

BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PROPERTY; ENACTING THE UNIFORM POWERS OF
 APPOINTMENT ACT; ENACTING THE UNIFORM TRUST DECANTING ACT;
 REVISING THE STATUTORY RULE AGAINST PERPETUITIES AS IT AFFECTS
 PROPERTY INTERESTS, INCLUDING REAL PROPERTY INTERESTS, HELD IN
 TRUST; MAKING TECHNICAL AND CONFORMING CHANGES TO THE UNIFORM
 PROBATE CODE AND THE UNIFORM TRUST CODE; AMENDING PROVISIONS OF
 THE UNIFORM PROBATE CODE PERTAINING TO NOTICE, TIME FOR
 PRESENTATION OF CLAIMS, PENALTY CLAUSES AND CLOSING AN ESTATE.

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

UNIFORM POWERS OF APPOINTMENT ACT

Article 1

GENERAL PROVISIONS

SECTION 1-101. [NEW MATERIAL] SHORT TITLE.--Sections
 1-101 through 1-603 of this act may be cited as the "Uniform

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1 Powers of Appointment Act".

2 SECTION 1-102. [NEW MATERIAL] DEFINITIONS.--As used in
3 the Uniform Powers of Appointment Act:

4 A. "appointee" means a person to which a
5 powerholder makes an appointment of appointive property;

6 B. "appointive property" means the property or
7 property interest subject to a power of appointment;

8 C. "blanket-exercise clause" means a clause in an
9 instrument that exercises a power of appointment and is not a
10 specific-exercise clause. "Blanket-exercise clause" includes a
11 clause that:

12 (1) expressly uses the words "any power" in
13 exercising any power of appointment the powerholder has;

14 (2) expressly uses the words "any property" in
15 appointing any property over which the powerholder has a power
16 of appointment; or

17 (3) disposes of all property subject to
18 disposition by the powerholder;

19 D. "donor" means a person that creates a power of
20 appointment;

21 E. "exclusionary power of appointment" means a
22 power of appointment exercisable in favor of any one or more of
23 the permissible appointees to the exclusion of the other
24 permissible appointees;

25 F. "general power of appointment" means a power of

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1 appointment exercisable in favor of the powerholder, the
2 powerholder's estate, a creditor of the powerholder or a
3 creditor of the powerholder's estate;

4 G. "gift-in-default clause" means a clause
5 identifying a taker in default of appointment;

6 H. "impermissible appointee" means a person that is
7 not a permissible appointee;

8 I. "instrument" means a record;

9 J. "nongeneral power of appointment" means a power
10 of appointment that is not a general power of appointment;

11 K. "permissible appointee" means a person in whose
12 favor a powerholder may exercise a power of appointment;

13 L. "person" means an individual; an estate; a
14 trust; a business or nonprofit entity; a public corporation; a
15 government or governmental subdivision, agency or
16 instrumentality; or another legal entity;

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

22 N. "powerholder" means a person in which a donor
23 creates a power of appointment;

24 O. "presently exercisable power of appointment"
25 means a power of appointment exercisable by the powerholder at

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1 the relevant time. "Presently exercisable power of
2 appointment":

3 (1) includes a power of appointment not
4 exercisable until the occurrence of a specified event, the
5 satisfaction of an ascertainable standard or the passage of a
6 specified time only after:

7 (a) the occurrence of the specified
8 event;

9 (b) the satisfaction of the
10 ascertainable standard; or

11 (c) the passage of the specified time;
12 and

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

15 P. "record" means information that is inscribed on
16 a tangible medium or that is stored in an electronic or other
17 medium and is retrievable in perceivable form;

18 Q. "specific-exercise clause" means a clause in an
19 instrument that specifically refers to and exercises a
20 particular power of appointment;

21 R. "taker in default of appointment" means a person
22 that takes all or part of the appointive property to the extent
23 the powerholder does not effectively exercise the power of
24 appointment; and

25 S. "terms of the instrument" means the

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1 manifestation of the intent of the maker of the instrument
2 regarding the instrument's provisions as expressed in the
3 instrument or as may be established by other evidence that
4 would be admissible in a legal proceeding.

5 SECTION 1-103. [NEW MATERIAL] GOVERNING LAW.--Unless the
6 terms of the instrument creating a power of appointment
7 manifest a contrary intent:

8 A. the creation, revocation or amendment of the
9 power is governed by the law of the donor's domicile at the
10 relevant time; and

11 B. the exercise, release or disclaimer of the
12 power, or the revocation or amendment of the exercise, release
13 or disclaimer of the power, is governed by the law of the
14 powerholder's domicile at the relevant time.

15 SECTION 1-104. [NEW MATERIAL] COMMON LAW AND PRINCIPLES
16 OF EQUITY.--The common law and principles of equity supplement
17 the Uniform Powers of Appointment Act, except to the extent
18 modified by that act or New Mexico law other than that act.

19 Article 2

20 CREATION, REVOCATION AND AMENDMENT OF POWER OF APPOINTMENT

21 SECTION 1-201. [NEW MATERIAL] CREATION OF POWER OF
22 APPOINTMENT.--

23 A. A power of appointment is created only if:

24 (1) the instrument creating the power:

25 (a) is valid under applicable law; and

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1 (b) except as otherwise provided in
2 Subsection B of this section, transfers the appointive
3 property; and

4 (2) the terms of the instrument creating the
5 power manifest the donor's intent to create in a powerholder a
6 power of appointment over the appointive property exercisable
7 in favor of a permissible appointee.

8 B. Subparagraph (b) of Paragraph (1) of Subsection
9 A of this section does not apply to the creation of a power of
10 appointment by the exercise of a power of appointment.

11 C. A power of appointment shall not be created in a
12 deceased individual.

13 D. Subject to the provisions of Section 45-2-901
14 NMSA 1978, a power of appointment may be created in an unborn
15 or unascertained powerholder.

16 SECTION 1-202. [NEW MATERIAL] NONTRANSFERABILITY.--A
17 powerholder shall not transfer a power of appointment. If a
18 powerholder dies without exercising or releasing a power, the
19 power lapses.

20 SECTION 1-203. [NEW MATERIAL] PRESUMPTION OF UNLIMITED
21 AUTHORITY.--Subject to Section 1-205 of the Uniform Powers of
22 Appointment Act, and unless the terms of the instrument
23 creating a power of appointment manifest a contrary intent, the
24 power is:

25 A. presently exercisable;

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1 B. exclusionary; and

2 C. except as otherwise provided in Section 1-204 of
3 the Uniform Powers of Appointment Act, general.

4 SECTION 1-204. [NEW MATERIAL] EXCEPTION TO PRESUMPTION OF
5 UNLIMITED AUTHORITY.--Unless the terms of the instrument
6 creating a power of appointment manifest a contrary intent, the
7 power is nongeneral if:

8 A. the power is exercisable only at the
9 powerholder's death; and

10 B. the permissible appointees of the power are a
11 defined and limited class that does not include the
12 powerholder's estate, the powerholder's creditors or the
13 creditors of the powerholder's estate.

14 SECTION 1-205. [NEW MATERIAL] RULES OF CLASSIFICATION.--

15 A. As used in this section, "adverse party" means a
16 person with a substantial beneficial interest in property that
17 would be affected adversely by a powerholder's exercise or
18 nonexercise of a power of appointment in favor of the
19 powerholder, the powerholder's estate, a creditor of the
20 powerholder or a creditor of the powerholder's estate.

21 B. If a powerholder may exercise a power of
22 appointment only with the consent or joinder of an adverse
23 party, the power is nongeneral.

24 C. If the permissible appointees of a power of
25 appointment are not defined and limited, the power is

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1 exclusionary.

2 SECTION 1-206. [NEW MATERIAL] POWER TO REVOKE OR
3 AMEND.--A donor may revoke or amend a power of appointment only
4 to the extent that:

5 A. the instrument creating the power is revocable
6 by the donor; or

7 B. the donor reserves a power of revocation or
8 amendment in the instrument creating the power of appointment.

9 Article 3

10 EXERCISE OF POWER OF APPOINTMENT

11 SECTION 1-301. [NEW MATERIAL] REQUISITES FOR EXERCISE OF
12 POWER OF APPOINTMENT.--A power of appointment is exercised
13 only:

14 A. if the instrument exercising the power is valid
15 under applicable law; and

16 B. if the terms of the instrument exercising the
17 power:

18 (1) manifest the powerholder's intent to
19 exercise the power; and

20 (2) subject to Section 1-304 of the Uniform
21 Powers of Appointment Act, satisfy the requirements of
22 exercise, if any, imposed by the donor; and

23 C. to the extent the appointment is a permissible
24 exercise of the power.

25 SECTION 1-302. [NEW MATERIAL] INTENT TO EXERCISE--

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1 DETERMINING INTENT FROM RESIDUARY CLAUSE.--

2 A. As used in this section:

3 (1) "residuary clause" does not include a
4 residuary clause containing a blanket-exercise clause or a
5 specific-exercise clause; and

6 (2) "will" includes a codicil and a
7 testamentary instrument that revises another will.

8 B. A residuary clause in a powerholder's will, or a
9 comparable clause in the powerholder's revocable trust,
10 manifests the powerholder's intent to exercise a power of
11 appointment only if:

12 (1) the terms of the instrument containing the
13 residuary clause do not manifest a contrary intent;

14 (2) the power is a general power exercisable
15 in favor of the powerholder's estate;

16 (3) there is no gift-in-default clause or the
17 gift-in-default clause is ineffective; and

18 (4) the powerholder did not release the power.

19 SECTION 1-303. [NEW MATERIAL] INTENT TO EXERCISE--AFTER-
20 ACQUIRED POWER.--Unless the terms of the instrument exercising
21 a power of appointment manifest a contrary intent:

22 A. except as otherwise provided in Subsection B of
23 this section, a blanket-exercise clause extends to a power
24 acquired by the powerholder after executing the instrument
25 containing the clause; and

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1 B. if the powerholder is also the donor of the
2 power, the clause does not extend to the power unless there is
3 no gift-in-default clause or the gift-in-default clause is
4 ineffective.

5 **SECTION 1-304. [NEW MATERIAL] SUBSTANTIAL COMPLIANCE WITH**
6 **DONOR-IMPOSED FORMAL REQUIREMENT.--**A powerholder's substantial
7 compliance with a formal requirement of appointment imposed by
8 the donor, including a requirement that the instrument
9 exercising the power of appointment make reference or specific
10 reference to the power, is sufficient if:

11 A. the powerholder knows of and intends to exercise
12 the power; and

13 B. the powerholder's manner of attempted exercise
14 of the power does not impair a material purpose of the donor in
15 imposing the requirement.

16 **SECTION 1-305. [NEW MATERIAL] PERMISSIBLE APPOINTMENT.--**

17 A. A powerholder of a general power of appointment
18 that permits appointment to the powerholder or the
19 powerholder's estate may make any appointment, including an
20 appointment in trust or creating a new power of appointment,
21 that the powerholder could make in disposing of the
22 powerholder's own property.

