

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 146

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

William H. Payne

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

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

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

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

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

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

.182520.2

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

underscored material = new
[bracketed material] = delete

1 policies.

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

4 (1) to simplify, [~~and~~] clarify and modernize
5 certain laws concerning the affairs of decedents, missing
6 persons, protected persons, minors and incapacitated persons;

7 (2) to discover and make effective the intent
8 of a decedent in distribution of [~~his~~] the decedent's property;

9 (3) to promote a speedy and efficient system
10 for the settlement and distribution of the estate of the
11 decedent; [~~and~~]

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

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

16 [~~(4)~~] (6) to facilitate the use and
17 enforcement of [~~certain trusts~~] governing instruments;

18 (7) to apportion taxes on estates; and

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

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

22 "45-1-104. SEVERABILITY.--If any [~~part or application of~~
23 ~~the Probate Code is held invalid, the remainder or its~~
24 ~~application to other situations or persons shall not be~~
25 ~~affected]~~ provision of the Uniform Probate Code or its

underscored material = new
[bracketed material] = delete

1 application to any person or circumstances is held invalid, the
2 invalidity does not affect other provisions or applications of
3 that code that can be given effect without the invalid
4 provision or application, and to this end, the provisions of
5 the code are severable."

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

8 "45-1-107. EVIDENCE OF DEATH OR STATUS.--In addition to
9 the rules of evidence in courts of general jurisdiction, the
10 following rules relating to a determination of death and status
11 apply:

12 A. in accordance with Subsection A of Section
13 12-2-4 NMSA 1978, death occurs when an individual has sustained
14 either:

15 (1) irreversible cessation of circulatory and
16 respiratory functions; or

17 (2) irreversible cessation of all functions of
18 the entire brain, including the brain stem.

19 A determination of death must be made in accordance with
20 accepted medical standards;

21 B. [~~a certified or~~] an authenticated copy of a
22 death certificate purporting to be issued by an official or
23 agency of the place where the death purportedly occurred is
24 prima facie evidence of the fact, place, date and time of death
25 and the identity of the decedent;

.182520.2

underscored material = new
[bracketed material] = delete

1 C. [~~a certified or~~] an authenticated copy of [~~any~~]
2 a record or report of a governmental agency, domestic or
3 foreign, that an individual is missing, detained, dead or alive
4 is prima facie evidence of the status and of the dates,
5 circumstances and places disclosed by the record or report;

6 D. in the absence of prima facie evidence of death
7 pursuant to Subsections B or C of this section, the fact of
8 death may be established by clear and convincing evidence,
9 including circumstantial evidence;

10 E. an individual whose death is not established
11 pursuant to Subsection A, B, C or D of this section who is
12 absent for a continuous period of five years, during which [~~he~~]
13 the person has not been heard from and whose absence is not
14 satisfactorily explained after diligent search or inquiry is
15 presumed to be dead. [~~His~~] The person's death is presumed to
16 have occurred at the end of the period unless there is
17 sufficient evidence for determining that death occurred
18 earlier; and

19 F. in the absence of evidence disputing the time of
20 death stated on a document described in Subsection B or C of
21 this section, a document described in Subsection B or C of this
22 section that states a time of death one hundred twenty hours or
23 more after the time of death of another individual, however the
24 time of death of the other individual is determined,
25 establishes by clear and convincing evidence that the

.182520.2

underscoring material = new
[bracketed material] = delete

1 individual survived the other individual by one hundred twenty
2 hours."

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

5 "45-1-110. TIME OF TAKING EFFECT--PROVISIONS FOR
6 TRANSITION.--Except as provided elsewhere in [~~this~~] the Uniform
7 Probate Code, on the effective date of this code or of any
8 amendment to this code:

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

11 B. the code or the amendment applies to any
12 proceedings in court then pending or thereafter commenced
13 regardless of the time of the death of decedent except to the
14 extent that in the opinion of the court the former procedure
15 should be made applicable in a particular case in the interest
16 of justice or because of infeasibility of application of the
17 procedure of this code or the amendment;

18 C. every personal representative or other fiduciary
19 holding an appointment under this code on that date continues
20 to hold the appointment but has only the powers conferred by
21 this code or the amendment and is subject to the duties imposed
22 with respect to any act occurring or done thereafter;

23 D. an act done before the effective date in any
24 proceeding and any accrued right is not impaired by this code
25 or the amendment. If a right is acquired, extinguished or

.182520.2

underscored material = new
[bracketed material] = delete

1 barred upon the expiration of a prescribed period of time
2 [~~which~~] that has commenced to run by the provisions of any
3 statute before the effective date, the provisions shall remain
4 in force with respect to that right; and

5 E. any rule of construction or presumption provided
6 in this code or the amendment applies to governing instruments
7 executed before the effective date unless there is a clear
8 indication of a contrary intent in the governing instrument."

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

11 "45-1-201. DEFINITIONS.--

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

15 (1) "agent" includes an attorney-in-fact under
16 a durable or nondurable power of attorney, an individual
17 authorized to make decisions concerning another's health care
18 and an individual authorized to make decisions for another
19 under a natural death act;

20 (2) "application" means a written request to
21 [~~the probate~~] a court for an order of informal probate or
22 appointment pursuant to [~~Sections 45-3-301 through 45-3-311~~]
23 Chapter 45, Article 3 NMSA 1978;

24 (3) "authenticated", with reference to copies,
25 means certified or exemplified;

.182520.2

underscored material = new
[bracketed material] = delete

1 [~~(3)~~] (4) "beneficiary", as it relates to a
2 trust beneficiary, includes a person who has any present or
3 future interest, vested or contingent, and also includes the
4 owner of an interest by assignment or other transfer; as it
5 relates to a charitable trust, includes any person entitled to
6 enforce the trust; as it relates to a "beneficiary of a
7 beneficiary designation", refers to a beneficiary of an
8 insurance or annuity policy, of an account with POD
9 designation, of a security registered in beneficiary form (TOD)
10 or of a pension, profit-sharing, retirement or similar benefit
11 plan or other nonprobate transfer at death; and, as it relates
12 to a "beneficiary designated in a governing instrument",
13 includes a grantee of a deed, a devisee, a trust beneficiary, a
14 beneficiary of a beneficiary designation, a donee, appointee or
15 taker in default of a power of appointment or a person in whose
16 favor a power of attorney or a power held in any individual,
17 fiduciary or representative capacity is exercised;

18 [~~(4)~~] (5) "beneficiary designation" refers to
19 a governing instrument naming a beneficiary of an insurance or
20 annuity policy, of an account with POD designation, of a
21 security registered in beneficiary form (TOD) or of a pension,
22 profit-sharing, retirement or similar benefit plan or other
23 nonprobate transfer at death;

24 [~~(5)~~] (6) "child" includes an individual
25 entitled to take as a child pursuant to the Uniform Probate

.182520.2

underscored material = new
[bracketed material] = delete

1 Code by intestate succession from the parent whose relationship
2 is involved and excludes a person who is only a stepchild, a
3 foster child, a grandchild or any more remote descendant;

4 ~~[(6)]~~ (7) "claims", in respect to estates of
5 decedents and protected persons, includes liabilities of the
6 decedent or protected person, whether arising in contract, in
7 tort or otherwise and liabilities of the estate that arise at
8 or after the death of the decedent or after the appointment of
9 a conservator, including funeral expenses and expenses of
10 administration. "Claims" does not include estate or
11 inheritance taxes or demands or disputes regarding title of a
12 decedent, an incapacitated person or a minor protected person
13 to specific assets alleged to be included in the estate;

14 ~~[(7)]~~ (8) "conservator" ~~[means a person who is~~
15 ~~appointed by a court to manage the property or financial~~
16 ~~affairs or both of an incapacitated person or a minor protected~~
17 ~~person]~~ has the same meaning as set forth in Section 45-5-101
18 NMSA 1978;

19 ~~[(8)]~~ (9) "descendant" of an individual means
20 all of the individual's descendants of all generations, with
21 the relationship of parent and child at each generation being
22 determined by the definition of child and parent contained in
23 the Uniform Probate Code;

24 ~~[(9)]~~ (10) "devise", when used as a noun,
25 means a testamentary disposition of real or personal property

.182520.2

underscored material = new
[bracketed material] = delete

1 and, when used as a verb, means to dispose of real or personal
2 property by will;

3 [~~(10)~~] (11) "devisee" means a person
4 designated in a will to receive a devise. For the purposes of
5 Chapter 45, Article 3 NMSA 1978, in the case of a devise to an
6 existing trust or trustee or to a trustee or trust described by
7 will, the trust or trustee is the devisee and the beneficiaries
8 are not devisees;

9 [~~(11)~~] (12) "distributee" means a person who
10 has received property of a decedent from the decedent's
11 personal representative other than as a creditor or purchaser.
12 A testamentary trustee is a distributee only to the extent of
13 distributed assets or increment thereto remaining in the
14 testamentary trustee's hands. A beneficiary of a testamentary
15 trust to whom the trustee has distributed property received
16 from a personal representative is a distributee of the personal
17 representative. For the purposes of this paragraph,
18 "testamentary trustee" includes a trustee to whom assets are
19 transferred by will, to the extent of the devised assets;

20 (13) "electronic" means relating to technology
21 having electronic, digital, magnetic, wireless, optical,
22 electromagnetic or similar capabilities;

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

25 (a) has entered into a valid marriage,

underscoring material = new
[bracketed material] = delete

1 whether or not the marriage was terminated by dissolution;

2 (b) is on active duty with any of the
3 armed forces of the United States; or

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

6 [~~12~~] (15) "estate" includes the property of
7 the decedent, trust or other person whose affairs are subject
8 to the Uniform Probate Code as the property was originally
9 constituted and as it exists from time to time during
10 administration;

11 [~~13~~] (16) "exempt property" means that
12 property of a decedent's estate that is described in [~~Section~~]
13 Sections 45-2-402 and 45-2-403 NMSA 1978;

14 [~~14~~] (17) "fiduciary" includes a personal
15 representative, guardian, guardian ad litem, conservator and
16 trustee;

17 [~~15~~] (18) "foreign personal representative"
18 means a personal representative appointed by another
19 jurisdiction;

20 [~~16~~] (19) "formal proceedings" means
21 proceedings conducted before a district judge with notice to
22 interested persons;

23 [~~17~~] (20) "governing instrument" means a
24 deed, will, trust, insurance or annuity policy, account with
25 POD designation, security registered in beneficiary form (TOD),

.182520.2

underscoring material = new
[bracketed material] = delete

1 pension, profit-sharing, retirement or similar benefit plan,
2 instrument creating or exercising a power of appointment or a
3 power of attorney or a dispositive, appointive or nominative
4 instrument of a similar type;

5 [~~(18)~~] (21) "guardian" means a person who has
6 qualified to provide for the care, custody or control of the
7 person of a minor or incapacitated person pursuant to
8 [~~testamentary~~] parental or court appointment [~~but excludes one~~
9 ~~who is merely~~]. "Guardian" includes a limited, emergency and
10 temporary guardian but not a guardian ad litem;

11 [~~(19)~~] (22) "guardian ad litem" means a person
12 appointed by the district court to represent and protect the
13 interests of a minor or an incapacitated person in connection
14 with litigation or any other court proceeding;

15 [~~(20)~~] (23) "heirs", except as controlled by
16 Section 45-2-711 NMSA 1978, means persons, including the
17 surviving spouse and the state, who are entitled under the
18 statutes of intestate succession to the property of a decedent;

19 [~~(21)~~] (24) "incapacitated person" means an
20 individual described in Section 45-5-101 NMSA 1978;

21 [~~(22)~~] (25) "informal proceedings" means those
22 proceedings conducted without notice to interested persons
23 before the [~~probate~~] court for probate of a will or appointment
24 of a personal representative, except as provided for in Section
25 45-3-306 NMSA 1978;

.182520.2

underscored material = new
[bracketed material] = delete

1 ~~[(23)]~~ (26) "interested person" includes
2 heirs, devisees, children, spouses, creditors, beneficiaries
3 and any others having a property right in or claim against a
4 trust estate or the estate of a decedent, a minor protected
5 person or an incapacitated person. "Interested person" also
6 includes persons having priority for appointment as personal
7 representatives and other fiduciaries representing interested
8 persons. The meaning as it relates to particular persons may
9 vary from time to time and ~~[must]~~ shall be determined according
10 to the particular purposes of, and matter involved in, a
11 proceeding; ~~["Interested person" does not apply to the~~
12 ~~provisions of Chapter 45, Article 5 NMSA 1978;~~

13 ~~(24)]~~ (27) "issue" of ~~[a person]~~ an individual
14 means ~~[all of]~~ the ~~[person's]~~ individual's descendants; ~~[of all~~
15 ~~generations, with the relationship of parent and child at each~~
16 ~~generation being determined by the definition of child and~~
17 ~~parent contained in the Uniform Probate Code;~~

18 ~~(25)]~~ (28) "lease" includes an oil, gas or
19 other mineral lease;

20 ~~[(26)]~~ (29) "letters" includes letters
21 testamentary, letters of guardianship, letters of
22 administration and letters of conservatorship;

23 ~~[(27)]~~ (30) "minor" means ~~[a person]~~ an
24 unemancipated individual who has not reached eighteen years of
25 age;

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

1 [~~(28)~~] (31) "mortgage" means any conveyance,
2 agreement or arrangement in which property is encumbered or
3 used as security;

4 [~~(29)~~] (32) "nonresident decedent" means a
5 decedent who was domiciled in another jurisdiction at the time
6 of death;

7 [~~(30)~~] (33) "organization" means a
8 corporation, business trust, limited liability company, estate,
9 trust, partnership, joint venture, association, government or
10 governmental subdivision or agency or any other legal or
11 commercial entity;

12 [~~(31)~~] (34) "parent" includes any person
13 entitled to take, or who would be entitled to take if the child
14 died without a will, as a parent pursuant to the Uniform
15 Probate Code by intestate succession from the child whose
16 relationship is in question and excludes any person who is only
17 a stepparent, foster parent or grandparent;

18 [~~(32)~~] (35) "payor" means a trustee, insurer,
19 business entity, employer, government, governmental agency or
20 subdivision or any other person authorized or obligated by law
21 or a governing instrument to make payments;

22 [~~(33)~~] (36) "person" means an individual or an
23 organization;

24 [~~(34)~~] (37) "personal representative" includes
25 executor, administrator, successor personal representative,

.182520.2

underscored material = new
[bracketed material] = delete

1 special administrator and persons who perform substantially the
2 same function under the law governing their status. "General
3 personal representative" excludes special administrator;

4 [~~(35)~~] (38) "petition" means a written motion
5 or other request to the [~~probate~~] district court for an order
6 after notice;

7 [~~(36)~~] (39) "proceeding" includes action at
8 law and suit in equity;

9 [~~(37)~~] (40) "property" includes both real and
10 personal property or any right or interest therein and means
11 anything that may be the subject of ownership;

12 [~~(38)~~] (41) "protected person" [~~is as defined~~]
13 has the same meaning as set forth in Section 45-5-101 NMSA
14 1978;

15 [~~(39)~~] (42) "protective proceeding" means a
16 conservatorship proceeding [~~described in Section 45-5-101~~]
17 pursuant to Section 45-5-401 NMSA 1978;

18 (43) "record" means information that is
19 inscribed on a tangible medium or that is stored in an
20 electronic or other medium and is retrievable in perceivable
21 form;

22 [~~(40)~~] (44) "security" includes any note,
23 stock, treasury stock, bond, debenture, evidence of
24 indebtedness, certificate of interest or participation in an
25 oil, gas or mining title or lease or in payments out of

.182520.2

underscored material = new
[bracketed material] = delete

1 production under such a title or lease, collateral trust
2 certificate, transferable share, voting trust certificate or,
3 in general, any interest or instrument commonly known as a
4 security or any certificate of interest or participation, any
5 temporary or interim certificate, receipt or certificate of
6 deposit for or any warrant or right to subscribe to or purchase
7 any of the foregoing;

8 ~~[(41)]~~ (45) "settlement", in reference to a
9 decedent's estate, includes the full process of administration,
10 distribution and closing;

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

13 (a) to execute or adopt a tangible
14 symbol; or

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

17 ~~[(42)]~~ (47) "special administrator" means a
18 personal representative as described by Sections 45-3-614
19 through 45-3-618 NMSA 1978;

20 ~~[(43)]~~ (48) "state" means a state of the
21 United States, the District of Columbia, the commonwealth of
22 Puerto Rico or any territory or insular possession subject to
23 the jurisdiction of the United States. "State" also includes
24 any Indian nation, tribe, pueblo or band located within the
25 United States and recognized by federal law or formally

.182520.2

underscored material = new
[bracketed material] = delete

1 acknowledged by a state of the United States;

2 [~~(44)~~] (49) "successor personal
3 representative" means a personal representative, other than a
4 special administrator, who is appointed to succeed a previously
5 appointed personal representative;

6 [~~(45)~~] (50) "successors" means persons, other
7 than creditors, who are entitled to property of a decedent
8 under the decedent's will or the Uniform Probate Code;

9 [~~(46)~~] (51) "supervised administration" refers
10 to the proceedings described in Article [~~III~~] 3, Part 5 of the
11 Uniform Probate Code;

12 [~~(47)~~] (52) "survive" means that an individual
13 has neither predeceased an event, including the death of
14 another individual, nor is deemed to have predeceased an event
15 pursuant to Section 45-2-104 or 45-2-702 NMSA 1978. "Survive"
16 includes its derivatives, such as "survives", "survived",
17 "survivor" and "surviving";

18 [~~(48)~~] (53) "testacy proceeding" means a
19 proceeding to establish a will or determine intestacy;

20 [~~(49)~~] (54) "testator" includes an individual
21 of either [~~sex~~] gender;

22 [~~(50)~~] (55) "trust" includes an express trust,
23 private or charitable, with additions thereto, wherever and
24 however created. "Trust" also includes a trust created or
25 determined by judgment or decree under which the trust is to be

.182520.2

underscored material = new
[bracketed material] = delete

1 administered in the manner of an express trust. "Trust"
2 excludes other constructive trusts and excludes resulting
3 trusts, conservatorships, personal representatives, trust
4 accounts as defined in Article [~~VI~~] 6 of the Uniform Probate
5 Code, custodial arrangements, including those created under the
6 Uniform [~~Transfer~~] Transfers to Minors Act, business trusts
7 providing for certificates to be issued to beneficiaries,
8 common trust funds, voting trusts, security arrangements,
9 liquidation trusts, trusts for the primary purpose of paying
10 debts, dividends, interest, salaries, wages, profits, pensions
11 or employee benefits of any kind and any arrangement under
12 which a person is nominee or escrowee for another;

13 [~~(51)~~] (56) "trustee" includes an original,
14 additional or successor trustee, whether or not appointed or
15 confirmed by court; and

16 [~~(52)~~] (57) "will" includes a codicil and any
17 testamentary instrument that merely appoints a personal
18 representative, revokes or revises another will, nominates a
19 guardian or expressly excludes or limits the right of an
20 individual or class to succeed to property of the decedent
21 passing by intestate succession. "Will" does not include a
22 holographic will.

23 B. The definitions in Subsection A of this section
24 are made subject to additional definitions contained in
25 subsequent articles that are applicable to specific articles,

.182520.2

underscored material = new
[bracketed material] = delete

1 parts or sections."

