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AN ACT

RELATING TO PROPERTY INTERESTS; UPDATING AND MAKING TECHNICAL REVISIONS TO THE UNIFORM PROBATE CODE, THE UNIFORM TRUST CODE AND THE UNIFORM PRINCIPAL AND INCOME ACT; ENACTING THE UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT; REPEALING SECTIONS OF THE NMSA 1978 THAT CONSTITUTE THE UNIFORM FIDUCIARIES ACT; AMENDING, REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 45-1-102 NMSA 1978 (being Laws 1975, Chapter 257, Section 1-102) is amended to read:

"45-1-102. RULE OF CONSTRUCTION--PURPOSES OF ACT.--

A. The Uniform Probate Code shall be liberally construed and applied to promote its underlying purposes and policies.

B. The underlying purposes and policies of the Uniform Probate Code are:

(1) to simplify, clarify and modernize certain laws concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons;

(2) to discover and make effective the intent of a decedent in distribution of the decedent's property;

(3) to promote a speedy and efficient system

1 for the settlement and distribution of the estate of the  
2 decedent;

3 (4) to facilitate survivorship and related  
4 accounts and similar property interests in New Mexico;

5 (5) to provide a comprehensive system of  
6 methods of disclaiming interests in property;

7 (6) to facilitate the use and enforcement of  
8 governing instruments;

9 (7) to apportion taxes on estates; and

10 (8) to make uniform the law among the  
11 states."

12 SECTION 2. Section 45-1-104 NMSA 1978 (being Laws 1975,  
13 Chapter 257, Section 1-104) is amended to read:

14 "45-1-104. SEVERABILITY.--If any provision of the  
15 Uniform Probate Code or its application to any person or  
16 circumstances is held invalid, the invalidity does not affect  
17 other provisions or applications of that code that can be  
18 given effect without the invalid provision or application,  
19 and to this end, the provisions of the code are severable."

20 SECTION 3. Section 45-1-107 NMSA 1978 (being Laws 1993,  
21 Chapter 174, Section 3) is amended to read:

22 "45-1-107. EVIDENCE OF DEATH OR STATUS.--In addition to  
23 the rules of evidence in courts of general jurisdiction, the  
24 following rules relating to a determination of death and  
25 status apply:

1           A. in accordance with Subsection A of Section  
2 12-2-4 NMSA 1978, death occurs when an individual has  
3 sustained either:

4                   (1) irreversible cessation of circulatory  
5 and respiratory functions; or

6                   (2) irreversible cessation of all functions  
7 of the entire brain, including the brain stem.

8           A determination of death must be made in accordance with  
9 accepted medical standards;

10           B. an authenticated copy of a death certificate  
11 purporting to be issued by an official or agency of the place  
12 where the death purportedly occurred is prima facie evidence  
13 of the fact, place, date and time of death and the identity  
14 of the decedent;

15           C. an authenticated copy of a record or report of  
16 a governmental agency, domestic or foreign, that an  
17 individual is missing, detained, dead or alive is prima facie  
18 evidence of the status and of the dates, circumstances and  
19 places disclosed by the record or report;

20           D. in the absence of prima facie evidence of death  
21 pursuant to Subsections B or C of this section, the fact of  
22 death may be established by clear and convincing evidence,  
23 including circumstantial evidence;

24           E. an individual whose death is not established  
25 pursuant to Subsection A, B, C or D of this section who is

1 absent for a continuous period of five years, during which  
2 the person has not been heard from and whose absence is not  
3 satisfactorily explained after diligent search or inquiry is  
4 presumed to be dead. The person's death is presumed to have  
5 occurred at the end of the period unless there is sufficient  
6 evidence for determining that death occurred earlier; and

7 F. in the absence of evidence disputing the time  
8 of death stated on a document described in Subsection B or C  
9 of this section, a document described in Subsection B or C of  
10 this section that states a time of death one hundred twenty  
11 hours or more after the time of death of another individual,  
12 however the time of death of the other individual is  
13 determined, establishes by clear and convincing evidence that  
14 the individual survived the other individual by one hundred  
15 twenty hours."

16 SECTION 4. Section 45-1-110 NMSA 1978 (being Laws 1995,  
17 Chapter 210, Section 1) is amended to read:

18 "45-1-110. TIME OF TAKING EFFECT--PROVISIONS FOR  
19 TRANSITION.--Except as provided elsewhere in the Uniform  
20 Probate Code, on the effective date of this code or of any  
21 amendment to this code:

22 A. the code or the amendment applies to governing  
23 instruments executed by decedents dying thereafter;

24 B. the code or the amendment applies to any  
25 proceedings in court then pending or thereafter commenced

1 regardless of the time of the death of decedent except to the  
2 extent that in the opinion of the court the former procedure  
3 should be made applicable in a particular case in the  
4 interest of justice or because of infeasibility of  
5 application of the procedure of this code or the amendment;

6 C. every personal representative or other  
7 fiduciary holding an appointment under this code on that date  
8 continues to hold the appointment but has only the powers  
9 conferred by this code or the amendment and is subject to the  
10 duties imposed with respect to any act occurring or done  
11 thereafter;

12 D. an act done before the effective date in any  
13 proceeding and any accrued right is not impaired by this code  
14 or the amendment. If a right is acquired, extinguished or  
15 barred upon the expiration of a prescribed period of time  
16 that has commenced to run by the provisions of any statute  
17 before the effective date, the provisions shall remain in  
18 force with respect to that right; and

19 E. any rule of construction or presumption  
20 provided in this code or the amendment applies to governing  
21 instruments executed before the effective date unless there  
22 is a clear indication of a contrary intent in the governing  
23 instrument."

24 SECTION 5. Section 45-1-201 NMSA 1978 (being Laws 1993,  
25 Chapter 174, Section 4, as amended) is amended to read:

1 "45-1-201. DEFINITIONS.--

2 A. As used in the Uniform Probate Code, except as  
3 provided in Subsection B of this section and unless the  
4 context otherwise requires:

5 (1) "agent" includes an attorney-in-fact  
6 under a durable or nondurable power of attorney, an  
7 individual authorized to make decisions concerning another's  
8 health care and an individual authorized to make decisions  
9 for another under a natural death act;

10 (2) "application" means a written request to  
11 a court for an order of informal probate or appointment  
12 pursuant to Chapter 45, Article 3 NMSA 1978;

13 (3) "authenticated", with reference to  
14 copies, means certified or exemplified;

15 (4) "beneficiary", as it relates to a trust  
16 beneficiary, includes a person who has any present or future  
17 interest, vested or contingent, and also includes the owner  
18 of an interest by assignment or other transfer; as it relates  
19 to a charitable trust, includes any person entitled to  
20 enforce the trust; as it relates to a "beneficiary of a  
21 beneficiary designation", refers to a beneficiary of an  
22 insurance or annuity policy, of an account with POD  
23 designation, of a security registered in beneficiary form  
24 (TOD) or of a pension, profit-sharing, retirement or similar  
25 benefit plan or other nonprobate transfer at death; and, as

1 it relates to a "beneficiary designated in a governing  
2 instrument", includes a grantee of a deed, a devisee, a trust  
3 beneficiary, a beneficiary of a beneficiary designation, a  
4 donee, appointee or taker in default of a power of  
5 appointment or a person in whose favor a power of attorney or  
6 a power held in any individual, fiduciary or representative  
7 capacity is exercised;

8 (5) "beneficiary designation" refers to a  
9 governing instrument naming a beneficiary of an insurance or  
10 annuity policy, of an account with POD designation, of a  
11 security registered in beneficiary form (TOD) or of a  
12 pension, profit-sharing, retirement or similar benefit plan  
13 or other nonprobate transfer at death;

14 (6) "child" includes an individual entitled  
15 to take as a child pursuant to the Uniform Probate Code by  
16 intestate succession from the parent whose relationship is  
17 involved and excludes a person who is only a stepchild, a  
18 foster child, a grandchild or any more remote descendant;

19 (7) "claims", in respect to estates of  
20 decedents and protected persons, includes liabilities of the  
21 decedent or protected person, whether arising in contract, in  
22 tort or otherwise and liabilities of the estate that arise at  
23 or after the death of the decedent or after the appointment  
24 of a conservator, including funeral expenses and expenses of  
25 administration. "Claims" does not include estate or

1 inheritance taxes or demands or disputes regarding title of a  
2 decedent, an incapacitated person or a minor protected person  
3 to specific assets alleged to be included in the estate;

4 (8) "conservator" has the same meaning as  
5 set forth in Section 45-5-101 NMSA 1978;

6 (9) "descendant" of an individual means all  
7 of the individual's descendants of all generations, with the  
8 relationship of parent and child at each generation being  
9 determined by the definition of child and parent contained in  
10 the Uniform Probate Code;

11 (10) "devise", when used as a noun, means a  
12 testamentary disposition of real or personal property and,  
13 when used as a verb, means to dispose of real or personal  
14 property by will;

15 (11) "devisee" means a person designated in  
16 a will to receive a devise. For the purposes of Chapter 45,  
17 Article 3 NMSA 1978, in the case of a devise to an existing  
18 trust or trustee or to a trustee or trust described by will,  
19 the trust or trustee is the devisee and the beneficiaries are  
20 not devisees;

21 (12) "distributee" means a person who has  
22 received property of a decedent from the decedent's personal  
23 representative other than as a creditor or purchaser. A  
24 testamentary trustee is a distributee only to the extent of  
25 distributed assets or increment thereto remaining in the



1 testamentary trustee's hands. A beneficiary of a  
2 testamentary trust to whom the trustee has distributed  
3 property received from a personal representative is a  
4 distributee of the personal representative. For the purposes  
5 of this paragraph, "testamentary trustee" includes a trustee  
6 to whom assets are transferred by will, to the extent of the  
7 devised assets;

8 (13) "electronic" means relating to  
9 technology having electronic, digital, magnetic, wireless,  
10 optical, electromagnetic or similar capabilities;

11 (14) "emancipated minor" means a person  
12 sixteen years of age or older who:

13 (a) has entered into a valid marriage,  
14 whether or not the marriage was terminated by dissolution;

15 (b) is a member of the active or  
16 reserve components of the army, navy, air force, marine corps  
17 or coast guard of the United States who is on active duty or  
18 a member of the national guard who is on activated status; or

19 (c) has received a declaration of  
20 emancipation pursuant to the Emancipation of Minors Act;

21 (15) "estate" includes the property of the  
22 decedent, trust or other person whose affairs are subject to  
23 the Uniform Probate Code as the property was originally  
24 constituted and as it exists from time to time during  
25 administration;

1 (16) "exempt property" means that property  
2 of a decedent's estate that is described in Sections 45-2-402  
3 and 45-2-403 NMSA 1978;

4 (17) "fiduciary" includes a personal  
5 representative, guardian, guardian ad litem, conservator and  
6 trustee;

7 (18) "foreign personal representative" means  
8 a personal representative appointed by another jurisdiction;

9 (19) "formal proceedings" means proceedings  
10 conducted before a district judge with notice to interested  
11 persons;

12 (20) "governing instrument" means a deed,  
13 will, trust, insurance or annuity policy, account with POD  
14 designation, security registered in beneficiary form (TOD),  
15 transfer on death (TOD) deed, pension, profit-sharing,  
16 retirement or similar benefit plan, instrument creating or  
17 exercising a power of appointment or a power of attorney or a  
18 dispositive, appointive or nominative instrument of a similar  
19 type;

20 (21) "guardian" means a person who has  
21 qualified to provide for the care, custody or control of the  
22 person of a minor or incapacitated person pursuant to  
23 parental or court appointment. "Guardian" includes a  
24 limited, emergency and temporary guardian but not a guardian  
25 ad litem;

1 (22) "guardian ad litem" means a person  
2 appointed by the district court to represent and protect the  
3 interests of a minor or an incapacitated person in connection  
4 with litigation or any other court proceeding;

5 (23) "heirs", except as controlled by  
6 Section 45-2-711 NMSA 1978, means persons, including the  
7 surviving spouse and the state, who are entitled under the  
8 statutes of intestate succession to the property of a  
9 decedent;

10 (24) "incapacitated person" means an  
11 individual described in Section 45-5-101 NMSA 1978;

12 (25) "informal proceedings" means those  
13 proceedings conducted without notice to interested persons  
14 before the court for probate of a will or appointment of a  
15 personal representative, except as provided for in Section  
16 45-3-306 NMSA 1978;

17 (26) "interested person" includes heirs,  
18 devisees, children, spouses, creditors, beneficiaries and any  
19 others having a property right in or claim against a trust  
20 estate or the estate of a decedent, a minor protected person  
21 or an incapacitated person. "Interested person" also  
22 includes persons having priority for appointment as personal  
23 representatives and other fiduciaries representing interested  
24 persons. The meaning as it relates to particular persons may  
25 vary from time to time and shall be determined according to

1 the particular purposes of, and matter involved in, a  
2 proceeding;

3 (27) "issue" of an individual means the  
4 individual's descendants;

5 (28) "lease" includes an oil, gas or other  
6 mineral lease;

7 (29) "letters" includes letters  
8 testamentary, letters of guardianship, letters of  
9 administration and letters of conservatorship;

10 (30) "minor" means an unemancipated  
11 individual who has not reached eighteen years of age;

12 (31) "mortgage" means any conveyance,  
13 agreement or arrangement in which property is encumbered or  
14 used as security;

15 (32) "nonresident decedent" means a decedent  
16 who was domiciled in another jurisdiction at the time of  
17 death;

18 (33) "organization" means a corporation,  
19 business trust, limited liability company, estate, trust,  
20 partnership, joint venture, association, government or  
21 governmental subdivision or agency or any other legal or  
22 commercial entity;

23 (34) "parent" includes any person entitled  
24 to take, or who would be entitled to take if the child died  
25 without a will, as a parent pursuant to the Uniform Probate

1 Code by intestate succession from the child whose  
2 relationship is in question and excludes any person who is  
3 only a stepparent, foster parent or grandparent;

4 (35) "payor" means a trustee, insurer,  
5 business entity, employer, government, governmental agency or  
6 subdivision or any other person authorized or obligated by  
7 law or a governing instrument to make payments;

8 (36) "person" means an individual or an  
9 organization;

10 (37) "personal representative" includes  
11 executor, administrator, successor personal representative,  
12 special administrator and persons who perform substantially  
13 the same function under the law governing their status.

14 "General personal representative" excludes special  
15 administrator;

16 (38) "petition" means a written motion or  
17 other request to the district court for an order after  
18 notice;

19 (39) "proceeding" includes action at law and  
20 suit in equity;

21 (40) "property" includes both real and  
22 personal property or any right or interest therein and means  
23 anything that may be the subject of ownership;

24 (41) "protected person" has the same meaning  
25 as set forth in Section 45-5-101 NMSA 1978;

1 (42) "protective proceeding" means a  
2 conservatorship proceeding pursuant to Section 45-5-401 NMSA  
3 1978;

4 (43) "record" means information that is  
5 inscribed on a tangible medium or that is stored in an  
6 electronic or other medium and is retrievable in perceivable  
7 form;

8 (44) "security" includes any note, stock,  
9 treasury stock, bond, debenture, evidence of indebtedness,  
10 certificate of interest or participation in an oil, gas or  
11 mining title or lease or in payments out of production under  
12 such a title or lease, collateral trust certificate,  
13 transferable share, voting trust certificate or, in general,  
14 any interest or instrument commonly known as a security or  
15 any certificate of interest or participation, any temporary  
16 or interim certificate, receipt or certificate of deposit for  
17 or any warrant or right to subscribe to or purchase any of  
18 the foregoing;

19 (45) "settlement", in reference to a  
20 decedent's estate, includes the full process of  
21 administration, distribution and closing;

22 (46) "sign" means with present intent to  
23 authenticate or adopt a record other than a will:

24 (a) to execute or adopt a tangible  
25 symbol; or

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

3 (47) "special administrator" means a  
4 personal representative as described by Sections 45-3-614  
5 through 45-3-618 NMSA 1978;

6 (48) "state" means a state of the United  
7 States, the District of Columbia, the commonwealth of Puerto  
8 Rico or any territory or insular possession subject to the  
9 jurisdiction of the United States. "State" also includes any  
10 Indian nation, tribe, pueblo or band located within the  
11 United States and recognized by federal law or formally  
12 acknowledged by a state of the United States;

13 (49) "successor personal representative"  
14 means a personal representative, other than a special  
15 administrator, who is appointed to succeed a previously  
16 appointed personal representative;

17 (50) "successors" means persons, other than  
18 creditors, who are entitled to property of a decedent under  
19 the decedent's will or the Uniform Probate Code;

20 (51) "supervised administration" refers to  
21 the proceedings described in Article 3, Part 5 of the Uniform  
22 Probate Code;

23 (52) "survive" means that an individual has  
24 neither predeceased an event, including the death of another  
25 individual, nor is deemed to have predeceased an event

1 pursuant to Section 45-2-104 or 45-2-702 NMSA 1978.

2 "Survive" includes its derivatives, such as "survives",  
3 "survived", "survivor" and "surviving";

4 (53) "testacy proceeding" means a proceeding  
5 to establish a will or determine intestacy;

6 (54) "testator" includes an individual of  
7 either gender;

8 (55) "trust" includes an express trust,  
9 private or charitable, with additions thereto, wherever and  
10 however created. "Trust" also includes a trust created or  
11 determined by judgment or decree under which the trust is to  
12 be administered in the manner of an express trust. "Trust"  
13 excludes other constructive trusts and excludes resulting  
14 trusts, conservatorships, personal representatives, trust  
15 accounts as defined in Article 6 of the Uniform Probate Code,  
16 custodial arrangements, including those created under the  
17 Uniform Transfers to Minors Act, business trusts providing  
18 for certificates to be issued to beneficiaries, common trust  
19 funds, voting trusts, security arrangements, liquidation  
20 trusts, trusts for the primary purpose of paying debts,  
21 dividends, interest, salaries, wages, profits, pensions or  
22 employee benefits of any kind and any arrangement under which  
23 a person is nominee or escrowee for another;

24 (56) "trustee" includes an original,  
25 additional or successor trustee, whether or not appointed or



1 confirmed by court; and

2 (57) "will" includes a codicil and any  
3 testamentary instrument that merely appoints a personal  
4 representative, revokes or revises another will, nominates a  
5 guardian or expressly excludes or limits the right of an  
6 individual or class to succeed to property of the decedent  
7 passing by intestate succession. "Will" does not include a  
8 holographic will.

9 B. The definitions in Subsection A of this section  
10 are made subject to additional definitions contained in  
11 subsequent articles that are applicable to specific articles,  
12 parts or sections."

13 SECTION 6. Section 45-1-301 NMSA 1978 (being Laws 1975,  
14 Chapter 257, Section 1-301) is amended to read:

15 "45-1-301. APPLICATION.--

16 A. Except as otherwise provided in the Uniform  
17 Probate Code, the code applies to:

18 (1) the affairs and estates of decedents,  
19 missing persons and protected persons domiciled in New  
20 Mexico;

21 (2) the property of nonresidents located in  
22 New Mexico or property coming into the control of a fiduciary  
23 who is subject to the laws of New Mexico;

24 (3) incapacitated persons, minors and  
25 protected persons in New Mexico;

1 (4) survivorship and related accounts and  
2 similar property interests in New Mexico;

3 (5) the disclaimer of property interests by  
4 persons in New Mexico;

5 (6) certain kinds of governing instruments  
6 that are governed by the laws of New Mexico; and

7 (7) the apportionment of taxes on estates  
8 subject to tax by New Mexico.

9 B. The Uniform Probate Code does not create,  
10 enlarge, modify or diminish parental rights or duties  
11 pursuant to the New Mexico Uniform Parentage Act, the  
12 Adoption Act, the Children's Code or other law of New Mexico.  
13 The definition or use of terms in the Uniform Probate Code  
14 shall not be used to interpret, by analogy or otherwise, the  
15 same or other terms in the New Mexico Uniform Parentage Act,  
16 the Adoption Act, the Children's Code or other law of New  
17 Mexico."

18 SECTION 7. Section 45-1-302 NMSA 1978 (being Laws 1975,  
19 Chapter 257, Section 1-302, as amended) is amended to read:

20 "45-1-302. SUBJECT MATTER JURISDICTION OF DISTRICT AND  
21 PROBATE COURTS.--

22 A. The district court has exclusive original  
23 jurisdiction over all subject matter relating to:

24 (1) formal proceedings with respect to the  
25 estates of decedents, including determinations of testacy,

1 appointment of personal representatives, constructions of  
2 wills, administration and expenditure of funds of estates,  
3 determination of heirs and successors of decedents and  
4 distribution and closing of estates;

5 (2) estates of missing and protected  
6 persons;

7 (3) protection of incapacitated persons and  
8 minors;

9 (4) survivorship and related accounts and  
10 similar property interests;

11 (5) disclaimer of interests in property;

12 (6) apportionment of taxes on estates; and

13 (7) governing instruments except wills.

14 B. The district court in formal proceedings shall  
15 have jurisdiction to determine title to and value of real or  
16 personal property as between the estate and any interested  
17 person, including strangers to the estate claiming adversely  
18 thereto. The district court has full power to make orders,  
19 judgments and decrees and to take all other action necessary  
20 and proper to administer justice in matters that come before  
21 it.

22 C. The probate court and the district court have  
23 original jurisdiction over informal proceedings for probate  
24 of a will or appointment of a personal representative."

25 SECTION 8. Section 45-1-303 NMSA 1978 (being Laws 1975,

1 Chapter 257, Section 1-303, as amended) is amended to read:

2 "45-1-303. VENUE--MULTIPLE PROCEEDINGS--TRANSFER.--

3 A. Subject to the provisions of Sections 45-1-302  
4 and 45-3-201 NMSA 1978 and Chapter 45, Article 5 NMSA 1978  
5 and the Uniform Adult Guardianship and Protective Proceedings  
6 Jurisdiction Act, if a proceeding under the Uniform Probate  
7 Code could be maintained in more than one place in New  
8 Mexico, the court in which the proceeding is first commenced  
9 has the exclusive right to proceed.

10 B. If proceedings concerning the same estate,  
11 protected person or trust are commenced in more than one  
12 court of New Mexico, the court having jurisdiction in which  
13 the proceeding was first commenced shall continue to hear the  
14 matter and the other courts shall hold the matter in abeyance  
15 until the question of venue is decided. If the ruling court  
16 determines that venue is properly in another court having  
17 jurisdiction, it shall transfer the proceeding to the other  
18 court.

19 C. If a court finds that in the interest of  
20 justice a proceeding or a file should be located in another  
21 court of New Mexico having jurisdiction, the court making the  
22 finding may transfer the proceeding or file to the other  
23 court."

