasonable manner at a price no lower than the  
20 determination of value and on the terms and conditions  
21 established by the court.

22 C. If the broker appointed under Subsection B of  
23 this section obtains within a reasonable time an offer to  
24 purchase the property for at least the determination of  
25 value:

1 (1) the broker shall comply with the  
2 reporting requirements in Section 11 of the Uniform Partition  
3 of Heirs Property Act; and

4 (2) the sale may be completed in accordance  
5 with state law other than the Uniform Partition of Heirs  
6 Property Act.

7 D. If the broker appointed under Subsection B of  
8 this section does not obtain within a reasonable time an  
9 offer to purchase the property for at least the determination  
10 of value, the court, after hearing, may:

11 (1) approve the highest outstanding offer,  
12 if any;

13 (2) redetermine the value of the property  
14 and order that the property continue to be offered for an  
15 additional time; or

16 (3) order that the property be sold by  
17 sealed bids or at an auction.

18 E. If the court orders a sale by sealed bids or an  
19 auction, the court shall set terms and conditions of the  
20 sale. If the court orders an auction, the auction must be  
21 conducted under Chapter 42, Article 5 NMSA 1978.

22 F. If a purchaser is entitled to a share of the  
23 proceeds of the sale, the purchaser is entitled to a credit  
24 against the price in an amount equal to the purchaser's share  
25 of the proceeds.

1           **SECTION 11. REPORT OF OPEN-MARKET SALE.--**

2           A. Unless required to do so within a shorter time  
3 by Chapter 42, Article 5 NMSA 1978, a broker appointed under  
4 Subsection B of Section 10 of the Uniform Partition of Heirs  
5 Property Act to offer heirs property for open-market sale  
6 shall file a report with the court not later than seven days  
7 after receiving an offer to purchase the property for at  
8 least the value determined under Section 6 or 10 of the  
9 Uniform Partition of Heirs Property Act.

10           B. The report required by Subsection A of this  
11 section shall contain the following information:

- 12                   (1) a description of the property to be sold  
13 to each buyer;
- 14                   (2) the name of each buyer;
- 15                   (3) the proposed purchase price;
- 16                   (4) the terms and conditions of the proposed  
17 sale, including the terms of any owner financing;
- 18                   (5) the amounts to be paid to lienholders;
- 19                   (6) a statement of contractual or other  
20 arrangements or conditions of the broker's commission; and
- 21                   (7) other material facts relevant to the  
22 sale.

23           **SECTION 12. UNIFORMITY OF APPLICATION AND**

24 **CONSTRUCTION.--**In applying and construing the Uniform

25 Partition of Heirs Property Act, consideration shall be given

1 to the need to promote uniformity of the law with respect to  
2 its subject matter among states that enact it.

3 SECTION 13. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL  
4 AND NATIONAL COMMERCE ACT.--The Uniform Partition of Heirs  
5 Property Act modifies, limits and supersedes the federal  
6 Electronic Signatures in Global and National Commerce Act, 15  
7 U.S.C. Section 7001 et seq., but does not modify, limit or  
8 supersede Section 101(c) of that act, 15 U.S.C. Section  
9 7001(c), or authorize electronic delivery of any of the  
10 notices described in Section 103(b) of that act, 15 U.S.C.  
11 Section 7003(b).

12 SECTION 14. Section 45-2-103 NMSA 1978 (being Laws  
13 1993, Chapter 174, Section 6, as amended) is amended to read:

14 "45-2-103. SHARE OF HEIRS OTHER THAN SURVIVING  
15 SPOUSE.--

16 A. Any part of the intestate estate not passing to  
17 a decedent's surviving spouse pursuant to Section 45-2-102  
18 NMSA 1978, or the entire intestate estate if there is no  
19 surviving spouse, passes in the following order to the  
20 individuals who survive the decedent:

21 (1) to the decedent's descendants by  
22 representation;

23 (2) if there is no surviving descendant, to  
24 the decedent's parents equally if both survive, or to the  
25 surviving parent if only one survives;

1                   (3) if there is no surviving descendant or  
2 parent, to the descendants of the decedent's parents or  
3 either of them by representation;

4                   (4) if there is no surviving descendant,  
5 parent or descendant of a parent, but the decedent is  
6 survived by one or more grandparents or descendants of  
7 grandparents, on both grandparents' sides:

