

1 HOUSE BILL 123

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

3 INTRODUCED BY

4 Daymon Ely

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9  
10 AN ACT

11 RELATING TO CONSERVATORSHIP; PROVIDING FOR WAIVER OF LIABILITY  
12 OF A CONSERVATOR IF A PROTECTED PERSON OR A PERSON INTERESTED  
13 IN A CONSERVATORSHIP ESTATE IS REPRESENTED BY INDEPENDENT LEGAL  
14 COUNSEL.

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

17 SECTION 1. Section 45-5-429 NMSA 1978 (being Laws 1975,  
18 Chapter 257, Section 5-429, as amended) is amended to read:

19 "45-5-429. INDIVIDUAL LIABILITY OF CONSERVATOR.--

20 A. Unless otherwise provided in the contract, a  
21 conservator is not individually liable on a contract properly  
22 entered into in the conservator's fiduciary capacity in the  
23 course of administration of the estate unless the conservator  
24 fails to reveal the conservator's representative capacity and  
25 identify the estate in the contract.

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1           B. The conservator is individually liable for  
2 obligations arising from ownership or control of property of  
3 the estate or for torts committed in the course of  
4 administration of the estate only if the conservator is  
5 personally at fault.

6           C. Claims based on contracts entered into by a  
7 conservator in the conservator's fiduciary capacity on  
8 obligations arising from ownership or control of the estate or  
9 on torts committed in the course of administration of the  
10 estate may be asserted against the estate by proceeding against  
11 the conservator in the conservator's fiduciary capacity,  
12 whether or not the conservator is individually liable for those  
13 claims.

14           D. Any question of liability between the estate and  
15 the conservator individually may be determined in a proceeding  
16 for accounting, surcharge or indemnification or other  
17 appropriate proceeding or action.

18           E. No person shall request, procure or receive a  
19 release or waiver of liability, however denominated, of a  
20 conservator, an agent, an affiliate or a designee of a  
21 conservator or any other third party acting on behalf of a  
22 conservator unless the protected person or a person interested  
23 in the conservatorship estate is represented by independent  
24 legal counsel.

25           F. A release or waiver of liability that is

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1 requested, procured or received contrary to the provisions of  
2 this section is void."

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