24 SECTION 9. Section 45-1-403 NMSA 1978 (being Laws 1975,  
25 Chapter 257, Section 1-403, as amended) is amended to read:

1           "45-1-403. PLEADINGS--WHEN PARTIES BOUND BY OTHERS--  
2 NOTICE.--In formal proceedings involving trusts, or estates  
3 of decedents, minors, protected persons or incapacitated  
4 persons, and in judicially supervised settlements, the  
5 following rules apply:

6           A. interests to be affected shall be described in  
7 pleadings that give reasonable information to owners by name  
8 or class, by reference to the instrument creating the  
9 interests or in another appropriate manner;

10           B. a person is bound by an order binding another  
11 in the following cases:

12                   (1) an order binding the sole holder or all  
13 co-holders of a power of revocation or a presently  
14 exercisable general power of appointment, including one in  
15 the form of a power of amendment, binds other persons to the  
16 extent their interests as objects, takers in default or  
17 otherwise are subject to the power;

18                   (2) to the extent there is no conflict of  
19 interest between them or among persons represented:

20                           (a) an order binding a conservator  
21 binds the person whose estate the conservator controls;

22                           (b) an order binding a guardian binds  
23 the protected person if no conservator of the protected  
24 person's estate has been appointed;

25                           (c) an order binding a trustee binds

1 beneficiaries of the trust in proceedings to probate a will  
2 establishing or adding to a trust, to review the acts or  
3 accounts of a former fiduciary and in proceedings involving  
4 creditors or other third parties;

5 (d) an order binding a personal  
6 representative binds persons interested in the undistributed  
7 assets of a decedent's estate in actions or proceedings by or  
8 against the estate; and

9 (e) an order binding the sole holder or  
10 all co-holders of a general testamentary power of appointment  
11 binds other persons to the extent their interests as objects,  
12 takers in default or otherwise are subject to the power; and

13 (3) unless otherwise represented, a minor or  
14 an incapacitated, unborn or unascertained person is bound by  
15 an order to the extent the minor's or the incapacitated,  
16 unborn or unascertained person's interest is adequately  
17 represented by another party having a substantially identical  
18 interest in the proceeding;

19 C. if no conservator or guardian has been  
20 appointed, a parent may represent a minor child;

21 D. notice is required as follows:

22 (1) the notice prescribed by Section  
23 45-1-401 NMSA 1978 shall be given to every person having an  
24 interest in the subject of the hearing or to one who can bind  
25 an interested person as described in Paragraph (1) or (2) of

1 Subsection B of this section. Notice may be given both to an  
2 interested person and to another who may bind that person;  
3 and

4 (2) notice is given to unborn or  
5 unascertained persons who are not represented under Paragraph  
6 (1) or (2) of Subsection B of this section by giving notice  
7 to all known persons whose interests in the proceedings are  
8 substantially identical to those of the unborn or  
9 unascertained persons; and

10 E. at any point in a proceeding, the district  
11 court shall appoint a guardian ad litem to represent the  
12 interest of a minor; an incapacitated, unborn or  
13 unascertained person; or a person whose identity or address  
14 is unknown, if the district court determines that  
15 representation of the interest would otherwise be inadequate.  
16 If not precluded by conflict of interests, a guardian ad  
17 litem may be appointed to represent several persons or  
18 interests. The district court shall state its reasons for  
19 appointing a guardian ad litem as a part of the record of the  
20 proceeding."

21 SECTION 10. Section 45-2-103 NMSA 1978 (being Laws  
22 1993, Chapter 174, Section 6) is amended to read:

23 "45-2-103. SHARE OF HEIRS OTHER THAN SURVIVING  
24 SPOUSE.--

25 A. Any part of the intestate estate not passing to SB 146  
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1 a decedent's surviving spouse pursuant to Section 45-2-102  
2 NMSA 1978, or the entire intestate estate if there is no  
3 surviving spouse, passes in the following order to the  
4 individuals who survive the decedent:

5 (1) to the decedent's descendants by  
6 representation;

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

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

13 (4) if there is no surviving descendant,  
14 parent or descendant of a parent, but the decedent is  
15 survived on both the paternal and maternal sides by one or  
16 more grandparents or descendants of grandparents:

17 (a) half to the decedent's paternal  
18 grandparents equally if both survive, to the surviving  
19 paternal grandparent if only one survives, or to the  
20 descendants of the decedent's paternal grandparents or either  
21 of them if both are deceased, the descendants taking by  
22 representation; and

23 (b) half to the decedent's maternal  
24 grandparents equally if both survive, to the surviving  
25 maternal grandparent if only one survives, or to the



1 descendants of the decedent's maternal grandparents or either  
2 of them if both are deceased, the descendants taking by  
3 representation; and

4 (5) 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 the paternal but not the maternal side, or on  
8 the maternal but not the paternal side, to the decedent's  
9 relatives on the side with one or more surviving members in  
10 the manner described in Paragraph (4) of this subsection.

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

13 (1) one deceased spouse who has one or more  
14 descendants who survive the decedent, the estate or part  
15 thereof passes to that spouse's descendants by  
16 representation; or

17 (2) more than one deceased spouse who has  
18 one or more descendants who survive the decedent, an equal  
19 share of the estate or part thereof passes to each set of  
20 descendants by representation.

21 C. For purposes of Subsection B of this section,  
22 the term "deceased spouse" means an individual to whom the  
23 decedent was married at the individual's death, and does not  
24 include a spouse who was divorced from, or treated pursuant  
25 to Section 45-2-802 or Section 45-2-804 NMSA 1978 as divorced

1 from, the decedent at the time of the decedent's death."

2 SECTION 11. Section 45-2-104 NMSA 1978 (being Laws  
3 1993, Chapter 174, Section 7) is amended to read:

4 "45-2-104. REQUIREMENT OF SURVIVAL BY ONE HUNDRED  
5 TWENTY HOURS--INDIVIDUAL IN GESTATION.--

6 A. For purposes of intestate succession and  
7 allowances, and except as otherwise provided in Subsection B  
8 of this section, the following rules apply:

9 (1) an individual born before a decedent's  
10 death who fails to survive the decedent by one hundred twenty  
11 hours is deemed to have predeceased the decedent. If it is  
12 not established by clear and convincing evidence that an  
13 individual born before the decedent's death survived the  
14 decedent by one hundred twenty hours, it is deemed that the  
15 individual failed to survive for the required period; and

16 (2) an individual in gestation at a  
17 decedent's death is deemed to be living at the decedent's  
18 death if the individual lives one hundred twenty hours after  
19 birth. If it is not established by clear and convincing  
20 evidence that an individual in gestation at the decedent's  
21 death lived one hundred twenty hours after birth, it is  
22 deemed that the individual failed to survive for the required  
23 period.

24 B. This section does not apply if its application  
25 would cause the estate to pass to the state under Section

1 45-2-105 NMSA 1978."

2 SECTION 12. Section 45-2-114 NMSA 1978 (being Laws  
3 1993, Chapter 174, Section 16, as amended) is amended to  
4 read:

5 "45-2-114. PARENT BARRED FROM INHERITING IN CERTAIN  
6 CIRCUMSTANCES.--

7 A. A parent is barred from inheriting from or  
8 through a child of the parent if:

9 (1) the parent's parental rights were  
10 terminated and the parent-child relationship was not  
11 judicially reestablished; or

12 (2) the child died before reaching eighteen  
13 years of age and there is clear and convincing evidence that  
14 immediately before the child's death the parental rights of  
15 the parent could have been terminated under law of New Mexico  
16 other than the Uniform Probate Code on the basis of  
17 nonsupport, abandonment, abuse, neglect or other actions or  
18 inactions of the parent toward the child.

19 B. For the purpose of intestate succession from or  
20 through the deceased child, a parent who is barred from  
21 inheriting under this section is treated as if the parent  
22 predeceased the child."

23 SECTION 13. A new Section 45-2-115 NMSA 1978 is enacted  
24 to read:

25 "45-2-115. DEFINITIONS.--As used in Subpart 2 of Part 1 SB 146  
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1 of Article 2 of the Uniform Probate Code:

2 A. "adoptee" means an individual who is adopted;

3 B. "assisted reproduction" means a method of  
4 causing pregnancy other than sexual intercourse;

5 C. "divorce" includes an annulment, dissolution  
6 and declaration of invalidity of a marriage;

7 D. "functioned as a parent of the child" means  
8 behaving toward a child in a manner consistent with being the  
9 child's parent and performing functions that are customarily  
10 performed by a parent, including fulfilling parental  
11 responsibilities toward the child, recognizing or holding out  
12 the child as the individual's child, materially participating  
13 in the child's upbringing and residing with the child in the  
14 same household as a regular member of that household;

15 E. "genetic father" means the man whose sperm  
16 fertilized the egg of a child's genetic mother. If the  
17 father-child relationship is established under the  
18 presumption of paternity pursuant to Paragraph (1), (2) or  
19 (3) of Subsection B of Section 40-11A-201 NMSA 1978, the term  
20 means only the man for whom that relationship is established;

21 F. "genetic mother" means the woman whose egg was  
22 fertilized by the sperm of a child's genetic father;

23 G. "genetic parent" means a child's genetic father  
24 or genetic mother;

25 H. "incapacity" means the inability of an

1 individual to function as a parent of a child because of the  
2 individual's physical or mental condition; and

3 I. "relative" means a grandparent or a descendant  
4 of a grandparent."

5 SECTION 14. A new Section 45-2-116 NMSA 1978 is enacted  
6 to read:

7 "45-2-116. EFFECT OF PARENT-CHILD RELATIONSHIP.--Except  
8 as otherwise provided in Subsections B through E of Section  
9 45-2-119 NMSA 1978, if a parent-child relationship exists or  
10 is established pursuant to Subpart 2 of Part 1 of Article 2  
11 of the Uniform Probate Code, the parent is a parent of the  
12 child and the child is a child of the parent for the purpose  
13 of intestate succession."

14 SECTION 15. A new Section 45-2-117 NMSA 1978 is enacted  
15 to read:

16 "45-2-117. NO DISTINCTION BASED ON MARITAL STATUS.--  
17 Except as otherwise provided in Section 45-2-114, 45-2-119,  
18 45-2-120 or 45-2-121 NMSA 1978, a parent-child relationship  
19 exists between a child and the child's genetic parents,  
20 regardless of the parents' marital status."

21 SECTION 16. A new Section 45-2-118 NMSA 1978 is enacted  
22 to read:

23 "45-2-118. ADOPTEE AND ADOPTEE'S ADOPTIVE PARENT OR  
24 PARENTS.--

25 A. A parent-child relationship exists between an

1 adoptee and the adoptee's adoptive parent or parents.

2 B. For purposes of Subsection A of this section:

3 (1) an individual who is in the process of  
4 being adopted by a married couple when one of the spouses  
5 dies is treated as adopted by the deceased spouse if the  
6 adoption is subsequently granted to the decedent's surviving  
7 spouse; and

8 (2) a child of a genetic parent who is in  
9 the process of being adopted by a genetic parent's spouse  
10 when the spouse dies is treated as adopted by the deceased  
11 spouse if the genetic parent survives the deceased spouse by  
12 one hundred twenty hours.

13 C. If, after a parent-child relationship is  
14 established between a child of assisted reproduction and a  
15 parent pursuant to Section 45-2-120 NMSA 1978 or between a  
16 gestational child and a parent pursuant to Section 45-2-121  
17 NMSA 1978, the child is in the process of being adopted by  
18 the parent's spouse when that spouse dies, the child is  
19 treated as adopted by the deceased spouse for the purpose of  
20 Paragraph (2) of Subsection B of this section."

21 SECTION 17. A new Section 45-2-119 NMSA 1978 is enacted  
22 to read:

23 "45-2-119. ADOPTEE AND ADOPTEE'S GENETIC  
24 PARENTS.--

25 A. Except as otherwise provided in Subsections B

1 through E of this section, a parent-child relationship does  
2 not exist between an adoptee and the adoptee's genetic  
3 parents.

4 B. A parent-child relationship exists between an  
5 individual who is adopted by the spouse of either genetic  
6 parent and:

7 (1) the genetic parent whose spouse adopted  
8 the individual; and

9 (2) the other genetic parent, but only for  
10 the purpose of the right of the adoptee or a descendant of  
11 the adoptee to inherit from or through the other genetic  
12 parent.

13 C. A parent-child relationship exists between both  
14 genetic parents and an individual who is adopted by a  
15 relative of a genetic parent or by the spouse or surviving  
16 spouse of a relative of a genetic parent, but only for the  
17 purpose of the right of the adoptee or a descendant of the  
18 adoptee to inherit from or through either genetic parent.

19 D. A parent-child relationship exists between both  
20 genetic parents and an individual who is adopted after the  
21 death of both genetic parents, but only for the purpose of  
22 the right of the adoptee or a descendant of the adoptee to  
23 inherit through either genetic parent.

24 E. If, after a parent-child relationship is  
25 established between a child of assisted reproduction and a

1 parent or parents pursuant to Section 45-2-120 NMSA 1978 or  
2 between a gestational child and a parent or parents pursuant  
3 to Section 45-2-121 NMSA 1978, the child is adopted by  
4 another or others, the child's parent or parents pursuant to  
5 Section 45-2-120 or 45-2-121 NMSA 1978 are treated as the  
6 child's genetic parent or parents for the purpose of this  
7 section."

8 SECTION 18. A new Section 45-2-120 NMSA 1978 is enacted  
9 to read:

10 "45-2-120. CHILD CONCEIVED BY ASSISTED REPRODUCTION  
11 OTHER THAN CHILD BORN TO GESTATIONAL CARRIER.--

12 A. As used in this section:

13 (1) "birth mother" means a woman, other than  
14 a gestational carrier pursuant to Section 45-2-121 NMSA 1978,  
15 who gives birth to a child of assisted reproduction. The  
16 term is not limited to a woman who is the child's genetic  
17 mother;

18 (2) "child of assisted reproduction" means a  
19 child conceived by means of assisted reproduction by a woman  
20 other than a gestational carrier pursuant to Section 45-2-121  
21 NMSA 1978; and

22 (3) "third-party donor" means an individual  
23 who produces eggs or sperm used for assisted reproduction,  
24 whether or not for consideration. The term does not include:

25 (a) a husband who provides sperm or a



1 wife who provides eggs that are used for assisted  
2 reproduction by the wife;

3 (b) the birth mother of a child of  
4 assisted reproduction; or

5 (c) an individual who has been  
6 determined pursuant to Subsection E or F of this section to  
7 have a parent-child relationship with a child of assisted  
8 reproduction.

9 B. A parent-child relationship does not exist  
10 between a child of assisted reproduction and a third-party  
11 donor.

12 C. A parent-child relationship exists between a  
13 child of assisted reproduction and the child's birth mother.

14 D. Except as otherwise provided in Subsections I  
15 and J of this section, a parent-child relationship exists  
16 between a child of assisted reproduction and the husband of  
17 the child's birth mother if the husband provided the sperm  
18 that the birth mother used during his lifetime for assisted  
19 reproduction.

20 E. A birth certificate identifying an individual  
21 other than the birth mother as the other parent of a child of  
22 assisted reproduction presumptively establishes a  
23 parent-child relationship between the child and that  
24 individual.

25 F. Except as otherwise provided in Subsections G,

1 I and J of this section, and unless a parent-child  
2 relationship is established pursuant to Subsection D or E of  
3 this section, a parent-child relationship exists between a  
4 child of assisted reproduction and an individual other than  
5 the birth mother who consented to assisted reproduction by  
6 the birth mother with intent to be treated as the other  
7 parent of the child. Consent to assisted reproduction by the  
8 birth mother with intent to be treated as the other parent of  
9 the child is established if the individual:

10 (1) before or after the child's birth,  
11 signed a record that, considering all the facts and  
12 circumstances, evidences the individual's consent; or

13 (2) in the absence of a signed record  
14 pursuant to Paragraph (1) of this subsection:

15 (a) functioned as a parent of the child  
16 no later than two years after the child's birth;

17 (b) intended to function as a parent of  
18 the child no later than two years after the child's birth but  
19 was prevented from carrying out that intent by death,  
20 incapacity or other circumstances; or

21 (c) intended to be treated as a parent  
22 of a posthumously conceived child if that intent is  
23 established by clear and convincing evidence.

24 G. For the purpose of Paragraph (1) of Subsection  
25 F of this section, neither an individual who signed a record

1 more than two years after the birth of the child nor a  
2 relative of that individual who is not also a relative of the  
3 birth mother inherits from or through the child unless the  
4 individual functioned as a parent of the child before the  
5 child reached eighteen years of age.

6 H. For the purpose of Paragraph (2) of Subsection  
7 F of this section, the following rules apply:

8 (1) if the birth mother is married and no  
9 divorce proceeding is pending, in the absence of clear and  
10 convincing evidence to the contrary, her spouse satisfies  
11 Subparagraph (a) or (b) of Paragraph (2) of Subsection F of  
12 this section; and

13 (2) if the birth mother is a surviving  
14 spouse and at her deceased spouse's death no divorce  
15 proceeding was pending, in the absence of clear and  
16 convincing evidence to the contrary, her deceased spouse  
17 satisfies Subparagraph (b) or (c) of Paragraph (2) of  
18 Subsection F of this section.

19 I. If a married couple is divorced before  
20 placement of eggs, sperm or embryos, a child resulting from  
21 the assisted reproduction is not a child of the birth  
22 mother's former spouse, unless the former spouse consented in  
23 a record that if assisted reproduction were to occur after  
24 divorce, the child would be treated as the former spouse's  
25 child.

1 J. If, in a record, an individual withdraws  
2 consent to assisted reproduction before placement of eggs,  
3 sperm or embryos, a child resulting from the assisted  
4 reproduction is not a child of that individual, unless the  
5 individual subsequently satisfies Subsection F of this  
6 section.

7 K. If, pursuant to this section, an individual is  
8 a parent of a child of assisted reproduction who is conceived  
9 after the individual's death, the child is treated as in  
10 gestation at the individual's death for purposes of Paragraph  
11 (2) of Subsection A of Section 45-2-104 NMSA 1978 if the  
12 child is:

13 (1) in utero not later than thirty-six  
14 months after the individual's death; or

15 (2) born not later than forty-five months  
16 after the individual's death."

17 SECTION 19. A new Section 45-2-121 NMSA 1978 is enacted  
18 to read:

19 "45-2-121. CHILD BORN TO GESTATIONAL CARRIER.--

20 A. As used in this section:

21 (1) "gestational agreement" means an  
22 enforceable or unenforceable agreement for assisted  
23 reproduction in which a woman agrees to carry a child to  
24 birth for an intended parent, intended parents or an  
25 individual described in Subsection E of this section;

1 (2) "gestational carrier" means a woman who  
2 is not an intended parent who gives birth to a child pursuant  
3 to a gestational agreement. The term is not limited to a  
4 woman who is the child's genetic mother;

5 (3) "gestational child" means a child born  
6 to a gestational carrier pursuant to a gestational agreement;  
7 and

8 (4) "intended parent" means an individual  
9 who entered into a gestational agreement providing that the  
10 individual will be the parent of a child born to a  
11 gestational carrier by means of assisted reproduction. The  
12 term is not limited to an individual who has a genetic  
13 relationship with the child.

14 B. A parent-child relationship is conclusively  
15 established by a court order designating the parent or  
16 parents of a gestational child.

17 C. A parent-child relationship between a  
18 gestational child and the child's gestational carrier does  
19 not exist unless the gestational carrier is:

20 (1) designated as a parent of the child in a  
21 court order described in Subsection B of this section; or

22 (2) the child's genetic mother and a  
23 parent-child relationship does not exist pursuant to this  
24 section with an individual other than the gestational  
25 carrier.

1           D. In the absence of a court order pursuant to  
2 Subsection B of this section, a parent-child relationship  
3 exists between a gestational child and an intended parent  
4 who:

5                   (1) functioned as a parent of the child no  
6 later than two years after the child's birth; or

7                   (2) died while the gestational carrier was  
8 pregnant if:

9                           (a) there were two intended parents and  
10 the other intended parent functioned as a parent of the child  
11 no later than two years after the child's birth;

12                           (b) there were two intended parents,  
13 the other intended parent also died while the gestational  
14 carrier was pregnant and a relative of either deceased  
15 intended parent or the spouse or surviving spouse of a  
16 relative of either deceased intended parent functioned as a  
17 parent of the child no later than two years after the child's  
18 birth; or

19                           (c) there was no other intended parent  
20 and a relative of or the spouse or surviving spouse of a  
21 relative of the deceased intended parent functioned as a  
22 parent of the child no later than two years after the child's  
23 birth.

24           E. In the absence of a court order pursuant to  
25 Subsection B of this section, a parent-child relationship

1 exists between a gestational child and an individual whose  
2 sperm or eggs were used after the individual's death or  
3 incapacity to conceive a child pursuant to a gestational  
4 agreement entered into after the individual's death or  
5 incapacity if the individual intended to be treated as the  
6 parent of the child. The individual's intent may be shown  
7 by:

8 (1) a record signed by the individual that,  
9 considering all the facts and circumstances, evidences the  
10 individual's intent; or

11 (2) other facts and circumstances  
12 establishing the individual's intent by clear and convincing  
13 evidence.

14 F. Except as otherwise provided in Subsection G of  
15 this section, and unless there is clear and convincing  
16 evidence of a contrary intent, an individual is deemed to  
17 have intended to be treated as the parent of a gestational  
18 child for purposes of Paragraph (2) of Subsection E of this  
19 section if:

20 (1) the individual, before death or  
21 incapacity, deposited the sperm or eggs that were used to  
22 conceive the child;

23 (2) when the individual deposited the sperm  
24 or eggs, the individual was married and no divorce proceeding  
25 was pending; and

1 (3) the individual's spouse or surviving  
2 spouse functioned as a parent of the child no later than two  
3 years after the child's birth.

4 G. The presumption pursuant to Subsection F of  
5 this section does not apply if there is:

6 (1) a court order pursuant to Subsection B  
7 of this section; or

8 (2) a signed record that satisfies Paragraph  
9 (1) of Subsection E of this section.

10 H. If, pursuant to this section, an individual is  
11 a parent of a gestational child who is conceived after the  
12 individual's death, the child is treated as in gestation at  
13 the individual's death for purposes of Paragraph (2) of  
14 Subsection A of Section 45-2-104 NMSA 1978 if the child is:

15 (1) in utero not later than thirty-six  
16 months after the individual's death; or

17 (2) born not later than forty-five months  
18 after the individual's death.

19 I. This section shall apply only for the purposes  
20 of determining inheritance rights and does not affect any law  
21 of New Mexico other than the Uniform Probate Code regarding  
22 the enforceability or validity of a gestational agreement.

23 J. Subject to Subsection I of this section, the  
24 Uniform Probate Code does not authorize or prohibit a  
25 gestational agreement."



1 SECTION 20. A new Section 45-2-122 NMSA 1978 is enacted  
2 to read:

3 "45-2-122. EQUITABLE ADOPTION.--Subpart 2 of Part 1 of  
4 Article 2 of the Uniform Probate Code does not affect the  
5 doctrine of equitable adoption."

