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AN ACT  
RELATING TO PROPERTY; ENACTING THE UNIFORM TRUST DECANTING  
ACT; REVISING THE STATUTORY RULE AGAINST PERPETUITIES AS IT  
AFFECTS PROPERTY INTERESTS, INCLUDING REAL PROPERTY  
INTERESTS, HELD IN TRUST.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:  
UNIFORM TRUST DECANTING ACT

SECTION 1-101. SHORT TITLE.--Sections 1-101 through  
1-129 of this act may be cited as the "Uniform Trust  
Decanting Act".

SECTION 1-102. DEFINITIONS.--As used in the Uniform  
Trust Decanting Act:

A. "appointive property" means the property or  
property interest subject to a power of appointment;

B. "ascertainable standard" means a standard  
relating to an individual's health, education, support or  
maintenance within the meaning of 26 U.S.C. Section  
2041(b)(1)(A), as amended, or 26 U.S.C. Section 2514(c)(1),  
as amended, and any applicable regulations;

C. "authorized fiduciary" means:  
(1) a trustee or other fiduciary, other than  
a settlor, that has discretion to distribute, or direct a  
trustee to distribute, part or all of the principal of the  
first trust to one or more current beneficiaries;

1 (2) a special fiduciary appointed under  
2 Section 1-109 of the Uniform Trust Decanting Act; or

3 (3) a special-needs fiduciary under Section  
4 1-113 of the Uniform Trust Decanting Act;

5 D. "beneficiary" means a person that:

6 (1) has a present or future, vested or  
7 contingent, beneficial interest in a trust;

8 (2) holds a power of appointment over trust  
9 property; or

10 (3) is an identified charitable organization  
11 that will or may receive distributions under the terms of the  
12 trust;

13 E. "charitable interest" means an interest in a  
14 trust that:

15 (1) is held by an identified charitable  
16 organization and makes the organization a qualified  
17 beneficiary;

18 (2) benefits only charitable organizations  
19 and, if the interest were held by an identified charitable  
20 organization, would make the organization a qualified  
21 beneficiary; or

22 (3) is held solely for charitable purposes  
23 and, if the interest were held by an identified charitable  
24 organization, would make the organization a qualified  
25 beneficiary;

1 F. "charitable organization" means:

2 (1) a person, other than an individual,  
3 organized and operated exclusively for charitable purposes;  
4 or

5 (2) a government or governmental  
6 subdivision, agency or instrumentality, to the extent it  
7 holds funds exclusively for a charitable purpose;

8 G. "charitable purpose" means the relief of  
9 poverty, the advancement of education or religion, the  
10 promotion of health, a municipal or other governmental  
11 purpose or another purpose the achievement of which is  
12 beneficial to the community;

13 H. "court" means the district court;

14 I. "current beneficiary" means a beneficiary that,  
15 on the date the beneficiary's qualification is determined, is  
16 a distributee or permissible distributee of trust income or  
17 principal. "Current beneficiary":

18 (1) includes the holder of a presently  
19 exercisable general power of appointment; and

20 (2) does not include a person that is a  
21 beneficiary only because the person holds any other power of  
22 appointment;

23 J. "decanting power" or "the decanting power"  
24 means the power of an authorized fiduciary under the Uniform  
25 Trust Decanting Act to distribute property of a first trust

1 to one or more second trusts or to modify the terms of the  
2 first trust;

3 K. "expanded distributive discretion" means a  
4 discretionary power of distribution that is not limited to an  
5 ascertainable standard or a reasonably definite standard;

6 L. "first trust" means a trust over which an  
7 authorized fiduciary may exercise the decanting power;

8 M. "first-trust instrument" means the trust  
9 instrument for a first trust;

10 N. "general power of appointment" means a power of  
11 appointment exercisable in favor of a powerholder, the  
12 powerholder's estate, a creditor of the powerholder or a  
13 creditor of the powerholder's estate;

14 O. "jurisdiction", with respect to a geographic  
15 area, includes a state or country;

16 P. "person" means an individual; an estate; a  
17 business or nonprofit entity; a public corporation; a  
18 government or governmental subdivision, agency or  
19 instrumentality; or another legal entity;

20 Q. "power of appointment" means a power that  
21 enables a powerholder acting in a nonfiduciary capacity to  
22 designate a recipient of an ownership interest in or another  
23 power of appointment over the appointive property. "Power of  
24 appointment" does not include a power of attorney;

25 R. "powerholder" means a person in which a donor

1 creates a power of appointment;

2 S. "presently exercisable power of appointment"  
3 means a power of appointment exercisable by the powerholder  
4 at the relevant time. "Presently exercisable power of  
5 appointment":

6 (1) includes a power of appointment  
7 exercisable only after the occurrence of a specified event,  
8 the satisfaction of an ascertainable standard or the passage  
9 of a specified time only after:

10 (a) the occurrence of the specified  
11 event;

12 (b) the satisfaction of the  
13 ascertainable standard; or

14 (c) the passage of the specified time;  
15 and

16 (2) does not include a power exercisable  
17 only at the powerholder's death;

18 T. "qualified beneficiary" means a beneficiary  
19 that on the date the beneficiary's qualification is  
20 determined:

21 (1) is a distributee or permissible  
22 distributee of trust income or principal;

23 (2) would be a distributee or permissible  
24 distributee of trust income or principal if the interests of  
25 the distributees described in Paragraph (1) of this

1 subsection terminated on that date without causing the trust  
2 to terminate; or

3 (3) would be a distributee or permissible  
4 distributee of trust income or principal if the trust  
5 terminated on that date;

6 U. "reasonably definite standard" means a clearly  
7 measurable standard under which a holder of a power of  
8 distribution is legally accountable within the meaning of 26  
9 U.S.C. Section 674(b)(5)(A), as amended, and any applicable  
10 regulations;

11 V. "record" means information that is inscribed on  
12 a tangible medium or that is stored in an electronic or other  
13 medium and is retrievable in perceivable form;