8                   (a) half to the decedent's  
9 grandparents on one side equally if both survive, or to the  
10 survivor of them if only one survives, or to the descendants  
11 of the decedent's grandparents on this side or either of them  
12 if both are deceased, the descendants taking by  
13 representation; and

14                   (b) half to the decedent's  
15 grandparents on the other side equally if both survive, or to  
16 the survivor of them if only one survives, or to the  
17 descendants of the decedent's grandparents or either of them  
18 if both are deceased, the descendants taking by  
19 representation; and

20                   (5) if there is no surviving descendant  
21 parent, or descendant of a parent, but the decedent is  
22 survived by one or more grandparents or descendants of  
23 grandparents on one side but not the other side, to the  
24 decedent's relatives on the side with one or more surviving  
25 members in the manner described in Paragraph (4) of this

1 subsection.

2 B. If there is no taker under Subsection A of this  
3 section, but the decedent has:

4 (1) one deceased spouse who has one or more  
5 descendants who survive the decedent, the estate or part  
6 thereof passes to that spouse's descendants by  
7 representation; or

8 (2) more than one deceased spouse who has  
9 one or more descendants who survive the decedent, an equal  
10 share of the estate or part thereof passes to each set of  
11 descendants by representation.

12 C. For purposes of Subsection B of this section,  
13 the term "deceased spouse" means an individual to whom the  
14 decedent was married at the individual's death, and does not  
15 include a spouse who was divorced from, or treated pursuant  
16 to Section 45-2-802 or Section 45-2-804 NMSA 1978 as divorced  
17 from, the decedent at the time of the decedent's death."

18 **SECTION 15.** Section 45-2-504 NMSA 1978 (being Laws  
19 1993, Chapter 174, Section 27, as amended) is amended to  
20 read:

21 "45-2-504. SELF-PROVED WILL.--

22 A. A will may be simultaneously executed, attested  
23 and made self-proved by acknowledgment thereof by the  
24 testator and affidavits or affirmations under penalty of  
25 perjury of the witnesses, each made before an officer

1 authorized to administer oaths under the laws of the state in  
2 which execution occurs and evidenced by the officer's  
3 certificate, under official seal, in substantially the  
4 following form:

5 "I, \_\_\_\_\_, the testator, swear or affirm under  
6 penalty of perjury on this \_\_\_\_\_ day of \_\_\_\_\_, that I  
7 request \_\_\_\_\_ and \_\_\_\_\_ to act as witnesses to my will;  
8 that I declare to them and the undersigned authority that  
9 this document is my will; that I sign this will in the  
10 presence of both witnesses; that they sign the will as  
11 witnesses in my presence and in the presence of each other;  
12 that the will was read by me (or read and explained to me)  
13 after being prepared and before I sign it; that it clearly  
14 and accurately expresses my wishes; that I sign it willingly  
15 (or willingly directed another to sign for me); that I make  
16 and sign the will as my free and voluntary act for the  
17 purposes expressed in the will; that I am eighteen years of  
18 age or older; that I am mentally capable of disposing of my  
19 estate by will; and that I am not acting under duress,  
20 menace, fraud or undue influence of any person.

21 \_\_\_\_\_  
22 Testator

23 We, \_\_\_\_\_ and \_\_\_\_\_, the witnesses, do hereby  
24 swear or affirm under penalty of perjury on this \_\_\_\_\_  
25 day of \_\_\_\_\_ to the undersigned authority that

1 the testator, \_\_\_\_\_, declares that the attached  
2 document is his or her will; that the testator signs it  
3 willingly (or willingly directs another to sign for him or  
4 her); that the testator signs it in the presence of both of us  
5 and requests both of us to sign as witnesses; that each of us,  
6 in the presence of the testator and in the presence of each  
7 other, signs this will as witness to the testator's signing;  
8 that so far as we can determine, the testator is eighteen  
9 years of age or older; that the testator is not acting under  
10 duress, menace, fraud or undue influence of any person; and  
11 that the testator, in our opinion, is mentally capable of  
12 disposing of his or her estate by will.

13 \_\_\_\_\_  
14 Witness

15 \_\_\_\_\_  
16 Witness

17 State of \_\_\_\_\_  
18 County of \_\_\_\_\_

19 Subscribed and sworn to, or affirmed under penalty of  
20 perjury, and acknowledged before me by \_\_\_\_\_, the  
21 testator, and subscribed and sworn to, or affirmed under  
22 penalty of perjury, before me by \_\_\_\_\_ and \_\_\_\_\_,  
23 witnesses, this \_\_\_\_\_ day of \_\_\_\_\_.