6 SECTION 21. Section 45-2-403 NMSA 1978 (being Laws  
7 1993, Chapter 174, Section 21, as amended) is amended to  
8 read:

9 "45-2-403. PERSONAL PROPERTY ALLOWANCE.--In addition to  
10 the family allowance, the decedent's surviving spouse is  
11 entitled from the estate to a value, not exceeding fifteen  
12 thousand dollars (\$15,000) in excess of any security  
13 interests therein, in household furniture, automobiles,  
14 furnishings, appliances and personal effects. If there is no  
15 surviving spouse, the decedent's children who are devisees  
16 under the will, who are entitled to a share of the estate  
17 pursuant to Section 45-2-302 NMSA 1978 or, if there is no  
18 will, who are intestate heirs are entitled jointly to the  
19 same value. If encumbered chattels are selected and the  
20 value in excess of security interests plus that of other  
21 exempt property is less than fifteen thousand dollars  
22 (\$15,000) or if there is not fifteen thousand dollars  
23 (\$15,000) worth of exempt property in the estate, the spouse  
24 or children are entitled to other assets of the estate, if  
25 any, to the extent necessary to make up the fifteen thousand

1 dollar (\$15,000) value. Rights to specific property for the  
2 personal property allowance and assets needed to make up a  
3 deficiency in the property have priority over all claims  
4 against the estate, but the right to any assets to make up a  
5 deficiency of exempt property abates as necessary to permit  
6 earlier payment of the family allowance. These rights are in  
7 addition to any benefit or share passing to the surviving  
8 spouse or children by intestate succession or by the  
9 decedent's will, unless otherwise provided by the decedent in  
10 the will or other governing instrument."

11 SECTION 22. Section 45-2-501 NMSA 1978 (being Laws  
12 1993, Chapter 174, Section 25) is amended to read:

13 "45-2-501. WHO MAY MAKE WILL.--An individual eighteen  
14 or more years of age who is of sound mind or an emancipated  
15 minor who is of sound mind may make a will."

16 SECTION 23. Section 45-2-507 NMSA 1978 (being Laws  
17 1993, Chapter 174, Section 30) is amended to read:

18 "45-2-507. REVOCATION BY WRITING OR BY ACT.--

19 A. A will or any part thereof is revoked:

20 (1) by executing a subsequent will that  
21 revokes the previous will or part expressly or by  
22 inconsistency;

23 (2) by executing another subsequent document  
24 in the manner provided for in Section 45-2-502 or 45-2-504  
25 NMSA 1978, or both, that expressly revokes the previous will

1 or part thereof; or

2 (3) by performing a revocatory act on the  
3 will if the testator performed the act with the intent and  
4 for the purpose of revoking the will or part or if another  
5 individual performed the act in the testator's conscious  
6 presence and by the testator's direction. For purposes of  
7 this paragraph, "revocatory act on the will" includes  
8 burning, tearing, canceling, obliterating or destroying the  
9 will or any part of it. A burning, tearing or canceling is a  
10 "revocatory act on the will", whether or not the burn, tear  
11 or cancellation touched any of the words on the will.

12 B. If a subsequent will does not expressly revoke  
13 a previous will, the execution of the subsequent will wholly  
14 revokes the previous will by inconsistency if the testator  
15 intended the subsequent will to replace rather than  
16 supplement the previous will.

17 C. The testator is presumed to have intended a  
18 subsequent will to replace rather than supplement a previous  
19 will if the subsequent will makes a complete disposition of  
20 the testator's estate. If this presumption arises and is not  
21 rebutted by clear and convincing evidence, the previous will  
22 is revoked; only the subsequent will is operative on the  
23 testator's death.

24 D. The testator is presumed to have intended a  
25 subsequent will to supplement rather than replace a previous

1 will if the subsequent will does not make a complete  
2 disposition of the testator's estate. If this presumption  
3 arises and is not rebutted by clear and convincing evidence,  
4 the subsequent will revokes the previous will only to the  
5 extent that the subsequent will is inconsistent with the  
6 previous will; each will is fully operative on the testator's  
7 death to the extent that the wills are not inconsistent."

8 SECTION 24. Section 45-2-603 NMSA 1978 (being Laws  
9 1993, Chapter 174, Section 42, as amended) is amended to  
10 read:

11 "45-2-603. ANTILAPSE--DECEASED DEVISEE--CLASS GIFTS.--

12 A. As used in this section:

13 (1) "alternative devise" means a devise that  
14 is expressly created by the will and, under the terms of the  
15 will, can take effect instead of another devise on the  
16 happening of one or more events, including survival of the  
17 testator or failure to survive the testator, whether an event  
18 is expressed in condition-precedent, condition-subsequent or  
19 any other form. A residuary clause constitutes an  
20 alternative devise with respect to a nonresiduary devise only  
21 if the will specifically provides that, upon lapse or  
22 failure, the nonresiduary devise, or nonresiduary devises in  
23 general, pass under the residuary clause;

24 (2) "class member" includes an individual  
25 who fails to survive the testator but who would have taken

1 under a devise in the form of a class gift had the class  
2 member survived the testator;

3 (3) "descendant of a grandparent", as used  
4 in Subsection B of this section, means an individual who  
5 qualifies as a descendant of a grandparent of the testator or  
6 of the donor of a power of appointment pursuant to:

7 (a) rules of construction applicable to  
8 a class gift created in the testator's will if the devise or  
9 exercise of the power is in the form of a class gift; or

10 (b) rules for intestate succession if  
11 the devise or exercise of the power is not in the form of a  
12 class gift;

13 (4) "descendants", as used in the phrase  
14 "surviving descendants" of a deceased devisee or class member  
15 in Paragraphs (1) and (2) of Subsection B of this section,  
16 means the descendants of a deceased devisee or class member  
17 who would take under a class gift created in the testator's  
18 will;

19 (5) "devise" includes an alternative devise,  
20 a devise in the form of a class gift and an exercise of a  
21 power of appointment;

22 (6) "devisee" includes:

23 (a) a class member if the devise is in  
24 the form of a class gift;

25 (b) an individual or class member who

1 was deceased at the time the testator executed the testator's  
2 will as well as an individual or class member who was then  
3 living but who failed to survive the testator; and

4 (c) an appointee under a power of  
5 appointment exercised by the testator's will;

6 (7) "stepchild" means a child of the  
7 surviving, deceased or former spouse of the testator or of  
8 the donor of a power of appointment and not of the testator  
9 or donor;

10 (8) "surviving", as used in the phrase  
11 "surviving devisees" or "surviving descendants", means  
12 devisees or descendants who neither predeceased the testator  
13 nor are deemed to have predeceased the testator pursuant to  
14 the provisions of Section 45-2-702 NMSA 1978; and

15 (9) "testator" includes the donee of a power  
16 of appointment if the power is exercised in the testator's  
17 will.

18 B. If a devisee fails to survive the testator and  
19 is a grandparent, a descendant of a grandparent or a  
20 stepchild of either the testator or the donor of a power of  
21 appointment exercised by the testator's will, the following  
22 apply:

23 (1) except as provided in Paragraph (4) of  
24 this subsection, if the devise is not in the form of a class  
25 gift and the deceased devisee leaves surviving descendants, a

1 substitute gift is created in the devisee's surviving  
2 descendants. They take by representation the property to  
3 which the devisee would have been entitled had the devisee  
4 survived the testator;

5 (2) except as provided in Paragraph (4) of  
6 this subsection, if the devise is in the form of a class  
7 gift, other than a devise to "issue", "descendants", "heirs  
8 of the body", "heirs", "next of kin", "relatives" or "family"  
9 or a class described by language of similar import, a  
10 substitute gift is created in the surviving descendants of  
11 any deceased devisee. The property to which the devisees  
12 would have been entitled had all of them survived the  
13 testator passes to the surviving devisees and the surviving  
14 descendants of the deceased devisees. Each surviving devisee  
15 takes the share to which the surviving devisee would have  
16 been entitled had the deceased devisees survived the  
17 testator. Each deceased devisee's surviving descendants who  
18 are substituted for the deceased devisee take by  
19 representation the share to which the deceased devisee would  
20 have been entitled had the deceased devisee survived the  
21 testator. For the purposes of this paragraph, "deceased  
22 devisee" means a class member who failed to survive the  
23 testator and left one or more surviving descendants;

24 (3) for the purposes of Section 45-2-601  
25 NMSA 1978, words of survivorship, such as in a devise to an

1 individual "if he survives me" or in a devise to "my  
2 surviving children" are not, in the absence of additional  
3 evidence, a sufficient indication of an intent contrary to  
4 the application of this section;

5 (4) if the will creates an alternative  
6 devise with respect to a devise for which a substitute gift  
7 is created by Paragraph (1) or (2) of this subsection, the  
8 substitute gift is superseded by the alternative devise if:

9 (a) the alternative devise is in the  
10 form of a class gift and one or more members of the class is  
11 entitled to take under the will; or

12 (b) the alternative devise is not in  
13 the form of a class gift and the expressly designated devisee  
14 of the alternative devise is entitled to take under the will;  
15 and

16 (5) unless the language creating a power of  
17 appointment expressly excludes the substitution of the  
18 descendants of an appointee for the appointee, a surviving  
19 descendant of a deceased appointee of a power of appointment  
20 can be substituted for the appointee pursuant to the  
21 provisions of this section whether or not the descendant is  
22 an object of the power.

23 C. If, pursuant to the provisions of Subsection B  
24 of this section, substitute gifts are created and not  
25 superseded with respect to more than one devise and the



1 devises are alternative devises, one to the other, the  
2 determination of which of the substitute gifts takes effect  
3 is resolved as follows:

4 (1) except as provided in Paragraph (2) of  
5 this subsection, the devised property passes under the  
6 primary substitute gift;

7 (2) if there is a younger-generation devise,  
8 the devised property passes under the younger-generation  
9 substitute gift and not under the primary substitute gift;  
10 and

11 (3) as used in this subsection:

12 (a) "primary devise" means the devise  
13 that would have taken effect had all the deceased devisees of  
14 the alternative devises who left surviving descendants  
15 survived the testator;

16 (b) "primary substitute gift" means the  
17 substitute gift created with respect to the primary devise;

18 (c) "younger-generation devise" means a  
19 devise that: 1) is to a descendant of a devisee of the  
20 primary devise; 2) is an alternative devise with respect to  
21 the primary devise; 3) is a devise for which a substitute  
22 gift is created; and 4) would have taken effect had all the  
23 deceased devisees who left surviving descendants survived the  
24 testator except the deceased devisee or devisees of the  
25 primary devise; and

1 (d) "younger-generation substitute  
2 gift" means the substitute gift created with respect to the  
3 younger-generation devise."

4 SECTION 25. Section 45-2-606 NMSA 1978 (being Laws  
5 1993, Chapter 174, Section 45) is amended to read:

6 "45-2-606. NONADEMPTION OF SPECIFIC DEVICES--UNPAID  
7 PROCEEDS OF SALE, CONDEMNATION OR INSURANCE--SALE BY  
8 CONSERVATOR OR AGENT.--

9 A. A specific devisee has a right to specifically  
10 devised property in the testator's estate at the testator's  
11 death and:

12 (1) any balance of the purchase price,  
13 together with any security agreement, owed by a purchaser at  
14 the testator's death by reason of sale of the property;

15 (2) any amount of a condemnation award for  
16 the taking of the property unpaid at death;

17 (3) any proceeds unpaid at death on fire or  
18 casualty insurance on or other recovery for injury to the  
19 property;

20 (4) any property owned by the testator at  
21 death and acquired as a result of foreclosure or obtained in  
22 lieu of foreclosure of the security interest for specifically  
23 devised obligation;

24 (5) any real property or tangible personal  
25 property owned by the testator at death that the testator

1 acquired as a replacement for specifically devised real  
2 property or tangible personal property; and

3 (6) if not covered by Paragraphs (1) through  
4 (5) of this subsection, a pecuniary devise equal to the value  
5 as of its date of disposition of other specifically devised  
6 property disposed of during the testator's lifetime but only  
7 to the extent it is established that ademption would be  
8 inconsistent with the testator's manifested plan of  
9 distribution or that at the time the will was made, the date  
10 of disposition or otherwise, the testator did not intend  
11 ademption of the devise.

12 B. If specifically devised property is sold or  
13 mortgaged by a conservator or by an agent acting within the  
14 authority of a durable power of attorney for an incapacitated  
15 person or if a condemnation award, insurance proceeds or  
16 recovery for injury to the property is paid to a conservator  
17 or to an agent acting within the authority of a durable power  
18 of attorney for an incapacitated person, the specific devisee  
19 has the right to a general pecuniary devise equal to the net  
20 sale price, the amount of the unpaid loan, the condemnation  
21 award, the insurance proceeds or the recovery.

22 C. The right of a specific devisee pursuant to  
23 Subsection B of this section is reduced by any right the  
24 devisee has pursuant to Subsection A of this section.

25 D. Subsection B of this section does not apply if, SB 146  
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1 after the sale, mortgage, condemnation, casualty or recovery,  
2 it is adjudicated that the testator's incapacity has ceased  
3 and the testator survives the adjudication for at least one  
4 year.

5 E. For the purposes of the references in  
6 Subsection B of this section to an agent acting within the  
7 authority of a durable power of attorney for an incapacitated  
8 person:

9 (1) no adjudication of incapacity before  
10 death is necessary; and

11 (2) the acts of an agent within the  
12 authority of a durable power of attorney are presumed to be  
13 for the incapacitated person."

14 SECTION 26. Section 45-2-705 NMSA 1978 (being Laws  
15 1993, Chapter 174, Section 53) is amended to read:

16 "45-2-705. CLASS GIFTS CONSTRUED TO ACCORD WITH  
17 INTESTATE SUCCESSION--EXCEPTIONS.--

18 A. As used in this section:

19 (1) "adoptee" has the meaning set forth in  
20 Section 45-2-115 NMSA 1978;

21 (2) "child of assisted reproduction" has the  
22 meaning set forth in Section 45-2-120 NMSA 1978;

23 (3) "distribution date" means the date when  
24 an immediate or postponed class gift takes effect in  
25 possession or enjoyment;

1 (4) "functioned as a parent of the adoptee"  
2 has the meaning set forth in Section 45-2-115 NMSA 1978,  
3 substituting "adoptee" for "child" in that definition;

4 (5) "functioned as a parent of the child"  
5 has the meaning set forth in Section 45-2-115 NMSA 1978;

6 (6) "genetic parent" has the meaning set  
7 forth in Section 45-2-115 NMSA 1978;

8 (7) "gestational child" has the meaning set  
9 forth in Section 45-2-121 NMSA 1978; and

10 (8) "relative" has the meaning set forth in  
11 Section 45-2-115 NMSA 1978.

12 B. A class gift that uses a term of relationship  
13 to identify the class members includes a child of assisted  
14 reproduction, a gestational child and, except as otherwise  
15 provided in Subsections E and F of this section, an adoptee  
16 and a child born to parents who are not married to each other  
17 and their respective descendants if appropriate to the class  
18 in accordance with the rules for intestate succession  
19 regarding parent-child relationships. For the purpose of  
20 determining whether a contrary intent exists pursuant to  
21 Section 45-2-701 NMSA 1978, a provision in a governing  
22 instrument that relates to the inclusion or exclusion in a  
23 class gift of a child born to parents who are not married to  
24 each other but that does not specifically refer to a child of  
25 assisted reproduction or a gestational child does not apply

1 to a child of assisted reproduction or a gestational child.

2 C. Terms of relationship in a governing instrument  
3 that do not differentiate relationships by blood from those  
4 by marriage, such as uncles, aunts, nieces or nephews, are  
5 construed to exclude relatives by marriage, unless:

6 (1) when the governing instrument was  
7 executed, the class was then and foreseeably would be empty;  
8 or

9 (2) the language or circumstances otherwise  
10 establish that relatives by marriage were intended to be  
11 included.

12 D. Terms of relationship in a governing instrument  
13 that do not differentiate relationships by the half blood  
14 from those by the whole blood, such as brothers, sisters,  
15 nieces or nephews, are construed to include both types of  
16 relationships.

17 E. In construing a dispositive provision of a  
18 transferor who is not the genetic parent, a child of a  
19 genetic parent is not considered the child of the genetic  
20 parent unless the genetic parent, a relative of the genetic  
21 parent, or the spouse or surviving spouse of the genetic  
22 parent or of a relative of the genetic parent functioned as a  
23 parent of the child before the child reached eighteen years  
24 of age.

25 F. In construing a dispositive provision of a

1 transferor who is not the adoptive parent, an adoptee is not  
2 considered the child of the adoptive parent unless:

3 (1) the adoption took place before the  
4 adoptee reached eighteen years of age;

5 (2) the adoptive parent was the adoptee's  
6 stepparent or foster parent; or

7 (3) the adoptive parent functioned as a  
8 parent of the adoptee before the adoptee reached eighteen  
9 years of age.

10 G. The following rules apply for purposes of the  
11 class-closing rules:

12 (1) a child in utero at a particular time is  
13 treated as living at that time if the child lives one hundred  
14 twenty hours after birth;

15 (2) if a child of assisted reproduction or a  
16 gestational child is conceived posthumously and the  
17 distribution date is the deceased parent's death, the child  
18 is treated as living on the distribution date if the child  
19 lives one hundred twenty hours after birth and was in utero  
20 not later than thirty-six months after the deceased parent's  
21 death or born not later than forty-five months after the  
22 deceased parent's death; and

23 (3) an individual who is in the process of  
24 being adopted when the class closes is treated as adopted  
25 when the class closes if the adoption is subsequently

1 granted."

2 SECTION 27. Section 45-2-706 NMSA 1978 (being Laws  
3 1993, Chapter 174, Section 54, as amended) is amended to  
4 read:

5 "45-2-706. LIFE INSURANCE--RETIREMENT PLAN--ACCOUNT  
6 WITH POD DESIGNATION--TRANSFER-ON-DEATH REGISTRATION--  
7 DECEASED BENEFICIARY.--

8 A. As used in this section:

9 (1) "alternative beneficiary designation"  
10 means a beneficiary designation that is expressly created by  
11 the governing instrument and, under the terms of the  
12 governing instrument, can take effect instead of another  
13 beneficiary designation on the happening of one or more  
14 events, including a person's survival of the decedent or  
15 failure to survive the decedent, whether an event is  
16 expressed in condition-precedent, condition-subsequent or any  
17 other form;

18 (2) "beneficiary" means the beneficiary of a  
19 beneficiary designation under which the beneficiary must  
20 survive the decedent and includes:

21 (a) a class member if the beneficiary  
22 designation is in the form of a class gift; and

23 (b) an individual or class member who  
24 was deceased at the time the beneficiary designation was  
25 executed as well as an individual or class member who was



1 then living but who failed to survive the decedent, but  
2 excludes a joint tenant of a joint tenancy with the right of  
3 survivorship and a party to a joint and survivorship account;

4 (3) "beneficiary designation" includes an  
5 alternative beneficiary designation and a beneficiary  
6 designation in the form of a class gift;

7 (4) "class member" includes an individual  
8 who fails to survive the decedent but who would have taken  
9 under a beneficiary designation in the form of a class gift  
10 had the individual survived the decedent;

11 (5) "descendant of a grandparent", as used  
12 in Subsection B of this section, means an individual who  
13 qualifies as a descendant of a grandparent of the decedent  
14 pursuant to:

15 (a) rules of construction applicable to  
16 a class gift created in the decedent's beneficiary  
17 designation if the beneficiary designation is in the form of  
18 a class gift; or

19 (b) rules for intestate succession if  
20 the beneficiary designation is not in the form of a class  
21 gift;

22 (6) "descendants", as used in the phrase  
23 "surviving descendants" of a deceased beneficiary or class  
24 member in Paragraphs (1) and (2) of Subsection B of this  
25 section, means the descendants of a deceased beneficiary or

1 class member who would take under a class gift created in the  
2 beneficiary designation;

3 (7) "stepchild" means a child of the  
4 decedent's surviving, deceased or former spouse and not of  
5 the decedent; and

6 (8) "surviving", as used in the phrase  
7 "surviving beneficiaries" or "surviving descendants", means  
8 beneficiaries or descendants who neither predeceased the  
9 decedent nor are deemed to have predeceased the decedent  
10 pursuant to the provisions of Section 45-2-702 NMSA 1978.

11 B. If a beneficiary fails to survive the decedent  
12 and is a grandparent, a descendant of a grandparent or a  
13 stepchild of the decedent, the following apply:

14 (1) except as provided in Paragraph (4) of  
15 this subsection, if the beneficiary designation is not in the  
16 form of a class gift and the deceased beneficiary leaves  
17 surviving descendants, a substitute gift is created in the  
18 beneficiary's surviving descendants. They take by  
19 representation the property to which the beneficiary would  
20 have been entitled had the beneficiary survived the decedent;

21 (2) except as provided in Paragraph (4) of  
22 this subsection, if the beneficiary designation is in the  
23 form of a class gift, other than a beneficiary designation to  
24 "issue", "descendants", "heirs of the body", "heirs", "next  
25 of kin", "relatives" or "family" or a class described by

1 language of similar import, a substitute gift is created in  
2 the surviving descendants of any deceased beneficiary. The  
3 property to which the beneficiaries would have been entitled  
4 had all of them survived the decedent passes to the surviving  
5 beneficiaries and the surviving descendants of the deceased  
6 beneficiaries. Each surviving beneficiary takes the share to  
7 which the surviving beneficiary would have been entitled had  
8 the deceased beneficiaries survived the decedent. Each  
9 deceased beneficiary's surviving descendants who are  
10 substituted for the deceased beneficiary take by  
11 representation the share to which the deceased beneficiary  
12 would have been entitled had the deceased beneficiary  
13 survived the decedent. For the purposes of this paragraph,  
14 "deceased beneficiary" means a class member who failed to  
15 survive the decedent and left one or more surviving  
16 descendants;

17 (3) for the purposes of Section 45-2-701  
18 NMSA 1978, words of survivorship, such as in a beneficiary  
19 designation to an individual "if he survives me" or in a  
20 beneficiary designation to "my surviving children", are not,  
21 in the absence of additional evidence, a sufficient  
22 indication of an intent contrary to the application of this  
23 section; and

24 (4) if a governing instrument creates an  
25 alternative beneficiary designation with respect to a

1 beneficiary designation for which a substitute gift is  
2 created by Paragraph (1) or (2) of this subsection, the  
3 substitute gift is superseded by the alternative beneficiary  
4 designation if:

5 (a) the alternative beneficiary  
6 designation is in the form of a class gift and one or more  
7 members of the class is entitled to take; or

8 (b) the alternative beneficiary  
9 designation is not in the form of a class gift and the  
10 expressly designated beneficiary of the alternative  
11 beneficiary designation is entitled to take.

12 C. If, pursuant to the provisions of Subsection B  
13 of this section, substitute gifts are created and not  
14 superseded with respect to more than one beneficiary  
15 designation and the beneficiary designations are alternative  
16 beneficiary designations, one to the other, the determination  
17 of which of the substitute gifts takes effect is resolved as  
18 follows:

19 (1) except as provided in Paragraph (2) of  
20 this subsection, the property passes under the primary  
21 substitute gift;

22 (2) if there is a younger-generation  
23 beneficiary designation, the property passes under the  
24 younger-generation substitute gift and not under the primary  
25 substitute gift; and

1 (3) as used in this subsection:

2 (a) "primary beneficiary designation"  
3 means the beneficiary designation that would have taken  
4 effect had all the deceased beneficiaries of the alternative  
5 beneficiary designations who left surviving descendants  
6 survived the decedent;

7 (b) "primary substitute gift" means the  
8 substitute gift created with respect to the primary  
9 beneficiary designation;

10 (c) "younger-generation beneficiary  
11 designation" means as a beneficiary designation that: 1) is  
12 to a descendant of a beneficiary of the primary beneficiary  
13 designation; 2) is an alternative beneficiary designation  
14 with respect to the primary beneficiary designation; 3) is a  
15 beneficiary designation for which a substitute gift is  
16 created; and 4) would have taken effect had all the deceased  
17 beneficiaries who left surviving descendants survived the  
18 decedent except the deceased beneficiary or beneficiaries of  
19 the primary beneficiary designation; and

20 (d) "younger-generation substitute  
21 gift" means the substitute gift created with respect to the  
22 younger-generation beneficiary designation.