23 B. A powerholder of a general power of appointment
24 that permits appointment only to the creditors of the
25 powerholder or of the powerholder's estate may appoint only to

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1 those creditors.

2 C. Unless the terms of the instrument creating a
3 power of appointment manifest a contrary intent, the
4 powerholder of a nongeneral power may:

5 (1) make an appointment in any form, including
6 an appointment in trust, in favor of a permissible appointee;

7 (2) create a general power in a permissible
8 appointee; or

9 (3) create a nongeneral power in any person to
10 appoint to one or more of the permissible appointees of the
11 original nongeneral power.

12 SECTION 1-306. [NEW MATERIAL] APPOINTMENT TO DECEASED
13 APPOINTEE OR PERMISSIBLE APPOINTEE'S DESCENDANT.--

14 A. Subject to Sections 45-2-603 and 45-2-707 NMSA
15 1978, an appointment to a deceased appointee is ineffective.

16 B. Unless the terms of the instrument creating a
17 power of appointment manifest a contrary intent, a powerholder
18 of a nongeneral power may exercise the power in favor of, or
19 create a new power of appointment in, a descendant of a
20 deceased permissible appointee whether or not the descendant is
21 described by the donor as a permissible appointee.

22 SECTION 1-307. [NEW MATERIAL] IMPERMISSIBLE
23 APPOINTMENT.--

24 A. Except as otherwise provided in Section 1-306 of
25 the Uniform Powers of Appointment Act, an exercise of a power

1 of appointment in favor of an impermissible appointee is
2 ineffective.

3 B. An exercise of a power of appointment in favor
4 of a permissible appointee is ineffective to the extent the
5 appointment is a fraud on the power.

6 SECTION 1-308. [NEW MATERIAL] SELECTIVE ALLOCATION
7 DOCTRINE.--If a powerholder exercises a power of appointment in
8 a disposition that also disposes of property the powerholder
9 owns, the owned property and the appointive property must be
10 allocated in the permissible manner that best carries out the
11 powerholder's intent.

12 SECTION 1-309. [NEW MATERIAL] CAPTURE DOCTRINE--
13 DISPOSITION OF INEFFECTIVELY APPOINTED PROPERTY UNDER GENERAL
14 POWER.--To the extent a powerholder of a general power of
15 appointment, other than a power to withdraw property from,
16 revoke or amend a trust, makes an ineffective appointment:

17 A. the gift-in-default clause controls the
18 disposition of the ineffectively appointed property; or

19 B. if there is no gift-in-default clause or to the
20 extent the clause is ineffective, the ineffectively appointed
21 property:

22 (1) passes to:

23 (a) the powerholder if the powerholder
24 is a permissible appointee and is living; or

25 (b) if the powerholder is an

1 impermissible appointee or deceased, the powerholder's estate
2 if the estate is a permissible appointee; or

3 (2) if there is no taker under Paragraph (1)
4 of this subsection, passes under a reversionary interest to the
5 donor or the donor's transferee or successor in interest.

6 SECTION 1-310. [NEW MATERIAL] DISPOSITION OF UNAPPOINTED
7 PROPERTY UNDER RELEASED OR UNEXERCISED GENERAL POWER.--To the
8 extent a powerholder releases or fails to exercise a general
9 power of appointment other than a power to withdraw property
10 from, revoke or amend a trust:

11 A. the gift-in-default clause controls the
12 disposition of the unappointed property; or

13 B. if there is no gift-in-default clause or to the
14 extent the clause is ineffective:

15 (1) except as otherwise provided in Paragraph
16 (2) of this subsection, the unappointed property passes to:

17 (a) the powerholder if the powerholder
18 is a permissible appointee and is living; or

19 (b) if the powerholder is an
20 impermissible appointee or deceased, the powerholder's estate
21 if the estate is a permissible appointee; or

22 (2) to the extent the powerholder released the
23 power, or if there is no taker under Paragraph (1) of this
24 subsection, the unappointed property passes under a
25 reversionary interest to the donor or the donor's transferee or

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1 successor in interest.

2 SECTION 1-311. [NEW MATERIAL] DISPOSITION OF UNAPPOINTED
3 PROPERTY UNDER RELEASED OR UNEXERCISED NONGENERAL POWER.--To
4 the extent a powerholder releases, ineffectively exercises or
5 fails to exercise a nongeneral power of appointment:

6 A. the gift-in-default clause controls the
7 disposition of the unappointed property; or

8 B. if there is no gift-in-default clause or to the
9 extent that the clause is ineffective, the unappointed
10 property:

11 (1) passes to the permissible appointees if:

12 (a) the permissible appointees are
13 defined and limited; and

14 (b) the terms of the instrument creating
15 the power do not manifest a contrary intent; or

16 (2) if there is no taker under Paragraph (1)
17 of this subsection, passes under a reversionary interest to the
18 donor or the donor's transferee or successor in interest.

19 SECTION 1-312. [NEW MATERIAL] DISPOSITION OF UNAPPOINTED
20 PROPERTY IF PARTIAL APPOINTMENT TO TAKER IN DEFAULT.--Unless
21 the terms of the instrument creating or exercising a power of
22 appointment manifest a contrary intent, if the powerholder
23 makes a valid partial appointment to a taker in default of
24 appointment, the taker in default of appointment may share
25 fully in unappointed property.

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1 in appointive property.

2 SECTION 1-402. [NEW MATERIAL] AUTHORITY TO RELEASE.--A
3 powerholder may release a power of appointment, in whole or in
4 part, except to the extent that the terms of the instrument
5 creating the power prevent the release.

6 SECTION 1-403. [NEW MATERIAL] METHOD OF RELEASE.--A
7 powerholder of a releasable power of appointment may release
8 the power in whole or in part:

9 A. by substantial compliance with a method provided
10 in the terms of the instrument creating the power; or

11 B. if the terms of the instrument creating the
12 power do not provide a method or the method provided in the
13 terms of the instrument is not expressly made exclusive, by a
14 record manifesting the powerholder's intent by clear and
15 convincing evidence.

16 SECTION 1-404. [NEW MATERIAL] REVOCATION OR AMENDMENT OF
17 RELEASE.--A powerholder may revoke or amend a release of a
18 power of appointment only to the extent that:

19 A. the instrument of release is revocable by the
20 powerholder; or

21 B. the powerholder reserves a power of revocation
22 or amendment in the instrument of release.

23 SECTION 1-405. [NEW MATERIAL] POWER TO CONTRACT--
24 PRESENTLY EXERCISABLE POWER OF APPOINTMENT.--A powerholder of a
25 presently exercisable power of appointment may contract:

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1 of appointment created by the powerholder is subject to a claim
2 of a creditor of the powerholder or of the powerholder's estate
3 to the extent provided in the Uniform Fraudulent Transfer Act.

4 C. Subject to Subsection B of this section,
5 appointive property subject to a general power of appointment
6 created by the powerholder is not subject to a claim of a
7 creditor of the powerholder or the powerholder's estate to the
8 extent the powerholder irrevocably appointed the property in
9 favor of a person other than the powerholder or the
10 powerholder's estate.

11 D. Subject to Subsections B and C of this section,
12 and notwithstanding the presence of a spendthrift provision or
13 whether the claim arose before or after the creation of the
14 power of appointment, appointive property subject to a general
15 power of appointment created by the powerholder is subject to a
16 claim of a creditor of:

17 (1) the powerholder, to the same extent as if
18 the powerholder owned the appointive property, if the power is
19 presently exercisable; and

20 (2) the powerholder's estate, to the extent
21 the estate is insufficient to satisfy the claim and subject to
22 the right of a decedent to direct the source from which
23 liabilities are paid, if the power is exercisable at the
24 powerholder's death.

25 SECTION 1-502. [NEW MATERIAL] CREDITOR CLAIM--GENERAL

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1 POWER NOT CREATED BY POWERHOLDER.--

2 A. Except as otherwise provided in Subsection B of
3 this section, appointive property subject to a general power of
4 appointment created by a person other than the powerholder is
5 subject to a claim of a creditor of:

6 (1) the powerholder, to the extent that the
7 powerholder's property is insufficient, if the power is
8 presently exercisable; and

9 (2) the powerholder's estate, to the extent
10 that the estate is insufficient, subject to the right of a
11 decedent to direct the source from which liabilities are paid.

12 B. Subject to Subsection C of Section 1-504 of the
13 Uniform Powers of Appointment Act, a power of appointment
14 created by a person other than the powerholder that is subject
15 to an ascertainable standard relating to an individual's
16 health, education, support or maintenance within the meaning of
17 26 U.S.C. Section 2041(b)(1)(A) or 26 U.S.C. Section
18 2514(c)(1), is treated for purposes of this article as a
19 nongeneral power.

20 SECTION 1-503. [NEW MATERIAL] POWER TO WITHDRAW.--

21 A. For purposes of this article and except as
22 otherwise provided in Subsection B of this section, a power to
23 withdraw property from a trust is treated, during the time the
24 power may be exercised, as a presently exercisable general
25 power of appointment to the extent of the property subject to

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1 the power to withdraw.

2 B. On the lapse, release or waiver of a power to
3 withdraw property from a trust, the power is treated as a
4 presently exercisable general power of appointment only to the
5 extent that the value of the property affected by the lapse,
6 release or waiver exceeds the greater of the amount specified
7 in 26 U.S.C. Section 2041(b)(2) and 26 U.S.C. Section 2514(e)
8 or the amount specified in 26 U.S.C. Section 2503(b).

9 SECTION 1-504. [NEW MATERIAL] CREDITOR CLAIM--NONGENERAL
10 POWER.--

11 A. Except as otherwise provided in Subsections B
12 and C of this section, appointive property subject to a
13 nongeneral power of appointment is exempt from a claim of a
14 creditor of the powerholder or the powerholder's estate.

15 B. Appointive property subject to a nongeneral
16 power of appointment is subject to a claim of a creditor of the
17 powerholder or the powerholder's estate to the extent that the
18 powerholder owned the property and, reserving the nongeneral
19 power, transferred the property in violation of the Uniform
20 Fraudulent Transfer Act.

21 C. If the initial gift in default of appointment is
22 to the powerholder or the powerholder's estate, a nongeneral
23 power of appointment is treated for purposes of this article as
24 a general power.

25 Article 6

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1 MISCELLANEOUS PROVISIONS

2 SECTION 1-601. [NEW MATERIAL] UNIFORMITY OF APPLICATION
3 AND CONSTRUCTION.--In applying and construing the Uniform
4 Powers of Appointment Act, consideration shall be given to the
5 need to promote uniformity of the act with respect to its
6 subject matter among states that enact it.

7 SECTION 1-602. [NEW MATERIAL] RELATION TO ELECTRONIC
8 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform
9 Powers of Appointment Act modifies, limits or supersedes the
10 Electronic Signatures in Global and National Commerce Act, 15
11 U.S.C. Section 7001 et seq., but does not modify, limit or
12 supersede Section 101(c) of that act, 15 U.S.C. Section
13 7001(c), or authorize electronic delivery of any of the notices
14 described in Section 103(b) of that act, 15 U.S.C. Section
15 7003(b).

