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HOUSE BILL 462

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Dona G. Irwin

AN ACT

RELATING TO PROPERTY INTERESTS; REVISING THE STATUTORY RULE AGAINST PERPETUITIES FOR CERTAIN PROPERTY INTERESTS HELD IN TRUST.

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

Section 1. Section 45-2-904 NMSA 1978 (being Laws 1992, Chapter 66, Section 4, as amended) is amended to read:

"45-2-904. EXCLUSIONS--RULE FOR CERTAIN TRUST PROPERTY--Section 45-2-901 NMSA 1978 does not apply to:

A. a nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of:

- (1) a premarital or postmarital agreement;
- (2) a separation or divorce settlement;

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- 1 (3) a spouse's election;
- 2 (4) a similar arrangement arising out of a
3 prospective, existing or previous marital relationship between
4 the parties;
- 5 (5) a contract to make or not to revoke a will
6 or trust;
- 7 (6) a contract to exercise or not to exercise
8 a power of appointment;
- 9 (7) a transfer in satisfaction of a duty of
10 support; or
- 11 (8) a reciprocal transfer;
- 12 B. a fiduciary's power relating to the
13 administration or management of assets, including the power of
14 a fiduciary to sell, lease or mortgage property and the power
15 of a fiduciary to determine principal and income;
- 16 C. a power to appoint a fiduciary;
- 17 D. a discretionary power of a trustee to distribute
18 principal before termination of a trust to a beneficiary having
19 an indefeasibly vested interest in the income and principal;
- 20 E. a nonvested property interest held by a charity,
21 government or governmental agency or subdivision if the
22 nonvested property interest is preceded by an interest held by
23 another charity, government or governmental agency or
24 subdivision;
- 25 F. a nonvested property interest in or a power of

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

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

16 H. a property interest or arrangement subject to a
17 time limit under the provisions of Section 45-2-907 NMSA 1978;
18 or

19 I. an interest in property held in trust; provided,
20 however, the rule against perpetuities for real property held
21 in trust is that at the expiration of one hundred ten years
22 from the later of the date on which a parcel of real property
23 or an interest in real property is added to or purchased by a
24 trust or the date the trust became irrevocable, such parcel or
25 interest, if still held in the trust, shall be distributed in

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1 accordance with the following provisions:

2 (1) if the trust instrument contains
3 provisions regarding the distribution of such property upon
4 termination of the trust, the property shall be distributed as
5 though termination occurred at that time;

6 (2) if no such provisions exist, the property
7 shall be distributed to the beneficiaries then entitled to
8 receive the income of the trust in proportion to the amount of
9 the income so receivable by such beneficiaries, or in equal
10 shares if specific proportions are not specified in the trust
11 instrument;

12 (3) in the event that the trust instrument
13 does not provide for distribution upon termination and there
14 are no income beneficiaries of the trust, the property shall be
15 distributed to the then-living persons who are then determined
16 to be the trustor's or testator's distributees by the
17 application of the intestacy laws of New Mexico then in effect
18 governing the distribution of intestate real property as though
19 the trustor or testator had died at that particular time,
20 intestate, a resident of New Mexico, and owning the property so
21 distributable; and

22 (4) for purposes of this subsection, real
23 property or a parcel or interest in the real property does not
24 include any intangible personal property such as an interest in
25 a corporation, limited liability company, partnership,

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1 statutory trust, business trust or other entity, regardless of
2 whether the entity is the owner of real property or any
3 interest in the real property."

4 Section 2. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2009.

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