14 W. "second trust" means:

15 (1) a first trust after modification under  
16 the Uniform Trust Decanting Act; or

17 (2) a trust to which a distribution of  
18 property from a first trust is or may be made under the  
19 Uniform Trust Decanting Act;

20 X. "second-trust instrument" means the trust  
21 instrument for a second trust;

22 Y. "settlor", except as otherwise provided in  
23 Section 1-125 of the Uniform Trust Decanting Act, means a  
24 person, including a testator, that creates or contributes  
25 property to a trust. If more than one person creates or

1 contributes property to a trust, each person is a settlor of  
2 the portion of the trust property attributable to the  
3 person's contribution except to the extent that another  
4 person has power to revoke or withdraw that portion;

5 Z. "sign" means, with present intent to  
6 authenticate or adopt a record:

7 (1) to execute or adopt a tangible symbol;

8 or

9 (2) to attach to or logically associate with  
10 the record an electronic symbol, sound or process;

11 AA. "state" means a state of the United States,  
12 the District of Columbia, Puerto Rico, the United States  
13 Virgin Islands or any territory or insular possession subject  
14 to the jurisdiction of the United States. "State" includes  
15 an Indian tribe, pueblo, nation or band located within the  
16 United States and recognized by federal law or formally  
17 acknowledged by a state of the United States;

18 BB. "terms of the trust" means the manifestation  
19 of the settlor's intent regarding a trust's provisions as  
20 expressed in the trust instrument, as may be established by  
21 other evidence that would be admissible in a judicial  
22 proceeding or as may be established by court order or  
23 nonjudicial settlement agreement; and

24 CC. "trust instrument" means a record executed by  
25 the settlor to create a trust or by any person to create a

1 second trust that contains some or all of the terms of the  
2 trust, including any amendments.

3 SECTION 1-103. SCOPE.--

4 A. Except as otherwise provided in Subsections B  
5 and C of this section, the Uniform Trust Decanting Act  
6 applies to an express trust that is irrevocable or revocable  
7 by the settlor only with the consent of the trustee or a  
8 person holding an adverse interest.

9 B. The Uniform Trust Decanting Act does not apply  
10 to a trust held solely for charitable purposes.

11 C. Subject to Section 1-115 of the Uniform Trust  
12 Decanting Act, a trust instrument may restrict or prohibit  
13 exercise of the decanting power.

14 D. The Uniform Trust Decanting Act does not limit  
15 the power of a trustee, powerholder or other person to  
16 distribute or appoint property in further trust or to modify  
17 a trust under the trust instrument, New Mexico law other than  
18 the Uniform Trust Decanting Act, common law, a court order or  
19 a nonjudicial-settlement agreement.

20 E. The Uniform Trust Decanting Act does not affect  
21 the ability of a settlor to provide in a trust instrument for  
22 the distribution of the trust property or appointment in  
23 further trust of the trust property or for modification of  
24 the trust instrument.

25 SECTION 1-104. FIDUCIARY DUTY.--

1           A. In exercising the decanting power, an  
2 authorized fiduciary shall act in accordance with its  
3 fiduciary duties, including the duty to act in accordance  
4 with the purposes of the first trust.

5           B. The Uniform Trust Decanting Act does not create  
6 or imply a duty to exercise the decanting power or to inform  
7 beneficiaries about the applicability of the Uniform Trust  
8 Decanting Act.

9           C. Except as otherwise provided in a first-trust  
10 instrument, the terms of the first trust are, for purposes of  
11 the Uniform Trust Decanting Act, Section 46A-8-801 NMSA 1978  
12 and Subsection A of Section 46A-8-802 NMSA 1978, deemed to  
13 include the decanting power.

14           **SECTION 1-105. APPLICATION--GOVERNING LAW.--**

15           A. The Uniform Trust Decanting Act applies to a  
16 trust that:

17                   (1) has its principal place of  
18 administration in New Mexico, including a trust whose  
19 principal place of administration has been changed to New  
20 Mexico; or

21                   (2) provides by its trust instrument that it  
22 is governed by New Mexico law or is governed by New Mexico  
23 law for the purpose of:

24                           (a) administration, including  
25 administration of a trust whose governing law for purposes of

1 administration has been changed to New Mexico law;

2 (b) construction of terms of the trust;

3 or

4 (c) determining the meaning or effect  
5 of terms of the trust.

6 B. Except as otherwise provided in the Uniform  
7 Trust Decanting Act, on and after January 1, 2017:

8 (1) the Uniform Trust Decanting Act applies  
9 to a trust created before, on or after January 1, 2017;

10 (2) the Uniform Trust Decanting Act applies  
11 to a judicial proceeding concerning a trust commenced on or  
12 after January 1, 2017;

13 (3) the Uniform Trust Decanting Act applies  
14 to a judicial proceeding concerning a trust commenced before  
15 January 1, 2017 unless the court finds that application of a  
16 particular provision of the Uniform Trust Decanting Act would  
17 interfere substantially with the effective conduct of the  
18 judicial proceeding or prejudice a right of a party, in which  
19 case the particular provision of the Uniform Trust Decanting  
20 Act does not apply and the superseded law applies;

21 (4) a rule of construction or presumption  
22 provided in the Uniform Trust Decanting Act applies to a  
23 trust instrument executed before January 1, 2017 unless there  
24 is a clear indication of a contrary intent in the terms of  
25 the instrument; and

1 (5) except as otherwise provided in  
2 Paragraphs (1) through (4) of this subsection, an action done  
3 before January 1, 2017 is not affected by the Uniform Trust  
4 Decanting Act.

5 C. If a right is acquired, extinguished or barred  
6 on the expiration of a prescribed period that commenced under  
7 New Mexico law other than the Uniform Trust Decanting Act  
8 before January 1, 2017, the law continues to apply to the  
9 right.