16 SECTION 1-603. [NEW MATERIAL] APPLICATION TO EXISTING
17 RELATIONSHIPS.--

18 A. Except as otherwise provided in the Uniform
19 Powers of Appointment Act, on and after January 1, 2017:

20 (1) the Uniform Powers of Appointment Act
21 applies to a power of appointment created before, on or after
22 January 1, 2017;

23 (2) the Uniform Powers of Appointment Act
24 applies to a judicial proceeding concerning a power of
25 appointment commenced on or after January 1, 2017;

1 (3) the Uniform Powers of Appointment Act
2 applies to a judicial proceeding concerning a power of
3 appointment commenced before January 1, 2017 unless the court
4 finds that application of a particular provision of the Uniform
5 Powers of Appointment Act would interfere substantially with
6 the effective conduct of the judicial proceeding or prejudice a
7 right of a party, in which case the particular provision of the
8 Uniform Powers of Appointment Act does not apply and the
9 superseded law applies;

10 (4) a rule of construction or presumption
11 provided in the Uniform Powers of Appointment Act applies to an
12 instrument executed before January 1, 2017 unless there is a
13 clear indication of a contrary intent in the terms of the
14 instrument; and

15 (5) except as otherwise provided in Paragraphs
16 (1) through (4) of this subsection, an action done before
17 January 1, 2017 is not affected by that act.

18 B. If a right is acquired, extinguished or barred
19 on the expiration of a prescribed period that commenced under
20 New Mexico law other than the Uniform Powers of Appointment Act
21 before January 1, 2017, the law continues to apply to the
22 right.

23 UNIFORM TRUST DECANTING ACT

24 Article 1

25 GENERAL PROVISIONS

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1 SECTION 2-101. [NEW MATERIAL] SHORT TITLE.--Sections
2 2-101 through 2-129 of this act may be cited as the "Uniform
3 Trust Decanting Act".

4 SECTION 2-102. [NEW MATERIAL] DEFINITIONS.--As used in
5 the Uniform Trust Decanting Act:

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

8 B. "ascertainable standard" means a standard
9 relating to an individual's health, education, support or
10 maintenance within the meaning of 26 U.S.C. Section
11 2041(b)(1)(A), as amended, or 26 U.S.C. Section 2514(c)(1), as
12 amended, and any applicable regulations;

13 C. "authorized fiduciary" means:

14 (1) a trustee or other fiduciary, other than a
15 settlor, that has discretion to distribute, or direct a trustee
16 to distribute, part or all of the principal of the first trust
17 to one or more current beneficiaries;

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

20 (3) a special needs fiduciary under Section
21 2-113 of the Uniform Trust Decanting Act;

22 D. "beneficiary" means a person that:

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

25 (2) holds a power of appointment over trust

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1 property; or

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

5 E. "charitable interest" means an interest in a
6 trust that:

7 (1) is held by an identified charitable
8 organization and makes the organization a qualified
9 beneficiary;

10 (2) benefits only charitable organizations
11 and, if the interest were held by an identified charitable
12 organization, would make the organization a qualified
13 beneficiary; or

14 (3) is held solely for charitable purposes
15 and, if the interest were held by an identified charitable
16 organization, would make the organization a qualified
17 beneficiary;

18 F. "charitable organization" means:

19 (1) a person, other than an individual,
20 organized and operated exclusively for charitable purposes; or

21 (2) a government or governmental subdivision,
22 agency or instrumentality, to the extent it holds funds
23 exclusively for a charitable purpose;

24 G. "charitable purpose" means the relief of
25 poverty, the advancement of education or religion, the

1 promotion of health, a governmental or municipal purpose or
2 another purpose, the achievement of which is beneficial to the
3 community;

4 H. "court" means the court in New Mexico having
5 jurisdiction in matters relating to trusts;

6 I. "current beneficiary" means a beneficiary that,
7 on the date the beneficiary's qualification is determined, is a
8 distributee or permissible distributee of trust income or
9 principal. "Current beneficiary":

10 (1) includes the holder of a presently
11 exercisable general power of appointment; and

12 (2) does not include a person that is a
13 beneficiary only because the person holds any other power of
14 appointment;

15 J. "decanting power" or "the decanting power" means
16 the power of an authorized fiduciary under the Uniform Trust
17 Decanting Act to distribute property of a first trust to one or
18 more second trusts or to modify the terms of the first trust;

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

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

24 M. "first-trust instrument" means the trust
25 instrument for a first trust;

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1 N. "general power of appointment" means a power of
2 appointment exercisable in favor of a powerholder, the
3 powerholder's estate, a creditor of the powerholder or a
4 creditor of the powerholder's estate;

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

7 P. "noncontingent" means:

8 (1) not subject to the exercise of discretion
9 or the occurrence of a specified event that is not certain to
10 occur; and

11 (2) that no person has discretion to
12 distribute the property subject to the interest to any person
13 other than the beneficiary or the beneficiary's estate;

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

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

23 S. "powerholder" means a person in which a donor
24 creates a power of appointment;

25 T. "presently exercisable power of appointment"

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1 means a power of appointment exercisable by the powerholder at
2 the relevant time. "Presently exercisable power":

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

7 (a) the occurrence of the specified
8 event;

9 (b) the satisfaction of the
10 ascertainable standard; or

11 (c) the passage of the specified time;
12 and

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

15 U. "qualified beneficiary" means a beneficiary that
16 on the date the beneficiary's qualification is determined:

17 (1) is a distributee or permissible
18 distributee of trust income or principal;

19 (2) would be a distributee or permissible
20 distributee of trust income or principal if the interests of
21 the distributees described in Paragraph (1) of this subsection
22 terminated on that date without causing the trust to terminate;
23 or

24 (3) would be a distributee or permissible
25 distributee of trust income or principal if the trust

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1 terminated on that date;

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

7 W. "record" means information that is inscribed on
8 a tangible medium or that is stored in an electronic or other
9 medium and is retrievable in perceivable form;

10 X. "second trust" means:

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

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

16 Y. "second-trust instrument" means the trust
17 instrument for a second trust;

18 Z. "settlor", except as otherwise provided in
19 Section 2-125 of the Uniform Trust Decanting Act, means a
20 person, including a testator, that creates or contributes
21 property to a trust. If more than one person creates or
22 contributes property to a trust, each person is a settlor of
23 the portion of the trust property attributable to the person's
24 contribution except to the extent that another person has power
25 to revoke or withdraw that portion;

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1 AA. "sign" means, with present intent to
2 authenticate or adopt a record:

- 3 (1) to execute or adopt a tangible symbol; or
4 (2) to attach to or logically associate with
5 the record an electronic symbol, sound or process;

6 BB. "state" means a state of the United States, the
7 District of Columbia, Puerto Rico, the United States Virgin
8 Islands or any territory or insular possession subject to the
9 jurisdiction of the United States;

10 CC. "terms of the trust" means the manifestation of
11 the settlor's intent regarding a trust's provisions as
12 expressed in the trust instrument, as may be established by
13 other evidence that would be admissible in a judicial
14 proceeding or as may be established by court order or
15 nonjudicial settlement agreement; and

16 DD. "trust instrument" means a record executed by
17 the settlor to create the trust or a record executed by any
18 person to create a second trust that contains some or all of
19 the terms of the trust, including any amendments.

20 SECTION 2-103. [NEW MATERIAL] SCOPE.--

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

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

3 C. Subject to Section 2-115 of the Uniform Trust
4 Decanting Act, a trust instrument may restrict or prohibit
5 exercise of the decanting power.

6 D. The Uniform Trust Decanting Act does not limit
7 the power of a trustee, powerholder or other person to
8 distribute or appoint property in further trust or to modify a
9 trust under the trust instrument, New Mexico law other than the
10 Uniform Trust Decanting Act, common law, a court order or a
11 nonjudicial-settlement agreement.

12 E. The Uniform Trust Decanting Act does not affect
13 the ability of a settlor to provide in a trust instrument for
14 the distribution or appointment in further trust of the trust
15 property or for modification of the trust instrument.

16 **SECTION 2-104. [NEW MATERIAL] FIDUCIARY DUTY.--**

17 A. In exercising the decanting power, an authorized
18 fiduciary shall act in accordance with its fiduciary duties,
19 including the duty to act in accordance with the purposes of
20 the first trust.

21 B. The Uniform Trust Decanting Act does not create
22 or imply a duty to exercise the decanting power or to inform
23 beneficiaries about the applicability of the Uniform Trust
24 Decanting Act.

25 C. Except as otherwise provided in a first-trust

1 instrument, for purposes of the Uniform Trust Decanting Act,
2 Section 46A-8-801 NMSA 1978 and Subsection A of Section
3 46A-8-802 NMSA 1978, the terms of the first trust are deemed to
4 include the decanting power.

5 SECTION 2-105. [NEW MATERIAL] APPLICATION--GOVERNING
6 LAW.--The Uniform Trust Decanting Act applies to a trust
7 created before, on or after January 1, 2017 that:

8 A. has its principal place of administration in New
9 Mexico, including a trust whose principal place of
10 administration has been changed to New Mexico; or

11 B. provides by its trust instrument that it is
12 governed by New Mexico law or is governed by New Mexico law for
13 purposes of:

14 (1) administration, including a trust whose
15 governing law for purposes of administration has been changed
16 to New Mexico law;

17 (2) construction of terms of the trust; or

18 (3) determining the meaning or effect of terms
19 of the trust.

20 SECTION 2-106. [NEW MATERIAL] REASONABLE RELIANCE.--A
21 trustee or other person that reasonably relies on the validity
22 of a distribution of part or all of the property of a trust to
23 another trust, or a modification of a trust under the Uniform
24 Trust Decanting Act, New Mexico law other than the Uniform
25 Trust Decanting Act or the law of another jurisdiction, is not

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1 liable to any person for any action or failure to act as a
2 result of the reliance.

3 SECTION 2-107. [NEW MATERIAL] NOTICE.--

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

7 B. Except as otherwise provided in the Uniform
8 Trust Decanting Act, an authorized fiduciary may exercise the
9 decanting power without the consent of any person and without
10 court approval.

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

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

17 (2) each qualified beneficiary of the first
18 trust;

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

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

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

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

25 (7) the attorney general, if Subsection B of

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1 Section 2-114 of the Uniform Trust Decanting Act applies.

2 D. An authorized fiduciary is not required to give
3 notice under Subsection C of this section to a qualified
4 beneficiary who is a minor and has no representative. The
5 authorized fiduciary is not required to give notice under
6 Subsection C of this section to a person that is not known to
7 the fiduciary or is known to the fiduciary but cannot be
8 located by the fiduciary after reasonable diligence.

9 E. A notice given under Subsection C of this
10 section shall:

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

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

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

17 (4) include a copy of all second-trust
18 instruments.