23 D. A payor is protected from liability in making  
24 payments under the terms of the beneficiary designation until  
25 the payor has received written notice of a claim to a

1 substitute gift under this section. Payment made before the  
2 receipt of written notice of a claim to a substitute gift  
3 under this section discharges the payor, but not the  
4 recipient, from all claims for the amounts paid. A payor is  
5 liable for a payment made after the payor has received  
6 written notice of the claim. A recipient is liable for a  
7 payment received whether or not written notice of the claim  
8 is given.

9       The written notice of the claim shall be mailed to the  
10 payor's main office or home by registered or certified mail,  
11 return receipt requested, or served upon the payor in the  
12 same manner as a summons in a civil action. Upon receipt of  
13 written notice of the claim, a payor may pay any amount owed  
14 by it to the court having jurisdiction of the probate  
15 proceedings relating to the decedent's estate or, if no  
16 proceedings have been commenced, to the court having  
17 jurisdiction of probate proceedings relating to decedents'  
18 estates located in the county of the decedent's residence.  
19 The court shall hold the funds and, upon its determination  
20 under this section, shall order disbursement in accordance  
21 with the determination. Payment made to the court discharges  
22 the payor from all claims for the amounts paid.

23       E. A person who purchases property for value and  
24 without notice or who receives a payment or other item of  
25 property in partial or full satisfaction of a legally

1 enforceable obligation is neither obligated pursuant to the  
2 provisions of this section to return the payment, item of  
3 property or benefit nor liable pursuant to the provisions of  
4 this section for the amount of the payment or the value of  
5 the item of property or benefit. But a person who, not for  
6 value, receives a payment, item of property or any other  
7 benefit to which the person is not entitled pursuant to the  
8 provisions of this section is obligated to return the  
9 payment, item of property or benefit or is personally liable  
10 for the amount of the payment or the value of the item of  
11 property or benefit to the person who is entitled to it  
12 pursuant to the provisions of this section.

13 F. If this section or any part of this section is  
14 preempted by federal law with respect to a payment, an item  
15 of property or any other benefit covered by this section, a  
16 person who, not for value, receives the payment, item of  
17 property or any other benefit to which the person is not  
18 entitled pursuant to the provisions of this section is  
19 obligated to return the payment, item of property or benefit  
20 or is personally liable for the amount of the payment or the  
21 value of the item of property or benefit to the person who  
22 would have been entitled to it were this section or part of  
23 this section not preempted."

24 SECTION 28. Section 45-2-707 NMSA 1978 (being Laws  
25 1993, Chapter 174, Section 55, as amended) is amended to

1 read:

2 "45-2-707. SURVIVORSHIP WITH RESPECT TO FUTURE  
3 INTERESTS UNDER TERMS OF TRUST--SUBSTITUTE TAKERS.--

4 A. As used in this section:

5 (1) "alternative future interest" means an  
6 expressly created future interest that can take effect in  
7 possession or enjoyment instead of another future interest on  
8 the happening of one or more events, including survival of an  
9 event or failure to survive an event, whether an event is  
10 expressed in condition-precedent, condition-subsequent or any  
11 other form. A residuary clause in a will does not create an  
12 alternative future interest with respect to a future interest  
13 created in a nonresiduary devise in the will, whether or not  
14 the will specifically provides that lapsed or failed devises  
15 are to pass under the residuary clause;

16 (2) "beneficiary" means the beneficiary of a  
17 future interest and includes a class member if the future  
18 interest is in the form of a class gift;

19 (3) "class member" includes an individual  
20 who fails to survive the distribution date but who would have  
21 taken under a future interest in the form of a class gift had  
22 the individual survived the distribution date;

23 (4) "descendants", as used in the phrase  
24 "surviving descendants" of a deceased beneficiary or class  
25 member in Paragraphs (1) and (2) of Subsection B of this



1 section, means the descendants of a deceased beneficiary or  
2 class member who would take under a class gift created in the  
3 trust;

4 (5) "distribution date", with respect to a  
5 future interest, means the time when the future interest is  
6 to take effect in possession or enjoyment. The distribution  
7 date need not occur at the beginning or end of a calendar  
8 day, but can occur at a time during the course of a day;

9 (6) "future interest" includes an  
10 alternative future interest and a future interest in the form  
11 of a class gift;

12 (7) "future interest under the terms of a  
13 trust" means a future interest that was created by a transfer  
14 creating a trust or to an existing trust or by an exercise of  
15 a power of appointment to an existing trust, directing the  
16 continuance of an existing trust, designating a beneficiary  
17 of an existing trust or creating a trust; and

18 (8) "surviving", as used in the phrase  
19 "surviving beneficiaries" or "surviving descendants", means  
20 beneficiaries or descendants who neither predeceased the  
21 distribution date nor are deemed to have predeceased the  
22 distribution date pursuant to the provisions of Section  
23 45-2-702 NMSA 1978.

24 B. A future interest under the terms of a trust is  
25 contingent on the beneficiary's surviving the distribution

1 date. If a beneficiary of a future interest under the terms  
2 of a trust fails to survive the distribution date, the  
3 following apply:

4 (1) except as provided in Paragraph (4) of  
5 this subsection, if the future interest is not in the form of  
6 a class gift and the deceased beneficiary leaves surviving  
7 descendants, a substitute gift is created in the  
8 beneficiary's surviving descendants. They take by  
9 representation the property to which the beneficiary would  
10 have been entitled had the beneficiary survived the  
11 distribution date;

12 (2) except as provided in Paragraph (4) of  
13 this subsection, if the future interest is in the form of a  
14 class gift, other than a future interest to "issue",  
15 "descendants", "heirs of the body", "heirs", "next of kin",  
16 "relatives" or "family" or a class described by language of  
17 similar import, a substitute gift is created in the surviving  
18 descendants of any deceased beneficiary. The property to  
19 which the beneficiaries would have been entitled had all of  
20 them survived the distribution date passes to the surviving  
21 beneficiaries and the surviving descendants of the deceased  
22 beneficiaries. Each surviving beneficiary takes the share to  
23 which the surviving beneficiary would have been entitled had  
24 the deceased beneficiaries survived the distribution date.

25 Each deceased beneficiary's surviving descendants who are

1 substituted for the deceased beneficiary take by  
2 representation the share to which the deceased beneficiary  
3 would have been entitled had the deceased beneficiary  
4 survived the distribution date. For the purposes of this  
5 paragraph, "deceased beneficiary" means a class member who  
6 failed to survive the distribution date and left one or more  
7 surviving descendants;

8 (3) for the purposes of Section 45-2-701  
9 NMSA 1978, words of survivorship attached to a future  
10 interest are not, in the absence of additional evidence, a  
11 sufficient indication of an intent contrary to the  
12 application of this section. Words of survivorship include  
13 words of survivorship that relate to the distribution date or  
14 to an earlier or an unspecified time, whether those words of  
15 survivorship are expressed in condition-precedent,  
16 condition-subsequent or any other form; and

17 (4) if a governing instrument creates an  
18 alternative future interest with respect to a future interest  
19 for which a substitute gift is created by Paragraph (1) or  
20 (2) of this subsection, the substitute gift is superseded by  
21 the alternative future interest if:

22 (a) the alternative future interest is  
23 in the form of a class gift and one or more members of the  
24 class is entitled to take in possession or enjoyment; or

25 (b) the alternative future interest is

1 not in the form of a class gift and the expressly designated  
2 beneficiary of the alternative future interest is entitled to  
3 take in possession or enjoyment.

4 C. If, pursuant to the provisions of Subsection B  
5 of this section, substitute gifts are created and not  
6 superseded with respect to more than one future interest and  
7 the future interests are alternative future interests, one to  
8 the other, the determination of which of the substitute gifts  
9 takes effect is resolved as follows:

10 (1) except as provided in Paragraph (2) of  
11 this subsection, the property passes under the primary  
12 substitute gift;

13 (2) if there is a younger-generation future  
14 interest, the property passes under the younger-generation  
15 substitute gift and not under the primary substitute gift;  
16 and

17 (3) as used in this subsection:

18 (a) "primary future interest" means the  
19 future interest that would have taken effect had all the  
20 deceased beneficiaries of the alternative future interests  
21 who left surviving descendants survived the distribution  
22 date;

23 (b) "primary substitute gift" means the  
24 substitute gift created with respect to the primary future  
25 interest;

1 (c) "younger-generation future  
2 interest" means a future interest that: 1) is to a  
3 descendant of a beneficiary of the primary future interest;  
4 2) is an alternative future interest with respect to the  
5 primary future interest; 3) is a future interest for which a  
6 substitute gift is created; and 4) would have taken effect  
7 had all the deceased beneficiaries who left surviving  
8 descendants survived the distribution date except the  
9 deceased beneficiary or beneficiaries of the primary future  
10 interest; and

11 (d) "younger-generation substitute  
12 gift" means the substitute gift created with respect to the  
13 younger-generation future interest.

14 D. Except as provided in Subsection E of this  
15 section, if after the application of Subsections B and C of  
16 this section there is no surviving taker, the property passes  
17 in the following order:

18 (1) if the trust was created in a  
19 nonresiduary devise in the transferor's will or in a codicil  
20 to the transferor's will, the property passes under the  
21 residuary clause in the transferor's will; for purposes of  
22 this section, the residuary clause is treated as creating a  
23 future interest under the terms of a trust; and

24 (2) if no taker is produced by the  
25 application of Paragraph (1) of this subsection, the property

1 passes to the transferor's heirs pursuant to the provisions  
2 of Section 45-2-711 NMSA 1978.

3 E. If, after the application of Subsections B and  
4 C of this section, there is no surviving taker and if the  
5 future interest was created by the exercise of a power of  
6 appointment:

7 (1) the property passes under the donor's  
8 gift-in-default clause, if any, which clause is treated as  
9 creating a future interest under the terms of a trust; and

10 (2) if no taker is produced by the  
11 application of Paragraph (1) of this subsection, the property  
12 passes as provided in Subsection D of this section. For  
13 purposes of Subsection D of this section, "transferor" means  
14 the donor if the power was a nongeneral power and means the  
15 donee if the power was a general power."

16 SECTION 29. Section 45-2-709 NMSA 1978 (being Laws  
17 1993, Chapter 174, Section 57, as amended) is amended to  
18 read:

19 "45-2-709. REPRESENTATION--PER CAPITA AT EACH  
20 GENERATION--PER STIRPES.--

21 A. As used in this section:

22 (1) "deceased child" or "deceased  
23 descendant" means a child or a descendant who either  
24 predeceased the distribution date or is deemed to have  
25 predeceased the distribution date pursuant to the provisions

1 of Section 45-2-702 NMSA 1978;

2 (2) "distribution date", with respect to an  
3 interest, means the time when the interest is to take effect  
4 in possession or enjoyment. The distribution date need not  
5 occur at the beginning or end of a calendar day, but can  
6 occur at a time during the course of a day; and

7 (3) "surviving ancestor", "surviving child"  
8 or "surviving descendant" means an ancestor, a child or a  
9 descendant who neither predeceased the distribution date nor  
10 is deemed to have predeceased the distribution date pursuant  
11 to the provisions of Section 45-2-702 NMSA 1978.

12 B. If an applicable statute or a governing  
13 instrument calls for property to be distributed "by  
14 representation" or "per capita at each generation", the  
15 property is divided into as many equal shares as there are:

16 (1) surviving descendants in the generation  
17 nearest to the designated ancestor that contains one or more  
18 surviving descendants; and

19 (2) deceased descendants in the same  
20 generation who left surviving descendants, if any.

21 Each surviving descendant in the nearest generation is  
22 allocated one share. The remaining shares, if any, are  
23 combined and then divided in the same manner among the  
24 surviving descendants of the deceased descendants as if the  
25 surviving descendants who were allocated a share and their

1 surviving descendants had predeceased the distribution date.

2 C. If a governing instrument calls for property to  
3 be distributed "per stirpes", the property is divided into as  
4 many equal shares as there are:

5 (1) surviving children of the designated  
6 ancestor; and

7 (2) deceased children who left surviving  
8 descendants.

9 Each surviving child, if any, is allocated one share.  
10 The share of each deceased child with surviving descendants  
11 is divided in the same manner, with subdivision repeating at  
12 each succeeding generation until the property is fully  
13 allocated among surviving descendants.

14 D. For the purposes of Subsections B and C of this  
15 section, an individual who is deceased and left no surviving  
16 descendant is disregarded and an individual who leaves a  
17 surviving ancestor who is a descendant of the designated  
18 ancestor is not entitled to a share."

19 SECTION 30. Section 45-2-803 NMSA 1978 (being Laws  
20 1993, Chapter 174, Section 62, as amended) is amended to  
21 read:

22 "45-2-803. EFFECT OF HOMICIDE ON INTESTATE SUCCESSION,  
23 WILLS, TRUSTS, JOINT ASSETS, LIFE INSURANCE AND BENEFICIARY  
24 DESIGNATIONS.--

25 A. As used in this section:



1                   (1) "disposition or appointment of property"  
2 includes a transfer of an item of property or any other  
3 benefit to a beneficiary designated in a governing  
4 instrument; and

5                   (2) "revocable", with respect to a  
6 disposition, appointment, provision or nomination, means one  
7 under which the decedent, at the time of or immediately  
8 before death, was alone empowered, by law or under the  
9 governing instrument, to cancel the designation in favor of  
10 the killer, whether or not the decedent was then empowered to  
11 designate the decedent's own self in place of the decedent's  
12 killer and the decedent then had capacity to exercise the  
13 power.

14                 B. An individual who feloniously and intentionally  
15 kills the decedent forfeits all benefits pursuant to the  
16 provisions of Chapter 45, Article 2 NMSA 1978 with respect to  
17 the decedent's estate, including an intestate share, an  
18 omitted spouse's or child's share, a family allowance and a  
19 personal property allowance. If the decedent died intestate,  
20 the decedent's intestate estate passes as if the killer  
21 disclaimed the killer's intestate share.

22                 C. The felonious and intentional killing of the  
23 decedent:

24                   (1) revokes any revocable:

25                         (a) disposition or appointment of

1 property made by the decedent to the killer in a governing  
2 instrument;

3 (b) provision in a governing instrument  
4 executed by the decedent conferring a general or nongeneral  
5 power of appointment on the killer; and

6 (c) nomination of the killer in a  
7 governing instrument executed by the decedent, nominating or  
8 appointing the killer to serve in any fiduciary or  
9 representative capacity, including a personal representative,  
10 executor, trustee or agent; and

11 (2) severs the interests of the decedent and  
12 killer in property held by them at the time of the killing as  
13 joint tenants with the right of survivorship, transforming  
14 the interests of the decedent and killer into equal tenancies  
15 in common.

16 D. A severance pursuant to the provisions of  
17 Paragraph (2) of Subsection C of this section does not affect  
18 any third-party interest in property acquired for value and  
19 in good faith reliance on an apparent title by survivorship  
20 in the killer unless a writing declaring the severance has  
21 been noted, registered, filed or recorded in records  
22 appropriate to the kind and location of the property that are  
23 relied upon in the ordinary course of transactions involving  
24 such property as evidence of ownership.

25 E. Provisions of a governing instrument executed

1 by the decedent are given effect as if the killer disclaimed  
2 all provisions revoked by this section or, in the case of a  
3 revoked nomination in a fiduciary or representative capacity,  
4 as if the killer predeceased the decedent.

5 F. An acquisition of property or interest by a  
6 killer not covered by this section shall be treated in  
7 accordance with the principle that a killer cannot profit  
8 from the killer's wrong.

9 G. After all right to appeal has been exhausted, a  
10 judgment of conviction establishing criminal accountability  
11 for the felonious and intentional killing of the decedent  
12 conclusively establishes the convicted individual as the  
13 decedent's killer for purposes of this section. In the  
14 absence of a conviction, the court upon the petition of an  
15 interested person shall determine whether under the  
16 preponderance of evidence standard the individual would be  
17 found criminally accountable for the felonious and  
18 intentional killing of the decedent. If the court determines  
19 that under that standard the individual would be found  
20 criminally accountable for the felonious and intentional  
21 killing of the decedent, the determination conclusively  
22 establishes that individual as the decedent's killer for  
23 purposes of this section.

24 H. A payor or other third party is not liable for  
25 having made a payment or transferred an item of property or

1 any other benefit to a beneficiary designated in a governing  
2 instrument executed by the decedent affected by an  
3 intentional and felonious killing or for having taken any  
4 other action in good faith reliance on the validity of the  
5 governing instrument executed by the decedent upon request  
6 and satisfactory proof of the decedent's death before the  
7 payor or other third party received written notice of a  
8 claimed forfeiture or revocation under this section. A payor  
9 or other third party is liable for a payment made or other  
10 action taken after the payor or other third party received  
11 written notice of a claimed forfeiture or revocation under  
12 this section.

13       Written notice of a claimed forfeiture or revocation  
14 pursuant to the provisions of this section shall be mailed to  
15 the payor's or other third party's main office or home by  
16 registered or certified mail, return receipt requested, or  
17 served upon the payor or other third party in the same manner  
18 as a summons in a civil action. Upon receipt of written  
19 notice of a claimed forfeiture or revocation pursuant to the  
20 provisions of this section, a payor or other third party may  
21 pay any amount owed or transfer or deposit any item of  
22 property held by it to or with the court having jurisdiction  
23 of the probate proceedings relating to the decedent's estate  
24 or, if no proceedings have been commenced, to or with the  
25 court having jurisdiction of probate proceedings relating to

1 decedents' estates located in the county of the decedent's  
2 residence. The court shall hold the funds or item of  
3 property and, upon its determination pursuant to the  
4 provisions of this section, shall order disbursement in  
5 accordance with the determination. Payments, transfers or  
6 deposits made to or with the court discharge the payor or  
7 other third party from all claims for the value of amounts  
8 paid to or items of property transferred to or deposited with  
9 the court.

10 I. A person who purchases property for value and  
11 without notice or who receives a payment or other item of  
12 property in partial or full satisfaction of a legally  
13 enforceable obligation is neither obligated pursuant to the  
14 provisions of this section to return the payment, item of  
15 property or benefit nor liable pursuant to the provisions of  
16 this section for the amount of the payment or the value of  
17 the item of property or benefit. But a person who, not for  
18 value, receives a payment, item of property or any other  
19 benefit to which the person is not entitled pursuant to the  
20 provisions of this section is obligated to return the  
21 payment, item of property or benefit or is personally liable  
22 for the amount of the payment or the value of the item of  
23 property or benefit to the person who is entitled to it  
24 pursuant to the provisions of this section.

25 J. If this section or any part of this section is

1 preempted by federal law with respect to a payment, an item  
2 of property or any other benefit covered by this section, a  
3 person who, not for value, receives the payment, item of  
4 property or any other benefit to which the person is not  
5 entitled pursuant to the provisions of this section is  
6 obligated to return the payment, item of property or benefit  
7 or is personally liable for the amount of the payment or the  
8 value of the item of property or benefit to the person who  
9 would have been entitled to it were this section or part of  
10 this section not preempted."

11 SECTION 31. Section 45-2-804 NMSA 1978 (being Laws  
12 1993, Chapter 174, Section 63, as amended) is amended to  
13 read:

14 "45-2-804. REVOCATION OF PROBATE AND NONPROBATE  
15 TRANSFERS BY DIVORCE--NO REVOCATION BY OTHER CHANGES OF  
16 CIRCUMSTANCES.--

17 A. As used in this section:

18 (1) "disposition or appointment of property"  
19 includes a transfer of an item of property or any other  
20 benefit to a beneficiary designated in a revocable trust or  
21 other governing instrument;

22 (2) "divorce or annulment" means a divorce  
23 or annulment, a dissolution or declaration of invalidity of a  
24 marriage that would exclude the spouse as a surviving spouse  
25 within the meaning of Section 45-2-802 NMSA 1978 or the

1 commencement of a valid proceeding concluded either before or  
2 after an individual's death by an order purporting to  
3 terminate all marital property rights, including a property  
4 division judgment entered pursuant to the provisions of  
5 Section 40-4-20 NMSA 1978. A decree of separation that does  
6 not terminate the status of husband and wife is not a divorce  
7 for purposes of this section;

8 (3) "divorced individual" includes an  
9 individual whose marriage has been annulled;

10 (4) "governing instrument" means a governing  
11 instrument executed by the divorced individual before the  
12 divorce or annulment of the divorced individual's marriage to  
13 the former spouse;

14 (5) "relative of the divorced individual's  
15 former spouse" means an individual who is related to the  
16 divorced individual's former spouse by blood, adoption or  
17 affinity and who, after the divorce or annulment, is not  
18 related to the divorced individual by blood, adoption or  
19 affinity; and

20 (6) "revocable", with respect to a  
21 disposition, appointment, provision or nomination, means one  
22 under which the divorced individual, at the time of the  
23 divorce or annulment, was alone empowered by law or under the  
24 governing instrument to cancel the designation in favor of  
25 the former spouse or former spouse's relative whether or not

1 the divorced individual was then empowered to designate the  
2 divorced individual's own self in place of the former spouse  
3 or in place of the former spouse's relative and whether or  
4 not the divorced individual then had the capacity to exercise  
5 the power.

6 B. Except as provided by the express terms of a  
7 governing instrument, a court order or a contract relating to  
8 the division of the marital estate made between the divorced  
9 individuals before or after the marriage, divorce or  
10 annulment, the divorce or annulment of a marriage:

11 (1) revokes any revocable:

12 (a) disposition or appointment of  
13 property made by a divorced individual to the former spouse  
14 in a governing instrument and any disposition or appointment  
15 created by law or in a governing instrument to a relative of  
16 the divorced individual's former spouse;

17 (b) provision in a governing instrument  
18 conferring a general or nongeneral power of appointment on  
19 the divorced individual's former spouse or on a relative of  
20 the divorced individual's former spouse; and

21 (c) nomination in a governing  
22 instrument, nominating a divorced individual's former spouse  
23 or a relative of the divorced individual's former spouse to  
24 serve in any fiduciary or representative capacity, including  
25 a personal representative, executor, trustee, conservator,



1 agent or guardian; and

2 (2) severs the interests of the former  
3 spouses in property held by them at the time of the divorce  
4 or annulment as joint tenants with the right of survivorship,  
5 transforming the interests of the former spouses into equal  
6 tenancies in common.

7 C. A severance pursuant to the provisions of  
8 Paragraph (2) of Subsection B of this section does not affect  
9 any third-party interest in property acquired for value and  
10 in good faith reliance on an apparent title by survivorship  
11 in the survivor of the former spouses unless a writing  
12 declaring the severance has been noted, registered, filed or  
13 recorded in records appropriate to the kind and location of  
14 the property that are relied upon in the ordinary course of  
15 transactions involving such property as evidence of  
16 ownership.