24 (Seal)

25 (Signed) \_\_\_\_\_

1 \_\_\_\_\_  
2 (Official capacity of officer)".

3 B. An attested will may be made self-proved at any  
4 time after its execution by the acknowledgment thereof by the  
5 testator and the affidavits or affirmation under penalty of  
6 perjury of the witnesses, each made before an officer  
7 authorized to administer oaths under the laws of the state in  
8 which the acknowledgment occurs and evidenced by the officer's  
9 certificate, under official seal, attached or annexed to the  
10 will in substantially the following form:

11 I, \_\_\_\_\_, the testator, swear or affirm  
12 under penalty of perjury on this \_\_\_\_\_ day of  
13 \_\_\_\_\_ that I requested \_\_\_\_\_ and \_\_\_\_\_  
14 to act as witnesses to my will; that I declared to them and  
15 the undersigned authority that this document is my will; that  
16 I signed this will in the presence of both witnesses; that  
17 they signed the will as witnesses in my presence and in the  
18 presence of each other; that the will was read by me (or read  
19 and explained to me) after being prepared and before I signed  
20 it; that it clearly and accurately expresses my wishes; that I  
21 signed it willingly (or willingly directed another to sign for  
22 me); that I made and signed the will as my free and voluntary  
23 act for the purposes expressed in the will; that I am eighteen  
24 years of age or older; that I am mentally capable of disposing  
25 of my estate by will; and that I am not acting under duress,

1 menace, fraud or undue influence of any person.

2 \_\_\_\_\_

3 Testator

4 We, \_\_\_\_\_ and \_\_\_\_\_,

5 witnesses, do hereby swear or affirm under penalty of perjury

6 on this \_\_\_\_\_ day of \_\_\_\_\_ that the

7 testator, \_\_\_\_\_, declared the attached document to

8 be his or her will; that the testator signed it willingly (or

9 willingly directed another to sign for the testator); that the

10 testator signed it in the presence of both of us and requested

11 both of us to sign as witnesses; that each of us, in the

12 presence of the testator and in the presence of each other,

13 signed this will as witness to the testator's signing; that so

14 far as we could determine, the testator is eighteen years of

15 age or older; that the testator was not acting under duress,

16 menace, fraud or undue influence of any person; and that the

17 testator, in our opinion, was mentally capable of disposing of

18 the testator's estate by will.

19 \_\_\_\_\_

20 Witness

21 \_\_\_\_\_

22 Witness

23 State of \_\_\_\_\_

24 County of \_\_\_\_\_

25 Subscribed and sworn to, or affirmed under penalty of

1 perjury, and acknowledged before me by \_\_\_\_\_, the  
2 testator, and subscribed and sworn to, or affirmed under  
3 penalty of perjury, before me by \_\_\_\_\_ and \_\_\_\_\_,  
4 witnesses, this \_\_\_\_\_ of \_\_\_\_\_.

5  
6 (Seal)

7 (Signed) \_\_\_\_\_

8 \_\_\_\_\_  
9 (Official capacity of officer)".

10 C. A signature affixed to a self-proving affidavit  
11 attached to a will is considered a signature affixed to the  
12 will if necessary to prove the will's due execution."

13 **SECTION 16.** Section 45-3-203 NMSA 1978 (being Laws  
14 1975, Chapter 257, Section 3-203, as amended) is amended to  
15 read:

16 "45-3-203. PRIORITY AMONG PERSONS SEEKING APPOINTMENT  
17 AS PERSONAL REPRESENTATIVE.--

18 A. Whether the proceedings are formal or informal,  
19 persons who are not disqualified have priority for appointment  
20 in the following order:

21 (1) the person with priority as determined  
22 by a probated will, including a person nominated by a power  
23 conferred in a will;

24 (2) the surviving spouse of the decedent who  
25 is a devisee of the decedent;

1                   (3) other devisees of the decedent;  
2                   (4) the surviving spouse of the decedent;  
3                   (5) other heirs of the decedent; and  
4                   (6) forty-five days after the death of the  
5 decedent, any creditor.