19 F. The decanting power may be exercised before
20 expiration of the notice period specified in Subsection A of
21 this section if all persons entitled to receive notice waive
22 the period in a signed record.

23 G. The receipt of notice, waiver of the notice
24 period or expiration of the notice period does not affect the
25 right of a person to file a petition under Section 2-109 of the

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1 Uniform Trust Decanting Act with the court asserting that:

2 (1) an attempted exercise of the decanting
3 power is ineffective because it did not comply with the Uniform
4 Trust Decanting Act or was an abuse of discretion or breach of
5 fiduciary duty; or

6 (2) Section 2-122 of the Uniform Trust
7 Decanting Act applies to the exercise of the decanting power.

8 H. An exercise of the decanting power is not
9 ineffective because of the failure to give notice to one or
10 more persons under Subsection C of this section if the
11 authorized fiduciary acted with reasonable care to comply with
12 that subsection.

13 **SECTION 2-108. [NEW MATERIAL] REPRESENTATION.--**

14 A. Notice to a person with authority to represent
15 and bind another person under a first-trust instrument or the
16 Uniform Trust Code has the same effect as notice given directly
17 to the person represented.

18 B. Consent of or waiver by a person with authority
19 to represent and bind another person under a first-trust
20 instrument or the Uniform Trust Code is binding on the person
21 represented unless the person represented objects to the
22 representation before the consent or waiver otherwise would
23 become effective.

24 C. A person with authority to represent and bind
25 another person under a first-trust instrument or the Uniform

1 Trust Code may file an application under Section 2-109 of the
2 Uniform Trust Decanting Act on behalf of the person
3 represented.

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

6 SECTION 2-109. [NEW MATERIAL] COURT INVOLVEMENT.--

7 A. On application of an authorized fiduciary, a
8 person entitled to notice under Subsection C of Section 2-107
9 of the Uniform Trust Decanting Act, a beneficiary or, with
10 respect to a charitable interest, the attorney general or any
11 other person that has standing to enforce the charitable
12 interest, the court, may:

13 (1) provide instructions to the authorized
14 fiduciary regarding whether a proposed exercise of the
15 decanting power is permitted under the Uniform Trust Decanting
16 Act and consistent with the fiduciary duties of the authorized
17 fiduciary;

18 (2) appoint a special fiduciary and authorize
19 the special fiduciary to determine whether the decanting power
20 should be exercised under the Uniform Trust Decanting Act and
21 to exercise the decanting power;

22 (3) approve an exercise of the decanting
23 power;

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

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1 (a) after applying Section 2-122 of the
2 Uniform Trust Decanting Act, the proposed or attempted exercise
3 does not or did not comply with the Uniform Trust Decanting
4 Act; or

5 (b) the proposed or attempted exercise
6 would be or was an abuse of the fiduciary's discretion or a
7 breach of fiduciary duty;

8 (5) determine the extent to which Section
9 2-122 of the Uniform Trust Decanting Act applies to a prior
10 exercise of the decanting power;

11 (6) provide instructions to the trustee
12 regarding the application of Section 2-122 of the Uniform Trust
13 Decanting Act to a prior exercise of the decanting power; or

14 (7) order other appropriate relief to carry
15 out the purposes of the Uniform Trust Decanting Act.

16 B. On application of an authorized fiduciary, the
17 court may approve:

18 (1) an increase in the fiduciary's
19 compensation under Section 2-116 of the Uniform Trust Decanting
20 Act; or

21 (2) a modification under Section 2-118 of the
22 Uniform Trust Decanting Act of a provision granting a person
23 the right to remove or replace the fiduciary.

24 **SECTION 2-110.** [NEW MATERIAL] FORMALITIES.--An exercise
25 of the decanting power shall be made in a record signed by an

1 authorized fiduciary. The signed record shall, directly or by
2 reference to the notice required by Section 2-107 of the
3 Uniform Trust Decanting Act, identify the first trust and the
4 second trusts and state which assets of the first trust are
5 being distributed to each of the second trusts and which
6 assets, if any, remain in the first trust.

7 SECTION 2-111. [NEW MATERIAL] DECANTING POWER UNDER
8 EXPANDED DISTRIBUTIVE DISCRETION.--

9 A. As used in this section:

10 (1) "presumptive remainder beneficiary" means
11 a qualified beneficiary other than a current beneficiary;

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

18 (3) "vested interest" means:

19 (a) a right to a mandatory distribution
20 that is noncontingent as of the date of the exercise of the
21 decanting power;

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

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1 (c) a current and noncontingent right,
2 annually or more frequently, to withdraw income, a specified
3 dollar amount or a percentage of value of some or all of the
4 trust property;

5 (d) a presently exercisable general
6 power of appointment; or

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

11 B. Subject to Subsection C of this section and
12 Section 2-114 of the Uniform Trust Decanting Act, an authorized
13 fiduciary that has expanded distributive discretion over the
14 principal of a first trust for benefit of one or more current
15 beneficiaries may exercise the decanting power over the
16 principal of the first trust.

17 C. Subject to Section 2-113 of the Uniform Trust
18 Decanting Act, in an exercise of the decanting power under this
19 section, a second trust shall not:

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

23 (2) include as a presumptive remainder
24 beneficiary or successor beneficiary a person that is not a
25 current beneficiary, presumptive remainder beneficiary or

1 successor beneficiary of the first trust, except as otherwise
2 provided in Subsection D of this section; or

3 (3) reduce or eliminate a vested interest.

4 D. Subject to Paragraph (3) of Subsection C of this
5 section and Section 2-114 of the Uniform Trust Decanting Act,
6 in an exercise of the decanting power under this section, a
7 second trust may:

8 (1) retain a power of appointment granted in
9 the first trust;

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

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

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

22 (5) be a trust created or administered under
23 the law of any jurisdiction.

24 E. A power of appointment described in Paragraphs
25 (1) through (4) of Subsection D of this section may be general

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1 or nongeneral. The class of permissible appointees in favor of
2 which the power may be exercised may be broader than or
3 different from the beneficiaries of the first trust.

4 F. If an authorized fiduciary has expanded
5 distributive discretion over part but not all of the principal
6 of a first trust, the fiduciary may exercise the decanting
7 power under this section over that part of the principal over
8 which the authorized fiduciary has expanded distributive
9 discretion.

10 SECTION 2-112. [NEW MATERIAL] DECANTING POWER UNDER
11 LIMITED DISTRIBUTIVE DISCRETION.--

12 A. As used in this section, "limited distributive
13 discretion" means a discretionary power of distribution that is
14 limited to an ascertainable standard or a reasonably definite
15 standard.

16 B. An authorized fiduciary that has limited
17 distributive discretion over the principal of the first trust
18 for benefit of one or more current beneficiaries may exercise
19 the decanting power over the principal of the first trust.

20 C. Second trusts under this section, in the
21 aggregate, shall grant each beneficiary of the first trust
22 beneficial interests in the second trusts that are
23 substantially similar to the beneficial interests of the
24 beneficiary in the first trust.

25 D. A power to make a distribution under a second

1 trust for the benefit of a beneficiary who is an individual is
2 substantially similar to a power under the first trust to make
3 a distribution directly to the beneficiary. A distribution is
4 for the benefit of a beneficiary if:

5 (1) the distribution is applied for the
6 benefit of the beneficiary;

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

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

14 E. Subject to Section 2-114 of the Uniform Trust
15 Decanting Act, a second trust under this section may be created
16 or administered under the law of any jurisdiction.

17 F. If an authorized fiduciary has limited
18 distributive discretion over part but not all of the principal
19 of a first trust, the fiduciary may exercise the decanting
20 power provided by this section over that part of the principal
21 over which the authorized fiduciary has limited distributive
22 discretion.

23 SECTION 2-113. [NEW MATERIAL] TRUST FOR BENEFICIARY WITH
24 DISABILITY.--

25 A. As used in this section:

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1 (1) "beneficiary with a disability" means a
2 beneficiary of the first trust who the special needs fiduciary
3 believes may qualify for governmental benefits based on
4 disability, whether or not the beneficiary currently receives
5 those benefits or is an individual who has been adjudicated
6 incapacitated;

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

10 (3) "special needs fiduciary" means, with
11 respect to a trust that has a beneficiary with a disability:

12 (a) a trustee or other fiduciary, other
13 than a settlor, that has discretion to distribute part or all
14 of the principal of a first trust to one or more current
15 beneficiaries;

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

21 (c) if no trustee or fiduciary has
22 discretion under Subparagraphs (a) and (b) of this paragraph, a
23 trustee or other fiduciary, other than a settlor, that is
24 required to distribute part or all of the income or principal
25 of the first trust to one or more current beneficiaries; and

1 (4) "special needs trust" means a trust that
2 the trustee believes would not be considered a resource for
3 purposes of determining whether the beneficiary with a
4 disability is eligible for governmental benefits.

5 B. A special needs fiduciary may exercise the
6 decanting power provided by Section 2-111 of the Uniform Trust
7 Decanting Act over the principal of a first trust as if the
8 fiduciary had authority to distribute principal to a
9 beneficiary with a disability subject to expanded distributive
10 discretion if:

11 (1) a second trust is a special needs trust
12 that benefits the beneficiary with a disability; and

13 (2) the special needs fiduciary determines
14 that exercise of the decanting power will further the purposes
15 of the first trust.

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

18 (1) notwithstanding Paragraph (2) of
19 Subsection C of Section 2-111 of the Uniform Trust Decanting
20 Act, the interest in the second trust of a beneficiary with a
21 disability may:

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

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

4 (2) Paragraph (3) of Subsection C of Section
5 2-111 of the Uniform Trust Decanting Act does not apply to the
6 interests of the beneficiary with a disability; and

7 (3) except as affected by any change to the
8 interests of the beneficiary with a disability, the second
9 trusts, in the aggregate, shall grant each other beneficiary of
10 the first trust beneficial interests in the second trusts that
11 are substantially similar to the beneficiary's beneficial
12 interests in the first trust.

13 SECTION 2-114. [NEW MATERIAL] PROTECTION OF CHARITABLE
14 INTERESTS.--

15 A. As used in this section:

16 (1) "determinable charitable interest" means a
17 charitable interest that is a right to a mandatory distribution
18 currently, periodically, on the occurrence of a specified event
19 or after the passage of a specified time and that is
20 unconditional or that will in all events be held for charitable
21 purposes; and

22 (2) "unconditional" means not subject to the
23 occurrence of a specified event that is not certain to occur,
24 other than a requirement in a trust instrument that a
25 charitable organization be in existence or qualify under a

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1 particular provision of the United States Internal Revenue Code
2 of 1986, as amended, on the date of the distribution if the
3 charitable organization meets the requirement on the date of
4 determination.

5 B. If a first trust contains a determinable
6 charitable interest, the attorney general has the rights of a
7 qualified beneficiary and may represent and bind the charitable
8 interest.