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

4 "45-1-301. APPLICATION.--

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

7 ~~[A.]~~ (1) the affairs and estates of decedents,
8 missing persons and protected persons domiciled in New Mexico;

9 ~~[B.]~~ (2) the property of nonresidents located
10 in New Mexico or property coming into the control of a
11 fiduciary who is subject to the laws of New Mexico;

12 ~~[C.]~~ (3) incapacitated persons, ~~[and]~~ minors
13 and protected persons in New Mexico;

14 ~~[D.]~~ (4) survivorship and related accounts and
15 similar property interests in New Mexico; ~~[and]~~

16 ~~E. trusts subject to administration in New~~
17 ~~Mexico;]~~

18 (5) the disclaimer of property interests by
19 persons in New Mexico;

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

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

24 B. The Uniform Probate Code does not create,
25 enlarge, modify or diminish parental rights or duties pursuant

.182520.2

underscored material = new
[bracketed material] = delete

1 to the New Mexico Uniform Parentage Act, the Children's Code or
2 other law of New Mexico. The definition or use of terms in the
3 Uniform Probate Code shall not be used to interpret, by analogy
4 or otherwise, the same or other terms in the New Mexico Uniform
5 Parentage Act, the Adoption Act or other law of New Mexico."

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

8 "45-1-302. SUBJECT MATTER JURISDICTION OF DISTRICT AND
9 PROBATE COURTS.--

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

12 (1) formal proceedings with respect to the
13 estates of decedents, including determinations of testacy,
14 appointment of personal representatives, constructions of
15 wills, administration and expenditure of funds of estates,
16 determination of heirs and successors of decedents and
17 distribution and closing of estates;

18 (2) estates of missing and protected persons;

19 (3) protection of incapacitated persons and
20 minors; [~~and~~]

21 (4) survivorship and related accounts and
22 similar property interests;

23 (5) disclaimer of interests in property;

24 (6) apportionment of taxes on estates; and

25 [~~(4) trusts~~] (7) governing instruments except

underscored material = new
[bracketed material] = delete

1 wills.

2 B. The district court in formal proceedings shall
3 have jurisdiction to determine title to and value of real or
4 personal property as between the estate and any interested
5 person, including strangers to the estate claiming adversely
6 thereto. The district court has full power to make orders,
7 judgments and decrees and to take all other action necessary
8 and proper to administer justice in matters [~~which~~] that come
9 before it.

10 C. The probate court and the district court have
11 original jurisdiction over informal proceedings for probate of
12 a will or appointment of a personal representative."

13 **SECTION 8.** Section 45-1-303 NMSA 1978 (being Laws 1975,
14 Chapter 257, Section 1-303, as amended) is amended to read:

15 "45-1-303. VENUE--MULTIPLE PROCEEDINGS--TRANSFER.--

16 A. Subject to the provisions of [~~Section~~] Sections
17 45-1-302 and 45-3-201 NMSA 1978 [~~where~~] and Chapter 45, Article
18 5 NMSA 1978 and the Uniform Adult Guardianship and Protective
19 Proceedings Jurisdiction Act, if a proceeding under the Uniform
20 Probate Code could be maintained in more than one place in New
21 Mexico, the court in which the proceeding is first commenced
22 has the exclusive right to proceed.

23 B. If proceedings concerning the same estate,
24 protected person or trust are commenced in more than one court
25 of New Mexico, the court having jurisdiction in which the

underscored material = new
[bracketed material] = delete

1 proceeding was first commenced shall continue to hear the
2 matter and the other courts shall hold the matter in abeyance
3 until the question of venue is decided. If the ruling court
4 determines that venue is properly in another court having
5 jurisdiction, it shall transfer the proceeding to the other
6 court.

7 C. If a court finds that in the interest of justice
8 a proceeding or a file should be located in another court of
9 New Mexico having jurisdiction, the court making the finding
10 may transfer the proceeding or file to the other court."

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

13 "45-1-403. PLEADINGS--WHEN PARTIES BOUND BY OTHERS--
14 NOTICE.--In judicial proceedings involving [~~trusts, or~~] estates
15 of decedents, minors, protected persons or incapacitated
16 persons, and in judicially supervised settlements, the
17 following rules apply:

18 A. interests to be affected shall be described in
19 pleadings that give reasonable information to owners by name or
20 class, by reference to the instrument creating the interests or
21 in [~~other~~] another appropriate manner;

22 B. [~~persons are~~] a person is bound by [~~orders~~] an
23 order binding [~~others~~] another in the following cases:

24 (1) [~~orders~~] an order binding the sole holder
25 or all co-holders of a power of revocation or a presently

.182520.2

underscored material = new
[bracketed material] = delete

1 exercisable general power of appointment, including one in the
2 form of a power of amendment, [~~bind~~] binds other persons to the
3 extent their interests as objects, takers in default or
4 otherwise are subject to the power;

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

7 (a) [~~orders~~] an order binding a
8 conservator [~~bind~~] binds the person whose estate the
9 conservator controls;

10 (b) [~~orders~~] an order binding a guardian
11 [~~bind~~] binds the protected person if no conservator of the
12 protected person's estate has been appointed;

13 (c) [~~orders~~] an order binding a trustee
14 [~~bind~~] binds beneficiaries of the trust in proceedings to
15 probate a will establishing or adding to a trust, to review the
16 acts or accounts of a [~~prior~~] former fiduciary and in
17 proceedings involving creditors or other third parties; [~~and~~]

18 (d) [~~orders~~] an order binding a personal
19 representative [~~bind~~] binds persons interested in the
20 undistributed assets of a decedent's estate in actions or
21 proceedings by or against the estate [~~If there is no conflict~~
22 ~~of interest and no conservator or guardian has been appointed,~~
23 ~~a parent may represent the parent's minor child]; and~~

24 (e) an order binding the sole holder or
25 all co-holders of a general testamentary power of appointment

underscored material = new
[bracketed material] = delete

1 binds other persons to the extent their interests as objects,
2 takers in default or otherwise are subject to the power; and

3 (3) [~~an~~] unless otherwise represented, a minor
4 or an incapacitated, unborn or unascertained person [~~who is not~~
5 ~~otherwise represented~~] is bound by an order to the extent the
6 minor's or the incapacitated, unborn or unascertained person's
7 interest is adequately represented by another party having a
8 substantially identical interest in the proceeding;

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

11 [~~G-~~] D. notice is required as follows:

12 (1) the notice [~~as~~] prescribed by Section
13 45-1-401 NMSA 1978 shall be given to [~~any~~] every person having
14 an interest in the subject of the hearing or to one who can
15 bind [~~that~~] an interested person as described in Paragraph (1)
16 or (2) of Subsection B of this section. Notice may be given
17 both to [~~a~~] an interested person and to another who may bind
18 that person; and

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

24 [~~D-~~] E. at any point in a proceeding, the district
25 court shall appoint a guardian ad litem to represent the

.182520.2

underscoring material = new
[bracketed material] = delete

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

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

11 "45-2-103. SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE.--

12 A. Any part of the intestate estate not passing to
13 ~~[the]~~ a decedent's surviving spouse pursuant to Section
14 45-2-102 NMSA 1978, or the entire intestate estate if there is
15 no surviving spouse, passes in the following order to the
16 individuals ~~[designated below]~~ who survive the decedent:

17 ~~[A.]~~ (1) to the decedent's descendants by
18 representation;

19 ~~[B.]~~ (2) if there is no surviving descendant,
20 to the decedent's parents equally if both survive, or to the
21 surviving parent if only one survives;

22 ~~[C.]~~ (3) if there is no surviving descendant
23 or parent, to the descendants of the decedent's parents or
24 either of them by representation; ~~[and~~

25 ~~[D.]~~ (4) if there is no surviving descendant,

.182520.2

underscored material = new
[bracketed material] = delete

1 parent or descendant of a parent, but the decedent is survived
2 on both the paternal and maternal sides by one or more
3 grandparents or descendants of grandparents:

4 (a) half ~~[of the estate passes]~~ to the
5 decedent's paternal grandparents equally if both survive, ~~[or]~~
6 to the surviving paternal grandparent if only one survives, or
7 to the descendants of the decedent's paternal grandparents or
8 either of them if both are deceased, the descendants taking by
9 representation; and ~~[the other half passes to the decedent's~~
10 ~~maternal relatives in the same manner; but if there is no~~
11 ~~surviving grandparent or descendant of a grandparent on either~~
12 ~~the paternal or the maternal side, the entire estate passes to~~
13 ~~the decedent's relatives on the other side in the same manner~~
14 ~~as the half]~~

15 (b) half to the decedent's maternal
16 grandparents equally if both survive, to the surviving maternal
17 grandparent if only one survives, or to the descendants of the
18 decedent's maternal grandparents or either of them if both are
19 deceased, the descendants taking by representation; and

20 (5) if there is no surviving descendant
21 parent, or descendant of a parent, but the decedent is survived
22 by one or more grandparents or descendants of grandparents on
23 the paternal but not the maternal side, or on the maternal but
24 not the paternal side, to the decedent's relatives on the side
25 with one or more surviving members in the manner described in

underscored material = new
[bracketed material] = delete

1 Paragraph (4) of this subsection.

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

4 (1) one deceased spouse who has one or more
5 descendants who survive the decedent, the estate or part
6 thereof passes to that spouse's descendants by representation;
7 or

8 (2) more than one deceased spouse who has one
9 or more descendants who survive the decedent, an equal share of
10 the estate or part thereof passes to each set of descendants by
11 representation.

12 C. For purposes of Subsection B of this section,
13 the term "deceased spouse" means an individual to whom the
14 decedent was married at the individual's death, and does not
15 include a spouse who was divorced from, or treated as divorced
16 from, the decedent at the time of the decedent's death."

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

19 "45-2-104. REQUIREMENT [~~THAT HEIR SURVIVE DECEDENT~~] OF
20 SURVIVAL BY ONE HUNDRED TWENTY HOURS--INDIVIDUAL IN
21 GESTATION.--

22 A. For purposes of intestate succession, homestead
23 allowance and exempt property, and except as otherwise provided
24 in Subsection B of this section, the following rules apply:

25 (1) an individual born before a decedent's

underscored material = new
[bracketed material] = delete

1 death who fails to survive the decedent by one hundred twenty
2 hours is deemed to have predeceased the decedent [~~for purposes~~
3 ~~of family allowance, personal property allowance and intestate~~
4 ~~succession, and the decedent's heirs are determined~~
5 ~~accordingly~~]. If it is not established by clear and convincing
6 evidence that an individual [~~who would otherwise be an heir~~
7 born before the decedent's death] survived the decedent by one
8 hundred twenty hours, it is deemed that the individual failed
9 to survive for the required period; [~~this section is not to be~~
10 ~~applied if its application would result in a taking of~~
11 ~~intestate estate by the state pursuant to Section 45-2-105 NMSA~~
12 ~~1978~~] and

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

20 B. This section does not apply if its application
21 would cause the estate to pass to the state under Section
22 45-2-105 NMSA 1978."

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

25 "45-2-114. PARENT [~~AND CHILD RELATIONSHIP~~] BARRED FROM

.182520.2

underscored material = new
[bracketed material] = delete

1 INHERITING IN CERTAIN CIRCUMSTANCES.--

2 ~~[A. Except as provided in Subsections B and C of~~
3 ~~this section, for purposes of intestate succession by, through~~
4 ~~or from a person, an individual is the child of his natural~~
5 ~~parents, regardless of their marital status. The parent and~~
6 ~~child relationship may be established under the Uniform~~
7 ~~Parentage Act.~~

8 ~~B. An adopted individual is the child of his~~
9 ~~adopting parent or parents and not of his natural parents, but~~
10 ~~adoption of a child by the spouse of either natural parent has~~
11 ~~no effect on:~~

12 ~~(1) the relationship between the child and~~
13 ~~that natural parent; or~~

14 ~~(2) the right of the child or a descendant of~~
15 ~~the child to inherit from or through that nonsevered natural~~
16 ~~parent.~~

17 ~~C. Inheritance from or through a child by either~~
18 ~~natural parent or his kindred is precluded unless that natural~~
19 ~~parent has openly treated the child as his and has not refused~~
20 ~~to support the child.]~~

21 A. A parent is barred from inheriting from or
22 through a child of the parent if:

23 (1) the parent's parental rights were
24 terminated and the parent-child relationship was not judicially
25 reestablished; or

.182520.2

underscored material = new
[bracketed material] = delete

1 (2) the child died before reaching eighteen
2 years of age and there is clear and convincing evidence that
3 immediately before the child's death the parental rights of the
4 parent could have been terminated under law of New Mexico other
5 than the Uniform Probate Code on the basis of nonsupport,
6 abandonment, abuse, neglect or other actions or inactions of
7 the parent toward the child.

8 B. For the purpose of intestate succession from or
9 through the deceased child, a parent who is barred from
10 inheriting under this section is treated as if the parent
11 predeceased the child."

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

14 "45-2-115. [NEW MATERIAL] DEFINITIONS.--As used in
15 Subpart 2 of Part 1 of Article 2 of the Uniform Probate Code:

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

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

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

21 D. "functioned as a parent of the child" means
22 behaving toward a child in a manner consistent with being the
23 child's parent and performing functions that are customarily
24 performed by a parent, including fulfilling parental
25 responsibilities toward the child, recognizing or holding out

.182520.2

underscored material = new
[bracketed material] = delete

1 the child as the individual's child, materially participating
2 in the child's upbringing and residing with the child in the
3 same household as a regular member of that household;

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

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

12 G. "genetic parent" means a child's genetic father
13 or genetic mother;

14 H. "incapacity" means the inability of an
15 individual to function as a parent of a child because of the
16 individual's physical or mental condition; and

17 I. "relative" means a grandparent or a descendant
18 of a grandparent."

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

21 "45-2-116. [NEW MATERIAL] EFFECT OF PARENT-CHILD
22 RELATIONSHIP.--Except as otherwise provided in Subsections B
23 through E of Section 45-2-119 NMSA 1978, if a parent-child
24 relationship exists or is established pursuant to Subpart 2 of
25 Part 1 of Article 2 of the Uniform Probate Code, the parent is

.182520.2

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

1 a parent of the child and the child is a child of the parent
2 for the purpose of intestate succession."

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

5 "45-2-117. [NEW MATERIAL] NO DISTINCTION BASED ON MARITAL
6 STATUS.--Except as otherwise provided in Section 45-2-114,
7 45-2-119, 45-2-120 or 45-2-121 NMSA 1978, a parent-child
8 relationship exists between a child and the child's genetic
9 parents, regardless of the parents' marital status."

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

12 "45-2-118. [NEW MATERIAL] ADOPTEE AND ADOPTEE'S ADOPTIVE
13 PARENT OR PARENTS.--

14 A. A parent-child relationship exists between an
15 adoptee and the adoptee's adoptive parent or parents.

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

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

21 (2) a child of a genetic parent who is in the
22 process of being adopted by a genetic parent's spouse when the
23 spouse dies is treated as adopted by the deceased spouse if the
24 genetic parent survives the deceased spouse by one hundred
25 twenty hours.

.182520.2

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

1 C. If, after a parent-child relationship is
2 established between a child of assisted reproduction and a
3 parent pursuant to Section 45-2-120 NMSA 1978 or between a
4 gestational child and a parent pursuant to Section 45-2-121
5 NMSA 1978, the child is in the process of being adopted by the
6 parent's spouse when that spouse dies, the child is treated as
7 adopted by the deceased spouse for the purpose of Paragraph (2)
8 of Subsection B of this section."

9 **SECTION 17.** A new Section 45-2-119 NMSA 1978 is enacted
10 to read:

11 "45-2-119. [NEW MATERIAL] ADOPTEE AND ADOPTEE'S GENETIC
12 PARENTS.--

13 A. Except as otherwise provided in Subsections B
14 through E of this section, a parent-child relationship does not
15 exist between an adoptee and the adoptee's genetic parents.

16 B. A parent-child relationship exists between an
17 individual who is adopted by the spouse of either genetic
18 parent and:

19 (1) the genetic parent whose spouse adopted
20 the individual; and

21 (2) the other genetic parent, but only for the
22 purpose of the right of the adoptee or a descendant of the
23 adoptee to inherit from or through the other genetic parent.

24 C. A parent-child relationship exists between both
25 genetic parents and an individual who is adopted by a relative

.182520.2

underscored material = new
[bracketed material] = delete

1 of a genetic parent or by the spouse or surviving spouse of a
2 relative of a genetic parent, but only for the purpose of the
3 right of the adoptee or a descendant of the adoptee to inherit
4 from or through either genetic parent.

5 D. A parent-child relationship exists between both
6 genetic parents and an individual who is adopted after the
7 death of both genetic parents, but only for the purpose of the
8 right of the adoptee or a descendant of the adoptee to inherit
9 through either genetic parent.

10 E. If, after a parent-child relationship is
11 established between a child of assisted reproduction and a
12 parent or parents pursuant to Section 45-2-120 NMSA 1978 or
13 between a gestational child and a parent or parents pursuant to
14 Section 45-2-121 NMSA 1978, the child is adopted by another or
15 others, the child's parent or parents pursuant to Section
16 45-2-120 or 45-2-121 NMSA 1978 are treated as the child's
17 genetic parent or parents for the purpose of this section."

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

20 "45-2-120. [NEW MATERIAL] CHILD CONCEIVED BY ASSISTED
21 REPRODUCTION OTHER THAN CHILD BORN TO GESTATIONAL CARRIER.--

22 A. As used in this section:

23 (1) "birth mother" means a woman, other than a
24 gestational carrier pursuant to Section 45-2-121 NMSA 1978, who
25 gives birth to a child of assisted reproduction. The term is

.182520.2

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

1 not limited to a woman who is the child's genetic mother;

2 (2) "child of assisted reproduction" means a
3 child conceived by means of assisted reproduction by a woman
4 other than a gestational carrier pursuant to Section 45-2-121
5 NMSA 1978; and

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

9 (a) a husband who provides sperm or a
10 wife who provides eggs that are used for assisted reproduction
11 by the wife;

12 (b) the birth mother of a child of
13 assisted reproduction; or

14 (c) an individual who has been
15 determined pursuant to Subsection E or F of this section to
16 have a parent-child relationship with a child of assisted
17 reproduction.

18 B. A parent-child relationship does not exist
19 between a child of assisted reproduction and a third-party
20 donor.

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

23 D. Except as otherwise provided in Subsections I
24 and J of this section, a parent-child relationship exists
25 between a child of assisted reproduction and the husband of the

.182520.2

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

1 child's birth mother if the husband provided the sperm that the
2 birth mother used during his lifetime for assisted
3 reproduction.

4 E. A birth certificate identifying an individual
5 other than the birth mother as the other parent of a child of
6 assisted reproduction presumptively establishes a parent-child
7 relationship between the child and that individual.

8 F. Except as otherwise provided in Subsections G, I
9 and J of this section, and unless a parent-child relationship
10 is established pursuant to Subsection D or E of this section, a
11 parent-child relationship exists between a child of assisted
12 reproduction and an individual other than the birth mother who
13 consented to assisted reproduction by the birth mother with
14 intent to be treated as the other parent of the child. Consent
15 to assisted reproduction by the birth mother with intent to be
16 treated as the other parent of the child is established if the
17 individual:

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

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

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

25 (b) intended to function as a parent of

1 the child no later than two years after the child's birth but
2 was prevented from carrying out that intent by death,
3 incapacity or other circumstances; or

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

7 G. For the purpose of Paragraph (1) of Subsection F
8 of this section, neither an individual who signed a record more
9 than two years after the birth of the child nor a relative of
10 that individual who is not also a relative of the birth mother
11 inherits from or through the child unless the individual
12 functioned as a parent of the child before the child reached
13 eighteen years of age.