6                   B. An objection to an appointment may be made only  
7 in formal proceedings. In case of objection, the priorities  
8 stated in Subsection A of this section apply except that:

9                   (1) if the estate appears to be more than  
10 adequate to meet allowances and costs of administration but  
11 inadequate to discharge anticipated unsecured claims, the  
12 court, on petition of creditors, may appoint any qualified  
13 person; and

14                   (2) in case of objection to appointment of a  
15 person other than one whose priority is determined by will by  
16 an heir or devisee appearing to have a substantial interest in  
17 the estate, the court may appoint a person who is acceptable  
18 to heirs and devisees whose interests in the estate appear to  
19 be worth in total more than half of the probable distributable  
20 value of the estate or, in default of this accord, any  
21 suitable person.

22                   C. A person entitled to letters under Paragraphs  
23 (2) through (5) of Subsection A of this section or a person  
24 who has not reached the age of majority and who would be  
25 entitled to letters but for the person's age may nominate a

1 qualified person to act as personal representative by an  
2 appropriate writing filed with the court and thereby confer  
3 the person's relative priority for appointment on the person's  
4 nominee. Any person who has reached the age of majority may  
5 renounce the right to nominate or to an appointment by an  
6 appropriate writing filed with the court. When two or more  
7 persons entitled to letters under Paragraphs (2) through (5)  
8 of Subsection A of this section share a priority, all those  
9 who do not renounce must concur in nominating another to act  
10 for them or in applying for appointment by an appropriate  
11 writing filed with the court. The person so nominated shall  
12 have the same priority as those who nominated the person. A  
13 nomination or renunciation shall be signed by each person  
14 making it, the person's attorney or the person's  
15 representative authorized by Subsection D of this section.

16 D. Conservators of the estates of protected  
17 persons or, if there is no conservator, any guardian except a  
18 guardian ad litem of a minor or incapacitated person may  
19 exercise the same right to nominate, to object to another's  
20 appointment or to participate in determining the preference of  
21 a majority in interest of the heirs and devisees that the  
22 protected person would have if qualified for appointment.

23 E. Appointment of one who does not have priority,  
24 including priority resulting from renunciation or nomination  
25 determined pursuant to this section, may be made only in

1 formal proceedings. Before appointing one without priority,  
2 the court shall determine that those having priority, although  
3 given notice of the proceedings, have failed to request  
4 appointment or to nominate another for appointment and that  
5 administration is necessary.

6 F. No person is qualified to serve as a personal  
7 representative who is:

8 (1) under the age of majority; or

9 (2) a person whom the court finds unsuitable  
10 in formal proceedings.

11 G. A personal representative appointed by a court  
12 of the decedent's domicile has priority over all other persons  
13 except where the decedent's will nominates different persons  
14 to be personal representatives in New Mexico and in the state  
15 of domicile. The domiciliary personal representative may  
16 nominate another, who shall have the same priority as the  
17 domiciliary personal representative.

18 H. This section governs priority for appointment  
19 of a successor personal representative but does not apply to  
20 the selection of a special administrator."

21 **SECTION 17.** Section 45-3-703 NMSA 1978 (being Laws  
22 1975, Chapter 257, Section 3-703, as amended) is amended to  
23 read:

24 "45-3-703. GENERAL DUTIES--RELATION AND LIABILITY TO  
25 PERSONS INTERESTED IN ESTATE--STANDING TO SUE.--

1           A. A personal representative is a fiduciary who  
2 shall observe the same standards of care applicable to  
3 trustees. A personal representative is under a duty to settle  
4 and distribute the estate of a decedent in accordance with the  
5 terms of any probated and effective will and the Uniform  
6 Probate Code and as expeditiously and efficiently as is  
7 consistent with the best interests of the estate. The  
8 personal representative shall use the authority conferred upon  
9 the personal representative by the Uniform Probate Code, the  
10 terms of the will, if any, and any order in proceedings to  
11 which the personal representative is party for the best  
12 interests of successors to the estate.

13           B. A personal representative may not be surcharged  
14 for acts of administration or distribution if the conduct in  
15 question was authorized at the time. Subject to other  
16 obligations of administration, an informally probated will  
17 authorizes a personal representative to administer and  
18 distribute the estate according to its terms.