9 C. If a first trust contains a charitable interest,
10 the second trusts shall not:

11 (1) diminish the charitable interest;

12 (2) diminish the interest of an identified
13 charitable organization that holds the charitable interest;

14 (3) alter any charitable purpose stated in the
15 first-trust instrument; or

16 (4) alter any condition or restriction related
17 to the charitable interest.

18 D. If there are two or more second trusts, the
19 second trusts shall be treated as one trust for purposes of
20 determining whether the exercise of the decanting power
21 diminishes the charitable interest or diminishes the interest
22 of an identified charitable organization for purposes of
23 Subsection C of this section.

24 E. If a first trust contains a determinable
25 charitable interest, the second trusts that include charitable

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1 interests pursuant to Subsection C of this section shall be
2 administered under New Mexico law unless:

3 (1) the attorney general, after receiving
4 notice under Section 2-107 of the Uniform Trust Decanting Act,
5 fails to object in a signed record delivered to the authorized
6 fiduciary within the notice period;

7 (2) the attorney general consents in a signed
8 record to the second trusts being administered under the law of
9 another jurisdiction; or

10 (3) the court approves the exercise of the
11 decanting power.

12 F. The Uniform Trust Decanting Act does not limit
13 the powers and duties of the attorney general under New Mexico
14 law.

15 SECTION 2-115. [NEW MATERIAL] TRUST LIMITATION ON
16 DECANTING.--

17 A. An authorized fiduciary shall not exercise the
18 decanting power to the extent that the first-trust instrument
19 expressly prohibits exercise of:

20 (1) the decanting power; or

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

24 B. Exercise of the decanting power is subject to
25 any restriction in the first-trust instrument that expressly

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1 applies to exercise of:

2 (1) the decanting power; or

3 (2) a power granted by state law to a
4 fiduciary to distribute part or all of the principal of the
5 trust to another trust or to modify the trust.

6 C. A general prohibition of the amendment or
7 revocation of a first trust, a spendthrift clause or a clause
8 restraining the voluntary or involuntary transfer of a
9 beneficiary's interest does not preclude exercise of the
10 decanting power.

11 D. Subject to Subsections A and B of this section,
12 an authorized fiduciary may exercise the decanting power
13 provided by the Uniform Trust Decanting Act even if the
14 first-trust instrument permits the authorized fiduciary or
15 another person to modify the first-trust instrument or to
16 distribute part or all of the principal of the first trust to
17 another trust.

18 E. If a first-trust instrument contains an express
19 prohibition described in Subsection A of this section or an
20 express restriction described in Subsection B of this section,
21 that provision shall be included in the second-trust
22 instrument.

23 **SECTION 2-116. [NEW MATERIAL] CHANGE IN COMPENSATION.--**

24 A. If a first-trust instrument specifies an
25 authorized fiduciary's compensation, the fiduciary shall not

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1 exercise the decanting power to increase the fiduciary's
2 compensation beyond the specified compensation unless:

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

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

6 B. If a first-trust instrument does not specify an
7 authorized fiduciary's compensation, the fiduciary shall not
8 exercise the decanting power to increase the fiduciary's
9 compensation above the compensation permitted by the Uniform
10 Trust Code unless:

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

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

14 C. A change in an authorized fiduciary's
15 compensation that is incidental to other changes made by the
16 exercise of the decanting power is not an increase in the
17 fiduciary's compensation for purposes of Subsections A and B of
18 this section.

19 SECTION 2-117. [NEW MATERIAL] RELIEF FROM LIABILITY AND
20 INDEMNIFICATION.--

21 A. Except as otherwise provided in Subsections B, C
22 and D of this section, a second-trust instrument shall not
23 relieve an authorized fiduciary from liability for breach of
24 trust to a greater extent than the first-trust instrument.

25 B. A second-trust instrument may provide for

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1 indemnification of an authorized fiduciary of the first trust
2 or another person acting in a fiduciary capacity under the
3 first trust for any liability or claim that would have been
4 payable from the first trust if the decanting power had not
5 been exercised.

6 C. A second-trust instrument shall not reduce
7 fiduciary liability in the aggregate.

8 D. Subject to Subsection C of this section, a
9 second-trust instrument may divide and reallocate fiduciary
10 powers among fiduciaries, including one or more trustees,
11 distribution advisors, investment advisors, trust protectors or
12 other persons, and relieve a fiduciary from liability for an
13 act or failure to act of another fiduciary as permitted by New
14 Mexico law other than the Uniform Trust Decanting Act.

15 SECTION 2-118. [NEW MATERIAL] REMOVAL OR REPLACEMENT OF
16 AUTHORIZED FIDUCIARY.--An authorized fiduciary shall not
17 exercise the decanting power to modify a provision in the
18 first-trust instrument granting another person power to remove
19 or replace the fiduciary unless:

20 A. the person holding the power consents to the
21 modification in a signed record and the modification applies
22 only to the person;

23 B. the person holding the power and the qualified
24 beneficiaries of the second trust consent to the modification
25 in a signed record and the modification grants a substantially

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1 similar power to another person; or

2 C. the court approves the modification and the
3 modification grants a substantially similar power to another
4 person.

5 SECTION 2-119. [NEW MATERIAL] TAX-RELATED LIMITATIONS.--

6 A. As used in this section:

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

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

13 (3) "nongrantor trust" means a trust that is
14 not a grantor trust; and

15 (4) "qualified benefits property" means
16 property subject to the minimum distribution requirements of 26
17 U.S.C. Section 401(a)(9), as amended, and any applicable
18 regulations or subject to any similar requirements that refer
19 to 26 U.S.C. Section 401(a)(9) or the regulations.

20 B. An exercise of the decanting power is subject to
21 the following limitations:

22 (1) if a first trust contains property that
23 qualified, or would have qualified but for provisions of the
24 Uniform Trust Decanting Act other than those in this section,
25 for a marital deduction for purposes of the gift or estate tax

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1 under the Internal Revenue Code or a state gift, estate or
2 inheritance tax, the second-trust instrument shall not include
3 or omit any term that, if included in or omitted from the trust
4 instrument for the trust to which the property was transferred,
5 would have prevented the transfer from qualifying for the
6 deduction, or would have reduced the amount of the deduction,
7 under the same provisions of the Internal Revenue Code or state
8 law under which the transfer qualified;

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

22 (3) if the first trust contains property that
23 qualified, or, but for provisions of the Uniform Trust
24 Decanting Act other than those in this section, would have
25 qualified, for the exclusion from the gift tax described in 26

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1 U.S.C. Section 2503(b), as amended, including by application of
2 26 U.S.C. Section 2503(c), the second-trust instrument shall
3 not include or omit a term that, if included in or omitted from
4 the trust instrument for the trust to which the property was
5 transferred, would have prevented the transfer from qualifying
6 under the same provision of 26 U.S.C. Section 2503;

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

24 (5) if the first trust contains property that
25 qualified, or, but for provisions of the Uniform Trust

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

9 (6) if the first trust is directly or
10 indirectly the beneficiary of qualified benefits property, the
11 second-trust instrument shall not include or omit any term
12 that, if included in or omitted from the first-trust
13 instrument, would have increased the minimum distributions
14 required with respect to the qualified benefits property under
15 26 U.S.C. Section 401(a)(9), as amended, and any applicable
16 regulations or any similar requirements that refer to 26 U.S.C.
17 Section 401(a)(9) or the regulations. If an attempted exercise
18 of the decanting power violates this paragraph, the trustee is
19 deemed to have held the qualified benefits property and any
20 reinvested distributions of the property as a separate share
21 from the date of the exercise of the power, and Section 2-122
22 of the Uniform Trust Decanting Act applies to the separate
23 share;

24 (7) if the first trust qualifies as a grantor
25 trust because of the application of 26 U.S.C. Section

1 672(f)(2)(A), as amended, the second trust shall not include or
2 omit a term that, if included in or omitted from the first-
3 trust instrument, would have prevented the first trust from
4 qualifying under 26 U.S.C. Section 672(f)(2)(A), as amended;

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

13 (a) the first-trust instrument expressly
14 indicates an intent to qualify for the benefit or the first-
15 trust instrument clearly is designed to enable the first trust
16 to qualify for the benefit; and

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

21 (9) subject to Paragraph (4) of this
22 subsection:

23 (a) except as otherwise provided in
24 Paragraph (7) of this subsection, the second trust may be a
25 nongrantor trust, even if the first trust is a grantor trust;

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1 and

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

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

9 (a) the first trust and second trust are
10 both grantor trusts, in whole or in part, the first trust
11 grants the settlor or another person the power to cause the
12 second trust to cease to be a grantor trust and the second
13 trust does not grant an equivalent power to the settlor or
14 other person; or

15 (b) the first trust is a nongrantor
16 trust and the second trust is a grantor trust, in whole or in
17 part, with respect to the settlor, unless: 1) the settlor has
18 the power at all times to cause the second trust to cease to be
19 a grantor trust; or 2) the first-trust instrument contains a
20 provision granting the settlor or another person a power that
21 would cause the first trust to cease to be a grantor trust and
22 the second-trust instrument contains the same provision.

23 **SECTION 2-120. [NEW MATERIAL] DURATION OF SECOND TRUST.--**

24 A. Subject to Subsection B of this section, a
25 second trust may have a duration that is the same as or

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1 different from the duration of the first trust.

2 B. To the extent that property of a second trust is
3 attributable to property of the first trust, the second trust
4 is subject to any maximum perpetuity, accumulation or
5 suspension-of-the-power-of-alienation rules that were
6 applicable to property of the first trust.

7 SECTION 2-121. [NEW MATERIAL] NEED TO DISTRIBUTE NOT
8 REQUIRED.--An authorized fiduciary may exercise the decanting
9 power regardless of whether under the first trust's
10 discretionary distribution standard the fiduciary would have
11 made, or could have been compelled to make, a discretionary
12 distribution of principal at the time of the exercise.

13 SECTION 2-122. [NEW MATERIAL] SAVINGS PROVISION.--

14 A. If exercise of the decanting power would be
15 effective under the Uniform Trust Decanting Act except that the
16 second-trust instrument in part does not comply with the
17 Uniform Trust Decanting Act, the exercise of the decanting
18 power is effective and the following rules apply to the
19 principal of the first trust subject to the exercise of the
20 power:

21 (1) a provision in the second-trust instrument
22 that is not permitted under the Uniform Trust Decanting Act is
23 void to the extent necessary to comply with the Uniform Trust
24 Decanting Act; and

25 (2) a provision required by the Uniform Trust

1 Decanting Act to be in the second-trust instrument that is not
2 contained in the instrument is deemed to be included in the
3 instrument to the extent necessary to comply with the Uniform
4 Trust Decanting Act.

5 B. If a trustee or other fiduciary of a second
6 trust discovers that Subsection A of this section applies to a
7 prior exercise of the decanting power, the fiduciary shall take
8 appropriate corrective action consistent with the fiduciary's
9 duties.