17 D. Provisions of a governing instrument are given  
18 effect as if the former spouse and relatives of the former  
19 spouse disclaimed all provisions revoked by this section or,  
20 in the case of a revoked nomination in a fiduciary or  
21 representative capacity, as if the former spouse and  
22 relatives of the former spouse died immediately before the  
23 divorce or annulment.

24 E. Provisions revoked solely by this section are  
25 revived by the divorced individual's remarriage to the former

1 spouse or by a nullification of the divorce or annulment.

2 F. No change of circumstances other than as  
3 described in this section and in Section 45-2-803 NMSA 1978  
4 effects a revocation.

5 G. A payor or other third party is not liable for  
6 having made a payment or transferred an item of property or  
7 any other benefit to a beneficiary designated in a governing  
8 instrument affected by a divorce, annulment or remarriage or  
9 for having taken any other action in good faith reliance on  
10 the validity of the governing instrument before the payor or  
11 other third party received written notice of the divorce,  
12 annulment or remarriage. A payor or other third party is  
13 liable for a payment made or other action taken after the  
14 payor or other third party received written notice of a  
15 claimed forfeiture or revocation pursuant to the provisions  
16 of this section.

17 Written notice of the divorce, annulment or remarriage  
18 pursuant to the provisions of this section shall be mailed to  
19 the payor's or other third party's main office or home by  
20 registered or certified mail, return receipt requested, or  
21 served upon the payor or other third party in the same manner  
22 as a summons in a civil action. Upon receipt of the written  
23 notice of the divorce, annulment or remarriage, a payor or  
24 other third party may pay any amount owed or transfer or  
25 deposit any item of property held by it to or with the court

1 having jurisdiction of the probate proceedings relating to  
2 the decedent's estate or, if no proceedings have been  
3 commenced, to or with the court having jurisdiction of  
4 probate proceedings relating to decedents' estates located in  
5 the county of the decedent's residence. The court shall hold  
6 the funds or item of property and, upon its determination  
7 pursuant to the provisions of this section, shall order  
8 disbursement or transfer in accordance with the  
9 determination. Payments, transfers or deposits made to or  
10 with the court discharge the payor or other third party from  
11 all claims for the value of amounts paid to or items of  
12 property transferred to or deposited with the court.

13 H. A person who purchases property from a former  
14 spouse, relative of a former spouse or any other person for  
15 value and without notice or who receives from a former spouse,  
16 relative of a former spouse or any other person a payment or  
17 other item of property in partial or full satisfaction of a  
18 legally enforceable obligation is neither obligated pursuant  
19 to the provisions of this section to return the payment, item  
20 of property or benefit nor is liable pursuant to the  
21 provisions of this section for the amount of the payment or  
22 the value of the item of property or benefit. But a former  
23 spouse, relative of a former spouse or other person who, not  
24 for value, received a payment, item of property or any other  
25 benefit to which that person is not entitled pursuant to the

1 provisions of this section is obligated to return the payment,  
2 item of property or benefit or is personally liable for the  
3 amount of the payment or the value of the item of property or  
4 benefit to the person who is entitled to it pursuant to the  
5 provisions of this section.

6 I. If this section or any part of this section is  
7 preempted by federal law with respect to a payment, an item of  
8 property or any other benefit covered by this section, a  
9 former spouse, relative of the former spouse or any other  
10 person who, not for value, received a payment, item of  
11 property or any other benefit to which that person is not  
12 entitled pursuant to the provisions of this section is  
13 obligated to return that payment, item of property or benefit  
14 or is personally liable for the amount of the payment or the  
15 value of the item of property or benefit to the person who  
16 would have been entitled to it were this section or part of  
17 this section not preempted."

18 SECTION 32. Section 45-2-805 NMSA 1978 (being Laws  
19 1975, Chapter 257, Section 2-804, as amended) is recompiled as  
20 Section 45-2-807 NMSA 1978 and a new Section 45-2-805 NMSA  
21 1978 is enacted to read:

22 "45-2-805. REFORMATION TO CORRECT MISTAKES.--The  
23 district court may reform the terms of a governing instrument,  
24 even if unambiguous, to conform the terms to the transferor's  
25 intention if it is proved by clear and convincing evidence

1 what the transferor's intention was and that the terms of the  
2 governing instrument were affected by a mistake of fact or  
3 law, whether in expression or inducement."

4 SECTION 33. Section 45-2-806 NMSA 1978 (being Laws  
5 1973, Chapter 276, Section 8) is recompiled as Section  
6 45-2-808 NMSA 1978 and a new Section 45-2-806 NMSA 1978 is  
7 enacted to read:

8 "45-2-806. MODIFICATION TO ACHIEVE TRANSFEROR'S TAX  
9 OBJECTIVES.--To achieve the transferor's tax objectives, the  
10 district court may modify the terms of a governing instrument  
11 in a manner that is not contrary to the transferor's probable  
12 intention. The district court may provide that the  
13 modification has retroactive effect."

14 SECTION 34. Section 45-2-901 NMSA 1978 (being Laws  
15 1992, Chapter 66, Section 1) is amended to read:

16 "45-2-901. STATUTORY RULE AGAINST PERPETUITIES.--

17 A. A nonvested property interest is invalid  
18 unless:

19 (1) when the interest is created, it is  
20 certain to vest or terminate no later than twenty-one years  
21 after the death of an individual then alive; or

22 (2) the interest either vests or terminates  
23 within ninety years after its creation.

24 B. A general power of appointment not presently  
25 exercisable because of a condition precedent is invalid

1 unless:

2 (1) when the power is created, the condition  
3 precedent is certain to be satisfied or to become impossible  
4 to satisfy no later than twenty-one years after the death of  
5 an individual then alive; or

6 (2) the condition precedent either is  
7 satisfied or becomes impossible to satisfy within ninety years  
8 after its creation.

9 C. A nongeneral power of appointment or a general  
10 testamentary power of appointment is invalid unless:

11 (1) when the power is created, it is certain  
12 to be irrevocably exercised or otherwise to terminate no later  
13 than twenty-one years after the death of an individual then  
14 alive; or

15 (2) the power is irrevocably exercised or  
16 otherwise terminates within ninety years after its creation.

17 D. In determining whether a nonvested property  
18 interest or a power of appointment is valid under each  
19 Paragraph (1) of Subsections A, B and C of this section, the  
20 possibility that a child will be born to an individual after  
21 the individual's death shall be disregarded.

22 E. If, in measuring a period from the creation of  
23 a trust or other property arrangement, language in a governing  
24 instrument (i) seeks to disallow the vesting or termination of  
25 any interest or trust beyond, (ii) seeks to postpone the

1 vesting or termination of any interest or trust until or (iii)  
2 seeks to operate in effect in any similar fashion upon, the  
3 later of (1) the expiration of a period of time not exceeding  
4 twenty-one years after the death of the survivor of specified  
5 lives in being at the creation of the trust or other property  
6 arrangement or (2) the expiration of a period of time that  
7 exceeds or might exceed twenty-one years after the death of  
8 the survivor of lives in being at the creation of the trust or  
9 other property arrangement, that language is inoperative to  
10 the extent it produces a period of time that exceeds  
11 twenty-one years after the death of the survivor of the  
12 specified lives."

13 SECTION 35. A new section of the Uniform Probate Code,  
14 Section 45-2-908 NMSA 1978, is enacted to read:

15 "45-2-908. DEFINITIONS.--As used in Sections 45-2-909  
16 through 45-2-914 NMSA 1978:

17 A. "nonvested easement in gross" means a nonvested  
18 easement that is not created to benefit or that does not  
19 benefit the possessor of any real property in the possessor's  
20 use of it as the possessor;

21 B. "option in gross with respect to an interest in  
22 real property" means an option in which the holder of the  
23 option does not own any leasehold or other interest in the  
24 real property that is the subject of the option; and

25 C. "preemptive right in the nature of a right of

1 first refusal in gross with respect to an interest in real  
2 property" means a preemptive right in which the holder of the  
3 preemptive right does not own any leasehold or other interest  
4 in the real property that is the subject of the preemptive  
5 right."

6 SECTION 36. A new section of the Uniform Probate Code,  
7 Section 45-2-909 NMSA 1978, is enacted to read:

8 "45-2-909. INTEREST IN REAL PROPERTY.--An option in  
9 gross with respect to an interest in real property or a  
10 preemptive right in the nature of a right of first refusal in  
11 gross with respect to an interest in real property becomes  
12 invalid if it is not actually exercised within thirty years  
13 after its creation."

14 SECTION 37. A new section of the Uniform Probate Code,  
15 Section 45-2-910 NMSA 1978, is enacted to read:

16 "45-2-910. LEASE TO COMMENCE IN THE FUTURE.--A lease of  
17 real property to commence at a time certain or upon the  
18 occurrence or nonoccurrence of a future event becomes invalid  
19 if its term does not actually commence in possession within  
20 thirty years after its execution."

21 SECTION 38. A new section of the Uniform Probate Code,  
22 Section 45-2-911 NMSA 1978, is enacted to read:

23 "45-2-911. NONVESTED EASEMENT.--A nonvested easement in  
24 gross becomes invalid if it does not actually vest within  
25 thirty years after its creation."



1 SECTION 39. A new section of the Uniform Probate Code,  
2 Section 45-2-912 NMSA 1978, is enacted to read:

3 "45-2-912. POSSIBILITY OF REVERTER, RIGHT OF ENTRY,  
4 EXECUTORY INTEREST.--A possibility of reverter preceded by a  
5 fee simple determinable, a right of entry preceded by a fee  
6 simple subject to a condition subsequent or an executory  
7 interest preceded by either a fee simple determinable or a fee  
8 simple subject to an executory limitation becomes invalid, and  
9 the preceding fee simple becomes a fee simple absolute, if the  
10 right to vest in possession of the possibility of reverter,  
11 right of entry or executory interest depends on an event or  
12 events affecting the use of real property and if the  
13 possibility of reverter, right of entry or executory interest  
14 does not actually vest in possession within thirty years after  
15 its creation."

16 SECTION 40. A new section of the Uniform Probate Code,  
17 Section 45-2-913 NMSA 1978, is enacted to read:

18 "45-2-913. EXCLUSIONS.--

19 A. Section 45-2-912 NMSA 1978 does not apply to a  
20 possibility of reverter, right of entry or executory interest  
21 that is held by a charity, a government or governmental agency  
22 or subdivision excluded from the provisions of Section  
23 45-2-901 NMSA 1978 by Subsection E of Section 45-2-904 NMSA  
24 1978.

25 B. Sections 45-2-909 and 45-2-910 NMSA 1978 do not SB 146  
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1 apply to an option, a preemptive right in the nature of a  
2 right of first refusal or a lease that relates solely to an  
3 interest in oil, gas or other minerals."

4 SECTION 41. A new section of the Uniform Probate Code,  
5 Section 45-2-914 NMSA 1978, is enacted to read:

6 "45-2-914. APPLICATION.--Sections 45-2-908 through  
7 45-2-913 NMSA 1978 apply only to a property interest or  
8 arrangement affecting real property that is created on or  
9 after January 1, 2012."

10 SECTION 42. Section 45-3-101 NMSA 1978 (being Laws  
11 1975, Chapter 257, Section 3-101) is amended to read:

12 "45-3-101. DEVOLUTION OF ESTATE AT DEATH--  
13 ADMINISTRATION ON DEATHS OF HUSBAND AND WIFE.--

14 A. The power of a person to leave property by will  
15 and the rights of creditors, devisees and heirs to the  
16 person's property are subject to the restrictions and  
17 limitations contained in Chapter 45, Article 3 NMSA 1978 to  
18 facilitate the prompt settlement of estates.

19 B. Upon the death of a person, the person's  
20 separate property and the person's share of community property  
21 devolves:

22 (1) to the persons to whom the property is  
23 devised by the person's last will;

24 (2) to those indicated as substitutes for  
25 them in cases involving revocation, lapse, disclaimer or other SB 146  
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1 circumstances pursuant to Chapter 45, Article 2 NMSA 1978  
2 affecting the devolution of testate estates; or

3 (3) in the absence of testamentary  
4 disposition, to the person's heirs or to those indicated as  
5 substitutes for them in cases involving revocation, lapse,  
6 disclaimer or other circumstances pursuant to Chapter 45,  
7 Article 2, Parts 3, 4, 10 and 11 NMSA 1978 affecting the  
8 devolution of intestate estates.

9 C. The devolution of separate property and the  
10 decedent's share of community property is subject to rights to  
11 the family allowance and personal property allowance, to  
12 rights of creditors and to administration as provided in  
13 Chapter 45, Article 3 NMSA 1978. The surviving spouse's share  
14 of the community property is subject to administration until  
15 the time for presentation of claims has expired, and  
16 thereafter only to the extent necessary to pay community  
17 claims."

18 SECTION 43. Section 45-3-108 NMSA 1978 (being Laws 1975,  
19 Chapter 257, Section 3-108, as amended) is amended to read:

20 "45-3-108. PROBATE, TESTACY AND APPOINTMENT  
21 PROCEEDINGS--ULTIMATE TIME LIMIT.--

22 A. No informal probate or appointment proceeding or  
23 formal testacy or appointment proceeding, other than a  
24 proceeding to probate a will previously probated at the  
25 testator's domicile or appointment proceedings relating to an

1 estate in which there has been a prior appointment, may be  
2 commenced more than three years after the decedent's death,  
3 except:

4 (1) if a previous proceeding was dismissed  
5 because of doubt about the fact of the decedent's death, then  
6 appropriate probate, appointment or testacy proceedings may be  
7 maintained at any time thereafter upon a finding that the  
8 decedent's death occurred before the initiation of the  
9 previous proceeding and the applicant or petitioner has not  
10 delayed unduly in initiating the subsequent proceeding;

11 (2) appropriate probate, appointment or testacy  
12 proceedings may be maintained in relation to the estate of an  
13 absent, disappeared or missing person for whose estate a  
14 conservator has been appointed at any time within three years  
15 after the conservator becomes able to establish the death of  
16 the protected person;

17 (3) a proceeding to contest an informally  
18 probated will and to secure appointment of the person with  
19 legal priority for appointment in the event the contest is  
20 successful may be commenced within the later of twelve months  
21 from the informal probate or three years from the decedent's  
22 death;

23 (4) an informal appointment in an intestate  
24 proceeding or a formal testacy or appointment proceeding may  
25 be commenced thereafter if no proceedings concerning the

1 succession or estate administration has occurred within the  
2 three-year period after the decedent's death, but the personal  
3 representative has no right to possess estate assets as  
4 provided in Section 45-3-709 NMSA 1978 beyond that necessary  
5 to confirm title thereto in the successors to the estate and  
6 claims other than expenses of administration may not be  
7 presented against the estate; and

8 (5) a formal testacy proceeding may be  
9 commenced at any time after three years from the decedent's  
10 death for the purpose of establishing an instrument to direct  
11 or control the ownership of property passing or distributable  
12 after the decedent's death from one other than the decedent  
13 when the property is to be appointed by the terms of the  
14 decedent's will or is to pass or be distributed as a part of  
15 the decedent's estate or its transfer is otherwise to be  
16 controlled by the terms of the decedent's will.

17 B. The limitations set out in Subsection A of this  
18 section do not apply to proceedings to construe probated wills  
19 or determine heirs of an intestate.

20 C. In cases pursuant to the provisions of Paragraph  
21 (1) or (2) of Subsection A of this section, the date on which  
22 a testacy or appointment proceeding is properly commenced  
23 shall be deemed to be the date of the decedent's death for  
24 purposes of other limitation provisions of the Uniform Probate  
25 Code that relate to the date of death."

1 SECTION 44. Section 45-3-203 NMSA 1978 (being Laws 1975,  
2 Chapter 257, Section 3-203, as amended) is amended to read:

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

5 A. Whether the proceedings are formal or informal,  
6 persons who are not disqualified have priority for appointment  
7 in the following order:

8 (1) the person with priority as determined by a  
9 probated will, including a person nominated by a power  
10 conferred in a will;

11 (2) the surviving spouse of the decedent who is  
12 a devisee of the decedent;

13 (3) other devisees of the decedent;

14 (4) the surviving spouse of the decedent;

15 (5) other heirs of the decedent; and

16 (6) on application or petition of an interested  
17 person other than a spouse, devisee or heir, any qualified  
18 person.

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

22 (1) if the estate appears to be more than  
23 adequate to meet allowances and costs of administration but  
24 inadequate to discharge anticipated unsecured claims, the  
25 court, on petition of creditors, may appoint any qualified

1 person; and

2 (2) in case of objection to appointment of a  
3 person other than one whose priority is determined by will by  
4 an heir or devisee appearing to have a substantial interest in  
5 the estate, the court may appoint a person who is acceptable  
6 to heirs and devisees whose interests in the estate appear to  
7 be worth in total more than half of the probable distributable  
8 value of the estate or, in default of this accord, any  
9 suitable person.

10 C. A person entitled to letters under Paragraphs  
11 (2) through (5) of Subsection A of this section or a person  
12 who has not reached the age of majority and who might be  
13 entitled to letters but for the person's age may nominate a  
14 qualified person to act as personal representative by an  
15 appropriate writing filed with the court and thereby confer  
16 the person's relative priority for appointment on the person's  
17 nominee. Any person who has reached the age of majority may  
18 renounce the right to nominate or to an appointment by an  
19 appropriate writing filed with the court. When two or more  
20 persons entitled to letters under Paragraphs (2) through (5)  
21 of Subsection A of this section share a priority, all those  
22 who do not renounce shall concur in nominating another to act  
23 for them or in applying for appointment by an appropriate  
24 writing filed with the court. The person so nominated shall  
25 have the same priority as those who nominated the person.

1 A nomination or renunciation shall be signed by each person  
2 making it, the person's attorney or the person's  
3 representative authorized by Subsection D of this section.

4 D. Conservators of the estates of protected persons  
5 or, if there is no conservator, any guardian except a guardian  
6 ad litem of a minor or incapacitated person may exercise the  
7 same right to nominate, to object to another's appointment or  
8 to participate in determining the preference of a majority in  
9 interest of the heirs and devisees that the protected person  
10 would have if qualified for appointment.

11 E. Appointment of one who does not have highest  
12 priority, including highest priority resulting from  
13 renunciation or nomination determined pursuant to this  
14 section, may be made only in formal proceedings. Before  
15 appointing one without highest priority, the court shall  
16 determine that those having highest priority, although given  
17 notice of the proceedings, have failed to request appointment  
18 or to nominate another for appointment and that administration  
19 is necessary.

20 F. No person is qualified to serve as a personal  
21 representative who is:

- 22 (1) under the age of majority;  
23 (2) a person whom the court finds unsuitable in  
24 formal proceedings; or  
25 (3) a creditor of the decedent unless the



1 appointment is to be made after forty-five days have elapsed  
2 from the death of the decedent.

3 G. A personal representative appointed by a court  
4 of the decedent's domicile has priority over all other persons  
5 except where the decedent's will nominates different persons  
6 to be personal representatives in New Mexico and in the state  
7 of domicile. The domiciliary personal representative may  
8 nominate another, who shall have the same priority as the  
9 domiciliary personal representative.

10 H. This section governs priority for appointment of  
11 a successor personal representative but does not apply to the  
12 selection of a special administrator."

13 SECTION 45. Section 45-3-309 NMSA 1978 (being Laws 1975,  
14 Chapter 257, Section 3-309, as amended) is amended to read:

15 "45-3-309. INFORMAL APPOINTMENT PROCEEDINGS--COURT NOT  
16 SATISFIED.--The probate or the district court may decline an  
17 application for informal appointment of a personal  
18 representative for any reason. A declination of informal  
19 appointment is not an adjudication and does not preclude  
20 appointment in formal proceedings."

21 SECTION 46. Section 45-3-703 NMSA 1978 (being Laws 1975,  
22 Chapter 257, Section 3-703) is amended to read:

23 "45-3-703. GENERAL DUTIES--RELATION AND LIABILITY TO  
24 PERSONS INTERESTED IN ESTATE--STANDING TO SUE.--

25 A. A personal representative is a fiduciary who

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

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

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

24 (1) a pending testacy proceeding;

25 (2) a proceeding to vacate an order entered in

1 an earlier testacy proceeding;

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

5 (4) a supervised administration proceeding.

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

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

17 SECTION 47. Section 45-3-803 NMSA 1978 (being Laws 1975,  
18 Chapter 257, Section 3-803, as amended) is amended to read:

19 "45-3-803. LIMITATIONS ON PRESENTATION OF CLAIMS.--

20 A. All claims against a decedent's estate that  
21 arose before the death of the decedent, including claims of  
22 the state and any political subdivision of the state, whether  
23 due or to become due, absolute or contingent, liquidated or  
24 unliquidated or founded on contract, tort or other legal  
25 basis, if not barred earlier by another statute of limitations

1 or nonclaim statute, are barred against the estate, the  
2 personal representative and the heirs, devisees and nonprobate  
3 transferees of the decedent unless presented within the  
4 earlier of the following:

5 (1) one year after the decedent's death; or

6 (2) the time provided by Subsection A of  
7 Section 45-3-801 NMSA 1978 for creditors who are given actual  
8 notice and the time provided in Subsection B of Section  
9 45-3-801 NMSA 1978 for all creditors barred by publication.

10 B. A claim described in Subsection A of this  
11 section that is barred by the nonclaim statute of the  
12 decedent's domicile before the giving of notice to creditors  
13 in this state is barred in this state.

14 C. All claims against a decedent's estate that  
15 arise at or after the death of the decedent, including claims  
16 of the state and any political subdivision of the state,  
17 whether due or to become due, absolute or contingent,  
18 liquidated or unliquidated or founded on contract, tort or  
19 other legal basis, are barred against the estate, the personal  
20 representative and the heirs and devisees of the decedent  
21 unless presented as follows:

22 (1) a claim based on a contract with the  
23 personal representative within four months after performance  
24 by the personal representative is due; or

25 (2) any other claim within the later of four

1 months after it arises or the time specified in Paragraph (1)  
2 of this subsection.

3 D. Nothing in this section affects or prevents:

4 (1) any proceeding to enforce any mortgage,  
5 pledge or other lien upon property of the estate;

6 (2) to the limits of the insurance protection  
7 only, a proceeding to establish liability of the decedent or  
8 the personal representative for which the decedent or personal  
9 representative is protected by liability insurance; or

10 (3) collection of compensation for services  
11 rendered and reimbursement for expenses advanced by the  
12 personal representative or by the attorney or accountant for  
13 the personal representative of the estate."

14 SECTION 48. Section 45-3-913 NMSA 1978 (being Laws 1975,  
15 Chapter 257, Section 3-913, as amended) is amended to read:

16 "45-3-913. DISTRIBUTIONS TO TRUSTEE.--

17 A. Before distributing to a trustee, the personal  
18 representative may require that the trust be registered if the  
19 state in which it is to be administered provides for  
20 registration and that the trustee inform the beneficiaries as  
21 provided in Section 46A-8-813 NMSA 1978.

22 B. If the trust instrument does not excuse the  
23 trustee from giving bond, the personal representative may  
24 petition the appropriate court to require that the trustee  
25 post bond if the personal representative apprehends that

1 distribution might jeopardize the interests of persons who are  
2 not able to protect themselves, and the personal  
3 representative may withhold distribution until the court has  
4 acted.