19           C. An order of appointment of a personal  
20 representative, whether issued in informal or formal  
21 proceedings, authorizes a personal representative to  
22 distribute apparently intestate assets to the heirs of the  
23 decedent if, at the time of distribution, the personal  
24 representative is not aware of:

25                   (1) a pending testacy proceeding;

1                   (2) a proceeding to vacate an order entered  
2 in an earlier testacy proceeding;

3                   (3) a formal proceeding questioning the  
4 personal representative's appointment or fitness to continue;  
5 or

6                   (4) a supervised administration proceeding.

7           D. This section does not affect the duty of the  
8 personal representative to administer and distribute the  
9 estate in accordance with the rights of claimants whose claims  
10 have been allowed, the surviving spouse, any minor and  
11 dependent children and any pretermitted child of the decedent.

12           E. Except as to proceedings that do not survive  
13 the death of the decedent, a personal representative of a  
14 decedent domiciled in New Mexico at the decedent's death has  
15 the same standing to sue and be sued in the courts of New  
16 Mexico and the courts of any other jurisdiction as the  
17 decedent had immediately prior to death.

18           F. The personal representative must not delay  
19 distribution of an estate pending the possible birth of a  
20 posthumously conceived child unless the personal  
21 representative:

22                   (1) has received written notice or has  
23 actual knowledge that there is an intention to use a  
24 decedent's genetic material to create a child; and

25                   (2) the birth of the child pursuant to the

1 provisions of Section 45-2-120 NMSA 1978 or other law could  
2 have an effect on the personal representative's distribution  
3 of the estate. As used in this subsection, "genetic material"  
4 means eggs, sperm or embryos."

5 SECTION 18. Section 45-3-705 NMSA 1978 (being Laws  
6 1975, Chapter 257, Section 3-705, as amended) is amended to  
7 read:

8 "45-3-705. DUTY OF PERSONAL REPRESENTATIVE--NOTICE TO  
9 HEIRS AND DEVISEES.--

10 A. Not later than thirty days after appointment,  
11 every personal representative, except a special administrator,  
12 shall give notice of the appointment to the heirs and  
13 devisees, including, if there has been no formal testacy  
14 proceeding and if the personal representative was appointed on  
15 the assumption that the decedent died intestate, the devisees  
16 in any will mentioned in the application or petition for  
17 appointment of a personal representative.

18 B. The notice shall be delivered or sent by  
19 ordinary mail to each of the heirs and devisees whose address  
20 is reasonably available to the personal representative. The  
21 duty does not extend to require notice to persons:

22 (1) who have been adjudicated in a prior  
23 formal testacy proceeding to have no interest in the estate;  
24 or

25 (2) who are born more than thirty days after

1 the personal representative's appointment, including children  
2 born by posthumous conception.

3 C. The notice shall:

4 (1) include the name and address of the  
5 personal representative;

6 (2) indicate that it is being sent to  
7 persons who have or may have some interest in the estate being  
8 administered;

9 (3) indicate whether bond has been filed;  
10 and

11 (4) describe the court where papers relating  
12 to the estate are on file.

13 D. The notice shall state that the estate is being  
14 administered by the personal representative pursuant to the  
15 provisions of the Uniform Probate Code without supervision by  
16 the court but that recipients are entitled to information  
17 regarding the administration from the personal representative  
18 and can petition the court in any matter relating to the  
19 estate, including distribution of assets and expenses of  
20 administration.

21 E. The personal representative shall file a  
22 statement with the appointing court giving the names and  
23 addresses of those persons notified pursuant to Subsection A  
24 of this section.

25 F. The personal representative's failure to give

1 notice pursuant to this section is a breach of duty to the  
2 persons concerned but does not affect the validity of the  
3 appointment, the personal representative's powers or other  
4 duties. A personal representative may inform other persons of  
5 the appointment by delivery or ordinary mail."

6 **SECTION 19.** Section 45-3-911 NMSA 1978 (being Laws  
7 1975, Chapter 257, Section 3-911) is amended to read:

8 "45-3-911. PARTITION FOR PURPOSE OF DISTRIBUTION.--

9 A. When two or more heirs or devisees are entitled  
10 to distribution of undivided interests in any real or personal  
11 property of the estate, the personal representative or one or  
12 more of the heirs or devisees may petition the district court  
13 prior to the formal or informal closing of the estate to make  
14 partition.

15 B. After notice to the interested heirs or  
16 devisees, the district court shall partition the property  
17 pursuant to the provisions of the Uniform Partition of Heirs  
18 Property Act.