10 SECTION 2-123. [NEW MATERIAL] TRUST FOR CARE OF ANIMAL.--

11 A. As used in this section:

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

15 (2) "protector" means a person appointed in an
16 animal trust to enforce the trust on behalf of the animal or,
17 if no such person is appointed in the animal trust, a person
18 appointed by the court for that purpose.

19 B. The decanting power may be exercised over an
20 animal trust that has a protector to the extent that the trust
21 could be decanted under the Uniform Trust Decanting Act as if
22 each animal that benefits from the trust were an individual if
23 the protector consents in a signed record to the exercise of
24 the decanting power.

25 C. A protector for an animal has the rights under

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1 the Uniform Trust Decanting Act of a qualified beneficiary.

2 D. Notwithstanding any other provision of the
3 Uniform Trust Decanting Act, if a first trust is an animal
4 trust, in an exercise of the decanting power, the second trust
5 shall provide that trust property may be applied only to its
6 intended purpose for the period the first trust benefited the
7 animal.

8 SECTION 2-124. [NEW MATERIAL] TERMS OF SECOND TRUST.--A
9 reference in the Uniform Trust Code to a trust instrument or
10 terms of the trust includes a second-trust instrument and the
11 terms of the second trust.

12 SECTION 2-125. [NEW MATERIAL] SETTLOR.--

13 A. For purposes of New Mexico law other than the
14 Uniform Trust Decanting Act and subject to Subsection B of this
15 section, a settlor of a first trust is deemed to be the settlor
16 of the second trust with respect to the portion of the
17 principal of the first trust subject to the exercise of the
18 decanting power.

19 B. In determining settlor intent with respect to a
20 second trust, the intent of a settlor of the first trust, the
21 intent of a settlor of the second trust and the intent of the
22 authorized fiduciary may be considered.

23 SECTION 2-126. [NEW MATERIAL] LATER-DISCOVERED
24 PROPERTY.--

25 A. Except as otherwise provided in Subsection C of

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1 this section, if exercise of the decanting power was intended
2 to distribute all the principal of the first trust to one or
3 more second trusts, later-discovered property otherwise
4 belonging to the first trust and property paid to or acquired
5 by the first trust after the exercise of the power is part of
6 the trust estate of the second trust.

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

14 C. An authorized fiduciary may provide in an
15 exercise of the decanting power, or by the terms of a second
16 trust, for disposition of later-discovered property belonging
17 to the first trust or property paid to or acquired by the first
18 trust after exercise of the decanting power.

19 SECTION 2-127. [NEW MATERIAL] OBLIGATIONS.--A debt,
20 liability or other obligation enforceable against property of a
21 first trust is enforceable to the same extent against that
22 property when held by the second trust after exercise of the
23 decanting power.

24 SECTION 2-128. [NEW MATERIAL] UNIFORMITY OF APPLICATION
25 AND CONSTRUCTION.--In applying and construing the Uniform Trust

1 Decanting Act, consideration shall be given to the need to
2 promote uniformity of the law with respect to its subject
3 matter among states that enact it.

4 SECTION 2-129. [NEW MATERIAL] RELATION TO ELECTRONIC
5 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform
6 Trust Decanting Act modifies, limits or supersedes the
7 Electronic Signatures in Global and National Commerce Act, 15
8 U.S.C. Section 7001 et seq., but does not modify, limit or
9 supersede Section 101(c) of that act, 15 U.S.C. Section
10 7001(c), or authorize electronic delivery of any of the notices
11 described in Section 103(b) of that act, 15 U.S.C. Section
12 7003(b).

13 SECTION 3-101. Section 45-1-108 NMSA 1978 (being Laws
14 1975, Chapter 257, Section 1-108) is amended to read:

15 "45-1-108. ACTS BY HOLDER OF GENERAL POWER.--~~[A.]~~ For the
16 purpose of granting consent or approval with regard to the acts
17 or accounts of a personal representative or trustee, including
18 relief from liability or penalty for failure to post bond, or
19 to perform other duties, and for purposes of consenting to
20 modification or termination of a trust or deviation from its
21 terms, the sole holder or all co-holders of a presently
22 exercisable general power of appointment, including one in the
23 form of a power of amendment or revocation, are deemed to act
24 for beneficiaries to the extent their interests, as objects,
25 takers in default or otherwise, are subject to the power.

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1 ~~[B. As used in Subsection A of this section, the~~
2 ~~term "general power" is one which enables the power holder to~~
3 ~~draw absolute ownership to himself. Moreover, the common law~~
4 ~~concept of general powers is intended rather than special~~
5 ~~concepts developed for tax purposes.]"~~

6 SECTION 3-102. Section 45-1-401 NMSA 1978 (being Laws
7 1975, Chapter 257, Section 1-401) is amended to read:

8 "45-1-401. NOTICE--METHOD AND TIME OF GIVING.--

9 A. If notice of a hearing on any petition is
10 required and except for specific notice requirements as
11 otherwise provided, the petitioner shall cause notice of the
12 time and place of hearing of any petition to be given to any
13 interested person ~~[having an interest in the subject of the~~
14 ~~hearing]~~ or, if the interested person is represented by an
15 attorney, to the attorney. Notice shall be given:

16 (1) by mailing a copy thereof at least
17 fourteen days before the time set for the hearing by certified,
18 registered or ordinary first class mail addressed to the person
19 being notified at the post office address given in ~~[his]~~ the
20 demand for notice, if any, or at ~~[his]~~ the person's office or
21 place of residence, if known; ~~[or]~~

22 (2) by service of a copy thereof upon the
23 person being notified in the manner provided by the rules of
24 civil procedure for service of summons and complaint in civil
25 actions; or

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1 (3) if the address or identity of any person
2 is not known and cannot be ascertained with reasonable
3 diligence, by publishing a copy thereof [~~at least~~] once a week
4 for [~~two~~] three consecutive weeks in a newspaper [~~published and~~
5 ~~having~~] of general circulation in the county in which the
6 hearing is to be held, [~~or, if there be no newspaper published~~
7 ~~in such county, then in a newspaper of general circulation in~~
8 ~~such county~~] the last publication of which is to be at least
9 ten days before the time set for the hearing.

10 B. The court for good cause shown may provide for a
11 different method or time of giving notice for [~~any hearings~~] a
12 hearing.

13 C. Proof of the giving of notice shall be made on
14 or before the hearing and filed in the proceeding."

15 SECTION 3-103. Section 45-1-403 NMSA 1978 (being Laws
16 1975, Chapter 257, Section 1-403, as amended) is amended to
17 read:

18 "45-1-403. PLEADINGS--WHEN PARTIES BOUND BY OTHERS--
19 NOTICE.--In formal proceedings involving trusts, or estates of
20 decedents, minors, protected persons or incapacitated persons,
21 and in judicially supervised settlements, [~~the following rules~~
22 ~~apply~~]:

23 A.] interests to be affected shall be described in
24 pleadings that give reasonable information to owners by name or
25 class, by reference to the instrument creating the interests or

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1 in another appropriate manner.

2 ~~[B. a person is bound by an order binding another~~
3 ~~in the following cases:~~

4 ~~(1) an order binding the sole holder or all~~
5 ~~co-holders of a power of revocation or a presently exercisable~~
6 ~~general power of appointment, including one in the form of a~~
7 ~~power of amendment, binds other persons to the extent their~~
8 ~~interests as objects, takers in default or otherwise are~~
9 ~~subject to the power;~~

10 ~~(2) to the extent there is no conflict of~~
11 ~~interest between them or among persons represented:~~

12 ~~(a) an order binding a conservator binds~~
13 ~~the person whose estate the conservator controls;~~

14 ~~(b) an order binding a guardian binds~~
15 ~~the protected person if no conservator of the protected~~
16 ~~person's estate has been appointed;~~

17 ~~(c) an order binding a trustee binds~~
18 ~~beneficiaries of the trust in proceedings to probate a will~~
19 ~~establishing or adding to a trust, to review the acts or~~
20 ~~accounts of a former fiduciary and in proceedings involving~~
21 ~~creditors or other third parties;~~

22 ~~(d) an order binding a personal~~
23 ~~representative binds persons interested in the undistributed~~
24 ~~assets of a decedent's estate in actions or proceedings by or~~
25 ~~against the estate; and~~

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

5 ~~(3) unless otherwise represented, a minor or~~
6 ~~an incapacitated, unborn or unascertained person is bound by an~~
7 ~~order to the extent the minor's or the incapacitated, unborn or~~
8 ~~unascertained person's interest is adequately represented by~~
9 ~~another party having a substantially identical interest in the~~
10 ~~proceeding;~~

11 ~~C. if no conservator or guardian has been~~
12 ~~appointed, a parent may represent a minor child;~~

13 ~~D. notice is required as follows:~~

14 ~~(1) the notice prescribed by Section 45-1-401~~
15 ~~NMSA 1978 shall be given to every person having an interest in~~
16 ~~the subject of the hearing or to one who can bind an interested~~
17 ~~person as described in Paragraph (1) or (2) of Subsection B of~~
18 ~~this section. Notice may be given both to an interested person~~
19 ~~and to another who may bind that person; and~~

20 ~~(2) notice is given to unborn or unascertained~~
21 ~~persons who are not represented under Paragraph (1) or (2) of~~
22 ~~Subsection B of this section by giving notice to all known~~
23 ~~persons whose interests in the proceedings are substantially~~
24 ~~identical to those of the unborn or unascertained persons; and~~

25 ~~E. at any point in a proceeding, the district court~~

1 shall appoint a guardian ad litem to represent the interest of
2 a minor; an incapacitated, unborn or unascertained person; or a
3 person whose identity or address is unknown, if the district
4 court determines that representation of the interest would
5 otherwise be inadequate. If not precluded by conflict of
6 interests, a guardian ad litem may be appointed to represent
7 several persons or interests. The district court shall state
8 its reasons for appointing a guardian ad litem as a part of the
9 record of the proceeding.]"

10 SECTION 3-104. A new section of the Uniform Probate Code,
11 Section 45-1-403.1 NMSA 1978, is enacted to read:

12 "45-1-403.1. [NEW MATERIAL] REPRESENTATION--BASIC
13 EFFECT.--

14 A. Notice to a person who may represent and bind
15 another person pursuant to the provisions of Chapter 45 NMSA
16 1978 has the same effect as if notice were given directly to
17 the other person.

18 B. The consent of a person who may represent and
19 bind another person pursuant to the provisions of Chapter 45
20 NMSA 1978 is binding on the person represented unless the
21 person represented objects to the representation before the
22 consent would otherwise have become effective.

23 C. Except as otherwise provided in Sections
24 46A-4-411 and 46A-6-602 NMSA 1978, a person who, pursuant to
25 the provisions of Chapter 45 NMSA 1978, may represent a settlor

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1 who lacks capacity, may receive notice and give a binding
2 consent on the settlor's behalf.

3 D. A settlor shall not represent or bind a
4 beneficiary pursuant to the provisions of Chapter 45 NMSA 1978
5 with respect to the termination or modification of a trust
6 under Subsection A of Section 46A-4-411 NMSA 1978."