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

16 (1) if the birth mother is married and no
17 divorce proceeding is pending, in the absence of clear and
18 convincing evidence to the contrary, her spouse satisfies
19 Subparagraph (a) or (b) of Paragraph (2) of Subsection F of
20 this section; and

21 (2) if the birth mother is a surviving spouse
22 and at her deceased spouse's death no divorce proceeding was
23 pending, in the absence of clear and convincing evidence to the
24 contrary, her deceased spouse satisfies Subparagraph (b) or (c)
25 of Paragraph (2) of Subsection F of this section.

underscored material = new
[bracketed material] = delete

1 I. If a married couple is divorced before placement
2 of eggs, sperm or embryos, a child resulting from the assisted
3 reproduction is not a child of the birth mother's former
4 spouse, unless the former spouse consented in a record that if
5 assisted reproduction were to occur after divorce, the child
6 would be treated as the former spouse's child.

7 J. If, in a record, an individual withdraws consent
8 to assisted reproduction before placement of eggs, sperm or
9 embryos, a child resulting from the assisted reproduction is
10 not a child of that individual, unless the individual
11 subsequently satisfies Subsection F of this section.

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

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

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

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

24 "45-2-121. [NEW MATERIAL] CHILD BORN TO GESTATIONAL
25 CARRIER.--

.182520.2

underscored material = new
[bracketed material] = delete

1 A. As used in this section:

2 (1) "gestational agreement" means an
3 enforceable or unenforceable agreement for assisted
4 reproduction in which a woman agrees to carry a child to birth
5 for an intended parent, intended parents or an individual
6 described in Subsection E of this section;

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

11 (3) "gestational child" means a child born to
12 a gestational carrier pursuant to a gestational agreement; and

13 (4) "intended parent" means an individual who
14 entered into a gestational agreement providing that the
15 individual will be the parent of a child born to a gestational
16 carrier by means of assisted reproduction. The term is not
17 limited to an individual who has a genetic relationship with
18 the child.

19 B. A parent-child relationship is conclusively
20 established by a court order designating the parent or parents
21 of a gestational child.

22 C. A parent-child relationship between a
23 gestational child and the child's gestational carrier does not
24 exist unless the gestational carrier is:

25 (1) designated as a parent of the child in a

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

1 court order described in Subsection B of this section; or

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

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

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

10 (2) died while the gestational carrier was
11 pregnant if:

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

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

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

25 E. In the absence of a court order pursuant to

.182520.2

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

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

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

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

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

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

24 (3) the individual's spouse or surviving
25 spouse functioned as a parent of the child no later than two

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

1 years after the child's birth.

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

4 (1) a court order pursuant to Subsection B of
5 this section; or

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

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

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

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

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

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

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

.182520.2

underscored material = new
[bracketed material] = delete

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

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

6 "45-2-403. PERSONAL PROPERTY ALLOWANCE.--In addition to
7 the family allowance, the decedent's surviving spouse is
8 entitled from the estate to a value, not exceeding fifteen
9 thousand dollars (\$15,000) in excess of any security interests
10 therein, in household furniture, automobiles, furnishings,
11 appliances and personal effects. If there is no surviving
12 spouse, the decedent's children who are devisees under the
13 will, who are entitled to a share of the estate pursuant to
14 Section 45-2-302 NMSA 1978 or, if there is no will, who are
15 intestate heirs are entitled jointly to the same value. If
16 encumbered chattels are selected and the value in excess of
17 security interests plus that of other exempt property is less
18 than fifteen thousand dollars (\$15,000) or if there is not
19 fifteen thousand dollars (\$15,000) worth of exempt property in
20 the estate, the spouse or children are entitled to other assets
21 of the estate, if any, to the extent necessary to make up the
22 fifteen thousand dollar (\$15,000) value. Rights to specific
23 property for the [~~family~~] personal property allowance and
24 assets needed to make up a deficiency in the property have
25 priority over all claims against the estate, but the right to

.182520.2

underscored material = new
[bracketed material] = delete

1 any assets to make up a deficiency of exempt property abates as
2 necessary to permit earlier payment of the family allowance.
3 These rights are in addition to any benefit or share passing to
4 the surviving spouse or children by intestate succession or by
5 the decedent's will, unless otherwise provided by the decedent
6 in the will or other governing instrument."

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

9 "45-2-501. WHO MAY MAKE WILL.--An individual eighteen or
10 more years of age who is of sound mind or an emancipated minor
11 who is of sound mind may make a will."

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

14 "45-2-507. REVOCATION BY WRITING OR BY ACT.--

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

16 (1) by executing a subsequent will that
17 revokes the previous will or part expressly or by
18 inconsistency; [~~or~~]

19 (2) by executing another subsequent document
20 in the manner provided for in Section 45-2-502 or 45-2-504 NMSA
21 1978, or both, that expressly revokes the previous will or part
22 thereof; or

23 [~~(2)~~] (3) by performing a revocatory act on
24 the will if the testator performed the act with the intent and
25 for the purpose of revoking the will or part or if another

.182520.2

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

1 individual performed the act in the testator's conscious
2 presence and by the testator's direction. For purposes of this
3 paragraph, "revocatory act on the will" includes burning,
4 tearing, canceling, obliterating or destroying the will or any
5 part of it. A burning, tearing or canceling is a "revocatory
6 act on the will", whether or not the burn, tear or cancellation
7 touched any of the words on the will.

8 B. If a subsequent will does not expressly revoke a
9 previous will, the execution of the subsequent will wholly
10 revokes the previous will by inconsistency if the testator
11 intended the subsequent will to replace rather than supplement
12 the previous will.

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

20 D. The testator is presumed to have intended a
21 subsequent will to supplement rather than replace a previous
22 will if the subsequent will does not make a complete
23 disposition of the testator's estate. If this presumption
24 arises and is not rebutted by clear and convincing evidence,
25 the subsequent will revokes the previous will only to the

.182520.2

underscoring material = new
[bracketed material] = delete

1 extent that the subsequent will is inconsistent with the
2 previous will; each will is fully operative on the testator's
3 death to the extent [~~they~~] that the wills are not
4 inconsistent."

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

7 "45-2-603. ANTILAPSE--DECEASED DEVISEE--CLASS GIFTS.--

8 A. As used in this section:

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

20 (2) "class member" includes an individual who
21 fails to survive the testator but who would have taken under a
22 devise in the form of a class gift had [~~he~~] the class member
23 survived the testator;

24 (3) "descendant of a grandparent", as used in
25 Subsection B of this section, means an individual who qualifies

underscored material = new
[bracketed material] = delete

1 as a descendant of a grandparent of the testator or of the
2 donor of a power of appointment pursuant to:

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

6 (b) rules for intestate succession if
7 the devise or exercise of the power is not in the form of a
8 class gift;

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

14 [~~3~~] (5) "devise" includes an alternative
15 devise, a devise in the form of a class gift and an exercise of
16 a power of appointment;

17 [~~4~~] (6) "devisee" includes:

18 (a) a class member if the devise is in
19 the form of a class gift;

20 (b) an individual or class member who
21 was deceased at the time the testator executed [~~his~~] the
22 testator's will as well as an individual or class member who
23 was then living but who failed to survive the testator; and

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

.182520.2

underscored material = new
[bracketed material] = delete

1 [~~(5)~~] (7) "stepchild" means a child of the
2 surviving, deceased or former spouse of the testator or of the
3 donor of a power of appointment and not of the testator or
4 donor;

5 [~~(6)~~ ~~"surviving devisee" or "surviving~~
6 ~~descendant"~~]

7 (8) "surviving", as used in the phrase
8 "surviving devisees" or "surviving descendants", means [a
9 ~~devisee]~~ devisees or [~~a descendant]~~ descendants who neither
10 predeceased the testator nor [~~is]~~ are deemed to have
11 predeceased the testator pursuant to the provisions of Section
12 45-2-702 NMSA 1978; and

13 [~~(7)~~] (9) "testator" includes the donee of a
14 power of appointment if the power is exercised in the
15 testator's will.

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

20 (1) except as provided in Paragraph (4) of
21 this subsection, if the devise is not in the form of a class
22 gift and the deceased devisee leaves surviving descendants, a
23 substitute gift is created in the devisee's surviving
24 descendants. They take by representation the property to which
25 the devisee would have been entitled had the devisee survived

.182520.2

underscored material = new
[bracketed material] = delete

1 the testator;

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

21 (3) for the purposes of Section 45-2-601 NMSA
22 1978, words of survivorship, such as in a devise to an
23 individual "if he survives me" or in a devise to "my surviving
24 children" are not, in the absence of additional evidence, a
25 sufficient indication of an intent contrary to the application

.182520.2

underscored material = new
[bracketed material] = delete

1 of this section;

2 (4) if the will creates an alternative devise
3 with respect to a devise for which a substitute gift is created
4 by Paragraph (1) or (2) of this subsection, the substitute gift
5 is superseded by the alternative devise ~~[only]~~ if ~~[an expressly~~
6 ~~designated devisee of the alternative devise is entitled to~~
7 ~~take under the will]~~:

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

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

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

21 C. If, pursuant to the provisions of Subsection B
22 of this section, substitute gifts are created and not
23 superseded with respect to more than one devise and the devises
24 are alternative devises, one to the other, the determination of
25 which of the substitute gifts takes effect is resolved as

.182520.2

underscored material = new
[bracketed material] = delete

1 follows:

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

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

8 ~~[D.]~~ (3) as used in ~~[Subsections C and D of]~~
9 this ~~[section]~~ subsection:

10 ~~[(1)]~~ (a) "primary devise" means the
11 devise that would have taken effect had all the deceased
12 devisees of the alternative devises who left surviving
13 descendants survived the testator;

14 ~~[(2)]~~ (b) "primary substitute gift"
15 means the substitute gift created with respect to the primary
16 devise;

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

25 ~~[(4)]~~ (d) "younger-generation substitute

underscored material = new
[bracketed material] = delete

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

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

5 "45-2-606. NONADEMPTION OF SPECIFIC DEVISES--UNPAID
6 PROCEEDS OF SALE, CONDEMNATION OR INSURANCE--SALE BY
7 CONSERVATOR OR AGENT.--

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

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

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

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

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

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

.182520.2

underscored material = new
[bracketed material] = delete

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

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

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

.182520.2

underscored material = new
[bracketed material] = delete

1 D. ~~[For the purposes of the references in~~
2 ~~Subsection B of this section to a conservator]~~ Subsection B of
3 this section does not apply if, after the sale, mortgage,
4 condemnation, casualty or recovery, it ~~[was]~~ is adjudicated
5 that the testator's incapacity has ceased and the testator
6 ~~[survived]~~ survives the adjudication ~~[by]~~ for at least one
7 year.

8 E. For the purposes of the references in Subsection
9 B of this section to an agent acting within the authority of a
10 durable power of attorney for an incapacitated ~~[principal]~~
11 person:

12 ~~[(1) "incapacitated principal" means a~~
13 ~~principal who is an incapacitated person;~~

14 ~~(2)]~~ (1) no adjudication of incapacity before
15 death is necessary; and

16 ~~(3)]~~ (2) the acts of an agent within the
17 authority of a durable power of attorney are presumed to be for
18 ~~[an]~~ the incapacitated ~~[principal]~~ person."

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

21 "45-2-705. CLASS GIFTS CONSTRUED TO ACCORD WITH INTESTATE
22 SUCCESSION--EXCEPTIONS.--

23 ~~[A. Adopted individuals and individuals born out of~~
24 ~~wedlock and their respective descendants if appropriate to the~~
25 ~~class are included in class gifts and other terms of~~

.182520.2

underscored material = new
[bracketed material] = delete

1 ~~relationship in accordance with the rules for intestate~~
2 ~~succession. Terms of relationship that do not differentiate~~
3 ~~relationships by blood from those by affinity, such as~~
4 ~~"uncles", "aunts", "nieces" or "nephews", are construed to~~
5 ~~exclude relatives by affinity. Terms of relationship that do~~
6 ~~not differentiate relationships by the half blood from those by~~
7 ~~the whole blood, such as "brothers", "sisters", "nieces" or~~
8 ~~"nephews", are construed to include both types of~~
9 ~~relationships.~~

10 ~~B. In addition to the requirements of Subsection A~~
11 ~~of this section, in construing a dispositive provision of a~~
12 ~~transferor who is not the natural parent, an individual born to~~
13 ~~the natural parent is not considered the child of that parent~~
14 ~~unless the individual lived while a minor as a regular member~~
15 ~~of the household of that natural parent or of that parent's~~
16 ~~parent, brother, sister, spouse or surviving spouse.~~

17 ~~C. In addition to the requirements of Subsection A~~
18 ~~of this section, in construing a dispositive provision of a~~
19 ~~transferor who is not the adopting parent, an adopted~~
20 ~~individual is not considered the child of the adopting parent~~
21 ~~unless the adopted individual lived while a minor, either~~
22 ~~before or after the adoption, as a regular member of the~~
23 ~~household of the adopting parent.]~~

24 A. As used in this section:

25 (1) "adoptee" has the meaning set forth in

underscored material = new
[bracketed material] = delete

1 Section 45-2-115 NMSA 1978;

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

4 (3) "distribution date" means the date when an
5 immediate or postponed class gift takes effect in possession or
6 enjoyment;

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

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

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

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

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

18 B. A class gift that uses a term of relationship to
19 identify the class members includes a child of assisted
20 reproduction, a gestational child and, except as otherwise
21 provided in Subsections E and F of this section, an adoptee and
22 a child born to parents who are not married to each other and
23 their respective descendants if appropriate to the class in
24 accordance with the rules for intestate succession regarding
25 parent-child relationships. A provision in a governing

.182520.2

underscored material = new
[bracketed material] = delete

1 instrument that uses a term of relationship that does not
2 specifically refer to a child of assisted reproduction or a
3 gestational child does not apply to a child of assisted
4 reproduction or a gestational child.

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

9 (1) when the governing instrument was
10 executed, the class was then and foreseeably would be empty; or

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

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

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

25 F. In construing a dispositive provision of a

.182520.2

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

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

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

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

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

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

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

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

.182520.2

underscored material = new
[bracketed material] = delete

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

3 "45-2-706. LIFE INSURANCE--RETIREMENT PLAN--ACCOUNT WITH
4 POD DESIGNATION--TRANSFER-ON-DEATH REGISTRATION--DECEASED
5 BENEFICIARY.--

6 A. As used in this section:

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

15 (2) "beneficiary" means the beneficiary of a
16 beneficiary designation under which the beneficiary must
17 survive the decedent and includes:

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

20 (b) an individual or class member who
21 was deceased at the time the beneficiary designation was
22 executed as well as an individual or class member who was then
23 living but who failed to survive the decedent, but excludes a
24 joint tenant of a joint tenancy with the right of survivorship
25 and a party to a joint and survivorship account;

.182520.2

underscored material = new
[bracketed material] = delete

1 (3) "beneficiary designation" includes an
2 alternative beneficiary designation and a beneficiary
3 designation in the form of a class gift;

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

8 (5) "descendant of a grandparent", as used in
9 Subsection B of this section, means an individual who qualifies
10 as a descendant of a grandparent of the decedent pursuant to:

11 (a) rules of construction applicable to
12 a class gift created in the decedent's beneficiary designation
13 if the beneficiary designation is in the form of a class gift;
14 or

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

17 (6) "descendants", as used in the phrase
18 "surviving descendants" of a deceased beneficiary or class
19 member in Paragraphs (1) and (2) of Subsection B of this
20 section, means the descendants of a deceased beneficiary or
21 class member who would take under a class gift created in the
22 beneficiary designation;

23 ~~(5)~~ (7) "stepchild" means a child of the
24 decedent's surviving, deceased or former spouse and not of the
25 decedent; and

.182520.2

underscored material = new
[bracketed material] = delete

1 [~~(6)~~ "~~surviving beneficiary~~" or "~~surviving~~
2 ~~descendant~~"]

3 (8) "surviving", as used in the phrase
4 "surviving beneficiaries" or "surviving descendants", means [~~a~~
5 ~~beneficiary~~] beneficiaries or [~~a descendant~~] descendants who
6 neither predeceased the decedent nor [~~is~~] are deemed to have
7 predeceased the decedent pursuant to the provisions of Section
8 45-2-702 NMSA 1978.

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

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

19 (2) except as provided in Paragraph (4) of
20 this subsection, if the beneficiary designation is in the form
21 of a class gift, other than a beneficiary designation to
22 "issue", "descendants", "heirs of the body", "heirs", "next of
23 kin", "relatives" or "family" or a class described by language
24 of similar import, a substitute gift is created in the
25 surviving descendants of any deceased beneficiary. The

.182520.2

underscored material = new
[bracketed material] = delete

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

14 (3) for the purposes of Section 45-2-701 NMSA
15 1978, words of survivorship, such as in a beneficiary
16 designation to an individual "if he survives me" or in a
17 beneficiary designation to "my surviving children", are not, in
18 the absence of additional evidence, a sufficient indication of
19 an intent contrary to the application of this section; and

20 (4) if a governing instrument creates an
21 alternative beneficiary designation with respect to a
22 beneficiary designation for which a substitute gift is created
23 by Paragraph (1) or (2) of this subsection, the substitute gift
24 is superseded by the alternative beneficiary designation ~~only~~
25 if ~~[an expressly designated beneficiary of the alternative~~

.182520.2

underscored material = new
[bracketed material] = delete

1 ~~beneficiary designation is entitled to take~~]:

2 (a) the alternative beneficiary
3 designation is in the form of a class gift and one or more
4 members of the class is entitled to take; or

5 (b) the alternative beneficiary
6 designation is not in the form of a class gift and the
7 expressly designated beneficiary of the alternative beneficiary
8 designation is entitled to take.

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

16 (1) except as provided in Paragraph (2) of
17 this subsection, the property passes under the primary
18 substitute gift; ~~and~~

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

23 ~~[D.]~~ (3) as used in ~~[Subsections C and D of]~~
24 this ~~[section]~~ subsection:

25 ~~[+]~~ (a) "primary beneficiary

underscored material = new
[bracketed material] = delete

1 designation" means the beneficiary designation that would have
2 taken effect had all the deceased beneficiaries of the
3 alternative beneficiary designations who left surviving
4 descendants survived the decedent;

5 [~~(2)~~] (b) "primary substitute gift"
6 means the substitute gift created with respect to the primary
7 beneficiary designation;

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

19 [~~(4)~~] (d) "younger-generation substitute
20 gift" means the substitute gift created with respect to the
21 younger- generation beneficiary designation.

22 [~~E-~~] D. A payor is protected from liability in
23 making payments under the terms of the beneficiary designation
24 until the payor has received written notice of a claim to a
25 substitute gift under this section. Payment made before the

.182520.2

underscored material = new
[bracketed material] = delete

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

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

19 Payment made to the court discharges the payor from all claims
20 for the amounts paid.

21 [~~F.~~] E. A person who purchases property for value
22 and without notice or who receives a payment or other item of
23 property in partial or full satisfaction of a legally
24 enforceable obligation is neither obligated pursuant to the
25 provisions of this section to return the payment, item of

.182520.2

underscored material = new
[bracketed material] = delete

1 property or benefit nor [~~is~~] liable pursuant to the provisions
2 of this section for the amount of the payment or the value of
3 the item of property or benefit. But a person who, not for
4 value, receives a payment, item of property or any other
5 benefit to which the person is not entitled pursuant to the
6 provisions of this section is obligated to return the payment,
7 item of property or benefit or is personally liable for the
8 amount of the payment or the value of the item of property or
9 benefit to the person who is entitled to it pursuant to the
10 provisions of this section.