5 C. No inference of negligence on the part of the  
6 personal representative shall be drawn from the personal  
7 representative's failure to exercise the authority conferred  
8 by Subsections A and B of this section."

9 SECTION 49. Section 45-3-915 NMSA 1978 (being Laws 1975,  
10 Chapter 257, Section 3-915, as amended) is amended to read:

11 "45-3-915. DISTRIBUTION TO PERSON UNDER DISABILITY.--

12 A. A personal representative may discharge an  
13 obligation to distribute to a minor or person under other  
14 disability by distributing in a manner expressly provided in  
15 the will or other governing instrument.

16 B. Unless contrary to an express provision in the  
17 will or other governing instrument, the personal  
18 representative may discharge an obligation to distribute to a  
19 minor or person under other disability as authorized by  
20 Section 45-5-103 NMSA 1978 or any other statute. If the  
21 personal representative knows that a conservator has been  
22 appointed or that a proceeding for appointment of a  
23 conservator is pending, the personal representative is  
24 authorized to distribute only to the conservator.

25 C. If the heir or devisee is under disability other

1 than minority, the personal representative is authorized to  
2 distribute to:

3 (1) an agent who has authority under a power of  
4 attorney to receive property for that person; or

5 (2) the spouse, parent or other close relative  
6 with whom the person under disability resides if the  
7 distribution is of amounts not exceeding ten thousand dollars  
8 (\$10,000) a year or property not exceeding fifty thousand  
9 dollars (\$50,000) in value unless the court authorizes a  
10 larger amount or greater value.

11 D. Persons receiving money or property for the  
12 disabled person are obligated to apply the money or property  
13 to the support of the disabled person. Persons may not pay  
14 themselves except by way of reimbursement for out-of-pocket  
15 expenses for goods and services necessary for the support of  
16 the disabled person. Excess sums must be preserved for future  
17 support of the disabled person. The personal representative  
18 is not responsible for the proper application of money or  
19 property distributed pursuant to this subsection."

20 SECTION 50. Section 45-3-1201 NMSA 1978 (being Laws  
21 1975, Chapter 257, Section 3-1201, as amended) is amended to  
22 read:

23 "45-3-1201. COLLECTION OF PERSONAL PROPERTY BY  
24 AFFIDAVIT.--

25 A. Thirty days after the death of a decedent, any

1 person indebted to the decedent or having possession of  
2 tangible personal property or an instrument evidencing a debt,  
3 obligation, stock or chose in action belonging to the decedent  
4 shall make payment of the indebtedness or deliver the tangible  
5 personal property or an instrument evidencing a debt,  
6 obligation, stock or chose in action to a person claiming to  
7 be the successor of the decedent upon being presented an  
8 affidavit made by or on behalf of the successor stating that:

9 (1) the value of the entire estate, wherever  
10 located, less liens and encumbrances, does not exceed fifty  
11 thousand dollars (\$50,000);

12 (2) thirty days have elapsed since the death of  
13 the decedent;

14 (3) no application or petition for the  
15 appointment of a personal representative is pending or has  
16 been granted in any jurisdiction; and

17 (4) the claiming successor is entitled to  
18 payment or delivery of the property.

19 B. A transfer agent of any security shall change  
20 the registered ownership on the books of a corporation from  
21 the decedent to the successor or successors upon the  
22 presentation of an affidavit as provided in Subsection A of  
23 this section.

24 C. The affidavit made pursuant to this section may  
25 not be used to perfect title to real estate."



1 SECTION 51. Section 45-3-1205 NMSA 1978 (being Laws  
2 1985, Chapter 12, Section 1 and Laws 1985, Chapter 132,  
3 Section 1) is amended to read:

4 "45-3-1205. TRANSFER OF TITLE TO HOMESTEAD TO SURVIVING  
5 SPOUSE BY AFFIDAVIT.--

6 A. Where a husband and wife own a homestead as  
7 community property and when either the husband or wife dies  
8 intestate or dies testate and by the husband's or wife's will  
9 devises the husband's or wife's interest in the homestead to  
10 the surviving spouse, the homestead passes to the survivor and  
11 no probate or administration is necessary.

12 B. Six months after the death of a decedent, the  
13 surviving spouse may record with the county clerk in the  
14 county in which the homestead is located an affidavit  
15 describing the real property and stating that:

16 (1) six months have elapsed since the death of  
17 the decedent as shown on the death certificate;

18 (2) the affiant and the decedent were at the  
19 time of the death of the decedent married and owned the  
20 homestead as community property;

21 (3) a copy of the deed with a legal description  
22 of the homestead is attached to the affidavit;

23 (4) but for the homestead, the decedent's  
24 estate need not be subject to any judicial probate proceeding  
25 either in district court or probate court;

1           (5) no application or petition for appointment  
2 of a personal representative or for admittance of a will to  
3 probate is pending or has been granted in any jurisdiction;

4           (6) funeral expenses, expenses of last illness  
5 and all unsecured debts of the decedent have been paid;

6           (7) the affiant is the surviving spouse of the  
7 decedent and is entitled to title to the homestead by  
8 intestate succession as provided in Section 45-2-102 NMSA 1978  
9 or by devise under a valid last will of the decedent, the  
10 original of which is attached to the affidavit;

11           (8) no other person has a right to the interest  
12 of the decedent in the described property;

13           (9) no federal or state tax is due on the  
14 decedent's estate; and

15           (10) the affiant affirms that all statements in  
16 the affidavit are true and correct and further acknowledges  
17 that any false statement may subject the person to penalties  
18 relating to perjury and subornation of perjury.

19           C. As used in this section, "homestead" means the  
20 principal place of residence of the decedent or surviving  
21 spouse or the last principal place of residence if neither the  
22 decedent nor the surviving spouse is residing in that  
23 residence because of illness or incapacitation and that  
24 consists of one or more dwellings together with appurtenant  
25 structures, the land underlying both the dwellings and the

1 appurtenant structures and a quantity of land reasonably  
2 necessary for parking and other uses that facilitates the use  
3 of the dwellings and appurtenant structures, and provided the  
4 full value of this property as assessed for property taxation  
5 purposes does not exceed five hundred thousand dollars  
6 (\$500,000)."

7 SECTION 52. Section 45-5-101 NMSA 1978 (being Laws 1975,  
8 Chapter 257, Section 5-101, as amended) is amended to read:

9 "45-5-101. DEFINITIONS AND USE OF TERMS.--Unless  
10 otherwise apparent from the context or unless otherwise  
11 specifically defined in other sections that are applicable to  
12 specific articles, parts or sections of the Uniform Probate  
13 Code, as used in Chapter 45, Article 5 NMSA 1978:

14 A. "conservator" means a person who is appointed by  
15 a court to manage the property or financial affairs or both of  
16 a protected person;

17 B. "court" means the district court or the  
18 children's or family division of the district court where such  
19 jurisdiction is conferred by the Children's Code;

20 C. "functional impairment" means an impairment that  
21 is measured by a person's inability to manage the person's  
22 personal care or the person's inability to manage the person's  
23 estate or financial affairs or both;

24 D. "guardian" has the same meaning as set forth in  
25 Section 45-1-201 NMSA 1978;

1 E. "guardian ad litem" has the same meaning as set  
2 forth in Section 45-1-201 NMSA 1978;

3 F. "incapacitated person" means any person who  
4 demonstrates over time either partial or complete functional  
5 impairment by reason of mental illness, mental deficiency,  
6 physical illness or disability, chronic use of drugs, chronic  
7 intoxication or other cause, except minority, to the extent  
8 that the person is unable to manage the person's personal  
9 affairs or the person is unable to manage the person's estate  
10 or financial affairs or both;

11 G. "inability to manage the person's personal care"  
12 means the inability, as evidenced by recent behavior, to meet  
13 one's needs for medical care, nutrition, clothing, shelter,  
14 hygiene or safety so that physical injury, illness or disease  
15 has occurred or is likely to occur in the near future;

16 H. "inability to manage the person's estate or  
17 financial affairs or both" means gross mismanagement, as  
18 evidenced by recent behavior, of one's income and resources or  
19 medical inability to manage one's income and resources that  
20 has led or is likely in the near future to lead to financial  
21 vulnerability;

22 I. "interested person" means any person who has an  
23 interest in the welfare of the person to be protected pursuant  
24 to Chapter 45, Article 5 NMSA 1978;

25 J. "least restrictive form of intervention" means

1 that the guardianship or conservatorship imposed on the  
2 incapacitated person or minor protected person represents only  
3 those limitations necessary to provide the needed care and  
4 rehabilitative services and that the incapacitated person or  
5 minor protected person shall enjoy the greatest amount of  
6 personal freedom and civil liberties;

7 K. "letters" has the same meaning as set forth in  
8 Section 45-1-201 NMSA 1978;

9 L. "limited conservator" means any person who is  
10 qualified to manage the estate and financial affairs of an  
11 incapacitated person pursuant to a court appointment in a  
12 limited conservatorship;

13 M. "limited conservatorship" means that an  
14 incapacitated person is subject to a conservator's exercise of  
15 some but not all of the powers enumerated in Sections  
16 45-5-424 and 45-5-425 NMSA 1978;

17 N. "limited guardian" means any person who is  
18 qualified to manage the care, custody and control of an  
19 incapacitated person pursuant to a court appointment of a  
20 limited guardianship;

21 O. "limited guardianship" means that an  
22 incapacitated person is subject to a guardian's exercise of  
23 some but not all of the powers enumerated in Section 45-5-312  
24 NMSA 1978;

25 P. "minor" has the same meaning as set forth in

1 Section 45-1-201 NMSA 1978;

2 Q. "minor protected person" means a minor for whom  
3 a guardian or conservator has been appointed solely because of  
4 minority;

5 R. "parent" means a parent whose parental rights  
6 have not been terminated or relinquished;

7 S. "protective proceeding" means a conservatorship  
8 proceeding under Section 45-5-401 NMSA 1978;

9 T. "protected person" means a minor or other person  
10 for whom a guardian or conservator has been appointed or other  
11 protective order has been made;

12 U. "qualified health care professional" means a  
13 physician, psychologist, physician assistant, nurse  
14 practitioner or other health care practitioner whose training  
15 and expertise aid in the assessment of functional impairment;  
16 and

17 V. "visitor" means a person who is an appointee of  
18 the court who has no personal interest in the proceeding and  
19 who has been trained or has the expertise to appropriately  
20 evaluate the needs of the person who is allegedly  
21 incapacitated. A "visitor" may include, but is not limited  
22 to, a psychologist, a social worker, a developmental  
23 incapacity professional, a physical and occupational  
24 therapist, an educator and a rehabilitation worker."

1 Chapter 257, Section 5-102) is amended to read:

2 "45-5-102. JURISDICTION OF SUBJECT MATTER--CONSOLIDATION  
3 OF PROCEEDINGS.--

4 A. Chapter 45, Article 5 NMSA 1978 applies to  
5 guardianship and protective proceedings for individuals over  
6 whom the court has jurisdiction and to property coming into  
7 the control of a guardian or conservator who is subject to the  
8 laws of New Mexico.

9 B. The court has exclusive jurisdiction over  
10 protective proceedings for minors domiciled in or having  
11 property located in New Mexico. Except to the extent that the  
12 guardianship is subject to the Uniform Child-Custody  
13 Jurisdiction and Enforcement Act, the court has exclusive  
14 jurisdiction over guardianship proceedings for minors  
15 domiciled or present in New Mexico.

16 C. The court has exclusive jurisdiction over  
17 guardianship and protective proceedings for an adult  
18 individual as provided in the Uniform Adult Guardianship and  
19 Protective Proceedings Jurisdiction Act.

20 D. When both guardianship and protective  
21 proceedings as to the same person are commenced or pending in  
22 the same court, the proceedings may be consolidated."

23 SECTION 54. Section 45-5-103 NMSA 1978 (being Laws 1975,  
24 Chapter 257, Section 5-103) is amended to read:

25 "45-5-103. FACILITY OF PAYMENT OR DELIVERY.--

1           A. A person under a duty to pay or deliver money or  
2 personal property to a minor may perform this duty, in amounts  
3 not exceeding ten thousand dollars (\$10,000) per year, by  
4 paying or delivering the money or property to:

5                   (1) a person having the care and custody of the  
6 minor and with whom the minor resides;

7                   (2) a guardian of the minor;

8                   (3) a financial institution for deposit in a  
9 federally insured savings account in the sole name of the  
10 minor and giving notice of the deposit to the minor; or

11                   (4) a custodian for the minor pursuant to the  
12 Uniform Transfers to Minors Act.

13           B. This section does not apply if the person making  
14 payment or delivery has actual knowledge that a conservator  
15 has been appointed or proceedings for appointment of a  
16 conservator of the estate of the minor are pending. The  
17 persons, other than the minor or any financial institution  
18 under Paragraph (4) of Subsection A of this section, receiving  
19 money or property for a minor are obligated to apply the money  
20 to the support and education of the minor but shall not pay  
21 themselves except by way of reimbursement for out-of-pocket  
22 expenses for goods and services necessary for the minor's  
23 support. Any excess sums shall be preserved for future  
24 support of the minor, and any balance not so used and any  
25 property received for the minor shall be turned over to the



1 minor when the minor ceases to be a minor. Persons who pay or  
2 deliver in accordance with provisions of this section are not  
3 responsible for the proper application of such payments."

4 SECTION 55. Section 45-5-208 NMSA 1978 (being Laws 1975,  
5 Chapter 257, Section 5-208) is amended to read:

6 "45-5-208. CONSENT TO SERVICE BY ACCEPTANCE OF  
7 APPOINTMENT--NOTICE.--By accepting a parental or court  
8 appointment as guardian, a guardian submits personally to the  
9 jurisdiction of the court in any proceeding relating to the  
10 guardianship that may be instituted by any interested person.  
11 Notice of a proceeding shall be delivered to the guardian or  
12 mailed to the guardian at the address listed in the court  
13 records and to the address then known to the petitioner.  
14 Letters of guardianship shall indicate whether the guardian  
15 was appointed by parental appointment or by court order."

16 SECTION 56. Section 45-5-210 NMSA 1978 (being Laws 1975,  
17 Chapter 257, Section 5-210, as amended) is amended to read:

18 "45-5-210. TERMINATION OF APPOINTMENT OF GUARDIAN--  
19 GENERAL.--A guardian's authority and responsibility terminate  
20 upon the death, resignation or removal of the guardian or upon  
21 the minor's death, adoption, emancipation, marriage or  
22 attainment of majority, but termination does not affect the  
23 guardian's liability for prior acts nor the guardian's  
24 obligation to account for money and property of the protected  
25 person. Resignation of a guardian does not terminate the

1 guardianship until it has been approved by the court. A  
2 testamentary appointment under an informally probated will  
3 terminates if the will is later denied probate in a formal  
4 proceeding."

5 SECTION 57. Section 45-5-313 NMSA 1978 (being Laws 1975,  
6 Chapter 257, Section 5-313, as amended) is amended to read:

7 "45-5-313. PROCEEDINGS SUBSEQUENT TO APPOINTMENT--  
8 VENUE.--

9 A. The court where the protected person resides has  
10 concurrent jurisdiction with the court that appointed the  
11 guardian, or in which acceptance of a testamentary appointment  
12 was filed, over resignation, removal, accounting and other  
13 proceedings relating to the guardianship.

14 B. Subject to the transfer provisions of the  
15 Uniform Adult Guardianship and Protective Proceedings  
16 Jurisdiction Act, if the court located where the protected  
17 person resides is not the court in which acceptance of  
18 appointment is filed, the court in which proceedings  
19 subsequent to appointment are commenced shall in all  
20 appropriate cases notify the other court, in this or another  
21 state, and after consultation with that court determine  
22 whether to retain jurisdiction or transfer the proceedings to  
23 the other court, whichever may be in the best interests of the  
24 protected person. A copy of any order accepting a resignation  
25 or removing a guardian shall be sent to the court in which

1 acceptance of appointment is filed."

2 SECTION 58. Section 45-5-417 NMSA 1978 (being Laws 1975,  
3 Chapter 257, Section 5-417) is amended to read:

4 "45-5-417. GENERAL DUTY OF CONSERVATOR.--In the exercise  
5 of a conservator's powers, a conservator shall act as a  
6 fiduciary and shall observe the standards of care applicable  
7 to trustees as described by Sections 46A-8-801 through  
8 46A-8-807 NMSA 1978."

9 SECTION 59. A new Section 45-5-434 NMSA 1978 is enacted  
10 to read:

11 "45-5-434. REGISTRATION OF GUARDIANSHIP ORDERS.--If a  
12 guardian has been appointed in another state and a petition  
13 for the appointment of a guardian is not pending in New  
14 Mexico, the guardian appointed in the other state, after  
15 giving notice to the appointing court of an intent to  
16 register, may register the guardianship order in New Mexico by  
17 filing as a foreign judgment in a district court, in any  
18 appropriate county of New Mexico, certified copies of the  
19 order and letters of office."

20 SECTION 60. A new Section 45-5-435 NMSA 1978 is enacted  
21 to read:

22 "45-5-435. REGISTRATION OF PROTECTIVE ORDERS.--If a  
23 conservator has been appointed in another state and a petition  
24 for a protective order is not pending in New Mexico, the  
25 conservator appointed in the other state, after giving notice

1 to the appointing court of an intent to register, may register  
2 the protective order in New Mexico by filing as a foreign  
3 judgment in a district court in New Mexico, in any county in  
4 which property belonging to the protected person is located,  
5 certified copies of the order and letters of office and of any  
6 bond."

7 SECTION 61. A new Section 45-5-436 NMSA 1978 is enacted  
8 to read:

9 "45-5-436. EFFECT OF REGISTRATION.--

10 A. Upon registration of a guardianship or  
11 protective order from another state, the guardian or  
12 conservator may exercise in New Mexico all powers authorized  
13 in the order of appointment except as prohibited under the  
14 laws of New Mexico, including maintaining actions and  
15 proceedings in New Mexico and, if the guardian or conservator  
16 is not a resident of New Mexico, subject to any conditions  
17 imposed upon nonresident parties.

18 B. A court of New Mexico may grant any relief  
19 available under Chapter 45, Article 5 NMSA 1978 and other law  
20 of this state to enforce a registered order."

21 SECTION 62. A new Section 45-5A-101 NMSA 1978 is enacted  
22 to read:

23 "45-5A-101. SHORT TITLE.--Chapter 45, Article 5A NMSA  
24 1978 may be cited as the "Uniform Adult Guardianship and  
25 Protective Proceedings Jurisdiction Act".

1 SECTION 63. A new Section 45-5A-102 NMSA 1978 is enacted  
2 to read:

3 "45-5A-102. DEFINITIONS.--As used in the Uniform Adult  
4 Guardianship and Protective Proceedings Jurisdiction Act:

5 A. "adult" means an individual who has attained  
6 eighteen years of age;

7 B. "conservator" means a person appointed by the  
8 court to administer the property of an adult, as provided in  
9 Chapter 45, Article 5 NMSA 1978;

10 C. "court" means the district court;

11 D. "guardian" means a person appointed by the court  
12 to make decisions regarding the person of an adult, as  
13 provided in Chapter 45, Article 5 NMSA 1978;

14 E. "guardianship order" means an order appointing a  
15 guardian;

16 F. "guardianship proceeding" means a judicial  
17 proceeding in which an order for the appointment of a guardian  
18 is sought or has been issued;

19 G. "incapacitated person" means an adult for whom a  
20 guardian has been appointed;

21 H. "party" means the respondent, petitioner,  
22 guardian, conservator or any other person allowed by the court  
23 to participate in a guardianship or protective proceeding;

24 I. "protected person" means an adult for whom a  
25 protective order has been issued;

1 J. "protective order" means an order appointing a  
2 conservator or other order related to management of an adult's  
3 property;

4 K. "protective proceeding" means a judicial  
5 proceeding in which a protective order is sought or has been  
6 issued; and

7 L. "respondent" means an adult for whom a  
8 protective order or the appointment of a guardian is sought."

9 SECTION 64. A new Section 45-5A-103 NMSA 1978 is enacted  
10 to read:

11 "45-5A-103. INTERNATIONAL APPLICATION OF THE UNIFORM  
12 ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION  
13 ACT.--A New Mexico court may treat a foreign country as if it  
14 were a state for the purpose of applying Parts 1, 2, 3 and 5  
15 of the Uniform Adult Guardianship and Protective Proceedings  
16 Jurisdiction Act."

17 SECTION 65. A new Section 45-5A-104 NMSA 1978 is enacted  
18 to read:

19 "45-5A-104. COMMUNICATION BETWEEN COURTS.--

20 A. A New Mexico court may communicate with a court  
21 in another state concerning a proceeding arising pursuant to  
22 the Uniform Adult Guardianship and Protective Proceedings  
23 Jurisdiction Act. The court may allow the parties to  
24 participate in the communication. Except as otherwise  
25 provided in Subsection B of this section and except as

1 otherwise provided by rules adopted by the New Mexico supreme  
2 court, the court shall make a record of the communication.  
3 The record may be limited to the fact that the communication  
4 occurred.

5 B. Except as otherwise provided by rules adopted by  
6 the New Mexico supreme court, courts may communicate  
7 concerning schedules, calendars, court records and other  
8 administrative matters without making a record."

9 SECTION 66. A new Section 45-5A-105 NMSA 1978 is enacted  
10 to read:

11 "45-5A-105. COOPERATION BETWEEN COURTS.--

12 A. Except as otherwise provided by rules adopted by  
13 the New Mexico supreme court, in a guardianship or protective  
14 proceeding in New Mexico, a New Mexico court may request the  
15 appropriate court of another state to do any of the following:

16 (1) hold an evidentiary hearing;

17 (2) order a person in that state to produce  
18 evidence or give testimony pursuant to procedures of that  
19 state;

20 (3) order that an evaluation or assessment be  
21 made of the respondent;

22 (4) order any appropriate investigation of a  
23 person involved in a proceeding;

24 (5) forward to the New Mexico court a certified  
25 copy of the transcript or other record of a hearing pursuant

1 to Paragraph (1) of this subsection or any other proceeding,  
2 any evidence otherwise produced pursuant to Paragraph (2) of  
3 this subsection and any evaluation or assessment prepared in  
4 compliance with an order pursuant to Paragraph (3) or (4) of  
5 this subsection;

6 (6) issue any order necessary to assure the  
7 appearance in the proceeding of a person whose presence is  
8 necessary for the court to make a determination, including the  
9 respondent or the incapacitated or protected person; and

10 (7) issue an order authorizing the release of  
11 medical, financial, criminal or other relevant information in  
12 that state, including protected health information as defined  
13 in 45 C.F.R. Section 164.504, as amended.

14 B. If a court of another state in which a  
15 guardianship or protective proceeding is pending requests  
16 assistance of the kind provided in Subsection A of this  
17 section, a New Mexico court has jurisdiction for the limited  
18 purpose of granting the request or making reasonable efforts  
19 to comply with the request."

20 SECTION 67. A new Section 45-5A-106 NMSA 1978 is enacted  
21 to read:

22 "45-5A-106. TAKING TESTIMONY IN ANOTHER STATE.--

23 A. In a guardianship or protective proceeding, in  
24 addition to other procedures that may be available, testimony  
25 of a witness who is located in another state may be offered by



1 deposition or other means allowable in New Mexico for  
2 testimony taken in another state. The court on its own motion  
3 may order that the testimony of a witness be taken in another  
4 state and may prescribe the manner in which, and the terms  
5 upon which, the testimony is to be taken.