7 SECTION 3-105. A new section of the Uniform Probate Code,
8 Section 45-1-403.2 NMSA 1978, is enacted to read:

9 "45-1-403.2. [NEW MATERIAL] REPRESENTATION BY HOLDER OF
10 GENERAL TESTAMENTARY POWER OF APPOINTMENT.--To the extent there
11 is no conflict of interest between the holder of a general
12 testamentary power of appointment and the persons represented
13 with respect to the particular question or dispute, the holder
14 may represent and bind persons whose interests, as permissible
15 appointees, takers in default or otherwise, are subject to the
16 power."

17 SECTION 3-106. A new section of the Uniform Probate Code,
18 Section 45-1-403.3 NMSA 1978, is enacted to read:

19 "45-1-403.3. [NEW MATERIAL] REPRESENTATION BY FIDUCIARIES
20 AND PARENTS.--To the extent there is no conflict of interest
21 between the representative and the person represented or among
22 those being represented with respect to a particular question
23 or dispute:

24 A. a conservator may represent and bind the estate
25 that the conservator controls;

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1 B. a guardian may represent and bind the protected
2 person if a conservator of the protected person's estate has
3 not been appointed;

4 C. an agent having authority to act with respect
5 to the particular question or dispute may represent and bind
6 the principal;

7 D. a trustee may represent and bind the
8 beneficiaries of the trust;

9 E. a personal representative of a decedent's
10 estate may represent and bind persons interested in the
11 estate; and

12 F. a parent may represent and bind the parent's
13 minor or unborn child if a conservator or guardian for the
14 child has not been appointed."

15 **SECTION 3-107.** A new section of the Uniform Probate Code,
16 Section 45-1-403.4 NMSA 1978, is enacted to read:

17 "45-1-403.4. [NEW MATERIAL] REPRESENTATION BY PERSON
18 HAVING SUBSTANTIALLY IDENTICAL INTEREST.--Unless otherwise
19 represented, a minor, incapacitated or unborn person, or a
20 person whose identity or location is unknown and not reasonably
21 ascertainable, may be represented by and bound by another
22 having a substantially identical interest with respect to the
23 particular question or dispute, but only to the extent that
24 there is no conflict of interest between the representative and
25 the person represented."

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1 **SECTION 3-108.** A new section of the Uniform Probate Code,
2 Section 45-1-403.5 NMSA 1978, is enacted to read:

3 "45-1-403.5. [NEW MATERIAL] APPOINTMENT OF
4 REPRESENTATIVE.--

5 A. If the court determines that an interest is not
6 represented under Chapter 45 NMSA 1978, or that the otherwise
7 available representation might be inadequate, the court may
8 appoint a representative to receive notice, give consent and
9 otherwise represent, bind and act on behalf of a minor,
10 incapacitated or unborn person, or a person whose identity or
11 location is unknown. A representative may be appointed to
12 represent several persons or interests.

13 B. A representative may act on behalf of the person
14 represented with respect to any matter arising under the
15 Uniform Probate Code, whether or not a judicial proceeding
16 concerning the estate is pending.

17 C. In making decisions, a representative may
18 consider the general benefit accruing to the living members of
19 the person's family."

20 **SECTION 3-109.** Section 45-2-506 NMSA 1978 (being Laws
21 1993, Chapter 174, Section 29) is amended to read:

22 "45-2-506. CHOICE OF LAW AS TO EXECUTION.--A written will
23 is valid if executed in compliance with Section 45-2-502 NMSA
24 1978 or if its execution complies with the law at the time of
25 execution of the place where the will is executed or of the law

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1 of the place where at the time of execution or at the time of
2 death the testator is domiciled, has a place of abode or is a
3 national."

4 SECTION 3-110. Section 45-2-517 NMSA 1978 (being Laws
5 1995, Chapter 210, Section 13) is amended to read:

6 "45-2-517. PENALTY CLAUSE FOR CONTEST.--A provision in a
7 governing instrument purporting to penalize an interested
8 person for contesting [~~a~~] the governing instrument or
9 instituting other proceedings relating to [~~a governing~~
10 ~~instrument or an~~] the estate is unenforceable if probable cause
11 exists for instituting proceedings."

12 SECTION 3-111. Section 45-2-904 NMSA 1978 (being Laws
13 1992, Chapter 66, Section 4, as amended) is amended to read:

14 "45-2-904. EXCLUSIONS.--

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

16 [~~A.~~] (1) a nonvested property interest or a
17 power of appointment arising out of a nondonative transfer,
18 except a nonvested property interest or a power of appointment
19 arising out of:

20 [~~(1)~~] (a) a premarital or postmarital
21 agreement;

22 [~~(2)~~] (b) a separation or divorce
23 settlement;

24 [~~(3)~~] (c) a spouse's election;

25 [~~(4)~~] (d) a similar arrangement arising

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1 out of a prospective, existing or previous marital relationship
2 between the parties;

3 [~~(5)~~] (e) a contract to make or not to
4 revoke a will or trust;

5 [~~(6)~~] (f) a contract to exercise or not
6 to exercise a power of appointment;

7 [~~(7)~~] (g) a transfer in satisfaction of
8 a duty of support; or

9 [~~(8)~~] (h) a reciprocal transfer;

10 [~~B.~~] (2) a fiduciary's power relating to the
11 administration or management of assets, including the power of
12 a fiduciary to sell, lease or mortgage property and the power
13 of a fiduciary to determine principal and income;

14 [~~C.~~] (3) a power to appoint a fiduciary;

15 [~~D.~~] (4) a discretionary power of a trustee to
16 distribute principal before termination of a trust to a
17 beneficiary having an indefeasibly vested interest in the
18 income and principal;

19 [~~E.~~] (5) a nonvested property interest held by
20 a charity, government or governmental agency or subdivision if
21 the nonvested property interest is preceded by an interest held
22 by another charity, government or governmental agency or
23 subdivision;

24 [~~F.~~] (6) a nonvested property interest in or a
25 power of appointment with respect to a trust or other property

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

11 ~~[G.]~~ (7) a property interest, power of
12 appointment or arrangement that was not subject to the
13 common-law rule against perpetuities or that is excluded by
14 another statute of New Mexico; or

15 ~~[H.]~~ (8) a property interest ~~[or arrangement~~
16 ~~subject to a time limit under the provisions of Section~~
17 ~~45-2-907 NMSA 1978]~~ held in trust.

18 B. For real property held in trust, at the end of
19 three hundred sixty-five years from the later of the date on
20 which an interest in real property is added to or purchased by
21 a trust or the date that the trust became irrevocable, if the
22 interest in real property is still held in trust and if the
23 trust instrument:

24 (1) provides for the distribution of the
25 interest upon termination of the trust, the property shall be

1 distributed as though termination occurred at that time;

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

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

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

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

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

24 (1) a trust holds an interest in a
25 corporation, a limited liability company, a partnership, a

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1 statutory trust, a business trust or another business entity;

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

4 (3) the entity terminates; and

5 (4) the trust becomes the holder of an
6 interest in real property.

7 D. Except as otherwise provided in the trust
8 instrument, the trustee of a trust that becomes the holder of
9 an interest in real property through the sequence outlined in
10 Subsection C of this section may:

11 (1) distribute the interest in real property
12 in accordance with this subsection; or

13 (2) convey the interest in real property to
14 another business entity in exchange for an interest in that
15 entity to be held by the trustee.

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

18 (1) intangible personal property; or

19 (2) an interest in a corporation, a limited
20 liability company, a partnership, a statutory trust, a business
21 trust or another business entity, regardless of whether the
22 entity is the owner of an interest in real property."

23 SECTION 3-112. Section 45-3-712 NMSA 1978 (being Laws
24 1975, Chapter 257, Section 3-712) is amended to read:

25 "45-3-712. IMPROPER EXERCISE OF POWER--BREACH OF

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1 FIDUCIARY DUTY.--If the exercise of power concerning the estate
2 is improper, the personal representative is liable to
3 interested persons for damage or loss resulting from breach of
4 [his] the personal representative's fiduciary duty to the same
5 extent as a trustee of an express trust. The rights of
6 purchasers and others dealing with a personal representative
7 shall be determined as provided in Sections [~~3-713 and 3-714~~]
8 45-3-713 and 45-3-714 NMSA 1978."

9 SECTION 3-113. Section 45-3-801 NMSA 1978 (being Laws
10 1975, Chapter 257, Section 3-801, as amended) is repealed and a
11 new Section 45-3-801 NMSA 1978 is enacted to read:

12 "45-3-801. [NEW MATERIAL] NOTICE TO CREDITORS.--

13 A. A personal representative upon appointment may
14 publish a notice to creditors once a week for three successive
15 weeks in a newspaper of general circulation in the county in
16 which the probate proceeding is pending, announcing the
17 personal representative's appointment and address and notifying
18 creditors of the estate to present their claims within four
19 months after the date of the first publication of the notice or
20 be forever barred.

21 B. A personal representative may give written
22 notice by mail or other delivery to a creditor, announcing the
23 personal representative's appointment and address and notifying
24 the creditor to present the creditor's claim within four months
25 after the published notice, if given as provided in Subsection

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underscored material = new
[bracketed material] = delete

1 A of this section, or within sixty days after the mailing or
2 other delivery of the notice, whichever is later, or be forever
3 barred.

4 C. The personal representative is not liable to
5 anyone for giving or failing to give notice pursuant to this
6 section."

7 SECTION 3-114. Section 45-3-803 NMSA 1978 (being Laws
8 1975, Chapter 257, Section 3-803, as amended) is amended to
9 read:

10 "45-3-803. LIMITATIONS ON PRESENTATION OF CLAIMS.--

11 A. All claims against a decedent's estate that
12 arose before the death of the decedent, including claims of the
13 state and any political subdivision of the state, whether due
14 or to become due, absolute or contingent, liquidated or
15 unliquidated or founded on contract, tort or other legal basis,
16 if not barred earlier by another statute of limitations or
17 nonclaim statute, are barred against the estate, the personal
18 representative and the heirs, devisees and nonprobate
19 transferees of the decedent unless presented within the earlier
20 of the following:

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

22 (2) the time provided by Subsection ~~[A]~~ B of

23 Section 45-3-801 NMSA 1978 for creditors who are given actual
24 notice and the time provided in Subsection ~~[B]~~ A of Section
25 45-3-801 NMSA 1978 for all creditors barred by publication.

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1 B. A claim described in Subsection A of this
2 section that is barred by the nonclaim statute of the
3 decedent's domicile before the giving of notice to creditors in
4 this state is barred in this state.

5 C. All claims against a decedent's estate that
6 arise at or after the death of the decedent, including claims
7 of the state and any political subdivision of the state,
8 whether due or to become due, absolute or contingent,
9 liquidated or unliquidated or founded on contract, tort or
10 other legal basis, are barred against the estate, the personal
11 representative and the heirs and devisees of the decedent
12 unless presented as follows:

13 (1) a claim based on a contract with the
14 personal representative within four months after performance by
15 the personal representative is due; or

16 (2) any other claim within the later of four
17 months after it arises or the time specified in Paragraph (1)
18 of this subsection.