10 SECTION 1-106. REASONABLE RELIANCE.--A trustee or other  
11 person that reasonably relies on the validity of a  
12 distribution of part or all of the property of a trust to  
13 another trust, or a modification of a trust under the Uniform  
14 Trust Decanting Act, New Mexico law other than the Uniform  
15 Trust Decanting Act or the law of another jurisdiction, is  
16 not liable to any person for any action or failure to act as  
17 a result of the reliance.

18 SECTION 1-107. NOTICE--EXERCISE OF DECANTING POWER.--

19 A. In this section, a notice period begins on the  
20 day notice is given under Subsection C of this section and  
21 ends fifty-nine days after the day notice is given.

22 B. Except as otherwise provided in the Uniform  
23 Trust Decanting Act, an authorized fiduciary may exercise the  
24 decanting power without the consent of any person and without  
25 court approval.

1           C. Except as otherwise provided in Subsection F of  
2 this section, an authorized fiduciary shall give notice in a  
3 record of the intended exercise of the decanting power not  
4 later than sixty days before the exercise to:

5                   (1) each settlor of the first trust, if  
6 living or then in existence;

7                   (2) each qualified beneficiary of the first  
8 trust;

9                   (3) each holder of a presently exercisable  
10 power of appointment over any part or all of the first trust;

11                   (4) each person that currently has the right  
12 to remove or replace the authorized fiduciary;

13                   (5) each other fiduciary of the first trust;

14                   (6) each fiduciary of the second trust; and

15                   (7) the attorney general, if Subsection B of  
16 Section 1-114 of the Uniform Trust Decanting Act applies.

17           D. An authorized fiduciary is not required to give  
18 notice under Subsection C of this section to a person that is  
19 not known to the fiduciary or is known to the fiduciary but  
20 cannot be located by the fiduciary after reasonable  
21 diligence.

22           E. A notice given under Subsection C of this  
23 section shall:

24                   (1) specify the manner in which the  
25 authorized fiduciary intends to exercise the decanting power;

1                   (2) specify the proposed effective date for  
2 exercise of the power;

3                   (3) include a copy of the first-trust  
4 instrument; and

5                   (4) include a copy of all second-trust  
6 instruments.

7                   F. The decanting power may be exercised before  
8 expiration of the notice period specified in Subsection A of  
9 this section if all persons entitled to receive notice waive  
10 the period in a signed record.

11                   G. The receipt of notice, waiver of the notice  
12 period or expiration of the notice period does not affect the  
13 right of a person to file an application under Section 1-109  
14 of the Uniform Trust Decanting Act asserting that:

15                   (1) an attempted exercise of the decanting  
16 power is ineffective because it did not comply with the  
17 Uniform Trust Decanting Act or was an abuse of discretion or  
18 breach of fiduciary duty; or

19                   (2) Section 1-122 of the Uniform Trust  
20 Decanting Act applies to the exercise of the decanting power.

21                   H. An exercise of the decanting power is not  
22 ineffective because of the failure to give notice to one or  
23 more persons under Subsection C of this section if the  
24 authorized fiduciary acted with reasonable care to comply  
25 with that subsection.

1           **SECTION 1-108. REPRESENTATION.--**

2           A. Notice to a person with authority to represent  
3 and bind another person under a first-trust instrument or the  
4 Uniform Trust Code has the same effect as notice given  
5 directly to the person represented.

6           B. Consent of or waiver by a person with authority  
7 to represent and bind another person under a first-trust  
8 instrument or the Uniform Trust Code is binding on the person  
9 represented unless the person represented objects to the  
10 representation before the consent or waiver otherwise would  
11 become effective.

12           C. A person with authority to represent and bind  
13 another person under a first-trust instrument or the Uniform  
14 Trust Code may file an application under Section 1-109 of the  
15 Uniform Trust Decanting Act on behalf of the person  
16 represented.

17           D. A settlor shall not represent or bind a  
18 beneficiary under the Uniform Trust Decanting Act.

19           **SECTION 1-109. COURT INVOLVEMENT.--**

20           A. On application of an authorized fiduciary, a  
21 person entitled to notice under Subsection C of Section 1-107  
22 of the Uniform Trust Decanting Act, a beneficiary or, with  
23 respect to a charitable interest, the attorney general or  
24 other person that has standing to enforce the charitable  
25 interest, the court, may:

1                   (1) provide instructions to the authorized  
2 fiduciary regarding whether a proposed exercise of the  
3 decanting power is permitted under the Uniform Trust  
4 Decanting Act and consistent with the fiduciary duties of the  
5 authorized fiduciary;

6                   (2) appoint a special fiduciary and  
7 authorize the special fiduciary to determine whether the  
8 decanting power should be exercised under the Uniform Trust  
9 Decanting Act and to exercise the decanting power;

10                   (3) approve an exercise of the decanting  
11 power;

12                   (4) determine that a proposed or attempted  
13 exercise of the decanting power is ineffective because:

14                   (a) after applying Section 1-122 of the  
15 Uniform Trust Decanting Act, the proposed or attempted  
16 exercise does not or did not comply with the Uniform Trust  
17 Decanting Act; or

18                   (b) the proposed or attempted exercise  
19 would be or was an abuse of the fiduciary's discretion or a  
20 breach of fiduciary duty;

21                   (5) determine the extent to which Section  
22 1-122 of the Uniform Trust Decanting Act applies to a prior  
23 exercise of the decanting power;

24                   (6) provide instructions to the trustee  
25 regarding the application of Section 1-122 of the Uniform

1 Trust Decanting Act to a prior exercise of the decanting  
2 power; or

3 (7) order other relief to carry out the  
4 purposes of the Uniform Trust Decanting Act.

5 B. On application of an authorized fiduciary, the  
6 court may approve:

7 (1) an increase in the fiduciary's  
8 compensation under Section 1-116 of the Uniform Trust  
9 Decanting Act; or

10 (2) a modification under Section 1-118 of  
11 the Uniform Trust Decanting Act of a provision granting a  
12 person the right to remove or replace the fiduciary.