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

22 SECTION 28. Section 45-2-707 NMSA 1978 (being Laws 1993,
23 Chapter 174, Section 55, as amended) is amended to read:

24 "45-2-707. SURVIVORSHIP WITH RESPECT TO FUTURE INTERESTS
25 UNDER TERMS OF TRUST--SUBSTITUTE TAKERS.--

.182520.2

underscored material = new
[bracketed material] = delete

1 A. As used in this section:

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

13 (2) "beneficiary" means the beneficiary of a
14 future interest and includes a class member if the future
15 interest is in the form of a class gift;

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

20 (4) "descendants", as used in the phrase
21 "surviving descendants" of a deceased beneficiary or class
22 member in Paragraphs (1) and (2) of Subsection B of this
23 section, means the descendants of a deceased beneficiary or
24 class member who would take under a class gift created in the
25 trust;

.182520.2

underscored material = new
[bracketed material] = delete

1 [~~(4)~~] (5) "distribution date", with respect to
2 a future interest, means the time when the future interest is
3 to take effect in possession or enjoyment. The distribution
4 date need not occur at the beginning or end of a calendar day,
5 but can occur at a time during the course of a day;

6 [~~(5)~~] (6) "future interest" includes an
7 alternative future interest and a future interest in the form
8 of a class gift;

9 [~~(6)~~] (7) "future interest under the terms of
10 a trust" means a future interest that was created by a transfer
11 creating a trust or to an existing trust or by an exercise of a
12 power of appointment to an existing trust, directing the
13 continuance of an existing trust, designating a beneficiary of
14 an existing trust or creating a trust; and

15 [~~(7)~~] ~~"surviving beneficiary" or "surviving~~
16 ~~descendant"]~~

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

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

.182520.2

underscored material = new
[bracketed material] = delete

1 a trust fails to survive the distribution date, the following
2 apply:

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

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

.182520.2

underscored material = new
[bracketed material] = delete

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

6 (3) for the purposes of Section 45-2-701 NMSA
7 1978, words of survivorship attached to a future interest are
8 not, in the absence of additional evidence, a sufficient
9 indication of an intent contrary to the application of this
10 section. Words of survivorship include words of survivorship
11 that relate to the distribution date or to an earlier or an
12 unspecified time, whether those words of survivorship are
13 expressed in condition-precedent, condition-subsequent or any
14 other form; and

15 (4) if a governing instrument creates an
16 alternative future interest with respect to a future interest
17 for which a substitute gift is created by Paragraph (1) or (2)
18 of this subsection, the substitute gift is superseded by the
19 alternative future interest ~~[only] if [an expressly designated~~
20 ~~beneficiary of the alternative future interest is entitled to~~
21 ~~take in possession or enjoyment]:~~

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

25 (b) the alternative future interest is

underscored material = new
[bracketed material] = delete

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

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

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

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

16 (3) as used in this subsection:

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

21 ~~(2)~~ (b) "primary substitute gift"
22 means the substitute gift created with respect to the primary
23 future interest;

24 ~~(3)~~ (c) "younger-generation future
25 interest" means a future interest that: ~~(a)~~ 1) is to a

underscored material = new
[bracketed material] = delete

1 descendant of a beneficiary of the primary future interest;
2 [~~(b)~~] 2) is an alternative future interest with respect to the
3 primary future interest; [~~(c)~~] 3) is a future interest for
4 which a substitute gift is created; and [~~(d)~~] 4) would have
5 taken effect had all the deceased beneficiaries who left
6 surviving descendants survived the distribution date except the
7 deceased beneficiary or beneficiaries of the primary future
8 interest; and

9 [~~(4)~~] (d) "younger-generation substitute
10 gift" means the substitute gift created with respect to the
11 younger-generation future interest.

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

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

22 (2) if no taker is produced by the application
23 of Paragraph (1) of this subsection, the property passes to the
24 transferor's heirs pursuant to the provisions of Section
25 45-2-711 NMSA 1978.

.182520.2

underscored material = new
[bracketed material] = delete

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

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

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

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

15 "45-2-709. REPRESENTATION--PER CAPITA AT EACH
16 GENERATION--PER STIRPES.--

17 A. As used in this section:

18 (1) "deceased child" or "deceased descendant"
19 means a child or a descendant who either predeceased the
20 distribution date or is deemed to have predeceased the
21 distribution date pursuant to the provisions of Section
22 45-2-702 NMSA 1978;

23 (2) "distribution date", with respect to an
24 interest, means the time when the interest is to take effect in
25 possession or enjoyment. The distribution date need not occur

.182520.2

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

1 at the beginning or end of a calendar day, but can occur at a
2 time during the course of a day; and

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

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

12 (1) surviving descendants in the generation
13 nearest to the designated ancestor that contains one or more
14 surviving descendants; and

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

17 Each surviving descendant in the nearest generation is
18 allocated one share. The remaining shares, if any, are
19 combined and then divided in the same manner among the
20 surviving descendants of the deceased descendants as if the
21 surviving descendants who were allocated a share and their
22 surviving descendants had predeceased the distribution date.

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

.182520.2

underscored material = new
[bracketed material] = delete

- 1 (1) surviving children of the designated
- 2 ancestor; and
- 3 (2) deceased children who left surviving
- 4 descendants.

5 Each surviving child, if any, is allocated one share. The
6 share of each deceased child [~~if any~~] with surviving
7 descendants is divided in the same manner, with subdivision
8 repeating at each succeeding generation until the property is
9 fully allocated among surviving descendants.

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

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

17 "45-2-803. EFFECT OF HOMICIDE ON INTESTATE SUCCESSION,
18 WILLS, TRUSTS, JOINT ASSETS, LIFE INSURANCE AND BENEFICIARY
19 DESIGNATIONS.--

20 A. As used in this section:

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

24 (2) "revocable", with respect to a
25 disposition, appointment, provision or nomination, means one

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

1 under which the decedent, at the time of or immediately before
2 death, was alone empowered, by law or under the governing
3 instrument, to cancel the designation in favor of the killer,
4 whether or not the decedent was then empowered to designate
5 ~~[himself]~~ the decedent's own self in place of ~~[his]~~ the
6 decedent's killer and the decedent then had capacity to
7 exercise the power.

8 B. An individual who feloniously and intentionally
9 kills the decedent forfeits all benefits pursuant to the
10 provisions of Chapter 45, Article 2 NMSA 1978 with respect to
11 the decedent's estate, including an intestate share, an omitted
12 spouse's or child's share, a family allowance and a personal
13 property allowance. If the decedent died intestate, the
14 decedent's intestate estate passes as if the killer disclaimed
15 ~~[his]~~ the killer's intestate share.

16 C. The felonious and intentional killing of the
17 decedent:

18 (1) revokes any revocable:

19 (a) disposition or appointment of
20 property made by the decedent to the killer in a governing
21 instrument;

22 (b) provision in a governing instrument
23 executed by the decedent conferring a general or nongeneral
24 power of appointment on the killer; and

25 (c) nomination of the killer in a

underscored material = new
[bracketed material] = delete

1 governing instrument executed by the decedent, nominating or
2 appointing the killer to serve in any fiduciary or
3 representative capacity, including a personal representative,
4 executor, trustee or agent; and

5 (2) severs the interests of the decedent and
6 killer in property held by them at the time of the killing as
7 joint tenants with the right of survivorship, transforming the
8 interests of the decedent and killer into equal tenancies in
9 common.

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

19 E. Provisions of a governing instrument executed by
20 the decedent are given effect as if the killer disclaimed all
21 provisions revoked by this section or, in the case of a revoked
22 nomination in a fiduciary or representative capacity, as if the
23 killer predeceased the decedent.

24 F. An acquisition of property or interest by a
25 killer not covered by this section [~~must~~] shall be treated in

.182520.2

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

1 accordance with the principle that a killer cannot profit from
2 ~~[his]~~ the killer's wrong.

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

17 H. A payor or other third party is not liable for
18 having made a payment or transferred an item of property or any
19 other benefit to a beneficiary designated in a governing
20 instrument executed by the decedent affected by an intentional
21 and felonious killing or for having taken any other action in
22 good faith reliance on the validity of the governing instrument
23 executed by the decedent upon request and satisfactory proof of
24 the decedent's death before the payor or other third party
25 received written notice of a claimed forfeiture or revocation

.182520.2

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

1 under this section. A payor or other third party is liable for
2 a payment made or other action taken after the payor or other
3 third party received written notice of a claimed forfeiture or
4 revocation under this section.

5 Written notice of a claimed forfeiture or revocation
6 pursuant to the provisions of this section [~~must~~] shall be
7 mailed to the payor's or other third party's main office or
8 home by registered or certified mail, return receipt requested,
9 or served upon the payor or other third party in the same
10 manner as a summons in a civil action. Upon receipt of written
11 notice of a claimed forfeiture or revocation pursuant to the
12 provisions of this section, a payor or other third party may
13 pay any amount owed or transfer or deposit any item of property
14 held by it to or with the court having jurisdiction of the
15 probate proceedings relating to the decedent's estate or, if no
16 proceedings have been commenced, to or with the court having
17 jurisdiction of probate proceedings relating to decedents'
18 estates located in the county of the decedent's residence. The
19 court shall hold the funds or item of property and, upon its
20 determination pursuant to the provisions of this section, shall
21 order disbursement in accordance with the determination.
22 Payments, transfers or deposits made to or with the court
23 discharge the payor or other third party from all claims for
24 the value of amounts paid to or items of property transferred
25 to or deposited with the court.

.182520.2

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

1 I. A person who purchases property for value and
2 without notice or who receives a payment or other item of
3 property in partial or full satisfaction of a legally
4 enforceable obligation is neither obligated pursuant to the
5 provisions of this section to return the payment, item of
6 property or benefit nor [~~is~~] liable pursuant to the provisions
7 of this section for the amount of the payment or the value of
8 the item of property or benefit. But a person who, not for
9 value, receives a payment, item of property or any other
10 benefit to which the person is not entitled pursuant to the
11 provisions of this section is obligated to return the payment,
12 item of property or benefit or is personally liable for the
13 amount of the payment or the value of the item of property or
14 benefit to the person who is entitled to it pursuant to the
15 provisions of this section.

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

.182520.2

underscored material = new
[bracketed material] = delete

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

3 "45-2-804. REVOCATION OF PROBATE AND NONPROBATE TRANSFERS
4 BY DIVORCE--NO REVOCATION BY OTHER CHANGES OF CIRCUMSTANCES.--

5 A. As used in this section:

6 (1) "disposition or appointment of property"
7 includes a transfer of an item of property or any other benefit
8 to a beneficiary designated in a governing instrument;

9 (2) "divorce or annulment" means [~~any~~] a
10 divorce or annulment or [~~any~~] a dissolution or declaration of
11 invalidity of a marriage that would exclude the spouse as a
12 surviving spouse within the meaning of Section 45-2-802 NMSA
13 1978. A decree of separation that does not terminate the
14 status of husband and wife is not a divorce for purposes of
15 this section;

16 (3) "divorced individual" includes an
17 individual whose marriage has been annulled;

18 (4) "governing instrument" means a governing
19 instrument executed by the divorced individual before the
20 divorce or annulment of [~~his~~] the divorced individual's
21 marriage to [~~his~~] the former spouse;

22 (5) "relative of the divorced individual's
23 former spouse" means an individual who is related to the
24 divorced individual's former spouse by blood, adoption or
25 affinity and who, after the divorce or annulment, is not

.182520.2

underscored material = new
[bracketed material] = delete

1 related to the divorced individual by blood, adoption or
2 affinity; and

3 (6) "revocable", with respect to a
4 disposition, appointment, provision or nomination, means one
5 under which the divorced individual, at the time of the divorce
6 or annulment, was alone empowered by law or under the governing
7 instrument to cancel the designation in favor of [~~his~~] the
8 former spouse or former spouse's relative whether or not the
9 divorced individual was then empowered to designate [~~himself~~]
10 the divorced individual's own self in place of [~~his~~] the former
11 spouse or in place of [~~his~~] the former spouse's relative and
12 whether or not the divorced individual then had the capacity to
13 exercise the power.

14 B. Except as provided by the express terms of a
15 governing instrument, a court order or a contract relating to
16 the division of the marital estate made between the divorced
17 individuals before or after the marriage, divorce or annulment,
18 the divorce or annulment of a marriage:

19 (1) revokes any revocable:

20 (a) disposition or appointment of
21 property made by a divorced individual to [~~his~~] the former
22 spouse in a governing instrument and any disposition or
23 appointment created by law or in a governing instrument to a
24 relative of the divorced individual's former spouse;

25 (b) provision in a governing instrument

.182520.2

underscored material = new
[bracketed material] = delete

1 conferring a general or nongeneral power of appointment on the
2 divorced individual's former spouse or on a relative of the
3 divorced individual's former spouse; and

4 (c) nomination in a governing
5 instrument, nominating a divorced individual's former spouse or
6 a relative of the divorced individual's former spouse to serve
7 in any fiduciary or representative capacity, including a
8 personal representative, executor, trustee, conservator, agent
9 or guardian; and

10 (2) severs the interests of the former spouses
11 in property held by them at the time of the divorce or
12 annulment as joint tenants with the right of survivorship,
13 transforming the interests of the former spouses into equal
14 tenancies in common.

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

24 D. Provisions of a governing instrument are given
25 effect as if the former spouse and relatives of the former

.182520.2

underscored material = new
[bracketed material] = delete

1 spouse disclaimed all provisions revoked by this section or, in
2 the case of a revoked nomination in a fiduciary or
3 representative capacity, as if the former spouse and relatives
4 of the former spouse died immediately before the divorce or
5 annulment.

6 E. Provisions revoked solely by this section are
7 revived by the divorced individual's remarriage to the former
8 spouse or by a nullification of the divorce or annulment.

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

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

23 Written notice of the divorce, annulment or remarriage
24 pursuant to the provisions of this section [~~must~~] shall be
25 mailed to the payor's or other third party's main office or

.182520.2

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

1 home by registered or certified mail, return receipt requested,
2 or served upon the payor or other third party in the same
3 manner as a summons in a civil action. Upon receipt of the
4 written notice of the divorce, annulment or remarriage, a payor
5 or other third party may pay any amount owed or transfer or
6 deposit any item of property held by it to or with the court
7 having jurisdiction of the probate proceedings relating to the
8 decedent's estate or, if no proceedings have been commenced, to
9 or with the court having jurisdiction of probate proceedings
10 relating to decedents' estates located in the county of the
11 decedent's residence. The court shall hold the funds or item
12 of property and, upon its determination pursuant to the
13 provisions of this section, shall order disbursement or
14 transfer in accordance with the determination. Payments,
15 transfers or deposits made to or with the court discharge the
16 payor or other third party from all claims for the value of
17 amounts paid to or items of property transferred to or
18 deposited with the court.

19 H. A person who purchases property from a former
20 spouse, relative of a former spouse or any other person for
21 value and without notice or who receives from a former spouse,
22 relative of a former spouse or any other person a payment or
23 other item of property in partial or full satisfaction of a
24 legally enforceable obligation is neither obligated pursuant
25 to the provisions of this section to return the payment, item

.182520.2

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

1 of property or benefit nor is liable pursuant to the
2 provisions of this section for the amount of the payment or
3 the value of the item of property or benefit. But a former
4 spouse, relative of a former spouse or other person who, not
5 for value, received a payment, item of property or any other
6 benefit to which that person is not entitled pursuant to the
7 provisions of this section is obligated to return the payment,
8 item of property or benefit or is personally liable for the
9 amount of the payment or the value of the item of property or
10 benefit to the person who is entitled to it pursuant to the
11 provisions of this section.

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

24 **SECTION 32.** Section 45-2-805 NMSA 1978 (being Laws
25 1975, Chapter 257, Section 2-804, as amended) is recompiled as
.182520.2

underscored material = new
[bracketed material] = delete

1 Section 45-2-807 NMSA 1978 and a new Section 45-2-805 NMSA
2 1978 is enacted to read:

3 "45-2-805. [NEW MATERIAL] REFORMATION TO CORRECT
4 MISTAKES.--The district court may reform the terms of a
5 governing instrument, even if unambiguous, to conform the
6 terms to the transferor's intention if it is proved by clear
7 and convincing evidence what the transferor's intention was
8 and that the terms of the governing instrument were affected
9 by a mistake of fact or law, whether in expression or
10 inducement."

11 SECTION 33. Section 45-2-806 NMSA 1978 (being Laws
12 1973, Chapter 276, Section 8) is recompiled as Section
13 45-2-808 NMSA 1978 and a new Section 45-2-806 NMSA 1978 is
14 enacted to read:

15 "45-2-806. [NEW MATERIAL] MODIFICATION TO ACHIEVE
16 TRANSFEROR'S TAX OBJECTIVES.--To achieve the transferor's tax
17 objectives, the district court may modify the terms of a
18 governing instrument in a manner that is not contrary to the
19 transferor's probable intention. The district court may
20 provide that the modification has retroactive effect."

21 SECTION 34. Section 45-2-901 NMSA 1978 (being Laws
22 1992, Chapter 66, Section 1) is amended to read:

23 "45-2-901. STATUTORY RULE AGAINST PERPETUITIES.--

24 A. A nonvested property interest is invalid
25 unless:

.182520.2

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

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

6 B. A general power of appointment not presently
7 exercisable because of a condition precedent is invalid
8 unless:

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

13 (2) the condition precedent either is
14 satisfied or becomes impossible to satisfy within ninety years
15 after its creation.

16 C. A nongeneral power of appointment or a general
17 testamentary power of appointment is invalid unless:

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

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

24 D. In determining whether a nonvested property
25 interest or a power of appointment is valid under each

underscored material = new
[bracketed material] = delete

1 Paragraph (1) of Subsections A, B and C of this section, the
2 possibility that a child will be born to an individual after
3 the individual's death shall be disregarded.

4 ~~[E. If, in measuring a period from the creation of~~
5 ~~a trust or other property arrangement, language in a governing~~
6 ~~instrument seeks to postpone the vesting or termination of any~~
7 ~~interest or trust until, seeks to disallow the vesting or~~
8 ~~termination of any interest or trust beyond, seeks to require~~
9 ~~all interests or trusts to vest or terminate no later than, or~~
10 ~~seeks to operate in effect in any similar fashion upon the~~
11 ~~later of:~~

12 ~~(1) the expiration of a period of time not~~
13 ~~exceeding twenty-one years after the death of the survivor of~~
14 ~~specified lives in being at the creation of the trust or other~~
15 ~~property arrangement; or~~

16 ~~(2) the expiration of a period of time that~~
17 ~~exceeds or might exceed twenty-one years after the death of~~
18 ~~the survivor of lives in being at the creation of the trust or~~
19 ~~other property arrangement, then the portion of the language~~
20 ~~described in Paragraph (2) above is inoperative if and to the~~
21 ~~extent it produces a period of time that exceeds twenty-one~~
22 ~~years after the death of the survivor of the lives specified~~
23 ~~in Paragraph (1) above.]~~

24 E. If, in measuring a period from the creation of
25 a trust or other property arrangement, language in a governing

underscored material = new
[bracketed material] = delete

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

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

17 "45-2-908. [NEW MATERIAL] DEFINITIONS.--As used in
18 Sections 45-2-909 through 45-2-914 NMSA 1978:

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

23 B. "option in gross with respect to an interest in
24 real property" means an option in which the holder of the
25 option does not own any leasehold or other interest in the

.182520.2

underscored material = new
[bracketed material] = delete

1 real property that is the subject of the option; and

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

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

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

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

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

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

25 "45-2-911. [NEW MATERIAL] NONVESTED EASEMENT.--A

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

1 nonvested easement in gross becomes invalid if it does not
2 actually vest within thirty years after its creation."