19 D. Nothing in this section affects or prevents:

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

22 (2) to the limits of the insurance protection
23 only, a proceeding to establish liability of the decedent or
24 the personal representative for which the decedent or personal
25 representative is protected by liability insurance; or

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1 (3) collection of compensation for services
2 rendered and reimbursement for expenses advanced by the
3 personal representative or by the attorney or accountant for
4 the personal representative of the estate."

5 SECTION 3-115. Section 45-3-902 NMSA 1978 (being Laws
6 1975, Chapter 257, Section 3-902, as amended) is amended to
7 read:

8 "45-3-902. DISTRIBUTION--ORDER IN WHICH ASSETS
9 APPROPRIATED--ABATEMENT.--

10 A. Except as provided in Subsection C of this
11 section, shares of distributees abate, without any preference
12 or priority as between real and personal property, in the
13 following order:

- 14 (1) property not disposed of by the will;
- 15 (2) residuary devises;
- 16 (3) general devises; and
- 17 (4) specific devises.

18 B. For purposes of abatement, a general devise
19 charged on any specific property or fund is a specific devise
20 to the extent of the value of the property on which it is
21 charged and, upon the failure or insufficiency of the property
22 on which it is charged, a general devise to the extent of the
23 failure or insufficiency. Abatement within each classification
24 is in proportion to the amounts of property each of the
25 beneficiaries would have received if full distribution of the

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underscored material = new
[bracketed material] = delete

1 property had been made in accordance with the terms of the
2 will.

3 C. If the will expresses an order of abatement or
4 if the testamentary plan or the express or implied purpose of
5 the devise would be defeated by the order of abatement stated
6 in Subsection A of this section, the shares of the distributees
7 abate as may be found necessary to give effect to the intention
8 of the testator.

9 D. If an estate of a decedent consists partly of
10 separate property and partly of community property, the debts
11 and expenses of administration shall be apportioned and charged
12 against the different kinds of property in accordance with the
13 provisions of Subsection B of Section [~~45-2-805~~] 45-2-807 NMSA
14 1978.

15 E. If the subject of a preferred devise is sold or
16 used incident to administration, abatement shall be achieved by
17 appropriate adjustments in or contribution from other interests
18 in the remaining assets."

19 SECTION 3-116. Section 45-3-905 NMSA 1978 is repealed and
20 a new Section 45-3-905 NMSA 1978 is enacted to read:

21 "45-3-905. [NEW MATERIAL] PENALTY CLAUSE FOR CONTEST.--A
22 provision in a will purporting to penalize any interested
23 person for contesting the will or instituting other proceedings
24 relating to the estate is unenforceable if probable cause
25 exists for instituting proceedings."

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underscoring material = new
~~[bracketed material] = delete~~

1 **SECTION 3-117.** Section 45-3-912 NMSA 1978 (being Laws
2 1975, Chapter 257, Section 3-912) is amended to read:

3 "45-3-912. PRIVATE AGREEMENTS AMONG SUCCESSORS TO
4 DECEDENT BINDING ON PERSONAL REPRESENTATIVE.--Subject to the
5 rights of creditors and taxing authorities, [~~competent~~]
6 successors or their representatives may agree among themselves
7 to alter the interests, shares or amounts to which they are
8 entitled under the will of the decedent or under the laws of
9 intestacy in any way that they provide in a written contract
10 executed by all who are affected by its provisions. The
11 personal representative shall abide by the terms of the
12 agreement subject to [~~his~~] the personal representative's
13 obligation to administer the estate for the benefit of
14 creditors, to pay all taxes and costs of administration and to
15 carry out the responsibilities of [~~his~~] the personal
16 representative's office for the benefit of any successors of
17 the decedent who are not parties. Personal representatives of
18 decedents' estates are not required to see to the performance
19 of trusts if the trustee thereof is another person who is
20 willing to accept the trust. Accordingly, trustees of a
21 testamentary trust are successors for the purposes of this
22 section. Nothing in this section relieves trustees of any
23 duties owed to beneficiaries of trusts."

24 **SECTION 3-118.** Section 45-3-1003 NMSA 1978 (being Laws
25 1975, Chapter 257, Section 3-1003, as amended) is amended to

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1 read:

2 "45-3-1003. CLOSING ESTATES--BY SWORN STATEMENT OF
3 PERSONAL REPRESENTATIVE.--

4 A. Unless prohibited by order of the district court
5 and except for estates being administered in supervised
6 administration proceedings, a personal representative may close
7 an estate by filing with the court, no earlier than [~~three~~] six
8 months after the date of original appointment of a general
9 personal representative for the estate, a verified statement
10 stating that the personal representative or a previous personal
11 representative has:

12 (1) determined that the time limited for
13 presentation of creditors' claims has expired;

14 (2) fully administered the estate of the
15 decedent by making payment, settlement or other disposition of
16 all claims that were presented, expenses of administration and
17 estate, inheritance and other death taxes, except as specified
18 in the statement, and that the assets of the estate have been
19 distributed to the persons entitled. If any claims remain
20 undischarged, the statement shall state whether the personal
21 representative has distributed the estate subject to possible
22 liability with the agreement of the distributees or it shall
23 state in detail other arrangements that have been made to
24 accommodate outstanding liabilities; and

25 (3) sent a copy of the statement to all

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1 distributees of the estate and to all creditors or other
2 claimants of whom the personal representative is aware whose
3 claims are neither paid nor barred and has furnished a full
4 account in writing of the personal representative's
5 administration to the distributees whose interests are affected
6 thereby, including guardians ad litem appointed pursuant to
7 Section 45-1-403 NMSA 1978, conservators and guardians.

8 B. If no proceedings involving the personal
9 representative are pending in the district court one year after
10 the closing statement is filed, the appointment of the personal
11 representative terminates."

12 SECTION 3-119. Section 45-3-1101 NMSA 1978 (being Laws
13 1975, Chapter 257, Section 3-1101, as amended) is amended to
14 read:

15 "45-3-1101. EFFECT OF APPROVAL OF AGREEMENTS INVOLVING
16 TRUSTS, INALIENABLE INTERESTS OR INTERESTS OF THIRD
17 PERSONS.--

18 A. A compromise of any controversy is binding on
19 all the parties thereto as to any lawful matter involving the
20 estate. Matters that may be resolved by the compromise
21 include:

22 (1) admission to probate of any instrument
23 offered for formal probate as the will of a decedent;

24 (2) the construction, validity or effect of
25 any governing instrument;

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1 (3) the rights or interests in the estate of
2 the decedent;

3 (4) the rights or interests of any successor;
4 [~~or~~] and

5 (5) the administration of the estate, if
6 approved in a formal proceeding in the district court for that
7 purpose.

8 B. [~~An approved~~] A court-approved compromise is
9 binding even though it may affect a trust or an inalienable
10 interest. A compromise does not impair the rights of creditors
11 or of taxing authorities [~~who~~] that are not parties to it."

12 SECTION 3-120. Section 45-3-1102 NMSA 1978 (being Laws
13 1975, Chapter 257, Section 3-1102, as amended) is amended to
14 read:

15 "45-3-1102. PROCEDURE FOR SECURING COURT APPROVAL OF
16 COMPROMISE.--The procedure for securing court approval of a
17 compromise is as follows:

18 A. the terms of the compromise shall be set forth
19 in an agreement in writing [~~which~~] that shall be executed by
20 all [~~competent~~] persons [~~and parents acting for any minor~~
21 ~~child~~] or their representatives having beneficial interests or
22 having claims [~~which~~] that will or may be affected by the
23 compromise;

24 B. any interested person, or the person's
25 representative, including the personal representative, if any,

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1 or a trustee, may then submit the agreement to the district
2 court for its approval and for execution by the personal
3 representative, the trustee of every affected testamentary
4 trust and other fiduciaries and representatives; and

5 C. after notice to all interested persons or their
6 representatives, including the personal representative of any
7 estate and all affected trustees of trusts, the district court,
8 if it finds that an actual contest or controversy exists and
9 that the effect of the agreement upon the interests of persons
10 represented by fiduciaries or other representatives is just and
11 reasonable, shall make an order approving the agreement and
12 directing all fiduciaries under its supervision to execute the
13 agreement. Minor children represented only by their parents
14 may be bound only if their parents join with other ~~[competent]~~
15 persons or their representatives in execution of the
16 compromise. Upon the making of the order and the execution of
17 the agreement, all further disposition of the estate shall then
18 be made in accordance with the terms of the agreement."

19 SECTION 3-121. Section 46A-1-113 NMSA 1978 (being Laws
20 2011, Chapter 124, Section 95) is amended to read:

21 "46A-1-113. INSURABLE INTEREST OF TRUSTEE.--

22 A. In this section, "settlor" means a person
23 ~~[including a person for which a fiduciary or agent is acting]~~
24 that executes a trust instrument. "Settlor" includes a person
25 for which a fiduciary or agent is acting.

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1 B. A trustee of a trust has an insurable interest
2 in the life of an individual insured under a life insurance
3 policy that is owned by [~~the trust or~~] the trustee of the trust
4 acting in a fiduciary capacity or that designates the trust
5 itself as the owner if, on the date the policy is issued:

6 (1) the insured is:

7 (a) a settlor of the trust; or

8 (b) an individual in whom a settlor of
9 the trust has, or would have had if living at the time the
10 policy was issued, an insurable interest; and

11 (2) the life insurance proceeds are primarily
12 for the benefit of one or more trust beneficiaries that have:

13 (a) an insurable interest in the life of
14 the insured; or

15 (b) a substantial interest engendered by
16 love and affection in the continuation of the life of the
17 insured and, if not already included under Subparagraph (a) of
18 this paragraph, who are: 1) related within the third degree or
19 closer, as measured by the civil law system of determining
20 degrees of relation, either by blood or law, to the insured; or
21 2) stepchildren of the insured."

22 **SECTION 3-122. REPEAL.**--Sections 45-2-608 and 45-2-704
23 NMSA 1978 (being Laws 1993, Chapter 174, Sections 47 and 52)
24 are repealed.

25 **SECTION 3-123. REPEAL.**--Section 45-2-907 NMSA 1978 (being
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1 Laws 1995, Chapter 210, Section 30) is repealed.

2 SECTION 3-124. TEMPORARY PROVISION--INSTRUCTION TO
3 COMPILER.--The compiler shall compile Sections 1-101 through
4 1-603 of this act in Chapter 46 NMSA 1978.

5 SECTION 3-125. EFFECTIVE DATE.--

6 A. The effective date of the provisions of Sections
7 3-101 through 3-121 and 3-123 of this act is July 1, 2016.

8 B. The effective date of the provisions of Sections
9 1-101 through 1-603, 2-101 through 2-129 and 3-122 of this act
10 is January 1, 2017.

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