13 **SECTION 1-110. FORMALITIES.--**An exercise of the  
14 decanting power shall be made in a record signed by an  
15 authorized fiduciary. The signed record shall, directly or  
16 by reference to the notice required by Section 1-107 of the  
17 Uniform Trust Decanting Act, identify the first trust and the  
18 second trust or trusts and state the property of the first  
19 trust being distributed to each second trust and the  
20 property, if any, that remains in the first trust.

21 **SECTION 1-111. DECANTING POWER UNDER EXPANDED**  
22 **DISTRIBUTIVE DISCRETION.--**

23 A. As used in this section:

24 (1) "noncontingent right" means a right that  
25 is not subject to the exercise of discretion or the

1 occurrence of a specified event that is not certain to occur.  
2 "Noncontingent right" does not include a right held by a  
3 beneficiary if any person has discretion to distribute  
4 property subject to the right to any person other than the  
5 beneficiary or the beneficiary's estate;

6 (2) "presumptive remainder beneficiary"  
7 means a qualified beneficiary other than a current  
8 beneficiary;

9 (3) "successor beneficiary" means a  
10 beneficiary that is not a qualified beneficiary on the date  
11 the beneficiary's qualification is determined. "Successor  
12 beneficiary" does not include a person that is a beneficiary  
13 only because the person holds a nongeneral power of  
14 appointment; and

15 (4) "vested interest" means:

16 (a) a right to a mandatory distribution  
17 that is a noncontingent right as of the date of the exercise  
18 of the decanting power;

19 (b) a current and noncontingent right,  
20 annually or more frequently, to a mandatory distribution of  
21 income, a specified dollar amount or a percentage of value of  
22 some or all of the trust property;

23 (c) a current and noncontingent right,  
24 annually or more frequently, to withdraw income, a specified  
25 dollar amount or a percentage of value of some or all of the

1 trust property;

2 (d) a presently exercisable general  
3 power of appointment; or

4 (e) a right to receive an ascertainable  
5 part of the trust property on the trust's termination that is  
6 not subject to the exercise of discretion or to the  
7 occurrence of a specified event that is not certain to occur.

8 B. Subject to Subsection C of this section and  
9 Section 1-114 of the Uniform Trust Decanting Act, an  
10 authorized fiduciary that has expanded distributive  
11 discretion over the principal of a first trust for the  
12 benefit of one or more current beneficiaries may exercise the  
13 decanting power over the principal of the first trust.

14 C. Subject to Section 1-113 of the Uniform Trust  
15 Decanting Act, in an exercise of the decanting power under  
16 this section, a second trust shall not:

17 (1) include as a current beneficiary a  
18 person that is not a current beneficiary of the first trust,  
19 except as otherwise provided in Subsection D of this section;

20 (2) include as a presumptive remainder  
21 beneficiary or successor beneficiary a person that is not a  
22 current beneficiary, presumptive remainder beneficiary or  
23 successor beneficiary of the first trust, except as otherwise  
24 provided in Subsection D of this section; or

25 (3) reduce or eliminate a vested interest.

1           D. Subject to Paragraph (3) of Subsection C of  
2 this section and Section 1-114 of the Uniform Trust Decanting  
3 Act, in an exercise of the decanting power under this  
4 section, a second trust may be a trust created or  
5 administered under the law of any jurisdiction and may:

6                   (1) retain a power of appointment granted in  
7 the first trust;

8                   (2) omit a power of appointment granted in  
9 the first trust, other than a presently exercisable general  
10 power of appointment;

11                   (3) create or modify a power of appointment  
12 if the powerholder is a current beneficiary of the first  
13 trust and the authorized fiduciary has expanded distributive  
14 discretion to distribute principal to the beneficiary; and

15                   (4) create or modify a power of appointment  
16 if the powerholder is a presumptive remainder beneficiary or  
17 successor beneficiary of the first trust, but the exercise of  
18 the power may take effect only after the powerholder becomes,  
19 or would have become if then living, a current beneficiary.

20           E. A power of appointment described in Paragraphs  
21 (1) through (4) of Subsection D of this section may be  
22 general or nongeneral. The class of permissible appointees  
23 in favor of which the power may be exercised may be broader  
24 than or different from the beneficiaries of the first trust.

25           F. If an authorized fiduciary has expanded

1 distributive discretion over part but not all of the  
2 principal of a first trust, the fiduciary may exercise the  
3 decanting power under this section over that part of the  
4 principal over which the authorized fiduciary has expanded  
5 distributive discretion.

6 SECTION 1-112. DECANTING POWER UNDER LIMITED  
7 DISTRIBUTIVE DISCRETION.--

8 A. As used in this section, "limited distributive  
9 discretion" means a discretionary power of distribution that  
10 is limited to an ascertainable standard or a reasonably  
11 definite standard.

12 B. An authorized fiduciary that has limited  
13 distributive discretion over the principal of the first trust  
14 for benefit of one or more current beneficiaries may exercise  
15 the decanting power over the principal of the first trust.

16 C. Under this section and subject to Section 1-114  
17 of the Uniform Trust Decanting Act, a second trust may be  
18 created or administered under the law of any jurisdiction.  
19 Under this section, the second trusts, in the aggregate,  
20 shall grant each beneficiary of the first trust beneficial  
21 interests that are substantially similar to the beneficial  
22 interests of the beneficiary in the first trust.

23 D. A power to make a distribution under a second  
24 trust for the benefit of a beneficiary who is an individual  
25 is substantially similar to a power under the first trust to

1 make a distribution directly to the beneficiary. A  
2 distribution is for the benefit of a beneficiary if:

3 (1) the distribution is applied for the  
4 benefit of the beneficiary;

5 (2) the beneficiary is under a legal  
6 disability or the trustee reasonably believes the beneficiary  
7 is incapacitated and the distribution is made as permitted  
8 under the Uniform Trust Code; or

9 (3) the distribution is made as permitted  
10 under the terms of the first-trust instrument and the  
11 second-trust instrument for the benefit of the beneficiary.