19 C. The district court may direct the personal  
20 representative to sell any property pursuant to the provisions  
21 of the Uniform Partition of Heirs Property Act."

22 **SECTION 20.** Section 46-12-119 NMSA 1978 (being Laws  
23 2016, Chapter 72, Section 1-119) is amended to read:

24 "46-12-119. TAX-RELATED LIMITATIONS.--

25 A. As used in this section:

1 (1) "grantor trust" means a trust as to  
2 which a settlor of a first trust is considered the owner under  
3 26 U.S.C. Sections 671 through 677, as amended, or 26 U.S.C.  
4 Section 679, as amended;

5 (2) "Internal Revenue Code" means the United  
6 States Internal Revenue Code of 1986, as amended;

7 (3) "nongrantor trust" means a trust that is  
8 not a grantor trust; and

9 (4) "qualified benefits property" means  
10 property subject to the minimum distribution requirements of  
11 26 U.S.C. Section 401(a)(9), as amended, and any applicable  
12 regulations or subject to any similar requirements that refer  
13 to 26 U.S.C. Section 401(a)(9), as amended or the regulations.

14 B. An exercise of the decanting power is subject  
15 to the following limitations:

16 (1) if a first trust contains property that  
17 qualified, or would have qualified but for provisions of the  
18 Uniform Trust Decanting Act other than those in this section,  
19 for a marital deduction for purposes of the gift or estate tax  
20 under the Internal Revenue Code or a state gift, estate or  
21 inheritance tax, the second-trust instrument shall not include  
22 or omit any term that, if included in or omitted from the  
23 trust instrument for the trust to which the property was  
24 transferred, would have prevented the transfer from qualifying  
25 for the deduction, or would have reduced the amount of the

1 deduction, under the same provisions of the Internal Revenue  
2 Code or state law under which the transfer qualified;

3 (2) if the first trust contains property  
4 that qualified, or would have qualified but for provisions of  
5 the Uniform Trust Decanting Act other than those in this  
6 section, for a charitable deduction for purposes of the  
7 income, gift or estate tax under the Internal Revenue Code or  
8 a state income, gift, estate or inheritance tax, the  
9 second-trust instrument shall not include or omit any term  
10 that, if included in or omitted from the trust instrument for  
11 the trust to which the property was transferred, would have  
12 prevented the transfer from qualifying for the deduction, or  
13 would have reduced the amount of the deduction, under the same  
14 provisions of the Internal Revenue Code or state law under  
15 which the transfer qualified;

16 (3) if the first trust contains property  
17 that qualified, or would have qualified but for provisions of  
18 the Uniform Trust Decanting Act other than those in this  
19 section, for the exclusion from the gift tax described in 26  
20 U.S.C. Section 2503(b), as amended, the second-trust  
21 instrument shall not include or omit a term that, if included  
22 in or omitted from the trust instrument for the trust to which  
23 the property was transferred, would have prevented the  
24 transfer from qualifying under 26 U.S.C. Section 2503(b), as  
25 amended. If the first trust contains property that qualified,

1 or would have qualified but for provisions of the Uniform  
2 Trust Decanting Act other than those in this section, for the  
3 exclusion from the gift tax described in 26 U.S.C. Section  
4 2503(b), as amended, by application of 26 U.S.C. Section  
5 2503(c), as amended, the second-trust instrument shall not  
6 include or omit a term that, if included or omitted from the  
7 trust instrument for the trust to which the property was  
8 transferred, would have prevented the transfer from qualifying  
9 under 26 U.S.C. Section 2503(c), as amended;

10 (4) if the property of the first trust  
11 includes shares of stock in an S corporation, as defined in  
12 26 U.S.C. Section 1361, as amended, and the first trust is,  
13 or, but for provisions of the Uniform Trust Decanting Act  
14 other than those in this section, would be, a permitted  
15 shareholder under any provision of 26 U.S.C. Section 1361, as  
16 amended, an authorized fiduciary may exercise the power with  
17 respect to part or all of the S-corporation stock only if any  
18 second trust receiving the stock is a permitted shareholder  
19 under 26 U.S.C. Section 1361(c)(2), as amended. If the  
20 property of the first trust includes shares of stock in an S  
21 corporation and the first trust is, or, but for provisions of  
22 the Uniform Trust Decanting Act other than those in this  
23 section, would be, a qualified subchapter-S trust within the  
24 meaning of 26 U.S.C. Section 1361(d), as amended, the  
25 second-trust instrument shall not include or omit a term that