6 B. In a guardianship or protective proceeding, a  
7 New Mexico court may permit a witness located in another state  
8 to be deposed or to testify by telephone or audiovisual or  
9 other electronic means. A New Mexico court shall cooperate  
10 with the court of the other state in designating an  
11 appropriate location for the deposition or testimony.

12 C. Except as otherwise provided by rules adopted by  
13 the New Mexico supreme court, documentary evidence transmitted  
14 from another state to a New Mexico court by technological  
15 means that do not produce an original writing shall not be  
16 excluded from evidence on an objection based on the best  
17 evidence rule."

18 SECTION 68. A new Section 45-5A-201 NMSA 1978 is enacted  
19 to read:

20 "45-5A-201. DEFINITIONS--SIGNIFICANT-CONNECTION  
21 FACTORS.--

22 A. As used in Part 2 of the Uniform Adult  
23 Guardianship and Protective Proceedings Jurisdiction Act:

24 (1) "emergency" means a circumstance that  
25 likely will result in substantial harm to a respondent's

1 health, safety or welfare and for which the appointment of a  
2 guardian is necessary because no other person has authority  
3 and is willing to act on the respondent's behalf;

4 (2) "home state" means the state in which the  
5 respondent was physically present, including any period of  
6 temporary absence, for at least six consecutive months  
7 immediately before the filing of a petition for a protective  
8 order or the appointment of a guardian; or, if none, the state  
9 in which the respondent was physically present, including any  
10 period of temporary absence, for at least six consecutive  
11 months ending within the six months prior to the filing of the  
12 petition; and

13 (3) "significant-connection state" means a  
14 state, other than the home state, with which a respondent has  
15 a significant connection other than mere physical presence and  
16 in which substantial evidence concerning the respondent is  
17 available.

18 B. In determining pursuant to Section 45-5A-203 and  
19 Subsection E of Section 45-5A-301 NMSA 1978 whether a  
20 respondent has a significant connection with a particular  
21 state, the court shall consider:

22 (1) the location of the respondent's family and  
23 other persons required to be notified of the guardianship or  
24 protective proceeding;

25 (2) the length of time the respondent at any

1 time was physically present in the state and the duration of  
2 any absence;

3 (3) the location of the respondent's property;  
4 and

5 (4) the extent to which the respondent has ties  
6 to the state, such as voting registration, state or local tax  
7 return filing, vehicle registration, driver's license, social  
8 relationship and receipt of services."

9 SECTION 69. A new Section 45-5A-202 NMSA 1978 is enacted  
10 to read:

11 "45-5A-202. EXCLUSIVE BASIS.--Part 2 of the Uniform  
12 Adult Guardianship and Protective Proceedings Jurisdiction Act  
13 provides the exclusive jurisdictional basis for a New Mexico  
14 court to appoint a guardian or issue a protective order for an  
15 adult."

16 SECTION 70. A new Section 45-5A-203 NMSA 1978 is enacted  
17 to read:

18 "45-5A-203. JURISDICTION.--A New Mexico court has  
19 jurisdiction to appoint a guardian or issue a protective order  
20 for a respondent if:

21 A. New Mexico is the respondent's home state;

22 B. on the date the petition is filed, New Mexico is  
23 a significant-connection state and:

24 (1) the respondent does not have a home state  
25 or a court of the respondent's home state has declined to

1 exercise jurisdiction because New Mexico is a more appropriate  
2 forum; or

3 (2) the respondent has a home state, a petition  
4 for an appointment or order is not pending in a court of that  
5 state or another significant-connection state and, before the  
6 court makes the appointment or issues the order:

7 (a) a petition for an appointment or order  
8 is not filed in the respondent's home state;

9 (b) an objection to the court's  
10 jurisdiction is not filed by a person required to be notified  
11 of the proceeding; and

12 (c) the court in New Mexico concludes that  
13 it is an appropriate forum pursuant to the factors set forth  
14 in Section 45-5A-206 NMSA 1978;

15 C. New Mexico does not have jurisdiction pursuant  
16 either to Subsection A or B of this section, the respondent's  
17 home state and all significant-connection states have declined  
18 to exercise jurisdiction because New Mexico is the more  
19 appropriate forum and jurisdiction in New Mexico is consistent  
20 with the constitutions of New Mexico and the United States; or

21 D. the requirements for special jurisdiction  
22 pursuant to Section 45-5A-204 NMSA 1978 are met."

23 SECTION 71. A new Section 45-5A-204 NMSA 1978 is enacted  
24 to read:

25 "45-5A-204. SPECIAL JURISDICTION.--

1           A. A New Mexico court lacking jurisdiction pursuant  
2 to Section 45-5A-203 NMSA 1978 has special jurisdiction to do  
3 any of the following:

4           (1) appoint a guardian in an emergency for a  
5 term not exceeding ninety days for a respondent who is  
6 physically present in New Mexico;

7           (2) issue a protective order with respect to  
8 real or tangible personal property located in New Mexico; and

9           (3) appoint a guardian or conservator for an  
10 incapacitated or protected person for whom a provisional order  
11 to transfer the proceeding from another state has been issued  
12 pursuant to procedures similar to Section 45-5A-301 NMSA 1978.

13           B. If a petition for the appointment of a guardian  
14 in an emergency is brought in New Mexico and New Mexico was  
15 not the respondent's home state on the date the petition was  
16 filed, the court shall dismiss the proceeding at the request  
17 of the court of the home state, if any, whether dismissal is  
18 requested before or after the emergency appointment."

19           SECTION 72. A new Section 45-5A-205 NMSA 1978 is enacted  
20 to read:

21           "45-5A-205. EXCLUSIVE AND CONTINUING JURISDICTION.--  
22 Except as otherwise provided in Section 45-5A-204 NMSA 1978, a  
23 court that has appointed a guardian or issued a protective  
24 order consistent with the Uniform Adult Guardianship and  
25 Protective Proceedings Jurisdiction Act has exclusive and

1 continuing jurisdiction over the proceeding until it is  
2 terminated by the court or the appointment or order expires by  
3 its own terms."

4 SECTION 73. A new Section 45-5A-206 NMSA 1978 is enacted  
5 to read:

6 "45-5A-206. APPROPRIATE FORUM.--

7 A. A New Mexico court having jurisdiction pursuant  
8 to Section 45-5A-203 NMSA 1978 to appoint a guardian or issue  
9 a protective order may decline to exercise its jurisdiction if  
10 it determines at any time that a court of another state is a  
11 more appropriate forum.

12 B. If a New Mexico court declines to exercise its  
13 jurisdiction pursuant to Subsection A of this section, it  
14 shall either dismiss or stay the proceeding. The court may  
15 impose any condition the court considers just and proper,  
16 including the condition that a petition for the appointment of  
17 a guardian or issuance of a protective order be filed promptly  
18 in another state.

19 C. In determining whether it is an appropriate  
20 forum, the court shall consider all relevant factors,  
21 including:

22 (1) any expressed preference of the respondent;  
23 (2) whether abuse, neglect or exploitation of  
24 the respondent has occurred or is likely to occur and which  
25 state could best protect the respondent from the abuse,

1 neglect or exploitation;

2 (3) the length of time the respondent was  
3 physically present in or was a legal resident of New Mexico or  
4 another state;

5 (4) the distance of the respondent from the  
6 court in each state;

7 (5) the financial circumstances of the  
8 respondent's estate;

9 (6) the nature and location of the evidence;

10 (7) the ability of the court in each state to  
11 decide the issue expeditiously and the procedures necessary to  
12 present evidence;

13 (8) the familiarity of the court of each state  
14 with the facts and issues in the proceeding; and

15 (9) if an appointment of a guardian or  
16 conservator were to be made, the court's ability to monitor  
17 the conduct of the guardian or conservator."

18 SECTION 74. A new Section 45-5A-207 NMSA 1978 is enacted  
19 to read:

20 "45-5A-207. JURISDICTION DECLINED BY REASON OF  
21 CONDUCT.--

22 A. If at any time a New Mexico court determines  
23 that it acquired jurisdiction to appoint a guardian or issue a  
24 protective order because of unjustifiable conduct, the court  
25 may:

1 (1) decline to exercise jurisdiction;

2 (2) exercise jurisdiction for the limited  
3 purpose of fashioning an appropriate remedy to:

4 (a) ensure the health, safety and welfare  
5 of the respondent or the protection of the respondent's  
6 property; or

7 (b) prevent a repetition of the  
8 unjustifiable conduct, including staying the proceeding until  
9 a petition for the appointment of a guardian or issuance of a  
10 protective order is filed in a court of another state having  
11 jurisdiction; or

12 (3) continue to exercise jurisdiction after  
13 considering:

14 (a) the extent to which the respondent and  
15 all persons required to be notified of the proceedings have  
16 acquiesced in the exercise of the court's jurisdiction;

17 (b) whether it is a more appropriate forum  
18 than the court of any other state pursuant to the factors set  
19 forth in Subsection C of Section 45-5A-206 NMSA 1978; and

20 (c) whether the court of any other state  
21 would have jurisdiction under factual circumstances in  
22 substantial conformity with the jurisdictional standards of  
23 Section 45-5A-203 NMSA 1978.

24 B. If a New Mexico court determines that it  
25 acquired jurisdiction to appoint a guardian or to issue a



1 protective order because a party seeking to invoke its  
2 jurisdiction engaged in unjustifiable conduct, it may assess  
3 against that party necessary and reasonable expenses,  
4 including attorney fees, investigative fees, court costs,  
5 communication expenses, witness fees and expenses and travel  
6 expenses. The court shall not assess fees, costs or expenses  
7 of any kind against New Mexico or a governmental subdivision,  
8 agency or instrumentality of New Mexico unless authorized by  
9 law other than the Uniform Adult Guardianship and Protective  
10 Proceedings Jurisdiction Act."

11 SECTION 75. A new Section 45-5A-208 NMSA 1978 is enacted  
12 to read:

13 "45-5A-208. NOTICE OF PROCEEDING.--If a petition for the  
14 appointment of a guardian or issuance of a protective order is  
15 brought in New Mexico and New Mexico was not the respondent's  
16 home state on the date the petition was filed, in addition to  
17 complying with the notice requirements of New Mexico, notice  
18 of the petition shall be given to those persons who would be  
19 entitled to notice of the petition if a proceeding were  
20 brought in the respondent's home state. The notice shall be  
21 given in the same manner as notice is required to be given in  
22 New Mexico."

23 SECTION 76. A new Section 45-5A-209 NMSA 1978 is enacted  
24 to read:

25 "45-5A-209. PROCEEDINGS IN MORE THAN ONE STATE.--Except

1 for a petition for the appointment of a guardian in an  
2 emergency or issuance of a protective order limited to  
3 property located in New Mexico pursuant to Paragraph (1) or  
4 (2) of Subsection A of Section 45-5A-204 NMSA 1978, if a  
5 petition for the appointment of a guardian or issuance of a  
6 protective order is filed in New Mexico and in another state  
7 and neither petition has been dismissed or withdrawn, the  
8 following rules apply:

9 A. if the New Mexico court has jurisdiction  
10 pursuant to Section 45-5A-203 NMSA 1978, it may proceed with  
11 the case unless a court in another state acquires jurisdiction  
12 pursuant to provisions similar to Section 45-5A-203 NMSA 1978  
13 before the appointment of the guardian or issuance of the  
14 protective order; and

15 B. if the New Mexico court does not have  
16 jurisdiction pursuant to Section 45-5A-203 NMSA 1978, whether  
17 at the time the petition is filed or at any time before the  
18 appointment of the guardian or issuance of the protective  
19 order, the court shall stay the proceeding and communicate  
20 with the court in the other state. If the court in the other  
21 state has jurisdiction, the New Mexico court shall dismiss the  
22 petition unless the court in the other state determines that  
23 the New Mexico court is a more appropriate forum."

24 SECTION 77. A new Section 45-5A-301 NMSA 1978 is enacted  
25 to read:

1           "45-5A-301. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP  
2 TO ANOTHER STATE.--

3           A. A guardian or conservator appointed in New  
4 Mexico may petition the court to transfer the guardianship or  
5 conservatorship to another state.

6           B. Notice of a petition pursuant to Subsection A of  
7 this section shall be given to the persons that would be  
8 entitled to notice of a petition in New Mexico for the  
9 appointment of a guardian or conservator.

10           C. On the court's own motion, or on request of the  
11 guardian or conservator, the incapacitated or protected person  
12 or other person required to be notified of the petition, the  
13 court shall hold a hearing on a petition filed pursuant to  
14 Subsection A of this section.

15           D. The court shall issue an order provisionally  
16 granting a petition to transfer a guardianship and shall  
17 direct the guardian to petition for guardianship in the other  
18 state if the court is satisfied that the guardianship will be  
19 accepted by the court in the other state and the court finds  
20 that:

21                   (1) the incapacitated person is physically  
22 present in or is reasonably expected to move permanently to  
23 the other state;

24                   (2) an objection to the transfer has not been  
25 made or, if an objection has been made, the objector has not

1 established that the transfer would be contrary to the  
2 interests of the incapacitated person; and

3 (3) plans for care and services for the  
4 incapacitated person in the other state are reasonable and  
5 sufficient.

6 E. The court shall issue a provisional order  
7 granting a petition to transfer a conservatorship and shall  
8 direct the conservator to petition for conservatorship in the  
9 other state if the court is satisfied that the conservatorship  
10 will be accepted by the court of the other state and the court  
11 finds that:

12 (1) the protected person is physically present  
13 in or is reasonably expected to move permanently to the other  
14 state, or the protected person has a significant connection to  
15 the other state considering the factors set forth in  
16 Subsection B of Section 45-5A-201 NMSA 1978;

17 (2) an objection to the transfer has not been  
18 made or, if an objection has been made, the objector has not  
19 established that the transfer would be contrary to the  
20 interests of the protected person; and

21 (3) adequate arrangements will be made for  
22 management of the protected person's property.

23 F. The court shall issue a final order confirming  
24 the transfer and terminating the guardianship or  
25 conservatorship upon its receipt of:

1           (1) a provisional order accepting the  
2 proceeding from the court to which the proceeding is to be  
3 transferred that is issued pursuant to provisions similar to  
4 those set forth in Section 45-5A-302 NMSA 1978; and

5           (2) the documents required to terminate a  
6 guardianship or conservatorship in New Mexico."

7           SECTION 78. A new Section 45-5A-302 NMSA 1978 is enacted  
8 to read:

9           "45-5A-302. ACCEPTING GUARDIANSHIP OR CONSERVATORSHIP  
10 TRANSFERRED FROM ANOTHER STATE.--

11           A. To confirm transfer of a guardianship or  
12 conservatorship transferred to New Mexico pursuant to  
13 provisions similar to Section 45-5A-301 NMSA 1978, the  
14 guardian or conservator shall petition the New Mexico court to  
15 accept the guardianship or conservatorship. The petition  
16 shall include a certified copy of the other state's  
17 provisional order of transfer.

18           B. Notice of a petition pursuant to Subsection A of  
19 this section shall be given to those persons that would be  
20 entitled to notice if the petition were a petition for the  
21 appointment of a guardian or issuance of a protective order in  
22 both the transferring state and New Mexico. The notice shall  
23 be given in the same manner as notice is required to be given  
24 in New Mexico.

25           C. On the court's own motion, or on request of the

1 guardian or conservator, the incapacitated or protected person  
2 or other person required to be notified of the proceeding, the  
3 court shall hold a hearing on a petition filed pursuant to  
4 Subsection A of this section.

5 D. The court shall issue an order provisionally  
6 granting a petition filed pursuant to Subsection A of this  
7 section unless:

8 (1) an objection is made and the objector  
9 establishes that transfer of the proceeding would be contrary  
10 to the interests of the incapacitated or protected person; or

11 (2) the guardian or conservator is ineligible  
12 for appointment in New Mexico.

13 E. The court shall issue a final order accepting  
14 the proceeding and appointing the guardian or conservator as  
15 guardian or conservator in New Mexico upon its receipt from  
16 the court from which the proceeding is being transferred of a  
17 final order issued pursuant to provisions similar to Section  
18 45-5A-301 NMSA 1978 transferring the proceeding to New Mexico.

19 F. Not later than ninety days after issuance of a  
20 final order accepting transfer of a guardianship or  
21 conservatorship, the court shall determine whether the  
22 guardianship or conservatorship needs to be modified to  
23 conform to the laws of New Mexico.

24 G. In granting a petition pursuant to this section,  
25 the court shall recognize a guardianship or conservatorship

1 order from the other state, including the determination of the  
2 incapacitated or protected person's incapacity and the  
3 appointment of the guardian or conservator.

4 H. The denial by a New Mexico court of a petition  
5 to accept a guardianship or conservatorship transferred from  
6 another state does not affect the ability of the guardian or  
7 conservator to seek appointment as guardian or conservator in  
8 New Mexico pursuant to Sections 45-5-301 and 45-5-401 NMSA  
9 1978 if the court has jurisdiction to make an appointment  
10 other than by reason of the provisional order of transfer."

11 SECTION 79. A new Section 45-5A-401 NMSA 1978 is enacted  
12 to read:

13 "45-5A-401. REGISTRATION OF GUARDIANSHIP ORDERS.--If a  
14 guardian has been appointed in another state and a petition  
15 for the appointment of a guardian is not pending in New  
16 Mexico, the guardian appointed in the other state, after  
17 giving notice to the appointing court of an intent to  
18 register, may register the guardianship order in New Mexico by  
19 filing as a foreign judgment in a court, in any appropriate  
20 county of New Mexico, certified copies of the order and  
21 letters of office."

22 SECTION 80. A new Section 45-5A-402 NMSA 1978 is enacted  
23 to read:

24 "45-5A-402. REGISTRATION OF PROTECTIVE ORDERS.--If a  
25 conservator has been appointed in another state and a petition

1 for a protective order is not pending in New Mexico, the  
2 conservator appointed in the other state, after giving notice  
3 to the appointing court of an intent to register, may register  
4 the protective order in New Mexico by filing as a foreign  
5 judgment in a New Mexico court, in any county in which  
6 property belonging to the protected person is located,  
7 certified copies of the order and letters of office and of any  
8 bond."

9 SECTION 81. A new Section 45-5A-403 NMSA 1978 is enacted  
10 to read:

11 "45-5A-403. EFFECT OF REGISTRATION.--

12 A. Upon registration of a guardianship or  
13 protective order from another state, the guardian or  
14 conservator may exercise in New Mexico all powers authorized  
15 in the order of appointment except as prohibited pursuant to  
16 the laws of New Mexico, including maintaining actions and  
17 proceedings in New Mexico and, if the guardian or conservator  
18 is not a resident of New Mexico, subject to any conditions  
19 imposed upon nonresident parties.

20 B. A New Mexico court may grant any relief  
21 available pursuant to the Uniform Adult Guardianship and  
22 Protective Proceedings Jurisdiction Act and other law of New  
23 Mexico to enforce a registered order."

24 SECTION 82. A new Section 45-5A-501 NMSA 1978 is enacted  
25 to read:



1 "45-5A-501. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL  
2 AND NATIONAL COMMERCE ACT.--The Uniform Adult Guardianship and  
3 Protective Proceedings Jurisdiction Act modifies, limits and  
4 supersedes the federal Electronic Signatures in Global and  
5 National Commerce Act, 15 U.S.C. Section 7001, et seq., but  
6 does not modify, limit or supersede Section 101(c) of that  
7 act, 15 U.S.C. Section 7001(c), or authorize electronic  
8 delivery of any of the notices described in Section 103(b) of  
9 that act, 15 U.S.C. Section 7003(b)."

10 SECTION 83. A new Section 45-5A-502 NMSA 1978 is enacted  
11 to read:

12 "45-5A-502. TRANSITIONAL PROVISION.--

13 A. Parts 1, 3 and 4 of the Uniform Adult  
14 Guardianship and Protective Proceedings Jurisdiction Act and  
15 Section 45-5A-501 NMSA 1978 apply to proceedings begun before  
16 January 1, 2012, regardless of whether a guardianship or  
17 protective order has been issued.

18 B. The Uniform Adult Guardianship and Protective  
19 Proceedings Jurisdiction Act applies to guardianship and  
20 protective proceedings begun on or after January 1, 2012."

21 SECTION 84. Section 45-6-205 NMSA 1978 (being Laws 1992,  
22 Chapter 66, Section 22) is amended to read:

23 "45-6-205. DESIGNATION OF AGENT.--

24 A. By a writing signed by all parties, the parties  
25 may designate as agent of all parties on an account a person

1 other than a party.

2 B. Unless the terms of an agency designation  
3 provide that the authority of the agent terminates on  
4 disability or incapacity of a party, the agent's authority  
5 survives disability and incapacity. The agent may act for a  
6 disabled or incapacitated party until the authority of the  
7 agent is terminated.

8 C. Death of the sole party or last surviving party  
9 terminates the authority of an agent."

10 SECTION 85. Section 45-6-216 NMSA 1978 (being Laws 1992,  
11 Chapter 66, Section 29, as amended) is amended to read:

12 "45-6-216. COMMUNITY PROPERTY.--

13 A. A deposit of community property in an account  
14 does not alter the community character of the property or  
15 community rights in the property, if any, but a right of  
16 survivorship between parties married to each other arising  
17 from the express terms of the account or Section 45-6-212 NMSA  
18 1978 may not be altered by will or other governing instrument.

19 B. This section does not affect or limit the right  
20 of a financial institution to make payments pursuant to  
21 Sections 45-6-211 through 45-6-227 NMSA 1978 and the deposit  
22 agreement."

23 SECTION 86. Section 46-3A-101 NMSA 1978 (being Laws  
24 2001, Chapter 113, Section 101) is amended to read:

25 "46-3A-101. SHORT TITLE.--Chapter 46, Article 3A NMSA

1 1978 may be cited as the "Uniform Principal and Income Act"."

2 SECTION 87. Section 46-3A-409 NMSA 1978 (being Laws  
3 2001, Chapter 113, Section 409) is amended to read:

4 "46-3A-409. DEFERRED COMPENSATION, ANNUITIES AND SIMILAR  
5 PAYMENTS.--

6 A. As used in this section:

7 (1) "payment" means a payment that a trustee  
8 may receive over a fixed number of years or during the life of  
9 one or more individuals because of services rendered or  
10 property transferred to the payer in exchange for future  
11 payments. The term includes a payment made in money or  
12 property from the payer's general assets or from a separate  
13 fund created by the payer. For purposes of Subsections D, E,  
14 F and G of this section, "payment" also includes any payment  
15 from any separate fund, regardless of the reason for the  
16 payment; and

17 (2) "separate fund" includes a private or  
18 commercial annuity, an individual retirement account and a  
19 pension, profit-sharing, stock-bonus or stock-ownership plan.

20 B. To the extent that a payment is characterized as  
21 interest or a dividend or a payment made in lieu of interest  
22 or a dividend, a trustee shall allocate the payment to income.  
23 The trustee shall allocate to principal the balance of the  
24 payment and any other payment received in the same accounting  
25 period that is not characterized as interest, a dividend or an

1 equivalent payment.