12 E. If an authorized fiduciary has limited  
13 distributive discretion over part but not all of the  
14 principal of a first trust, the fiduciary may exercise the  
15 decanting power provided by this section over that part of  
16 the principal over which the authorized fiduciary has limited  
17 distributive discretion.

18 **SECTION 1-113. TRUST FOR BENEFICIARY WITH DISABILITY.--**

19 A. As used in this section:

20 (1) "beneficiary with a disability" means a  
21 beneficiary of a first trust who the special-needs fiduciary  
22 believes may qualify for governmental benefits based on  
23 disability, whether or not the beneficiary currently receives  
24 those benefits or is an individual who has been adjudicated  
25 incapacitated;

1                   (2) "governmental benefits" means financial  
2 aid or services from a state, federal or other type of public  
3 agency;

4                   (3) "special-needs fiduciary" means, with  
5 respect to a trust that has a beneficiary with a disability:

6                   (a) a trustee or other fiduciary, other  
7 than a settlor, that has discretion to distribute part or all  
8 of the principal of a first trust to one or more current  
9 beneficiaries;

10                  (b) if no trustee or fiduciary has  
11 discretion under Subparagraph (a) of this paragraph, a  
12 trustee or other fiduciary, other than a settlor, that has  
13 discretion to distribute part or all of the income of the  
14 first trust to one or more current beneficiaries; or

15                  (c) if no trustee or fiduciary has  
16 discretion under Subparagraphs (a) and (b) of this paragraph,  
17 a trustee or other fiduciary, other than a settlor, that is  
18 required to distribute part or all of the income or principal  
19 of the first trust to one or more current beneficiaries; and

20                  (4) "special-needs trust" means a trust that  
21 the trustee believes would not be considered a resource for  
22 purposes of determining whether a beneficiary with a  
23 disability is eligible for governmental benefits.

24                  B. A special-needs fiduciary may exercise the  
25 decanting power provided by Section 1-111 of the Uniform

1 Trust Decanting Act over the principal of a first trust as if  
2 the fiduciary had authority to distribute principal to a  
3 beneficiary with a disability subject to expanded  
4 distributive discretion if:

5 (1) a second trust is a special-needs trust  
6 that benefits the beneficiary with a disability; and

7 (2) the special-needs fiduciary determines  
8 that exercise of the decanting power will further the  
9 purposes of the first trust.

10 C. In an exercise of the decanting power provided  
11 by this section, the following rules apply:

12 (1) notwithstanding Paragraph (2) of  
13 Subsection C of Section 1-111 of the Uniform Trust Decanting  
14 Act, the interest in the second trust of a beneficiary with a  
15 disability may:

16 (a) be a pooled trust as defined by  
17 medicaid law for the benefit of the beneficiary with a  
18 disability under 42 U.S.C. Section 1396p(d)(4)(C), as  
19 amended; or

20 (b) contain payback provisions  
21 complying with reimbursement requirements of medicaid law  
22 under 42 U.S.C. Section 1396p(d)(4)(A), as amended;

23 (2) Paragraph (3) of Subsection C of Section  
24 1-111 of the Uniform Trust Decanting Act does not apply to  
25 the interests of the beneficiary with a disability; and

1 (3) except as affected by any change to the  
2 interests of the beneficiary with a disability, the second  
3 trust, or if there are two or more second trusts, the second  
4 trusts in the aggregate, shall grant each other beneficiary  
5 of the first trust beneficial interests in the second trusts  
6 that are substantially similar to the beneficiary's  
7 beneficial interests in the first trust.

8 SECTION 1-114. PROTECTION OF CHARITABLE INTEREST.--

9 A. As used in this section:

10 (1) "determinable charitable interest" means  
11 a charitable interest that is a right to a mandatory  
12 distribution currently, periodically, on the occurrence of a  
13 specified event or after the passage of a specified time and  
14 that is unconditional or will be held solely for charitable  
15 purposes; and

16 (2) "unconditional" means not subject to the  
17 occurrence of a specified event that is not certain to occur,  
18 other than a requirement in a trust instrument that a  
19 charitable organization be in existence or qualify under a  
20 particular provision of the United States Internal Revenue  
21 Code of 1986, as amended, on the date of the distribution if  
22 the charitable organization meets the requirement on the date  
23 of determination.

24 B. If a first trust contains a determinable  
25 charitable interest, the attorney general has the rights of a

1 qualified beneficiary and may represent and bind the  
2 charitable interest.

3 C. If a first trust contains a charitable  
4 interest, the second trust or trusts shall not:

- 5 (1) diminish the charitable interest;  
6 (2) diminish the interest of an identified  
7 charitable organization that holds the charitable interest;  
8 (3) alter any charitable purpose stated in  
9 the first-trust instrument; or  
10 (4) alter any condition or restriction  
11 related to the charitable interest.

12 D. If there are two or more second trusts, the  
13 second trusts shall be treated as one trust for purposes of  
14 determining whether the exercise of the decanting power  
15 diminishes the charitable interest or diminishes the interest  
16 of an identified charitable organization for purposes of  
17 Subsection C of this section.

18 E. If a first trust contains a determinable  
19 charitable interest, the second trust or trusts that include  
20 a charitable interest pursuant to Subsection C of this  
21 section shall be administered under New Mexico law unless:

- 22 (1) the attorney general, after receiving  
23 notice under Section 1-107 of the Uniform Trust Decanting  
24 Act, fails to object in a signed record delivered to the  
25 authorized fiduciary within the notice period;

1 (2) the attorney general consents in a  
2 signed record to the second trust or trusts being  
3 administered under the law of another jurisdiction; or

4 (3) the court approves the exercise of the  
5 decanting power.

6 F. The Uniform Trust Decanting Act does not limit  
7 the powers and duties of the attorney general under New  
8 Mexico law other than that act.