1 prevents the second trust from qualifying as a qualified  
2 subchapter-S trust;

3 (5) if the first trust contains property  
4 that qualified, or, but for provisions of the Uniform Trust  
5 Decanting Act other than those in this section, would have  
6 qualified, for a zero inclusion ratio for purposes of the  
7 generation-skipping transfer tax under 26 U.S.C. Section  
8 2642(c), as amended, the second-trust instrument shall not  
9 include or omit a term that, if included in or omitted from  
10 the first-trust instrument, would have prevented the transfer  
11 to the first trust from qualifying for a zero inclusion ratio  
12 under 26 U.S.C. Section 2642(c), as amended;

13 (6) if the first trust is directly or  
14 indirectly the beneficiary of qualified benefits property, the  
15 second-trust instrument shall not include or omit any term  
16 that, if included in or omitted from the first-trust  
17 instrument, would have increased the minimum distributions  
18 required with respect to the qualified benefits property under  
19 26 U.S.C. Section 401(a)(9), as amended, and any applicable  
20 regulations or any similar requirements that refer to 26  
21 U.S.C. Section 401(a)(9), as amended, or the regulations. If  
22 an attempted exercise of the decanting power violates this  
23 paragraph, the trustee is deemed to have held the qualified  
24 benefits property and any reinvested distributions of the  
25 property as a separate share from the date of the exercise of

1 the power, and Section 46-12-122 NMSA 1978 applies to the  
2 separate share;

3 (7) if the first trust qualifies as a  
4 grantor trust because of the application of 26 U.S.C. Section  
5 672(f)(2)(A), as amended, the second trust shall not include  
6 or omit a term that, if included in or omitted from the first-  
7 trust instrument, would have prevented the first trust from  
8 qualifying under 26 U.S.C. Section 672(f)(2)(A), as amended;

9 (8) as used in this paragraph, "tax benefit"  
10 means a federal or state tax deduction, exemption, exclusion  
11 or other benefit not otherwise listed in this section, except  
12 for a benefit arising from being a grantor trust. Subject to  
13 Paragraph (9) of this subsection, a second-trust instrument  
14 shall not include or omit a term that, if included in or  
15 omitted from the first-trust instrument, would have prevented  
16 qualification for a tax benefit if:

17 (a) the first-trust instrument  
18 expressly indicates an intent to qualify for the benefit or  
19 the first-trust instrument clearly is designed to enable the  
20 first trust to qualify for the benefit; and

21 (b) the transfer of property held by  
22 the first trust or the first trust qualified, or, but for  
23 provisions of the Uniform Trust Decanting Act other than those  
24 in this section, would have qualified, for the tax benefit;

25 (9) subject to Paragraph (4) of this

1 subsection:

2 (a) except as otherwise provided in  
3 Paragraph (7) of this subsection, the second trust may be a  
4 nongrantor trust, even if the first trust is a grantor trust;  
5 and

6 (b) except as otherwise provided in  
7 Paragraph (10) of this subsection, the second trust may be a  
8 grantor trust, even if the first trust is a nongrantor trust;  
9 and

10 (10) an authorized fiduciary shall not  
11 exercise the decanting power if a settlor objects in a signed  
12 record delivered to the fiduciary within the notice period  
13 and:

14 (a) the first trust and a second trust  
15 are both grantor trusts, in whole or in part, the first trust  
16 grants the settlor or another person the power to cause the  
17 first trust to cease to be a grantor trust and the second  
18 trust does not grant an equivalent power to the settlor or  
19 other person; or

20 (b) the first trust is a nongrantor  
21 trust and a second trust is a grantor trust, in whole or in  
22 part, with respect to the settlor, unless: 1) the settlor has  
23 the power at all times to cause the second trust to cease to  
24 be a grantor trust; or 2) the first-trust instrument contains  
25 a provision granting the settlor or another person a power

1 that would cause the first trust to cease to be a grantor  
2 trust and the second-trust instrument contains the same  
3 provision."

4 SECTION 21. EFFECTIVE DATE.--

5 A. The effective date of the provisions of  
6 Sections 14 and 20 of this act is July 1, 2017.

7 B. The effective date of the provisions of  
8 Sections 1 through 13 and 15 through 19 of this act is January  
9 1, 2018.

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