2 C. If no part of a payment is characterized as  
3 interest, a dividend or an equivalent payment, and all or part  
4 of the payment is required to be made, a trustee shall  
5 allocate to income ten percent of the part that is required to  
6 be made during the accounting period and the balance to  
7 principal. If no part of a payment is required to be made or  
8 the payment received is the entire amount to which the trustee  
9 is entitled, the trustee shall allocate the entire payment to  
10 principal. For purposes of this subsection, a payment is not  
11 "required to be made" to the extent that it is made because  
12 the trustee exercises a right of withdrawal.

13 D. Except as otherwise provided in Subsection E of  
14 this section, Subsections F and G of this section apply and  
15 Subsections B and C of this section do not apply in  
16 determining the allocation of a payment made from a separate  
17 fund to:

18 (1) a trust to which an election to qualify for  
19 a marital deduction pursuant to Section 2056(b)(7) of the  
20 Internal Revenue Code of 1986, as amended, has been made; or

21 (2) a trust that qualifies for the marital  
22 deduction pursuant to Section 2056(b)(5) of the Internal  
23 Revenue Code of 1986, as amended.

24 E. Subsections D, F and G of this section do not  
25 apply if, and to the extent that, the series of payments

1 would, without the application of Subsection D of this  
2 section, qualify for the marital deduction pursuant to Section  
3 2056(b)(7)(C) of the Internal Revenue Code of 1986, as  
4 amended.

5 F. A trustee shall determine the internal income of  
6 each separate fund for the accounting period as if the  
7 separate fund were a trust subject to the Uniform Principal  
8 and Income Act. Upon request of the surviving spouse, the  
9 trustee shall demand that the person administering the  
10 separate fund distribute the internal income to the trust.  
11 The trustee shall allocate a payment from the separate fund to  
12 income to the extent of the internal income of the separate  
13 fund and distribute that amount to the surviving spouse. The  
14 trustee shall allocate the balance of the payment to  
15 principal. Upon request of the surviving spouse, the trustee  
16 shall allocate principal to income to the extent the internal  
17 income of the separate fund exceeds payments made from the  
18 separate fund to the trust during the accounting period.

19 G. If a trustee cannot determine the internal  
20 income of a separate fund but can determine the value of the  
21 separate fund, the internal income of the separate fund is  
22 deemed to equal four percent of the fund's value according to  
23 the most recent statement of value preceding the beginning of  
24 the accounting period. If the trustee can determine neither  
25 the internal income of the separate fund nor the fund's value,

1 the internal income of the fund is deemed to equal the product  
2 of the interest rate and the present value of the expected  
3 future payments as determined pursuant to Section 7520 of the  
4 Internal Revenue Code of 1986, as amended, for the month  
5 preceding the accounting period for which the computation is  
6 made.

7 H. This section does not apply to a payment to  
8 which Section 46-3A-410 NMSA 1978 applies."

9 SECTION 88. Section 46-3A-505 NMSA 1978 (being Laws  
10 2001, Chapter 113, Section 505) is amended to read:

11 "46-3A-505. INCOME TAXES.--

12 A. A tax required to be paid by a trustee based on  
13 receipts allocated to income must be paid from income.

14 B. A tax required to be paid by a trustee based on  
15 receipts allocated to principal must be paid from principal,  
16 even if the tax is called an income tax by the taxing  
17 authority.

18 C. A tax required to be paid by a trustee on the  
19 trust's share of an entity's taxable income must be paid:

20 (1) from income to the extent that receipts  
21 from the entity are allocated only to income;

22 (2) from principal to the extent that receipts  
23 from the entity are allocated only to principal;

24 (3) proportionately from principal and income  
25 to the extent that receipts from the entity are allocated to

1 both income and principal; and

2 (4) from principal to the extent that the tax  
3 exceeds the total receipts from the entity.

4 D. After applying Subsections A through C of this  
5 section, the trustee shall adjust income or principal receipts  
6 to the extent that the trust's taxes are reduced because the  
7 trust receives a deduction for payments made to a  
8 beneficiary."

9 SECTION 89. Section 46-10-1 NMSA 1978 (being Laws 2001,  
10 Chapter 290, Section 1) is recompiled as Section 45-2-1101  
11 NMSA 1978 and is amended to read:

12 "45-2-1101. SHORT TITLE.--Chapter 45, Article 2, Part 11  
13 NMSA 1978 may be cited as the "Uniform Disclaimer of Property  
14 Interests Act"."

15 SECTION 90. Section 46-10-2 NMSA 1978 (being Laws 2001,  
16 Chapter 290, Section 2) is recompiled as Section 45-2-1102  
17 NMSA 1978 and is amended to read:

18 "45-2-1102. DEFINITIONS.--As used in the Uniform  
19 Disclaimer of Property Interests Act:

20 A. "disclaimant" means the person to whom a  
21 disclaimed interest or power would have passed had the  
22 disclaimer not been made;

23 B. "disclaimed interest" means the interest that  
24 would have passed to the disclaimant had the disclaimer not  
25 been made;

1 C. "disclaimer" means the refusal to accept an  
2 interest in or power over property;

3 D. "fiduciary" means a personal representative,  
4 trustee, agent acting under a power of attorney or other  
5 person authorized to act as a fiduciary with respect to the  
6 property of another person;

7 E. "jointly held property" means property held in  
8 the name of two or more persons under an arrangement in which  
9 all holders have concurrent interests and under which the last  
10 surviving holder is entitled to the whole of the property; and

11 F. "trust" means:

12 (1) an express trust, charitable or  
13 noncharitable, with additions thereto, whenever and however  
14 created; and

15 (2) a trust created pursuant to a statute,  
16 judgment or decree that requires the trust to be administered  
17 in the manner of an express trust."

18 SECTION 91. Section 46-10-6 NMSA 1978 (being Laws 2001,  
19 Chapter 290, Section 6) is recompiled as Section 45-2-1106  
20 NMSA 1978 and is amended to read:

21 "45-2-1106. DISCLAIMER OF INTEREST IN PROPERTY.--

22 A. As used in this section:

23 (1) "future interest" means an interest that  
24 takes effect in possession or enjoyment, if at all, later than  
25 the time of its creation; and



1           (2) "time of distribution" means the time when  
2 a disclaimed interest would have taken effect in possession or  
3 enjoyment.

4           B. Except for a disclaimer governed by Section  
5 45-2-1107 or 45-2-1108 NMSA 1978, the following rules apply to  
6 a disclaimer of an interest in property:

7           (1) The disclaimer takes effect as of the time  
8 the instrument creating the interest becomes irrevocable, or,  
9 if the interest arose under the law of intestate succession,  
10 as of the time of the intestate's death.

11           (2) The disclaimed interest passes according to  
12 any provision in the instrument creating the interest  
13 providing for the disposition of the interest, should it be  
14 disclaimed, or of disclaimed interests in general.

15           (3) If the instrument does not contain a  
16 provision described in Paragraph (2) of this subsection, the  
17 following rules apply:

18           (a) If the disclaimant is not an  
19 individual, the disclaimed interest passes as if the  
20 disclaimant did not exist.

21           (b) If the disclaimant is an individual,  
22 except as otherwise provided in Subparagraphs (c) and (d) of  
23 this paragraph, the disclaimed interest passes as if the  
24 disclaimant had died immediately before the time of  
25 distribution.

1 (c) If, by law or under the instrument,  
2 the descendants of the disclaimant would share in the  
3 disclaimed interest by any method of representation had the  
4 disclaimant died before the time of distribution, the  
5 disclaimed interest passes only to the descendants of the  
6 disclaimant who survive the time of distribution.

7 (d) If the disclaimed interest would pass  
8 to the disclaimant's estate had the disclaimant died before  
9 the time of distribution, the disclaimed interest instead  
10 passes by representation to the descendants of the disclaimant  
11 who survive the time of distribution. If no descendant of the  
12 disclaimant survives the time of distribution, the disclaimed  
13 interest passes to those persons, including the state but  
14 excluding the disclaimant, and in such shares as would succeed  
15 to the transferor's intestate estate under the intestate  
16 succession law of the transferor's domicile had the transferor  
17 died at the time of distribution. However, if the  
18 transferor's surviving spouse is living but is remarried at  
19 the time of distribution, the transferor is deemed to have  
20 died unmarried at the time of distribution.

21 (4) Upon the disclaimer of a preceding  
22 interest, a future interest held by a person other than the  
23 disclaimant takes effect as if the disclaimant had died or  
24 ceased to exist immediately before the time of distribution,  
25 but a future interest held by the disclaimant is not

1 accelerated in possession or enjoyment."

2 SECTION 92. Section 46-10-12 NMSA 1978 (being Laws 2001,  
3 Chapter 290, Section 12) is recompiled as Section 45-2-1112  
4 NMSA 1978 and is amended to read:

5 "45-2-1112. DELIVERY OR FILING.--

6 A. As used in this section, "beneficiary  
7 designation" means an instrument, other than an instrument  
8 creating a trust, naming the beneficiary of:

- 9 (1) an annuity or insurance policy;  
10 (2) an account with a designation for payment  
11 on death;  
12 (3) a security registered in beneficiary form;  
13 (4) a pension, profit-sharing, retirement or  
14 other employment-related benefit plan; or  
15 (5) any other nonprobate transfer at death.

16 B. Subject to Subsections C through L of this  
17 section, delivery of a disclaimer may be effected by personal  
18 delivery, first-class mail or any other method likely to  
19 result in its receipt.

20 C. In the case of an interest created under the law  
21 of intestate succession or an interest created by will, other  
22 than an interest in a testamentary trust:

- 23 (1) a disclaimer must be delivered to the  
24 personal representative of the decedent's estate; or  
25 (2) if no personal representative is then

1 serving, it must be filed with a court having jurisdiction to  
2 appoint the personal representative.

3 D. In the case of an interest in a testamentary  
4 trust:

5 (1) a disclaimer must be delivered to the  
6 trustee then serving or, if no trustee is then serving, to the  
7 personal representative of the decedent's estate; or

8 (2) if no personal representative is then  
9 serving, it must be filed with a court having jurisdiction to  
10 enforce the trust.

11 E. In the case of an interest in an inter vivos  
12 trust:

13 (1) a disclaimer must be delivered to the  
14 trustee then serving;

15 (2) if no trustee is then serving, it must be  
16 filed with a court having jurisdiction to enforce the trust;  
17 or

18 (3) if the disclaimer is made before the time  
19 the instrument creating the trust becomes irrevocable, it must  
20 be delivered to the settlor of a revocable trust or the  
21 transferor of the interest.

22 F. In the case of an interest, created by a  
23 beneficiary designation, that is disclaimed before the  
24 designation becomes irrevocable, the disclaimer must be  
25 delivered to the person making the beneficiary designation.

1           G. In the case of an interest, created by a  
2 beneficiary designation, that is disclaimed after the  
3 designation becomes irrevocable:

4           (1) the disclaimer of an interest in personal  
5 property must be delivered to the person obligated to  
6 distribute the interest; and

7           (2) the disclaimer of an interest in real  
8 property must be recorded in the office of the county clerk of  
9 each county where the real property that is the subject of the  
10 disclaimer is located.

11           H. In the case of a disclaimer by a surviving  
12 holder of jointly held property, the disclaimer must be  
13 delivered to the person to whom the disclaimed interest  
14 passes.

15           I. In the case of a disclaimer by an object or  
16 taker in default of exercise of a power of appointment at any  
17 time after the power was created:

18           (1) the disclaimer must be delivered to the  
19 holder of the power or to the fiduciary acting under the  
20 instrument that created the power; or

21           (2) if no fiduciary is then serving, it must be  
22 filed with a court having authority to appoint the fiduciary.

23           J. In the case of a disclaimer by an appointee of a  
24 nonfiduciary power of appointment:

25           (1) the disclaimer must be delivered to the

1 holder, the personal representative of the holder's estate or  
2 to the fiduciary under the instrument that created the power;  
3 or

4 (2) if no fiduciary is then serving, it must be  
5 filed with a court having authority to appoint the fiduciary.

6 K. In the case of a disclaimer by a fiduciary of a  
7 power over a trust or estate, the disclaimer must be delivered  
8 as provided in Subsection C, D or E of this section, as if the  
9 power disclaimed were an interest in property.

10 L. In the case of a disclaimer of a power by an  
11 agent, the disclaimer must be delivered to the principal or  
12 the principal's representative."

13 SECTION 93. Section 46-10-15 NMSA 1978 (being Laws 2001,  
14 Chapter 290, Section 15) is recompiled as Section 45-2-1115  
15 NMSA 1978 and is amended to read:

16 "45-2-1115. RECORDING OF DISCLAIMER.--If an instrument  
17 transferring an interest in or power over property subject to  
18 a disclaimer is required or permitted by law to be filed,  
19 recorded or registered, the disclaimer may be so filed,  
20 recorded or registered. Except as otherwise provided in  
21 Paragraph (2) of Subsection G of Section 45-2-1112 NMSA 1978,  
22 failure to file, record or register the disclaimer does not  
23 affect its validity as between the disclaimant and persons to  
24 whom the property interest or power passes by reason of the  
25 disclaimer."

1 SECTION 94. Section 46A-1-107 NMSA 1978 (being Laws  
2 2003, Chapter 122, Section 1-107, as amended) is amended to  
3 read:

4 "46A-1-107. GOVERNING LAW.--The meaning and effect of  
5 the terms of a trust are determined by:

6 A. the law of the jurisdiction designated in the  
7 terms unless the designation of that jurisdiction's law is  
8 contrary to a strong public policy of the jurisdiction having  
9 the most significant relationship to the matter at issue; or

10 B. in the absence of a controlling designation in  
11 the terms of the trust, the law of the jurisdiction having the  
12 most significant relationship to the matter at issue."

13 SECTION 95. A new section of the Uniform Trust Code,  
14 Section 46A-1-113 NMSA 1978, is enacted to read:

15 "46A-1-113. INSURABLE INTEREST OF TRUSTEE.--

16 A. In this section, "settlor" means a person,  
17 including a person for which a fiduciary or agent is acting,  
18 that executes a trust instrument.

19 B. A trustee of a trust has an insurable  
20 interest in the life of an individual insured under a life  
21 insurance policy owned by the trust or the trustee of the  
22 trust acting in a fiduciary capacity if, on the date the  
23 policy is issued:

24 (1) the insured is:

25 (a) a settlor of the trust; or

1 (b) an individual in whom a settlor of the  
2 trust has, or would have had if living at the time the policy  
3 was issued, an insurable interest; and

4 (2) the life insurance proceeds are primarily  
5 for the benefit of trust beneficiaries that have:

6 (a) an insurable interest in the life of  
7 the insured; or

8 (b) a substantial interest engendered by  
9 love and affection in the continuation of the life of the  
10 insured and, if not already included under Subparagraph (a) of  
11 this paragraph, who are: 1) related within the third degree  
12 or closer, as measured by the civil law system of determining  
13 degrees of relation, either by blood or law, to the insured;  
14 or 2) stepchildren of the insured."

15 SECTION 96. Section 46A-11-1104 NMSA 1978 (being Laws  
16 2003, Chapter 122, Section 11-1104) is amended to read:

17 "46A-11-1104. APPLICATION TO EXISTING RELATIONSHIPS.--

18 A. Except as otherwise provided in the Uniform  
19 Trust Code, on the effective date of the Uniform Trust Code or  
20 of any amendment to that code:

21 (1) the Uniform Trust Code or the amendment  
22 applies to all trusts created before, on or after its  
23 effective date;

24 (2) the Uniform Trust Code or the amendment  
25 applies to all judicial proceedings concerning trusts



1 commenced on or after its effective date;

2 (3) the Uniform Trust Code or the amendment  
3 applies to judicial proceedings concerning trusts commenced  
4 before its effective date, unless the court finds that  
5 application of a particular provision of the Uniform Trust  
6 Code or the amendment would substantially interfere with the  
7 effective conduct of the judicial proceedings or prejudice the  
8 rights of the parties, in which case the particular provision  
9 of the Uniform Trust Code or the amendment does not apply and  
10 the superseded law applies;

11 (4) any rule of construction or presumption  
12 provided in the Uniform Trust Code or the amendment applies to  
13 trust instruments executed before the effective date of the  
14 Uniform Trust Code or any amendment to that code unless there  
15 is a clear indication of a contrary intent in the terms of the  
16 trust; and

17 (5) an act done before the effective date of  
18 the Uniform Trust Code or any amendment to that code is not  
19 affected by the Uniform Trust Code or the amendment.

20 B. If a right is acquired, extinguished or barred  
21 upon the expiration of a prescribed period that has commenced  
22 to run under any other statute before the effective date of  
23 the Uniform Trust Code or any amendment to that code, that  
24 statute continues to apply to the right even if it has been  
25 repealed or superseded.

1 C. The Uniform Trust Code or any amendment to that  
2 code does not apply to the trust created by the Enabling Act  
3 for New Mexico of June 20, 1910, 36 Stat. 557, Ch. 310."

4 SECTION 97. REPEAL.--Sections 45-2-108, 45-5-301.2,  
5 45-5-432, 45-9A-12, 45-9A-13, 46-1-1 through 46-1-11 and  
6 46-10-17 NMSA 1978 (being Laws 1993, Chapter 174, Section 10,  
7 Laws 1993, Chapter 301, Section 24, Laws 1975, Chapter 257,  
8 Section 5-432, Laws 2005, Chapter 143, Sections 16 and 17,  
9 Laws 1923, Chapter 26, Sections 1, 2 and 4 through 12 and Laws  
10 2001, Chapter 290, Section 17) are repealed.

11 SECTION 98. TEMPORARY PROVISION--COMPILATION  
12 INSTRUCTIONS.--

13 A. Sections 45-2-101 through 45-2-114 NMSA 1978  
14 shall be compiled as Subpart 1, General Provisions, of Part 1  
15 of Article 2 of the Uniform Probate Code.

16 B. Sections 45-2-115 through 45-2-122 NMSA 1978  
17 shall be compiled as Subpart 2, Parent-Child Relationship, of  
18 Part 1 of Article 2 of the Uniform Probate Code.

19 C. Sections 45-2-901 through 45-2-914 NMSA 1978  
20 shall be compiled as Part 9, Uniform Statutory Rule Against  
21 Perpetuities; Honorary Trusts; Trusts For Pets; Time Limits On  
22 Options In Gross And Certain Other Interests In Real Property,  
23 of Article 2 of the Uniform Probate Code.

24 D. Sections 45-2-901 through 45-2-906 NMSA 1978  
25 shall be compiled as Subpart 1, Uniform Statutory Rule Against

1 Perpetuities, of Part 9 of Article 2 of the Uniform Probate  
2 Code.

3 E. Section 45-2-907 NMSA 1978 shall be compiled as  
4 Subpart 2, Honorary Trusts; Trusts For Pets, of Part 9 of  
5 Article 2 of the Uniform Probate Code.

6 F. Sections 45-2-908 through 45-2-914 NMSA 1978  
7 shall be compiled as Subpart 3, Time Limits On Options In  
8 Gross And Certain Other Interests In Real Property, of Part 9  
9 of Article 2 of the Uniform Probate Code.

10 SECTION 99. TEMPORARY PROVISION--RECOMPILATION.--

11 Sections 45-9A-1 through 45-9A-11 NMSA 1978 (being Laws 2005,  
12 Chapter 143, Sections 5 through 15) are recompiled as Sections  
13 45-3-920 through 45-3-930 NMSA 1978 and shall be compiled as  
14 Part 9A, the Uniform Estate Tax Apportionment Act, of Article  
15 3 of the Uniform Probate Code.

16 SECTION 100. TEMPORARY PROVISION--COMPILATION  
17 INSTRUCTIONS.--

18 A. Sections 62 through 83 of this act shall be  
19 compiled as Article 5A, the Uniform Adult Guardianship and  
20 Protective Proceedings Jurisdiction Act, of the Uniform  
21 Probate Code.

22 B. Sections 62 through 67 of this act shall be  
23 compiled as Part 1, General Provisions, of Article 5A of the  
24 Uniform Probate Code.

25 C. Sections 68 through 76 of this act shall be

1 compiled as Part 2, Jurisdiction, of Article 5A of the Uniform  
2 Probate Code.

3 D. Sections 77 and 78 of this act shall be compiled  
4 as Part 3, Transfer of Guardianship or Conservatorship, of  
5 Article 5A of the Uniform Probate Code.

6 E. Sections 79 through 81 of this act shall be  
7 compiled as Part 4, Registration and Recognition of Orders  
8 from Other States, of Article 5A of the Uniform Probate Code.

9 F. Sections 82 and 83 of this act shall be compiled  
10 as Part 5, Miscellaneous Provisions, of Article 5A of the  
11 Uniform Probate Code.

12 SECTION 101. TEMPORARY PROVISION--RECOMPILATION.--

13 Sections 46-10-3 through 46-10-5 NMSA 1978 (being Laws 2001,  
14 Chapter 290, Sections 3 through 5) are recompiled as Sections  
15 45-2-1103 through 45-2-1105 NMSA 1978. Sections 46-10-7  
16 through 46-10-11 NMSA 1978 (being Laws 2001, Chapter 290,  
17 Sections 7 through 11) are recompiled as Sections 45-2-1107  
18 through 45-2-1111 NMSA 1978. Sections 46-10-13, 46-10-14 and  
19 46-10-16 (being Laws 2001, Chapter 290, Sections 13, 14 and  
20 16) are recompiled as Sections 45-2-1113, 45-2-1114 and  
21 45-2-1116 NMSA 1978.

22 SECTION 102. TEMPORARY PROVISION--RECOMPILATION.--

23 A. Sections 46B-1-101 through 46B-1-123 NMSA 1978  
24 (being Laws 2007, Chapter 135, Sections 101 through 123) are  
25 recompiled as Sections 45-5B-101 through 45-5B-123 NMSA 1978.

1           B. Sections 46B-1-201 through 46B-1-217 NMSA 1978  
2 (being Laws 2007, Chapter 135, Sections 201 through 217) are  
3 recompiled as Sections 45-5B-201 through 45-5B-217 NMSA 1978.

4           C. Sections 46B-1-301 and 46B-1-302 (being Laws  
5 2007, Chapter 135, Sections 301 and 302) are recompiled as  
6 Sections 45-5B-301 and 45-5B-302 NMSA 1978.

7           D. Sections 46B-1-401 through 46B-1-403 NMSA 1978  
8 (being Laws 2007, Chapter 135, Sections 401 through 403) are  
9 recompiled as Sections 45-5B-401 through 45-5B-403 NMSA 1978.

10          SECTION 103. APPLICABILITY.--The provisions of Section  
11 87 of this act apply to a trust described in Subsection D of  
12 Section 46-3A-409 NMSA 1978 on and after the following dates:

13           A. if the trust is not funded as of  
14 January 1, 2012, the date of the decedent's death;

15           B. if the trust is initially funded in the calendar  
16 year beginning January 1, 2012, the date of the decedent's  
17 death; or

18           C. if the trust is not described in Subsection A or  
19 B of this section, January 1, 2012.

20          SECTION 104. EFFECTIVE DATE.--The effective date of the  
21 provisions of this act is January 1, 2012. \_\_\_\_\_

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