9 SECTION 1-115. TRUST LIMITATION ON DECANTING.--

10 A. An authorized fiduciary shall not exercise the  
11 decanting power to the extent that the first-trust instrument  
12 expressly prohibits exercise of:

13 (1) the decanting power; or

14 (2) a power granted by state law to the  
15 fiduciary to distribute part or all of the principal of the  
16 trust to another trust.

17 B. Exercise of the decanting power is subject to  
18 any restriction in the first-trust instrument that expressly  
19 applies to exercise of:

20 (1) the decanting power; or

21 (2) a power granted by state law to a  
22 fiduciary to distribute part or all of the principal of the  
23 trust to another trust or to modify the trust.

24 C. A general prohibition of the amendment or  
25 revocation of a first trust, a spendthrift clause or a clause

1     restraining the voluntary or involuntary transfer of a  
2     beneficiary's interest does not preclude exercise of the  
3     decanting power.

4             D. Subject to Subsections A and B of this section,  
5     an authorized fiduciary may exercise the decanting power  
6     provided by the Uniform Trust Decanting Act even if the  
7     first-trust instrument permits the authorized fiduciary or  
8     another person to modify the first-trust instrument or to  
9     distribute part or all of the principal of the first trust to  
10    another trust.

11            E. If a first-trust instrument contains an express  
12    prohibition described in Subsection A of this section or an  
13    express restriction described in Subsection B of this  
14    section, the provision shall be included in the second-trust  
15    instrument.

16            **SECTION 1-116. CHANGE IN COMPENSATION.--**

17            A. If a first-trust instrument specifies an  
18    authorized fiduciary's compensation, the fiduciary shall not  
19    exercise the decanting power to increase the fiduciary's  
20    compensation above the specified compensation unless:

21                    (1) all qualified beneficiaries of the  
22    second trust consent to the increase in a signed record; or

23                    (2) the increase is approved by the court.

24            B. If a first-trust instrument does not specify an  
25    authorized fiduciary's compensation, the fiduciary shall not

1 exercise the decanting power to increase the fiduciary's  
2 compensation above the compensation permitted by the Uniform  
3 Trust Code unless:

4 (1) all qualified beneficiaries of the  
5 second trust consent to the increase in a signed record; or

6 (2) the increase is approved by the court.

7 C. A change in an authorized fiduciary's  
8 compensation that is incidental to other changes made by the  
9 exercise of the decanting power is not an increase in the  
10 fiduciary's compensation for purposes of Subsections A and B  
11 of this section.

12 SECTION 1-117. RELIEF FROM LIABILITY AND  
13 INDEMNIFICATION.--

14 A. Except as otherwise provided in this section, a  
15 second-trust instrument shall not relieve an authorized  
16 fiduciary from liability for breach of trust to a greater  
17 extent than the first-trust instrument.

18 B. A second-trust instrument may provide for  
19 indemnification of an authorized fiduciary of the first trust  
20 or another person acting in a fiduciary capacity under the  
21 first trust for any liability or claim that would have been  
22 payable from the first trust if the decanting power had not  
23 been exercised.

24 C. A second-trust instrument shall not reduce  
25 fiduciary liability in the aggregate.

1           D. Subject to Subsection C of this section, a  
2 second-trust instrument may divide and reallocate fiduciary  
3 powers among fiduciaries, including one or more trustees,  
4 distribution advisors, investment advisors, trust protectors  
5 or other persons, and relieve a fiduciary from liability for  
6 an act or failure to act of another fiduciary as permitted by  
7 New Mexico law other than the Uniform Trust Decanting Act.

8           **SECTION 1-118. REMOVAL OR REPLACEMENT OF AUTHORIZED**  
9 **FIDUCIARY.--**An authorized fiduciary shall not exercise the  
10 decanting power to modify a provision in a first-trust  
11 instrument granting another person power to remove or replace  
12 the fiduciary unless:

13           A. the person holding the power consents to the  
14 modification in a signed record and the modification applies  
15 only to the person;

16           B. the person holding the power and the qualified  
17 beneficiaries of the second trust consent to the modification  
18 in a signed record and the modification grants a  
19 substantially similar power to another person; or

20           C. the court approves the modification and the  
21 modification grants a substantially similar power to another  
22 person.

23           **SECTION 1-119. TAX-RELATED LIMITATIONS.--**

24           A. As used in this section:

25                 (1) "grantor trust" means a trust as to

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

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

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

8 (4) "qualified benefits property" means  
9 property subject to the minimum distribution requirements of  
10 26 U.S.C. Section 401(a)(9), as amended, and any applicable  
11 regulations or subject to any similar requirements that refer  
12 to 26 U.S.C. Section 401(a)(9), as amended or the  
13 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  
20 tax under the Internal Revenue Code or a state gift, estate  
21 or inheritance tax, the second-trust instrument shall not  
22 include or omit any term that, if included in or omitted from  
23 the trust instrument for the trust to which the property was  
24 transferred, would have prevented the transfer from  
25 qualifying for the deduction, or would have reduced the

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

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

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

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

11 (4) if the property of the first trust  
12 includes shares of stock in an S corporation, as defined in  
13 26 U.S.C. Section 1361, as amended, and the first trust is,  
14 or, but for provisions of the Uniform Trust Decanting Act  
15 other than those in this section, would be, a permitted  
16 shareholder under any provision of 26 U.S.C. Section 1361, as  
17 amended, an authorized fiduciary may exercise the power with  
18 respect to part or all of the S-corporation stock only if any  
19 second trust receiving the stock is a permitted shareholder  
20 under 26 U.S.C. Section 1361(c)(2), as amended. If the  
21 property of the first trust includes shares of stock in an S  
22 corporation and the first trust is, or, but for provisions of  
23 the Uniform Trust Decanting Act other than those in this  
24 section, would be, a qualified subchapter-S trust within the  
25 meaning of 26 U.S.C. Section 1361(d), as amended, the