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

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

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

20 "45-2-913. [NEW MATERIAL] EXCLUSIONS.--

21 A. Section 45-2-912 NMSA 1978 does not apply to a
22 possibility of reverter, right of entry or executory interest
23 that is held by a charity, a government or governmental agency
24 or subdivision excluded from the provisions of Section
25 45-2-901 NMSA 1978 by Subsection E of Section 45-2-904 NMSA

.182520.2

underscoring material = new
[bracketed material] = delete

1 1978.

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

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

8 "45-2-914. [NEW MATERIAL] APPLICATION.--Sections
9 45-2-908 through 45-2-913 NMSA 1978 apply only to a property
10 interest or arrangement affecting real property that is
11 created on or after July 1, 1992."

12 SECTION 42. Section 45-3-101 NMSA 1978 (being Laws
13 1975, Chapter 257, Section 3-101) is amended to read:

14 "45-3-101. DEVOLUTION OF ESTATE AT DEATH--
15 ADMINISTRATION ON DEATHS OF HUSBAND AND WIFE.--

16 A. The power of a person to leave property by will
17 and the rights of creditors, devisees and heirs to ~~[his]~~ the
18 person's property are subject to the restrictions and
19 limitations contained in ~~[Sections 3-101 through 3-1204]~~
20 Chapter 45, Article 3 NMSA 1978 to facilitate the prompt
21 settlement of estates.

22 B. Upon the death of a person, ~~[his]~~ the person's
23 separate property and ~~[his]~~ the person's share of community
24 property devolves:

25 (1) to the persons to whom the property is

underscored material = new
[bracketed material] = delete

1 devised by [~~his~~] the person's last will;

2 (2) to those indicated as substitutes for
3 them in cases involving revocation, lapse, [~~renunciation~~]
4 disclaimer or other circumstances pursuant to [~~Sections 2-508~~
5 ~~and 2-601 through 2-803~~] Chapter 45, Article 2 NMSA 1978
6 affecting the devolution of testate estates; or

7 (3) in the absence of testamentary
8 disposition, to [~~his~~] the person's heirs or to those indicated
9 as substitutes for them in cases involving [~~renunciation~~]
10 revocation, lapse, disclaimer or other circumstances pursuant
11 to [~~Sections 2-301 through 2-405~~] Chapter 45, Article 2, Parts
12 3, 4, 10 and 11 NMSA 1978 affecting the devolution of
13 intestate estates.

14 C. The devolution of separate property and the
15 decedent's share of community property is subject to rights to
16 the family allowance and personal property allowance, to
17 rights of creditors and to administration as provided in
18 [~~Sections 3-101 through 3-1204~~] Chapter 45, Article 3 NMSA
19 1978. The surviving spouse's share of the community property
20 is subject to administration until the time for presentation
21 of claims has expired, and thereafter only to the extent
22 necessary to pay community claims."

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

25 "45-3-108. PROBATE, TESTACY AND APPOINTMENT

.182520.2

underscored material = new
[bracketed material] = delete

1 PROCEEDINGS--ULTIMATE TIME LIMIT.--

2 A. No informal probate or appointment proceeding or
3 formal testacy or appointment proceeding, other than a
4 proceeding to probate a will previously probated at the
5 testator's domicile or appointment proceedings relating to an
6 estate in which there has been a prior appointment, may be
7 commenced more than three years after the decedent's death,
8 except:

9 (1) if a previous proceeding was dismissed
10 because of doubt about the fact of the decedent's death, then
11 appropriate probate, appointment or testacy proceedings may be
12 maintained at any time thereafter upon a finding that the
13 decedent's death occurred [~~prior to~~] before the initiation of
14 the previous proceeding and the applicant or petitioner has
15 not delayed unduly in initiating the subsequent proceeding;

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

22 (3) a proceeding to contest an informally
23 probated will and to secure appointment of the person with
24 legal priority for appointment in the event the contest is
25 successful may be commenced within the later of twelve months

.182520.2

underscored material = new
[bracketed material] = delete

1 from the informal probate or three years from the decedent's
2 death;

3 (4) an informal appointment in an intestate
4 proceeding or a formal testacy or appointment proceeding may
5 be commenced thereafter if no proceedings concerning the
6 succession or estate administration has occurred within the
7 three-year period after the decedent's death, but the personal
8 representative has no right to possess estate assets as
9 provided in Section 45-3-709 NMSA 1978 beyond that necessary
10 to confirm title thereto in the successors to the estate and
11 claims other than expenses of administration may not be
12 presented against the estate; and

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

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

25 C. In cases pursuant to the provisions of Paragraph

.182520.2

underscored material = new
[bracketed material] = delete

1 (1) or (2) of Subsection A of this section, the date on which
2 a testacy or appointment proceeding is properly commenced
3 shall be deemed to be the date of the decedent's death for
4 purposes of other limitation provisions of the Uniform Probate
5 Code that relate to the date of death."

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

8 "45-3-203. PRIORITY AMONG PERSONS SEEKING APPOINTMENT AS
9 PERSONAL REPRESENTATIVE.--

10 A. Whether the proceedings are formal or informal,
11 persons who are not disqualified have priority for appointment
12 in the following order:

13 (1) the person with priority as determined by a
14 probated will, including a person nominated by a power
15 conferred in a will;

16 (2) the surviving spouse of the decedent who is
17 a devisee of the decedent;

18 (3) other devisees of the decedent;

19 (4) the surviving spouse of the decedent;

20 (5) other heirs of the decedent; and

21 (6) on application or petition of an interested
22 person other than a spouse, devisee or heir, any qualified
23 person.

24 B. An objection to an appointment may be made only
25 in formal proceedings. In case of objection, the priorities

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

1 stated in Subsection A of this section apply except that:

2 (1) if the estate appears to be more than
3 adequate to meet ~~[exemptions]~~ allowances and costs of
4 administration but inadequate to discharge anticipated
5 unsecured claims, the court, on petition of creditors, may
6 appoint any qualified person; and

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

15 C. A person entitled to letters under Paragraphs
16 (2) through (5) of Subsection A of this section or a person
17 who has not reached the age of majority and who might be
18 entitled to letters but for the person's age may nominate a
19 qualified person to act as personal representative and thereby
20 confer the person's relative priority for appointment on the
21 person's nominee. Any person who has reached the age of
22 majority may renounce the right to nominate or to an
23 appointment by an appropriate writing signed by the person and
24 filed with the court. When two or more persons entitled to
25 letters under Paragraphs (2) through (5) of Subsection A of

.182520.2

underscored material = new
[bracketed material] = delete

1 this section share a priority, all those [~~of them~~] who do not
2 renounce shall concur in nominating another to act for them or
3 in applying for appointment by an appropriate writing signed
4 by the nominating persons and filed with the court. The
5 person so nominated shall have the same priority as those who
6 nominated the person.

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

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

23 F. No person is qualified to serve as a personal
24 representative who is:

25 (1) under the age of majority;

underscored material = new
[bracketed material] = delete

1 (2) a person whom the court finds unsuitable in
2 formal proceedings; or

3 (3) a creditor of the decedent unless the
4 appointment is to be made after forty-five days have elapsed
5 from the death of the decedent.

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

13 H. This section governs priority for appointment of
14 a successor personal representative but does not apply to the
15 selection of a special administrator."

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

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

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

.182520.2

underscored material = new
[bracketed material] = delete

1 "45-3-703. GENERAL DUTIES--RELATION AND LIABILITY TO
2 PERSONS INTERESTED IN ESTATE--STANDING TO SUE.--

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

15 B. A personal representative [~~shall~~] may not be
16 surcharged for acts of administration or distribution if the
17 conduct in question was authorized at the time. Subject to
18 other obligations of administration, an informally probated
19 will [~~is authority~~] authorizes a personal representative to
20 administer and distribute the estate according to its terms.

21 C. An order of appointment of a personal
22 representative, whether issued in informal or formal
23 proceedings, [~~is authority~~] authorizes a personal
24 representative to distribute apparently intestate assets to
25 the heirs of the decedent if, at the time of distribution, the

.182520.2

underscored material = new
[bracketed material] = delete

1 personal representative is not aware of:

2 (1) a pending testacy proceeding;

3 (2) a proceeding to vacate an order entered in
4 an earlier testacy proceeding;

5 (3) a formal proceeding questioning [~~his~~] the
6 personal representative's appointment or fitness to continue;

7 or

8 (4) a supervised administration proceeding.

9 D. [~~Nothing in~~] This section [~~affects~~] does not
10 affect the duty of the personal representative to administer
11 and distribute the estate in accordance with the rights of
12 claimants whose claims have been allowed, the surviving
13 spouse, any minor and dependent children and any pretermitted
14 child of the decedent.

15 E. Except as to proceedings [~~which~~] that do not
16 survive the death of the decedent, a personal representative
17 of a decedent domiciled in New Mexico at [~~his~~] the decedent's
18 death has the same standing to sue and be sued in the courts
19 of New Mexico and the courts of any other jurisdiction as
20 [~~his~~] the decedent had immediately prior to death."

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

23 "45-3-803. LIMITATIONS ON PRESENTATION OF CLAIMS.--

24 A. All claims against a decedent's estate that
25 arose before the death of the decedent, including claims of

.182520.2

underscored material = new
[bracketed material] = delete

1 the state and any political subdivision of the state, whether
2 due or to become due, absolute or contingent, liquidated or
3 unliquidated or founded on contract, tort or other legal
4 basis, if not barred earlier by another statute of limitations
5 or nonclaim statute, are barred against the estate, the
6 personal representative and the heirs, [~~and~~] devisees and
7 nonprobate transferees of the decedent unless presented within
8 the earlier of the following:

- 9 (1) one year after the decedent's death; or
10 (2) the time provided by Subsection A of
11 Section 45-3-801 NMSA 1978 for creditors who are given actual
12 notice and the time provided in Subsection B of Section
13 45-3-801 NMSA 1978 for all creditors barred by publication.

14 B. A claim described in Subsection A of this
15 section that is barred by the nonclaim statute of the
16 decedent's domicile before the giving of notice to creditors
17 in this state is barred in this state.

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

.182520.2

underscored material = new
[bracketed material] = delete

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

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

7 D. Nothing in this section affects or prevents:

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

10 (2) to the limits of the insurance protection
11 only, ~~any~~ a proceeding to establish liability of the
12 decedent or the personal representative for which ~~he~~ the
13 decedent or personal representative is protected by liability
14 insurance; or

15 (3) collection of compensation for services
16 rendered and reimbursement for expenses advanced by the
17 personal representative or by the attorney or accountant for
18 the personal representative of the estate."

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

21 "45-3-913. DISTRIBUTIONS TO TRUSTEE.--

22 A. Before distributing to a trustee, the personal
23 representative may require that the trust be registered if the
24 state in which it is to be administered provides for
25 registration and that the trustee inform the beneficiaries as

.182520.2

underscored material = new
[bracketed material] = delete

1 provided in Section [~~45-7-303~~] 46A-8-813 NMSA 1978.

2 B. If the trust instrument does not excuse the
3 trustee from giving bond, the personal representative may
4 petition the appropriate court to require that the trustee
5 post bond if [~~he~~] the personal representative apprehends that
6 distribution might jeopardize the interests of persons who are
7 not able to protect themselves, and [~~he~~] the personal
8 representative may withhold distribution until the court has
9 acted.

10 C. No inference of negligence on the part of the
11 personal representative shall be drawn from [~~his~~] the personal
12 representative's failure to exercise the authority conferred
13 by Subsections A and B of this section."

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

16 "45-3-915. DISTRIBUTION TO PERSON UNDER DISABILITY.--

17 A. A personal representative may discharge [~~his~~] an
18 obligation to distribute to [~~any~~] a minor or person under
19 other disability by distributing in a manner expressly
20 provided in the will or other governing instrument.

21 B. Unless contrary to an express provision in the
22 will or other governing instrument, the personal
23 representative may discharge [~~his~~] an obligation to distribute
24 to a minor or person under other disability as authorized by
25 Section [~~45-5-101~~] 45-5-103 NMSA 1978 or any other statute.

underscored material = new
[bracketed material] = delete

1 If the personal representative knows that a conservator has
2 been appointed or that a proceeding for appointment of a
3 conservator is pending, the personal representative is
4 authorized to distribute only to the conservator.

5 C. If the heir or devisee is under disability other
6 than minority, the personal representative is authorized to
7 distribute to:

8 (1) an [~~attorney in fact~~] agent who has
9 authority under a power of attorney to receive property for
10 that person; or

11 (2) the spouse, parent or other close relative
12 with whom the person under disability resides if the
13 distribution is of amounts not exceeding ten thousand dollars
14 (\$10,000) a year or property not exceeding [~~ten thousand~~
15 ~~dollars (\$10,000)~~] fifty thousand dollars (\$50,000) in value
16 unless the court authorizes a larger amount or greater value.

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

.182520.2

underscored material = new
[bracketed material] = delete

1 **SECTION 50.** Section 45-3-1201 NMSA 1978 (being Laws
2 1975, Chapter 257, Section 3-1201, as amended) is amended to
3 read:

4 "45-3-1201. COLLECTION OF PERSONAL PROPERTY BY
5 AFFIDAVIT.--

6 A. Thirty days after the death of a decedent, any
7 person indebted to the decedent or having possession of
8 tangible personal property or an instrument evidencing a debt,
9 obligation, stock or chose in action belonging to the decedent
10 shall make payment of the indebtedness or deliver the tangible
11 personal property or an instrument evidencing a debt,
12 obligation, stock or chose in action to a person claiming to
13 be the successor of the decedent upon being presented an
14 affidavit made by or on behalf of the successor stating that:

15 (1) the value of the entire estate, wherever
16 located, less liens and encumbrances, does not exceed [~~thirty~~
17 ~~thousand dollars (\$30,000)] fifty thousand dollars (\$50,000);~~

18 (2) thirty days have elapsed since the death of
19 the decedent;

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

23 (4) the claiming successor is entitled to
24 payment or delivery of the property.

25 B. A transfer agent of any security shall change

underscored material = new
[bracketed material] = delete

1 the registered ownership on the books of a corporation from
2 the decedent to the successor or successors upon the
3 presentation of an affidavit as provided in Subsection A of
4 this section.

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

7 SECTION 51. Section 45-3-1205 NMSA 1978 (being Laws
8 1985, Chapter 12, Section 1 and Laws 1985, Chapter 132,
9 Section 1) is amended to read:

10 "45-3-1205. [~~SMALL ESTATES~~] TRANSFER OF TITLE TO
11 HOMESTEAD TO SURVIVING SPOUSE BY AFFIDAVIT.--

12 A. Where a husband and wife own a homestead as
13 community property and when either the husband or wife dies
14 intestate or dies testate and by [~~their~~] the husband's or
15 wife's will [~~devise their~~] devises the husband's or wife's
16 interest in the homestead to the surviving spouse, the
17 homestead passes to the survivor and no probate or
18 administration is necessary.

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

23 (1) six months have elapsed since the death of
24 the decedent as shown in a certified copy of the death
25 certificate attached to the affidavit;

.182520.2

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

1 (2) the affiant and the decedent were at the
2 time of the death of the decedent married and owned the
3 homestead as community property;

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

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

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

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

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

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

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

23 (10) the affiant affirms that all statements in
24 the affidavit are true and correct and further acknowledges
25 that any false statement may subject the person to penalties

.182520.2

underscored material = new
[bracketed material] = delete

1 relating to perjury and subornation of perjury.

2 C. As used in this section, "homestead" means the
3 principal place of residence of the decedent or surviving
4 spouse or the last principal place of residence if neither the
5 decedent nor the surviving spouse is residing in that
6 residence because of illness or incapacitation and ~~[which]~~
7 that consists of one or more dwellings together with
8 appurtenant structures, the land underlying both the dwellings
9 and the appurtenant structures and a quantity of land
10 reasonably necessary for parking and other uses that
11 facilitates the use of the dwellings and appurtenant
12 structures, and provided the full value of this property as
13 assessed for property taxation purposes does not exceed ~~[one~~
14 ~~hundred thousand dollars (\$100,000)]~~ five hundred thousand
15 dollars (\$500,000)."

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

18 "45-5-101. DEFINITIONS AND USE OF TERMS.--Unless
19 otherwise apparent from the context or unless otherwise
20 specifically defined in other sections that are applicable to
21 specific articles, parts or sections of the Uniform Probate
22 Code, as used in Chapter 45, Article 5 NMSA 1978:

23 A. "conservator" ~~[is as defined in Section 45-1-201~~
24 ~~NMSA 1978]~~ means a person who is appointed by a court to
25 manage the property or financial affairs or both of a

.182520.2

underscored material = new
[bracketed material] = delete

1 protected person;

2 B. "court" means the district court or the
3 children's or family division of the district court where such
4 jurisdiction is conferred by the Children's Code;

5 C. "functional impairment" means an impairment that
6 is measured by a person's inability to manage the person's
7 personal care or the person's inability to manage the person's
8 estate or financial affairs or both;

9 D. "guardian" [~~is as defined~~] has the same meaning
10 as set forth in Section 45-1-201 NMSA 1978;

11 E. "guardian ad litem" [~~is as defined~~] has the same
12 meaning as set forth in Section 45-1-201 NMSA 1978;

13 F. "incapacitated person" means any person who
14 demonstrates over time either partial or complete functional
15 impairment by reason of mental illness, mental deficiency,
16 physical illness or disability, chronic use of drugs, chronic
17 intoxication or other cause, except minority, to the extent
18 that the person is unable to manage the person's personal
19 affairs or the person is unable to manage the person's estate
20 or financial affairs or both;

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

.182520.2

underscored material = new
[bracketed material] = delete

1 H. "inability to manage the person's estate or
2 financial affairs or both" means gross mismanagement, as
3 evidenced by recent behavior, of one's income and resources or
4 medical inability to manage one's income and resources that
5 has led or is likely in the near future to lead to financial
6 vulnerability;

7 I. "interested person" means any person who has an
8 interest in the welfare of the person to be protected [~~under~~
9 ~~this article~~] pursuant to Chapter 45, Article 5 NMSA 1978;

10 J. "least restrictive form of intervention" means
11 that the guardianship or conservatorship imposed on the
12 incapacitated person or minor protected person represents only
13 those limitations necessary to provide the needed care and
14 rehabilitative services and that the incapacitated person or
15 minor protected person shall enjoy the greatest amount of
16 personal freedom and civil liberties;

17 K. "letters" [~~is as defined~~] has the same meaning
18 as set forth in Section 45-1-201 NMSA 1978;

19 L. "limited conservator" means any person who is
20 qualified to manage the estate and financial affairs of an
21 incapacitated person pursuant to a court appointment in a
22 limited conservatorship;

23 M. "limited conservatorship" means that an
24 incapacitated person is subject to a conservator's exercise of
25 some but not all of the powers enumerated in Sections

.182520.2

underscored material = new
[bracketed material] = delete

1 45-5-424 and 45-5-425 NMSA 1978;

2 N. "limited guardian" means any person who is
3 qualified to manage the care, custody and control of an
4 incapacitated person pursuant to a court appointment of a
5 limited guardianship;

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

10 P. "minor" [~~is as defined~~] has the same meaning as
11 set forth in Section 45-1-201 NMSA 1978;

12 Q. "minor protected person" means a minor for whom
13 a guardian or conservator has been appointed solely because of
14 minority;

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

17 [~~R.~~] S. "protective proceeding" means a
18 conservatorship proceeding under Section 45-5-401 NMSA 1978;

19 [~~S.~~] T. "protected person" means a minor or other
20 person for whom a guardian or conservator has been appointed
21 or other protective order has been made;

22 [~~T.~~] U. "qualified health care professional" means
23 a physician, psychologist, physician assistant, nurse
24 practitioner or other health care practitioner whose training
25 and expertise aid in the assessment of functional impairment;

.182520.2

underscored material = new
[bracketed material] = delete

1 and

2 [U.] V. "visitor" means a person who is an
3 appointee of the court who has no personal interest in the
4 proceeding and who has been trained or has the expertise to
5 appropriately evaluate the needs of the person who is
6 allegedly incapacitated. A "visitor" may include, but is not
7 limited to, a psychologist, a social worker, a developmental
8 incapacity professional, a physical and occupational
9 therapist, an educator and a rehabilitation worker."