1 second-trust instrument shall not include or omit a term that  
2 prevents the second trust from qualifying as a qualified  
3 subchapter-S trust;

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

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

1 distributions of the property as a separate share from the  
2 date of the exercise of the power, and Section 1-122 of the  
3 Uniform Trust Decanting Act applies to the separate share;

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

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

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

23 (b) the transfer of property held by  
24 the first trust or the first trust qualified, or, but for  
25 provisions of the Uniform Trust Decanting Act other than

1 those in this section, would have qualified, for the tax  
2 benefit;

3 (9) subject to Paragraph (4) of this  
4 subsection:

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

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

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

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

23 (b) the first trust is a nongrantor  
24 trust and a second trust is a grantor trust, in whole or in  
25 part, with respect to the settlor, unless: 1) the settlor

1 has the power at all times to cause the second trust to cease  
2 to be a grantor trust; or 2) the first-trust instrument  
3 contains a provision granting the settlor or another person a  
4 power that would cause the first trust to cease to be a  
5 grantor trust and the second-trust instrument contains the  
6 same provision.

7 **SECTION 1-120. DURATION OF SECOND TRUST.--**

8 A. Subject to Subsection B of this section, a  
9 second trust may have a duration that is the same as or  
10 different from the duration of the first trust.

11 B. To the extent that property of a second trust  
12 is attributable to property of the first trust, the property  
13 of the second trust is subject to any maximum perpetuity,  
14 accumulation or suspension-of-the-power-of-alienation rules  
15 that apply to property of the first trust.

16 **SECTION 1-121. NEED TO DISTRIBUTE NOT REQUIRED.--**An  
17 authorized fiduciary may exercise the decanting power  
18 regardless of whether under the first trust's discretionary  
19 distribution standard the fiduciary would have made, or could  
20 have been compelled to make, a discretionary distribution of  
21 principal at the time of the exercise.

22 **SECTION 1-122. SAVING PROVISION.--**

23 A. If exercise of the decanting power would be  
24 effective under the Uniform Trust Decanting Act except that  
25 the second-trust instrument in part does not comply with the

1 Uniform Trust Decanting Act, the exercise of the power is  
2 effective and the following rules apply with respect to the  
3 principal of the second trust attributable to the exercise of  
4 the power:

5 (1) a provision in the second-trust  
6 instrument that is not permitted under the Uniform Trust  
7 Decanting Act is void to the extent necessary to comply with  
8 the Uniform Trust Decanting Act; and

9 (2) a provision required by the Uniform  
10 Trust Decanting Act to be in the second-trust instrument that  
11 is not contained in the instrument is deemed to be included  
12 in the instrument to the extent necessary to comply with the  
13 Uniform Trust Decanting Act.

14 B. If a trustee or other fiduciary of a second  
15 trust determines that Subsection A of this section applies to  
16 a prior exercise of the decanting power, the fiduciary shall  
17 take corrective action consistent with the fiduciary's  
18 duties.

19 **SECTION 1-123. TRUST FOR CARE OF ANIMAL.--**

20 A. As used in this section:

21 (1) "animal trust" means a trust or an  
22 interest in a trust created to provide for the care of one or  
23 more animals; and

24 (2) "protector" means a person appointed in  
25 an animal trust to enforce the trust on behalf of the animal

1 or, if no such person is appointed in the trust, a person  
2 appointed by the court for that purpose.

3 B. The decanting power may be exercised over an  
4 animal trust that has a protector to the extent that the  
5 trust could be decanted under the Uniform Trust Decanting Act  
6 as if each animal that benefits from the trust were an  
7 individual if the protector consents in a signed record to  
8 the exercise of the power.

9 C. A protector for an animal has the rights under  
10 the Uniform Trust Decanting Act of a qualified beneficiary.

11 D. Notwithstanding any other provision of the  
12 Uniform Trust Decanting Act, if a first trust is an animal  
13 trust, in an exercise of the decanting power, the second  
14 trust shall provide that trust property may be applied only  
15 to its intended purpose for the period the first trust  
16 benefited the animal.

17 SECTION 1-124. TERMS OF SECOND TRUST.--A reference in  
18 the Uniform Trust Code to a trust instrument or terms of the  
19 trust includes a second-trust instrument and the terms of the  
20 second trust.

21 SECTION 1-125. SETTLOR.--

22 A. For purposes of New Mexico law other than the  
23 Uniform Trust Decanting Act and subject to Subsection B of  
24 this section, a settlor of a first trust is deemed to be the  
25 settlor of the second trust with respect to the portion of

1 the principal of the first trust subject to the exercise of  
2 the decanting power.

3 B. In determining settlor intent with respect to a  
4 second trust, the intent of a settlor of the first trust, a  
5 settlor of the second trust and the authorized fiduciary may  
6 be considered.

7 SECTION 1-126. LATER-DISCOVERED PROPERTY.--

8 A. Except as otherwise provided in Subsection C of  
9 this section, if exercise of the decanting power was intended  
10 to distribute all the principal of the first trust to one or  
11 more second trusts, later-discovered property belonging to  
12 the first trust and property paid to or acquired by the first  
13 trust after the exercise of the power is part of the trust  
14 estate of the second trust or trusts.

15 B. Except as otherwise provided in Subsection C of  
16 this section, if exercise of the decanting power was intended  
17 to distribute less than all the principal of the first trust  
18 to one or more second trusts, later-discovered property  
19 belonging to the first trust or property paid to or acquired  
20 by the first trust after exercise of the power remains part  
21 of the trust estate of the first trust.

22 C. An authorized fiduciary may provide in an  
23 exercise of the decanting power, or by the terms of a second  
24 trust, for disposition of later-discovered property belonging  
25 to the first trust or property paid to or acquired by the

1 first trust after exercise of the power.

2 SECTION 1-127. OBLIGATIONS.--A debt, liability or other  
3 obligation enforceable against property of a first trust is  
4 enforceable to the same extent against the property when held  
5 by the second trust after exercise of the decanting power.