10 SECTION 53. Section 45-5-102 NMSA 1978 (being Laws 1975,
11 Chapter 257, Section 5-102) is amended to read:

12 "45-5-102. JURISDICTION OF SUBJECT MATTER--CONSOLIDATION
13 OF PROCEEDINGS.--

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

19 B. The court has exclusive jurisdiction over
20 protective proceedings [~~and guardianship proceedings~~] for
21 minors domiciled in or having property located in New Mexico.
22 Except to the extent that the guardianship is subject to the
23 Uniform Child-Custody Jurisdiction and Enforcement Act, the
24 court has exclusive jurisdiction over guardianship proceedings
25 for minors domiciled or present in New Mexico.

.182520.2

underscored material = new
[bracketed material] = delete

1 C. The court has exclusive jurisdiction over
2 guardianship and protective proceedings for an adult
3 individual as provided in the Uniform Adult Guardianship and
4 Protective Proceedings Jurisdiction Act.

5 ~~[B.]~~ D. When both guardianship and protective
6 proceedings as to the same person are commenced or pending in
7 the same court, the proceedings may be consolidated."

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

10 "45-5-103. FACILITY OF PAYMENT OR DELIVERY.--

11 A. ~~[Any]~~ A person under a duty to pay or deliver
12 money or personal property to a minor may perform this duty,
13 in amounts not exceeding five thousand dollars (\$5,000) per
14 ~~[annum]~~ year, by paying or delivering the money or property
15 to:

- 16 (1) ~~[the minor, if he is married;~~
- 17 ~~(2) any]~~ a person having the care and custody
18 of the minor and with whom the minor resides;
- 19 ~~[(3)]~~ (2) a guardian of the minor; ~~[or~~
- 20 ~~(4)]~~ (3) a financial institution for deposit in
21 a federally insured savings account in the sole name of the
22 minor and giving notice of the deposit to the minor; or
- 23 (4) a custodian for the minor pursuant to the
24 Uniform Transfers to Minors Act.

25 B. This section does not apply if the person making

underscored material = new
[bracketed material] = delete

1 payment or delivery has actual knowledge that a conservator
2 has been appointed or proceedings for appointment of a
3 conservator of the estate of the minor are pending. The
4 persons, other than the minor or any financial institution
5 under Paragraph (4) of Subsection A of this section, receiving
6 money or property for a minor are obligated to apply the money
7 to the support and education of the minor but [~~may~~] shall not
8 pay themselves except by way of reimbursement for out-of-
9 pocket expenses for goods and services necessary for the
10 minor's support. Any excess sums shall be preserved for
11 future support of the minor, and any balance not so used and
12 any property received for the minor [~~must~~] shall be turned
13 over to the minor when [~~he attains majority~~] the minor ceases
14 to be a minor. Persons who pay or deliver in accordance with
15 provisions of this section are not responsible for the proper
16 application of such payments."

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

19 "45-5-208. CONSENT TO SERVICE BY ACCEPTANCE OF
20 APPOINTMENT--NOTICE.--By accepting a [~~testamentary~~] parental
21 or court appointment as guardian, a guardian submits
22 personally to the jurisdiction of the court in any proceeding
23 relating to the guardianship that may be instituted by any
24 interested person. Notice of [~~any~~] a proceeding shall be
25 delivered to the guardian or mailed to [~~him~~] the guardian at

.182520.2

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

1 ~~[his]~~ the address ~~[as]~~ listed in the court records and to
2 ~~[his]~~ the address ~~[as]~~ then known to the petitioner. Letters
3 of guardianship ~~[must]~~ shall indicate whether the guardian was
4 appointed by ~~[will]~~ parental appointment or by court order."

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

7 "45-5-210. TERMINATION OF APPOINTMENT OF GUARDIAN--
8 GENERAL.--A guardian's authority and responsibility terminate
9 upon the death, resignation or removal of the guardian or upon
10 the minor's death, adoption, emancipation, marriage or
11 attainment of majority, but termination does not affect the
12 guardian's liability for prior acts nor the guardian's
13 obligation to account for money and property of the protected
14 person. Resignation of a guardian does not terminate the
15 guardianship until it has been approved by the court. A
16 testamentary appointment under an informally probated will
17 terminates if the will is later denied probate in a formal
18 proceeding."

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

21 "45-5-313. PROCEEDINGS SUBSEQUENT TO APPOINTMENT--
22 VENUE.--

23 A. The court where the protected person resides has
24 concurrent jurisdiction with the court that appointed the
25 guardian, or in which acceptance of a testamentary appointment

.182520.2

underscored material = new
[bracketed material] = delete

1 was filed, over resignation, removal, accounting and other
2 proceedings relating to the guardianship.

3 B. Subject to the transfer provisions of the
4 Uniform Adult Guardianship and Protective Proceedings
5 Jurisdiction Act, if the court located where the protected
6 person resides is not the court in which acceptance of
7 appointment is filed, the court in which proceedings
8 subsequent to appointment are commenced shall in all
9 appropriate cases notify the other court, in this or another
10 state, and after consultation with that court determine
11 whether to retain jurisdiction or transfer the proceedings to
12 the other court, whichever may be in the best interests of the
13 protected person. A copy of any order accepting a resignation
14 or removing a guardian shall be sent to the court in which
15 acceptance of appointment is filed."

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

18 "45-5-417. GENERAL DUTY OF CONSERVATOR.--In the exercise
19 of [~~his~~] a conservator's powers, a conservator shall act as a
20 fiduciary and shall observe the standards of care applicable
21 to trustees as described by [~~Section 7-302~~] Sections 46A-8-801
22 through 46A-8-807 NMSA 1978."

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

25 "45-5-434. [NEW MATERIAL] REGISTRATION OF GUARDIANSHIP

.182520.2

underscored material = new
[bracketed material] = delete

1 ORDERS.--If a guardian has been appointed in another state and
2 a petition for the appointment of a guardian is not pending in
3 New Mexico, the guardian appointed in the other state, after
4 giving notice to the appointing court of an intent to
5 register, may register the guardianship order in New Mexico by
6 filing as a foreign judgment in a district court, in any
7 appropriate county of New Mexico, certified copies of the
8 order and letters of office."

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

11 "45-5-435. [NEW MATERIAL] REGISTRATION OF PROTECTIVE
12 ORDERS.--If a conservator has been appointed in another state
13 and a petition for a protective order is not pending in New
14 Mexico, the conservator appointed in the other state, after
15 giving notice to the appointing court of an intent to
16 register, may register the protective order in New Mexico by
17 filing as a foreign judgment in a district court in New
18 Mexico, in any county in which property belonging to the
19 protected person is located, certified copies of the order and
20 letters of office and of any bond."

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

23 "45-5-436. [NEW MATERIAL] EFFECT OF REGISTRATION.--

24 A. Upon registration of a guardianship or
25 protective order from another state, the guardian or

.182520.2

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

1 conservator may exercise in New Mexico all powers authorized
2 in the order of appointment except as prohibited under the
3 laws of New Mexico, including maintaining actions and
4 proceedings in New Mexico and, if the guardian or conservator
5 is not a resident of New Mexico, subject to any conditions
6 imposed upon nonresident parties.

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

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

12 "45-5A-101. [NEW MATERIAL] SHORT TITLE.--Chapter 45,
13 Article 5A NMSA 1978 may be cited as the "Uniform Adult
14 Guardianship and Protective Proceedings Jurisdiction Act"."

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

17 "45-5A-102. [NEW MATERIAL] DEFINITIONS.--As used in the
18 Uniform Adult Guardianship and Protective Proceedings
19 Jurisdiction Act:

20 A. "adult" means an individual who has attained
21 eighteen years of age;

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

25 C. "court" means the district court;

.182520.2

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

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

4 E. "guardianship order" means an order appointing a
5 guardian;

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

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

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

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

16 J. "protective order" means an order appointing a
17 conservator or other order related to management of an adult's
18 property;

19 K. "protective proceeding" means a judicial
20 proceeding in which a protective order is sought or has been
21 issued; and

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

24 **SECTION 64.** A new Section 45-5A-103 NMSA 1978 is enacted
25 to read:

.182520.2

underscored material = new
[bracketed material] = delete

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

7 **SECTION 65.** A new Section 45-5A-104 NMSA 1978 is enacted
8 to read:

9 "45-5A-104. [NEW MATERIAL] COMMUNICATION BETWEEN
10 COURTS.--

11 A. A New Mexico court may communicate with a court
12 in another state concerning a proceeding arising pursuant to
13 the Uniform Adult Guardianship and Protective Proceedings
14 Jurisdiction Act. The court may allow the parties to
15 participate in the communication. Except as otherwise
16 provided in Subsection B of this section and except as
17 otherwise provided by rules adopted by the New Mexico supreme
18 court, the court shall make a record of the communication.
19 The record may be limited to the fact that the communication
20 occurred.

21 B. Except as otherwise provided by rules adopted by
22 the New Mexico supreme court, courts may communicate
23 concerning schedules, calendars, court records and other
24 administrative matters without making a record."

25 **SECTION 66.** A new Section 45-5A-105 NMSA 1978 is enacted

underscored material = new
[bracketed material] = delete

1 to read:

2 "45-5A-105. [NEW MATERIAL] COOPERATION BETWEEN COURTS.--

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

7 (1) hold an evidentiary hearing;

8 (2) order a person in that state to produce
9 evidence or give testimony pursuant to procedures of that
10 state;

11 (3) order that an evaluation or assessment be
12 made of the respondent;

13 (4) order any appropriate investigation of a
14 person involved in a proceeding;

15 (5) forward to the New Mexico court a certified
16 copy of the transcript or other record of a hearing pursuant
17 to Paragraph (1) of this subsection or any other proceeding,
18 any evidence otherwise produced pursuant to Paragraph (2) of
19 this subsection and any evaluation or assessment prepared in
20 compliance with an order pursuant to Paragraph (3) or (4) of
21 this subsection;

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

.182520.2

underscored material = new
[bracketed material] = delete

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

5 B. If a court of another state in which a
6 guardianship or protective proceeding is pending requests
7 assistance of the kind provided in Subsection A of this
8 section, a New Mexico court has jurisdiction for the limited
9 purpose of granting the request or making reasonable efforts
10 to comply with the request."

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

13 "45-5A-106. [NEW MATERIAL] TAKING TESTIMONY IN ANOTHER
14 STATE.--

15 A. In a guardianship or protective proceeding, in
16 addition to other procedures that may be available, testimony
17 of a witness who is located in another state may be offered by
18 deposition or other means allowable in New Mexico for
19 testimony taken in another state. The court on its own motion
20 may order that the testimony of a witness be taken in another
21 state and may prescribe the manner in which, and the terms
22 upon which, the testimony is to be taken.

23 B. In a guardianship or protective proceeding, a
24 New Mexico court may permit a witness located in another state
25 to be deposed or to testify by telephone or audiovisual or

underscored material = new
[bracketed material] = delete

1 other electronic means. A New Mexico court shall cooperate
2 with the court of the other state in designating an
3 appropriate location for the deposition or testimony.

4 C. Except as otherwise provided by rules adopted by
5 the New Mexico supreme court, documentary evidence transmitted
6 from another state to a New Mexico court by technological
7 means that do not produce an original writing shall not be
8 excluded from evidence on an objection based on the best
9 evidence rule."

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

12 "45-5A-201. [NEW MATERIAL] DEFINITIONS--SIGNIFICANT-
13 CONNECTION FACTORS.--

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

16 (1) "emergency" means a circumstance that
17 likely will result in substantial harm to a respondent's
18 health, safety or welfare and for which the appointment of a
19 guardian is necessary because no other person has authority
20 and is willing to act on the respondent's behalf;

21 (2) "home state" means the state in which the
22 respondent was physically present, including any period of
23 temporary absence, for at least six consecutive months
24 immediately before the filing of a petition for a protective
25 order or the appointment of a guardian; or, if none, the state

.182520.2

1 in which the respondent was physically present, including any
2 period of temporary absence, for at least six consecutive
3 months ending within the six months prior to the filing of the
4 petition; and

5 (3) "significant-connection state" means a
6 state, other than the home state, with which a respondent has
7 a significant connection other than mere physical presence and
8 in which substantial evidence concerning the respondent is
9 available.

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

14 (1) the location of the respondent's family and
15 other persons required to be notified of the guardianship or
16 protective proceeding;

17 (2) the length of time the respondent at any
18 time was physically present in the state and the duration of
19 any absence;

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

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

underscored material = new
[bracketed material] = delete

1 **SECTION 69.** A new Section 45-5A-202 NMSA 1978 is enacted
2 to read:

3 "45-5A-202. [NEW MATERIAL] EXCLUSIVE BASIS.--Part 2 of
4 the Uniform Adult Guardianship and Protective Proceedings
5 Jurisdiction Act provides the exclusive jurisdictional basis
6 for a New Mexico court to appoint a guardian or issue a
7 protective order for an adult."

8 **SECTION 70.** A new Section 45-5A-203 NMSA 1978 is enacted
9 to read:

10 "45-5A-203. [NEW MATERIAL] JURISDICTION.--A New Mexico
11 court has jurisdiction to appoint a guardian or issue a
12 protective order for a respondent if:

- 13 A. New Mexico is the respondent's home state;
14 B. on the date the petition is filed, New Mexico is
15 a significant-connection state and:

16 (1) the respondent does not have a home state
17 or a court of the respondent's home state has declined to
18 exercise jurisdiction because New Mexico is a more appropriate
19 forum; or

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

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

.182520.2

underscored material = new
[bracketed material] = delete

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

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

7 C. New Mexico does not have jurisdiction pursuant
8 either to Subsection A or B of this section, the respondent's
9 home state and all significant-connection states have declined
10 to exercise jurisdiction because New Mexico is the more
11 appropriate forum and jurisdiction in New Mexico is consistent
12 with the constitutions of New Mexico and the United States; or

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

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

17 "45-5A-204. [NEW MATERIAL] SPECIAL JURISDICTION.--

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

21 (1) appoint a guardian in an emergency for a
22 term not exceeding ninety days for a respondent who is
23 physically present in New Mexico;

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

.182520.2

underscored material = new
[bracketed material] = delete

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

5 B. If a petition for the appointment of a guardian
6 in an emergency is brought in New Mexico and New Mexico was
7 not the respondent's home state on the date the petition was
8 filed, the court shall dismiss the proceeding at the request
9 of the court of the home state, if any, whether dismissal is
10 requested before or after the emergency appointment."

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

13 "45-5A-205. [NEW MATERIAL] EXCLUSIVE AND CONTINUING
14 JURISDICTION.--Except as otherwise provided in Section
15 45-5A-204 NMSA 1978, a court that has appointed a guardian or
16 issued a protective order consistent with the Uniform Adult
17 Guardianship and Protective Proceedings Jurisdiction Act has
18 exclusive and continuing jurisdiction over the proceeding
19 until it is terminated by the court or the appointment or
20 order expires by its own terms."

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

23 "45-5A-206. [NEW MATERIAL] APPROPRIATE FORUM.--

24 A. A New Mexico court having jurisdiction pursuant
25 to Section 45-5A-203 NMSA 1978 to appoint a guardian or issue

1 a protective order may decline to exercise its jurisdiction if
2 it determines at any time that a court of another state is a
3 more appropriate forum.

4 B. If a New Mexico court declines to exercise its
5 jurisdiction pursuant to Subsection A of this section, it
6 shall either dismiss or stay the proceeding. The court may
7 impose any condition the court considers just and proper,
8 including the condition that a petition for the appointment of
9 a guardian or issuance of a protective order be filed promptly
10 in another state.

11 C. In determining whether it is an appropriate
12 forum, the court shall consider all relevant factors,
13 including:

14 (1) any expressed preference of the respondent;

15 (2) whether abuse, neglect or exploitation of
16 the respondent has occurred or is likely to occur and which
17 state could best protect the respondent from the abuse,
18 neglect or exploitation;

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

22 (4) the distance of the respondent from the
23 court in each state;

24 (5) the financial circumstances of the
25 respondent's estate;

underscored material = new
[bracketed material] = delete

- 1 (6) the nature and location of the evidence;
2 (7) the ability of the court in each state to
3 decide the issue expeditiously and the procedures necessary to
4 present evidence;
5 (8) the familiarity of the court of each state
6 with the facts and issues in the proceeding; and
7 (9) if an appointment of a guardian or
8 conservator were to be made, the court's ability to monitor
9 the conduct of the guardian or conservator."

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

12 "45-5A-207. [NEW MATERIAL] JURISDICTION DECLINED BY
13 REASON OF CONDUCT.--

14 A. If at any time a New Mexico court determines
15 that it acquired jurisdiction to appoint a guardian or issue a
16 protective order because of unjustifiable conduct, the court
17 may:

- 18 (1) decline to exercise jurisdiction;
19 (2) exercise jurisdiction for the limited
20 purpose of fashioning an appropriate remedy to:
21 (a) ensure the health, safety and welfare
22 of the respondent or the protection of the respondent's
23 property; or
24 (b) prevent a repetition of the
25 unjustifiable conduct, including staying the proceeding until

.182520.2

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

1 a petition for the appointment of a guardian or issuance of a
2 protective order is filed in a court of another state having
3 jurisdiction; or

4 (3) continue to exercise jurisdiction after
5 considering:

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

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

12 (c) whether the court of any other state
13 would have jurisdiction under factual circumstances in
14 substantial conformity with the jurisdictional standards of
15 Section 45-5A-203 NMSA 1978.

16 B. If a New Mexico court determines that it
17 acquired jurisdiction to appoint a guardian or to issue a
18 protective order because a party seeking to invoke its
19 jurisdiction engaged in unjustifiable conduct, it may assess
20 against that party necessary and reasonable expenses,
21 including attorney fees, investigative fees, court costs,
22 communication expenses, witness fees and expenses and travel
23 expenses. The court shall not assess fees, costs or expenses
24 of any kind against New Mexico or a governmental subdivision,
25 agency or instrumentality of New Mexico unless authorized by

.182520.2

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

1 law other than the Uniform Adult Guardianship and Protective
2 Proceedings Jurisdiction Act."

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

5 "45-5A-208. [NEW MATERIAL] NOTICE OF PROCEEDING.--If a
6 petition for the appointment of a guardian or issuance of a
7 protective order is brought in New Mexico and New Mexico was
8 not the respondent's home state on the date the petition was
9 filed, in addition to complying with the notice requirements
10 of New Mexico, notice of the petition shall be given to those
11 persons who would be entitled to notice of the petition if a
12 proceeding were brought in the respondent's home state. The
13 notice shall be given in the same manner as notice is required
14 to be given in New Mexico."

15 SECTION 76. A new Section 45-5A-209 NMSA 1978 is enacted
16 to read:

17 "45-5A-209. [NEW MATERIAL] PROCEEDINGS IN MORE THAN ONE
18 STATE.--Except for a petition for the appointment of a
19 guardian in an emergency or issuance of a protective order
20 limited to property located in New Mexico pursuant to
21 Paragraph (1) or (2) of Subsection A of Section 45-5A-204 NMSA
22 1978, if a petition for the appointment of a guardian or
23 issuance of a protective order is filed in New Mexico and in
24 another state and neither petition has been dismissed or
25 withdrawn, the following rules apply:

.182520.2

underscored material = new
[bracketed material] = delete

1 A. if the New Mexico court has jurisdiction
2 pursuant to Section 45-5A-203 NMSA 1978, it may proceed with
3 the case unless a court in another state acquires jurisdiction
4 pursuant to provisions similar to Section 45-5A-203 NMSA 1978
5 before the appointment of the guardian or issuance of the
6 protective order; and

7 B. if the New Mexico court does not have
8 jurisdiction pursuant to Section 45-5A-203 NMSA 1978, whether
9 at the time the petition is filed or at any time before the
10 appointment of the guardian or issuance of the protective
11 order, the court shall stay the proceeding and communicate
12 with the court in the other state. If the court in the other
13 state has jurisdiction, the New Mexico court shall dismiss the
14 petition unless the court in the other state determines that
15 the New Mexico court is a more appropriate forum."

16 **SECTION 77.** A new Section 45-5A-301 NMSA 1978 is enacted
17 to read:

18 "45-5A-301. [NEW MATERIAL] TRANSFER OF GUARDIANSHIP OR
19 CONSERVATORSHIP TO ANOTHER STATE.--

20 A. A guardian or conservator appointed in New
21 Mexico may petition the court to transfer the guardianship or
22 conservatorship to another state.

23 B. Notice of a petition pursuant to Subsection A of
24 this section shall be given to the persons that would be
25 entitled to notice of a petition in New Mexico for the

.182520.2

1 appointment of a guardian or conservator.

2 C. On the court's own motion, or on request of the
3 guardian or conservator, the incapacitated or protected person
4 or other person required to be notified of the petition, the
5 court shall hold a hearing on a petition filed pursuant to
6 Subsection A of this section.

7 D. The court shall issue an order provisionally
8 granting a petition to transfer a guardianship and shall
9 direct the guardian to petition for guardianship in the other
10 state if the court is satisfied that the guardianship will be
11 accepted by the court in the other state and the court finds
12 that:

13 (1) the incapacitated person is physically
14 present in or is reasonably expected to move permanently to
15 the other state;

16 (2) an objection to the transfer has not been
17 made or, if an objection has been made, the objector has not
18 established that the transfer would be contrary to the
19 interests of the incapacitated person; and

20 (3) plans for care and services for the
21 incapacitated person in the other state are reasonable and
22 sufficient.

23 E. The court shall issue a provisional order
24 granting a petition to transfer a conservatorship and shall
25 direct the conservator to petition for conservatorship in the

1 other state if the court is satisfied that the conservatorship
2 will be accepted by the court of the other state and the court
3 finds that:

4 (1) the protected person is physically present
5 in or is reasonably expected to move permanently to the other
6 state, or the protected person has a significant connection to
7 the other state considering the factors set forth in
8 Subsection B of Section 45-5A-201 NMSA 1978;

9 (2) an objection to the transfer has not been
10 made or, if an objection has been made, the objector has not
11 established that the transfer would be contrary to the
12 interests of the protected person; and

13 (3) adequate arrangements will be made for
14 management of the protected person's property.

15 F. The court shall issue a final order confirming
16 the transfer and terminating the guardianship or
17 conservatorship upon its receipt of:

18 (1) a provisional order accepting the
19 proceeding from the court to which the proceeding is to be
20 transferred that is issued pursuant to provisions similar to
21 those set forth in Section 45-5A-302 NMSA 1978; and

22 (2) the documents required to terminate a
23 guardianship or conservatorship in New Mexico."

24 **SECTION 78.** A new Section 45-5A-302 NMSA 1978 is enacted
25 to read:

underscored material = new
[bracketed material] = delete

1 "45-5A-302. [NEW MATERIAL] ACCEPTING GUARDIANSHIP OR
2 CONSERVATORSHIP TRANSFERRED FROM ANOTHER STATE.--

3 A. To confirm transfer of a guardianship or
4 conservatorship transferred to New Mexico pursuant to
5 provisions similar to Section 45-5A-301 NMSA 1978, the
6 guardian or conservator shall petition the New Mexico court to
7 accept the guardianship or conservatorship. The petition
8 shall include a certified copy of the other state's
9 provisional order of transfer.

10 B. Notice of a petition pursuant to Subsection A of
11 this section shall be given to those persons that would be
12 entitled to notice if the petition were a petition for the
13 appointment of a guardian or issuance of a protective order in
14 both the transferring state and New Mexico. The notice shall
15 be given in the same manner as notice is required to be given
16 in New Mexico.

17 C. On the court's own motion, or on request of the
18 guardian or conservator, the incapacitated or protected person
19 or other person required to be notified of the proceeding, the
20 court shall hold a hearing on a petition filed pursuant to
21 Subsection A of this section.

22 D. The court shall issue an order provisionally
23 granting a petition filed pursuant to Subsection A of this
24 section unless:

25 (1) an objection is made and the objector

.182520.2

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

1 establishes that transfer of the proceeding would be contrary
2 to the interests of the incapacitated or protected person; or

3 (2) the guardian or conservator is ineligible
4 for appointment in New Mexico.

5 E. The court shall issue a final order accepting
6 the proceeding and appointing the guardian or conservator as
7 guardian or conservator in New Mexico upon its receipt from
8 the court from which the proceeding is being transferred of a
9 final order issued pursuant to provisions similar to Section
10 45-5A-301 NMSA 1978 transferring the proceeding to New Mexico.

11 F. Not later than ninety days after issuance of a
12 final order accepting transfer of a guardianship or
13 conservatorship, the court shall determine whether the
14 guardianship or conservatorship needs to be modified to
15 conform to the laws of New Mexico.

16 G. In granting a petition pursuant to this section,
17 the court shall recognize a guardianship or conservatorship
18 order from the other state, including the determination of the
19 incapacitated or protected person's incapacity and the
20 appointment of the guardian or conservator.

21 H. The denial by a New Mexico court of a petition
22 to accept a guardianship or conservatorship transferred from
23 another state does not affect the ability of the guardian or
24 conservator to seek appointment as guardian or conservator in
25 New Mexico pursuant to Sections 45-5-301 and 45-5-401 NMSA

.182520.2

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

1 1978 if the court has jurisdiction to make an appointment
2 other than by reason of the provisional order of transfer."

3 SECTION 79. A new Section 45-5A-401 NMSA 1978 is enacted
4 to read:

5 "45-5A-401. [NEW MATERIAL] REGISTRATION OF GUARDIANSHIP
6 ORDERS.--If a guardian has been appointed in another state and
7 a petition for the appointment of a guardian is not pending in
8 New Mexico, the guardian appointed in the other state, after
9 giving notice to the appointing court of an intent to
10 register, may register the guardianship order in New Mexico by
11 filing as a foreign judgment in a court, in any appropriate
12 county of New Mexico, certified copies of the order and
13 letters of office."

14 SECTION 80. A new Section 45-5A-402 NMSA 1978 is enacted
15 to read:

16 "45-5A-402. [NEW MATERIAL] REGISTRATION OF PROTECTIVE
17 ORDERS.--If a conservator has been appointed in another state
18 and a petition for a protective order is not pending in New
19 Mexico, the conservator appointed in the other state, after
20 giving notice to the appointing court of an intent to
21 register, may register the protective order in New Mexico by
22 filing as a foreign judgment in a New Mexico court, in any
23 county in which property belonging to the protected person is
24 located, certified copies of the order and letters of office
25 and of any bond."

.182520.2

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

1 **SECTION 81.** A new Section 45-5A-403 NMSA 1978 is enacted
2 to read:

3 "45-5A-403. [NEW MATERIAL] EFFECT OF REGISTRATION.--

4 A. Upon registration of a guardianship or
5 protective order from another state, the guardian or
6 conservator may exercise in New Mexico all powers authorized
7 in the order of appointment except as prohibited pursuant to
8 the laws of New Mexico, including maintaining actions and
9 proceedings in New Mexico and, if the guardian or conservator
10 is not a resident of New Mexico, subject to any conditions
11 imposed upon nonresident parties.

12 B. A New Mexico court may grant any relief
13 available pursuant to the Uniform Adult Guardianship and
14 Protective Proceedings Jurisdiction Act and other law of New
15 Mexico to enforce a registered order."

16 **SECTION 82.** A new Section 45-5A-501 NMSA 1978 is enacted
17 to read:

18 "45-5A-501. [NEW MATERIAL] RELATION TO ELECTRONIC
19 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform
20 Adult Guardianship and Protective Proceedings Jurisdiction Act
21 modifies, limits and supersedes the federal Electronic
22 Signatures in Global and National Commerce Act, 15 U.S.C.
23 Section 7001, et seq., but does not modify, limit or supersede
24 Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
25 authorize electronic delivery of any of the notices described

.182520.2

underscored material = new
[bracketed material] = delete

1 in Section 103(b) of that act, 15 U.S.C. Section 7003(b)."

2 SECTION 83. A new Section 45-5A-502 NMSA 1978 is enacted
3 to read:

4 "45-5A-502. [NEW MATERIAL] TRANSITIONAL PROVISION.--

5 A. Parts 1, 3 and 4 of the Uniform Adult
6 Guardianship and Protective Proceedings Jurisdiction Act and
7 Section 45-5A-501 NMSA 1978 apply to proceedings begun before
8 January 1, 2012, regardless of whether a guardianship or
9 protective order has been issued.

10 B. The Uniform Adult Guardianship and Protective
11 Proceedings Jurisdiction Act applies to guardianship and
12 protective proceedings begun on or after January 1, 2012."

13 SECTION 84. Section 45-6-205 NMSA 1978 (being Laws 1992,
14 Chapter 66, Section 22) is amended to read:

15 "45-6-205. DESIGNATION OF AGENT.--

16 A. By a writing signed by all parties, the parties
17 may designate as agent of all parties on an account a person
18 other than a party.

19 B. Unless the terms of an agency designation
20 provide that the authority of the agent terminates on
21 disability or incapacity of a party, the agent's authority
22 survives disability and incapacity. The agent may act for a
23 disabled or incapacitated party until the authority of the
24 agent is terminated.

25 C. Death of the sole party or last surviving party

underscored material = new
[bracketed material] = delete

1 terminates the authority of an agent."

2 SECTION 85. Section 45-6-216 NMSA 1978 (being Laws 1992,
3 Chapter 66, Section 29, as amended) is amended to read:

4 "45-6-216. COMMUNITY PROPERTY.--

5 A. A deposit of community property in an account
6 does not alter the community character of the property or
7 community rights in the property, if any, but a right of
8 survivorship between parties married to each other arising
9 from the express terms of the account or Section 45-6-212 NMSA
10 1978 may not be altered by will or other governing instrument.

11 B. This section does not affect or limit the right
12 of a financial institution to make payments pursuant to
13 Sections 45-6-211 through 45-6-227 NMSA 1978 and the deposit
14 agreement."

15 SECTION 86. Section 46-3A-101 NMSA 1978 (being Laws
16 2001, Chapter 113, Section 101) is amended to read:

17 "46-3A-101. SHORT TITLE.--~~[This act]~~ Chapter 46, Article
18 3A NMSA 1978 may be cited as the "Uniform Principal and Income
19 Act"."

20 SECTION 87. Section 46-3A-409 NMSA 1978 (being Laws
21 2001, Chapter 113, Section 409) is amended to read:

22 "46-3A-409. DEFERRED COMPENSATION, ANNUITIES AND SIMILAR
23 PAYMENTS.--

24 ~~(a)~~ A. As used in this section:

25 (1) "payment" means a payment that a trustee

underscored material = new
[bracketed material] = delete

1 may receive over a fixed number of years or during the life of
2 one or more individuals because of services rendered or
3 property transferred to the payer in exchange for future
4 payments. The term includes a payment made in money or
5 property from the payer's general assets or from a separate
6 fund created by the payer. [~~including~~] For purposes of
7 Subsections D, E, F and G of this section, "payment" also
8 includes any payment from any separate fund, regardless of the
9 reason for the payment; and

10 (2) "separate fund" includes a private or
11 commercial annuity, an individual retirement account and a
12 pension, profit-sharing, stock-bonus or stock-ownership plan.

13 [~~(b)~~] B. To the extent that a payment is
14 characterized as interest or a dividend or a payment made in
15 lieu of interest or a dividend, a trustee shall allocate [~~it~~]
16 the payment to income. The trustee shall allocate to principal
17 the balance of the payment and any other payment received in
18 the same accounting period that is not characterized as
19 interest, a dividend or an equivalent payment.

20 [~~(c)~~] C. If no part of a payment is characterized as
21 interest, a dividend or an equivalent payment, and all or part
22 of the payment is required to be made, a trustee shall allocate
23 to income ten percent of the part that is required to be made
24 during the accounting period and the balance to principal. If
25 no part of a payment is required to be made or the payment

.182520.2

underscored material = new
[bracketed material] = delete

1 received is the entire amount to which the trustee is entitled,
2 the trustee shall allocate the entire payment to principal.
3 For purposes of this subsection, a payment is not "required to
4 be made" to the extent that it is made because the trustee
5 exercises a right of withdrawal.

6 ~~[(d) If, to obtain an estate tax marital deduction~~
7 ~~for a trust, a trustee must allocate more of a payment to~~
8 ~~income than provided for by this section, the trustee shall~~
9 ~~allocate to income the additional amount necessary to obtain~~
10 ~~the marital deduction.]~~

11 D. Except as otherwise provided in Subsection E of
12 this section, Subsections F and G of this section apply and
13 Subsections B and C of this section do not apply in determining
14 the allocation of a payment made from a separate fund to:

15 (1) a trust to which an election to qualify for
16 a marital deduction pursuant to Section 2056(b)(7) of the
17 Internal Revenue Code of 1986, as amended, has been made; or

18 (2) a trust that qualifies for the marital
19 deduction pursuant to Section 2056(b)(5) of the Internal
20 Revenue Code of 1986, as amended.

21 E. Subsections D, F and G of this section do not
22 apply if, and to the extent that, the series of payments would,
23 without the application of Subsection D of this section,
24 qualify for the marital deduction pursuant to Section
25 2056(b)(7)(C) of the Internal Revenue Code of 1986, as amended.

.182520.2

underscored material = new
[bracketed material] = delete

1 F. A trustee shall determine the internal income of
2 each separate fund for the accounting period as if the separate
3 fund were a trust subject to the Uniform Principal and Income
4 Act. Upon request of the surviving spouse, the trustee shall
5 demand that the person administering the separate fund
6 distribute the internal income to the trust. The trustee shall
7 allocate a payment from the separate fund to income to the
8 extent of the internal income of the separate fund and
9 distribute that amount to the surviving spouse. The trustee
10 shall allocate the balance of the payment to principal. Upon
11 request of the surviving spouse, the trustee shall allocate
12 principal to income to the extent the internal income of the
13 separate fund exceeds payments made from the separate fund to
14 the trust during the accounting period.

15 G. If a trustee cannot determine the internal income
16 of a separate fund but can determine the value of the separate
17 fund, the internal income of the separate fund is deemed to
18 equal four percent of the fund's value according to the most
19 recent statement of value preceding the beginning of the
20 accounting period. If the trustee can determine neither the
21 internal income of the separate fund nor the fund's value, the
22 internal income of the fund is deemed to equal the product of
23 the interest rate and the present value of the expected future
24 payments as determined pursuant to Section 7520 of the Internal
25 Revenue Code of 1986, as amended, for the month preceding the

.182520.2

underscoring material = new
[bracketed material] = delete

1 accounting period for which the computation is made.

2 [~~(e)~~] H. This section does not apply to [~~payments~~] a
3 payment to which Section [~~410~~] 46-3A-410 NMSA 1978 applies."

4 SECTION 88. Section 46-3A-505 NMSA 1978 (being Laws 2001,
5 Chapter 113, Section 505) is amended to read:

6 "46-3A-505. INCOME TAXES.--

7 [~~(a)~~] A. A tax required to be paid by a trustee based
8 on receipts allocated to income must be paid from income.

9 [~~(b)~~] B. A tax required to be paid by a trustee based
10 on receipts allocated to principal must be paid from principal,
11 even if the tax is called an income tax by the taxing
12 authority.

13 [~~(c)~~] C. A tax required to be paid by a trustee on
14 the trust's share of an entity's taxable income must be paid
15 [~~proportionately~~]:

16 (1) from income to the extent that receipts from
17 the entity are allocated only to income; [~~and~~]

18 (2) from principal to the extent that [~~(A)~~]
19 receipts from the entity are allocated only to principal; [~~and~~

20 ~~(B) the trust's share of the entity's~~
21 ~~taxable income exceeds the total receipts described in~~
22 ~~Paragraphs (1) and (2)(A)]~~

23 (3) proportionately from principal and income to
24 the extent that receipts from the entity are allocated to both
25 income and principal; and

.182520.2

underscored material = new
[bracketed material] = delete

1 (4) from principal to the extent that the tax
2 exceeds the total receipts from the entity.

3 ~~[(d) For purposes of this section, receipts allocated~~
4 ~~to principal or income must be reduced by the amount~~
5 ~~distributed to a beneficiary from principal or income for which~~
6 ~~the trust receives a deduction in calculating the tax.]~~

7 D. After applying Subsections A through C of this
8 section, the trustee shall adjust income or principal receipts
9 to the extent that the trust's taxes are reduced because the
10 trust receives a deduction for payments made to a beneficiary."

11 SECTION 89. Section 46-10-1 NMSA 1978 (being Laws 2001,
12 Chapter 290, Section 1) is recompiled as Section 45-2-1101 NMSA
13 1978 and is amended to read:

14 "45-2-1101. SHORT TITLE.--~~[This act]~~ Chapter 45, Article
15 2, Part 11 NMSA 1978 may be cited as the "Uniform Disclaimer of
16 Property Interests Act".

17 SECTION 90. Section 46-10-2 NMSA 1978 (being Laws 2001,
18 Chapter 290, Section 2) is recompiled as Section 45-2-1102 NMSA
19 1978 and is amended to read:

20 "45-2-1102. DEFINITIONS.--As used in the Uniform
21 Disclaimer of Property Interests Act:

22 A. "disclaimant" means the person to whom a
23 disclaimed interest or power would have passed had the
24 disclaimer not been made;

25 B. "disclaimed interest" means the interest that

underscored material = new
[bracketed material] = delete

1 would have passed to the disclaimant had the disclaimer not
2 been made;

3 C. "disclaimer" means the refusal to accept an
4 interest in or power over property;

5 D. "fiduciary" means a personal representative,
6 trustee, agent acting under a power of attorney or other person
7 authorized to act as a fiduciary with respect to the property
8 of another person;

9 E. "jointly held property" means property held in the
10 name of two or more persons under an arrangement in which all
11 holders have concurrent interests and under which the last
12 surviving holder is entitled to the whole of the property; and

13 ~~[F. "person" means an individual, corporation,
14 business trust, estate, trust, partnership, limited liability
15 company, association, joint venture, government governmental
16 subdivision, agency or instrumentality, public corporation or
17 any other legal or commercial entity;~~

18 ~~G. "state" means a state of the United States, the
19 District of Columbia, Puerto Rico, the United States Virgin
20 Islands or any territory or insular possession subject to the
21 jurisdiction of the United States. The term includes an Indian
22 tribe, an Indian band or an Alaskan native village recognized
23 by federal law or formally acknowledged by a state; and~~

24 ~~H.]~~ F. "trust" means:

25 (1) an express trust, charitable or

underscored material = new
[bracketed material] = delete

1 noncharitable, with additions thereto, whenever and however
2 created; and

3 (2) a trust created pursuant to a statute,
4 judgment or decree [~~which~~] that requires the trust to be
5 administered in the manner of an express trust."