6 SECTION 1-128. UNIFORMITY OF APPLICATION AND  
7 CONSTRUCTION.--In applying and construing the Uniform Trust  
8 Decanting Act, consideration shall be given to the need to  
9 promote uniformity of the law with respect to its subject  
10 matter among states that enact it.

11 SECTION 1-129. RELATION TO ELECTRONIC SIGNATURES IN  
12 GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform Trust  
13 Decanting Act modifies, limits or supersedes the Electronic  
14 Signatures in Global and National Commerce Act, 15 U.S.C.  
15 Section 7001 et seq., but does not modify, limit or supersede  
16 Section 101(c) of that act, 15 U.S.C. Section 7001(c), or  
17 authorize electronic delivery of any of the notices described  
18 in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

19 SECTION 2-101. Section 45-2-904 NMSA 1978 (being Laws  
20 1992, Chapter 66, Section 4, as amended) is amended to read:

21 "45-2-904. EXCLUSIONS.--

22 A. Section 45-2-901 NMSA 1978 does not apply to:

23 (1) a nonvested property interest or a power  
24 of appointment arising out of a nondonative transfer, except  
25 a nonvested property interest or a power of appointment

1 arising out of:

- 2 (a) a premarital or postmarital  
3 agreement;
- 4 (b) a separation or divorce settlement;  
5 (c) a spouse's election;  
6 (d) a similar arrangement arising out  
7 of a prospective, existing or previous marital relationship  
8 between the parties;
- 9 (e) a contract to make or not to revoke  
10 a will or trust;
- 11 (f) a contract to exercise or not to  
12 exercise a power of appointment;
- 13 (g) a transfer in satisfaction of a  
14 duty of support; or
- 15 (h) a reciprocal transfer;
- 16 (2) a fiduciary's power relating to the  
17 administration or management of assets, including the power  
18 of a fiduciary to sell, lease or mortgage property and the  
19 power of a fiduciary to determine principal and income;
- 20 (3) a power to appoint a fiduciary;
- 21 (4) a discretionary power of a trustee to  
22 distribute principal before termination of a trust to a  
23 beneficiary having an indefeasibly vested interest in the  
24 income and principal;
- 25 (5) a nonvested property interest held by a

1 charity, government or governmental agency or subdivision if  
2 the nonvested property interest is preceded by an interest  
3 held by another charity, government or governmental agency or  
4 subdivision;

5 (6) a nonvested property interest in or a  
6 power of appointment with respect to a trust or other  
7 property arrangement forming part of a pension,  
8 profit-sharing, stock bonus, health, disability, death  
9 benefit, income deferral or other current or deferred benefit  
10 plan for one or more employees, independent contractors or  
11 their beneficiaries or spouses, to which contributions are  
12 made for the purpose of distributing to or for the benefit of  
13 the participants or their beneficiaries or spouses the  
14 property, income or principal in the trust or other property  
15 arrangement, except a nonvested property interest or a power  
16 of appointment that is created by an election of a  
17 participant or a beneficiary or spouse;

18 (7) a property interest, power of  
19 appointment or arrangement that was not subject to the  
20 common-law rule against perpetuities or that is excluded by  
21 another statute of New Mexico; or

22 (8) a property interest held in trust.

23 B. For real property held in trust, at the end of  
24 three hundred sixty-five years from the later of the date on  
25 which an interest in real property is added to or purchased

1 by a trust or the date that the trust became irrevocable, if  
2 the interest in real property is still held in trust and if  
3 the trust instrument:

4 (1) provides for the distribution of the  
5 interest upon termination of the trust, the property shall be  
6 distributed as though termination occurred at that time;

7 (2) does not provide for the distribution of  
8 the interest upon termination of the trust, the property  
9 shall be distributed to the beneficiaries who are then  
10 entitled to receive income from the trust:

11 (a) in proportion to the amount of  
12 income each is entitled to receive; or

13 (b) if that proportion is not specified  
14 in the trust instrument, in equal shares; or

15 (3) does not provide for the distribution of  
16 the interest upon termination of the trust and there is no  
17 income beneficiary of the trust, the property shall be  
18 distributed, pursuant to the laws of New Mexico then in  
19 effect that govern the distribution of intestate real  
20 property, to the then-living persons who are then determined  
21 to be the settlor's or testator's distributees as though the  
22 settlor or testator had died at that time, intestate, a  
23 resident of New Mexico and owning the property so  
24 distributable. For the purposes of this paragraph, "settlor"  
25 means a person who creates or contributes property to a

1 trust.

2 C. A trust shall not become void or subject to  
3 termination under this section or Section 45-2-901 NMSA 1978  
4 if:

5 (1) a trust holds an interest in a  
6 corporation, a limited liability company, a partnership, a  
7 statutory trust, a business trust or another business entity;

8 (2) the entity is the owner of an interest  
9 in real property;

10 (3) the entity terminates; and

11 (4) the trust becomes the holder of an  
12 interest in real property.

13 D. Except as otherwise provided in the trust  
14 instrument, the trustee of a trust that becomes the holder of  
15 an interest in real property through the sequence outlined in  
16 Subsection C of this section may:

17 (1) distribute the interest in real property  
18 in accordance with this subsection; or

19 (2) convey the interest in real property to  
20 another business entity in exchange for an interest in that  
21 entity to be held by the trustee.

22 E. For the purposes of this section, "real  
23 property" does not include:

24 (1) intangible personal property; or

25 (2) an interest in a corporation, a limited

1 liability company, a partnership, a statutory trust, a  
2 business trust or another business entity, regardless of  
3 whether the entity is the owner of an interest in real  
4 property."

5 SECTION 3-101. EFFECTIVE DATE.--

6 A. The effective date of the provisions of Section  
7 2-101 of this act is July 1, 2016.

8 B. The effective date of the provisions of  
9 Sections 1-101 through 1-129 of this act is January 1, 2017.==

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