6 SECTION 91. Section 46-10-6 NMSA 1978 (being Laws 2001,
7 Chapter 290, Section 6) is recompiled as Section 45-2-1106 NMSA
8 1978 and is amended to read:

9 "45-2-1106. DISCLAIMER OF INTEREST IN PROPERTY.--

10 [~~(a)~~] A. As used in this section:

11 [~~(1)~~] ~~"time of distribution" means the time when~~
12 ~~a disclaimed interest would have taken effect in possession or~~
13 ~~enjoyment; and~~

14 [~~(2)~~] (1) "future interest" means an interest
15 that takes effect in possession or enjoyment, if at all, later
16 than the time of its creation; and

17 (2) "time of distribution" means the time when a
18 disclaimed interest would have taken effect in possession or
19 enjoyment.

20 [~~(b)~~] B. Except for a disclaimer governed by Section
21 [~~7 or 8 of the Uniform Disclaimer of Property Interests Act]~~
22 45-2-1107 or 45-2-1108 NMSA 1978, the following rules apply to
23 a disclaimer of an interest in property:

24 (1) The disclaimer takes effect as of the time
25 the instrument creating the interest becomes irrevocable, or,

.182520.2

underscored material = new
[bracketed material] = delete

1 if the interest arose under the law of intestate succession, as
2 of the time of the intestate's death.

3 (2) The disclaimed interest passes according to
4 any provision in the instrument creating the interest providing
5 for the disposition of the interest, should it be disclaimed,
6 or of disclaimed interests in general.

7 (3) If the instrument does not contain a
8 provision described in Paragraph (2) of this subsection, the
9 following rules apply:

10 ~~[(a) If the disclaimant is an individual,~~
11 ~~the disclaimed interest passes as if the disclaimant had died~~
12 ~~immediately before the time of distribution. However, if, by~~
13 ~~law or under the instrument, the descendants of the disclaimant~~
14 ~~would share in the disclaimed interest by any method of~~
15 ~~representation had the disclaimant died before the time of~~
16 ~~distribution, the disclaimed interest passes only to the~~
17 ~~descendants of the disclaimant who survive the time of~~
18 ~~distribution.~~

19 ~~(b)]~~ (a) If the disclaimant is not an
20 individual, the disclaimed interest passes as if the
21 disclaimant did not exist.

22 (b) If the disclaimant is an individual,
23 except as otherwise provided in Subparagraphs (c) and (d) of
24 this paragraph, the disclaimed interest passes as if the
25 disclaimant had died immediately before the time of

underscored material = new
[bracketed material] = delete

1 distribution.

2 (c) If, by law or under the instrument, the
3 descendants of the disclaimant would share in the disclaimed
4 interest by any method of representation had the disclaimant
5 died before the time of distribution, the disclaimed interest
6 passes only to the descendants of the disclaimant who survive
7 the time of distribution.

8 (d) If the disclaimed interest would pass to
9 the disclaimant's estate had the disclaimant died before the
10 time of distribution, the disclaimed interest instead passes by
11 representation to the descendants of the disclaimant who
12 survive the time of distribution. If no descendant of the
13 disclaimant survives the time of distribution, the disclaimed
14 interest passes to those persons, including the state but
15 excluding the disclaimant, and in such shares as would succeed
16 to the transferor's intestate estate under the intestate
17 succession law of the transferor's domicile had the transferor
18 died at the time of distribution. However, if the transferor's
19 surviving spouse is living but is remarried at the time of
20 distribution, the transferor is deemed to have died unmarried
21 at the time of distribution.

22 (4) Upon the disclaimer of a preceding interest,
23 a future interest held by a person other than the disclaimant
24 takes effect as if the disclaimant had died or ceased to exist
25 immediately before the time of distribution, but a future

.182520.2

underscored material = new
[bracketed material] = delete

1 interest held by the disclaimant is not accelerated in
2 possession or enjoyment."

3 SECTION 92. Section 46-10-12 NMSA 1978 (being Laws 2001,
4 Chapter 290, Section 12) is recompiled as Section 45-2-1112
5 NMSA 1978 and is amended to read:

6 "45-2-1112. DELIVERY OR FILING.--

7 [~~(a)~~] A. As used in this section, "beneficiary
8 designation" means an instrument, other than an instrument
9 creating a trust, naming the beneficiary of:

- 10 (1) an annuity or insurance policy;
- 11 (2) an account with a designation for payment on
12 death;
- 13 (3) a security registered in beneficiary form;
- 14 (4) a pension, profit-sharing, retirement or
15 other employment-related benefit plan; or
- 16 (5) any other nonprobate transfer at death.

17 [~~(b)~~] B. Subject to Subsections [~~(e)~~] C through [~~(l)~~]
18 L of this section, delivery of a disclaimer may be effected by
19 personal delivery, first-class mail or any other method likely
20 to result in its receipt.

21 [~~(c)~~] C. In the case of an interest created under the
22 law of intestate succession or an interest created by will,
23 other than an interest in a testamentary trust:

- 24 (1) a disclaimer must be delivered to the
25 personal representative of the decedent's estate; or

underscored material = new
[bracketed material] = delete

1 (2) if no personal representative is then
2 serving, it must be filed with a court having jurisdiction to
3 appoint the personal representative.

4 [~~(d)~~] D. In the case of an interest in a testamentary
5 trust:

6 (1) a disclaimer must be delivered to the
7 trustee then serving or, if no trustee is then serving, to the
8 personal representative of the decedent's estate; or

9 (2) if no personal representative is then
10 serving, it must be filed with a court having jurisdiction to
11 enforce the trust.

12 [~~(e)~~] E. In the case of an interest in an inter vivos
13 trust:

14 (1) a disclaimer must be delivered to the
15 trustee then serving;

16 (2) if no trustee is then serving, it must be
17 filed with a court having jurisdiction to enforce the trust; or

18 (3) if the disclaimer is made before the time
19 the instrument creating the trust becomes irrevocable, it must
20 be delivered to the settlor of a revocable trust or the
21 transferor of the interest.

22 [~~(f)~~] F. In the case of an interest, created by a
23 beneficiary designation, [~~made~~] that is disclaimed before [~~the~~
24 ~~time~~] the designation becomes irrevocable, [~~a~~] the disclaimer
25 must be delivered to the person making the beneficiary

underscored material = new
[bracketed material] = delete

1 designation.

2 [~~(g)~~] G. In the case of an interest, created by a
3 beneficiary designation, [~~made~~] that is disclaimed after [~~the~~
4 ~~time~~] the designation becomes irrevocable:

5 [~~(a)~~] (1) the disclaimer of an interest in
6 personal property must be delivered to the person obligated to
7 distribute the interest; and

8 (2) the disclaimer of an interest in real
9 property must be recorded in the office of the county clerk of
10 each county where the real property that is the subject of the
11 disclaimer is located.

12 [~~(h)~~] H. In the case of a disclaimer by a surviving
13 holder of jointly held property, the disclaimer must be
14 delivered to the person to whom the disclaimed interest passes.

15 [~~(i)~~] I. In the case of a disclaimer by an object or
16 taker in default of exercise of a power of appointment at any
17 time after the power was created:

18 (1) the disclaimer must be delivered to the
19 holder of the power or to the fiduciary acting under the
20 instrument that created the power; or

21 (2) if no fiduciary is then serving, it must be
22 filed with a court having authority to appoint the fiduciary.

23 [~~(j)~~] J. In the case of a disclaimer by an appointee
24 of a nonfiduciary power of appointment:

25 (1) the disclaimer must be delivered to the

underscored material = new
[bracketed material] = delete

1 holder, the personal representative of the holder's estate or
2 to the fiduciary under the instrument that created the power;
3 or

4 (2) if no fiduciary is then serving, it must be
5 filed with a court having authority to appoint the fiduciary.

6 [~~(k)~~] K. In the case of a disclaimer by a fiduciary
7 of a power over a trust or estate, the disclaimer must be
8 delivered as provided in Subsection [~~(c)~~, ~~(d)~~ or ~~(e)~~] C, D or E
9 of this section, as if the power disclaimed were an interest in
10 property.

11 [~~(l)~~] L. In the case of a disclaimer of a power by an
12 agent, the disclaimer must be delivered to the principal or the
13 principal's representative."

14 **SECTION 93.** Section 46-10-15 NMSA 1978 (being Laws 2001,
15 Chapter 290, Section 15) is recompiled as Section 45-2-1115
16 NMSA 1978 and is amended to read:

17 "45-2-1115. RECORDING OF DISCLAIMER.--If an instrument
18 transferring an interest in or power over property subject to a
19 disclaimer is required or permitted by law to be filed,
20 recorded or registered, the disclaimer may be so filed,
21 recorded or registered. Except as otherwise provided in
22 Paragraph (2) of Subsection G of Section 45-2-1112 NMSA 1978,
23 failure to file, record or register the disclaimer does not
24 affect its validity as between the disclaimant and persons to
25 whom the property interest or power passes by reason of the

.182520.2

underscored material = new
[bracketed material] = delete

1 disclaimer."

2 SECTION 94. Section 46A-1-107 NMSA 1978 (being Laws 2003,
3 Chapter 122, Section 1-107, as amended) is amended to read:

4 "46A-1-107. GOVERNING LAW.--The meaning and effect of the
5 terms of a trust are determined by:

6 ~~[A. the law of the state designated in the terms;~~
7 ~~B.]~~ A. the law of the jurisdiction designated in the
8 terms ~~[which jurisdiction is not a state]~~ unless the
9 designation of that jurisdiction's law is contrary to a strong
10 public policy of ~~[this state or]~~ the ~~[state]~~ jurisdiction
11 having the most significant relationship to the matter at
12 issue; or

13 ~~[C.]~~ B. in the absence of a controlling designation
14 in the terms of the trust, the law of the jurisdiction having
15 the most significant relationship to the matter at issue."

16 SECTION 95. A new section of the Uniform Trust Code,
17 Section 46A-1-113 NMSA 1978, is enacted to read:

18 "46A-1-113. [NEW MATERIAL] INSURABLE INTEREST OF
19 TRUSTEE.--

20 A. In this section, "settlor" means a person,
21 including a person for which a fiduciary or agent is acting,
22 that executes a trust instrument.

23 B. A trustee of a trust has an insurable interest in
24 the life of an individual insured under a life insurance policy
25 owned by the trust or the trustee of the trust acting in a

underscored material = new
[bracketed material] = delete

1 fiduciary capacity if, on the date the policy is issued:

2 (1) the insured is:

3 (a) a settlor of the trust; or

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

7 (2) the life insurance proceeds are primarily
8 for the benefit of trust beneficiaries that have:

9 (a) an insurable interest in the life of the
10 insured; or

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

18 SECTION 96. Section 46A-11-1104 NMSA 1978 (being Laws
19 2003, Chapter 122, Section 11-1104) is amended to read:

20 "46A-11-1104. APPLICATION TO EXISTING RELATIONSHIPS.--

21 A. Except as otherwise provided in the Uniform Trust
22 Code, on the effective date of the Uniform Trust Code or of any
23 amendment to that code:

24 (1) the Uniform Trust Code or the amendment
25 applies to all trusts created before, on or after its effective

.182520.2

underscored material = new
[bracketed material] = delete

1 date;

2 (2) the Uniform Trust Code or the amendment
3 applies to all judicial proceedings concerning trusts commenced
4 on or after its effective date;

5 (3) the Uniform Trust Code or the amendment
6 applies to judicial proceedings concerning trusts commenced
7 before its effective date, unless the court finds that
8 application of a particular provision of the Uniform Trust Code
9 or the amendment would substantially interfere with the
10 effective conduct of the judicial proceedings or prejudice the
11 rights of the parties, in which case the particular provision
12 of the Uniform Trust Code or the amendment does not apply and
13 the superseded law applies;

14 (4) any rule of construction or presumption
15 provided in the Uniform Trust Code or the amendment applies to
16 trust instruments executed before the effective date of the
17 Uniform Trust Code or any amendment to that code unless there
18 is a clear indication of a contrary intent in the terms of the
19 trust; and

20 (5) an act done before the effective date of the
21 Uniform Trust Code or any amendment to that code is not
22 affected by the Uniform Trust Code or the amendment.

23 B. If a right is acquired, extinguished or barred
24 upon the expiration of a prescribed period that has commenced
25 to run under any other statute before the effective date of the

.182520.2

underscored material = new
[bracketed material] = delete

1 Uniform Trust Code or any amendment to that code, that statute
2 continues to apply to the right even if it has been repealed or
3 superseded.

4 C. The Uniform Trust Code or any amendment to that
5 code does not apply to the trust created by the Enabling Act
6 for New Mexico of June 20, 1910, 36 Stat. 557, Ch. 310."

7 Section 97. Section 46B-1-104 NMSA 1978 (being Laws 2007,
8 Chapter 135, Section 104) is recompiled as Section 45-5B-104
9 NMSA 1978 and is amended to read:

10 "45-5B-104. POWER OF ATTORNEY IS DURABLE.--A power of
11 attorney created under the Uniform Power of Attorney Act is
12 durable unless it expressly provides that it is terminated by
13 the incapacity of the principal. Unless the power of attorney
14 expressly provides that it is terminated by the death of the
15 principal, a power of attorney described in the Uniform Health-
16 Care Decisions Act survives the death of the principal until
17 the earlier of:

18 A. one year after the death of the principal; or

19 B. the appointment of a personal representative for
20 the principal's estate."

21 SECTION 98. REPEAL.--Sections 45-2-108, 45-5-301.2,
22 45-5-432, 45-9A-12, 45-9A-13, 46-1-1 through 46-1-11 and
23 46-10-17 NMSA 1978 (being Laws 1993, Chapter 174, Section 10,
24 Laws 1993, Chapter 301, Section 24, Laws 1975, Chapter 257,
25 Section 5-432, Laws 2005, Chapter 143, Sections 16 and 17, Laws
.182520.2

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

1 1923, Chapter 26, Sections 1, 2 and 4 through 12 and Laws 2001,
2 Chapter 290, Section 17) are repealed.

3 SECTION 99. TEMPORARY PROVISION--COMPILATION
4 INSTRUCTIONS.--

5 A. Sections 45-2-101 through 45-2-114 NMSA 1978 shall
6 be compiled as Subpart 1, General Provisions, of Part 1 of
7 Article 2 of the Uniform Probate Code.

8 B. Sections 45-2-115 through 45-2-122 NMSA 1978 shall
9 be compiled as Subpart 2, Parent-Child Relationship, of Part 1
10 of Article 2 of the Uniform Probate Code.

11 C. Sections 45-2-901 through 45-2-914 NMSA 1978 shall
12 be compiled as Part 9, Uniform Statutory Rule Against
13 Perpetuities; Honorary Trusts; Trusts For Pets; Time Limits On
14 Options In Gross And Certain Other Interests In Real Property,
15 of Article 2 of the Uniform Probate Code.

16 D. Sections 45-2-901 through 45-2-906 NMSA 1978 shall
17 be compiled as Subpart 1, Uniform Statutory Rule Against
18 Perpetuities, of Part 9 of Article 2 of the Uniform Probate
19 Code.

20 E. Section 45-2-907 NMSA 1978 shall be compiled as
21 Subpart 2, Honorary Trusts; Trusts For Pets, of Part 9 of
22 Article 2 of the Uniform Probate Code.

23 F. Sections 45-2-908 through 45-2-914 NMSA 1978 shall
24 be compiled as Subpart 3, Time Limits On Options In Gross And
25 Certain Other Interests In Real Property, of Part 9 of Article

.182520.2

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

1 2 of the Uniform Probate Code.

2 **SECTION 100. TEMPORARY PROVISION--RECOMPILATION.--**

3 Sections 45-9A-1 through 45-9A-11 NMSA 1978 (being Laws 2005,
4 Chapter 143, Sections 5 through 15) are recompiled as Sections
5 45-3-920 through 45-3-930 NMSA 1978 and shall be compiled as
6 Part 9A, the Uniform Estate Tax Apportionment Act, of Article 3
7 of the Uniform Probate Code.

8 **SECTION 101. TEMPORARY PROVISION--COMPILATION**
9 **INSTRUCTIONS.--**

10 A. Sections 62 through 83 of this act shall be
11 compiled as Article 5A, the Uniform Adult Guardianship and
12 Protective Proceedings Jurisdiction Act, of the Uniform Probate
13 Code.

14 B. Sections 62 through 67 of this act shall be
15 compiled as Part 1, General Provisions, of Article 5A of the
16 Uniform Probate Code.

17 C. Sections 68 through 76 of this act shall be
18 compiled as Part 2, Jurisdiction, of Article 5A of the Uniform
19 Probate Code.

20 D. Sections 77 and 78 of this act shall be compiled
21 as Part 3, Transfer of Guardianship or Conservatorship, of
22 Article 5A of the Uniform Probate Code.

23 E. Sections 79 through 81 of this act shall be
24 compiled as Part 4, Registration and Recognition of Orders from
25 Other States, of Article 5A of the Uniform Probate Code.

.182520.2

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

1 F. Sections 82 and 83 of this act shall be compiled
2 as Part 5, Miscellaneous Provisions, of Article 5A of the
3 Uniform Probate Code.

4 **SECTION 102. TEMPORARY PROVISION--RECOMPILATION.--**
5 Sections 46-10-3 through 46-10-5 NMSA 1978 (being Laws 2001,
6 Chapter 290, Sections 3 through 5) are recompiled as Sections
7 45-2-1103 through 45-2-1105 NMSA 1978. Sections 46-10-7
8 through 46-10-11 NMSA 1978 (being Laws 2001, Chapter 290,
9 Sections 7 through 11) are recompiled as Sections 45-2-1107
10 through 45-2-1111 NMSA 1978. Sections 46-10-13, 46-10-14 and
11 46-10-16 (being Laws 2001, Chapter 290, Sections 13, 14 and 16)
12 are recompiled as Sections 45-2-1113, 45-2-1114 and 45-2-1116
13 NMSA 1978.

14 **SECTION 103. TEMPORARY PROVISION--RECOMPILATION.--**

15 A. Sections 46B-1-101 through 46B-1-103 NMSA 1978
16 (being Laws 2007, Chapter 135, Sections 101 through 103) are
17 recompiled as Sections 45-5B-101 through 45-5B-103 NMSA 1978.

18 B. Sections 46B-1-105 through 46B-1-123 NMSA 1978
19 (being Laws 2007, Chapter 135, Sections 105 through 123) are
20 recompiled as Sections 45-5B-105 through 45-5B-123 NMSA 1978.

21 C. Sections 46B-1-201 through 46B-1-217 NMSA 1978
22 (being Laws 2007, Chapter 135, Sections 201 through 217) are
23 recompiled as Sections 45-5B-201 through 45-5B-217 NMSA 1978.

24 D. Sections 46B-1-301 and 46B-1-302 (being Laws 2007,
25 Chapter 135, Sections 301 and 302) are recompiled as Sections

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

1 45-5B-301 and 45-5B-302 NMSA 1978.

2 E. Sections 46B-1-401 through 46B-1-403 NMSA 1978
3 (being Laws 2007, Chapter 135, Sections 401 through 403) are
4 recompiled as Sections 45-5B-401 through 45-5B-403 NMSA 1978.

5 SECTION 104. APPLICABILITY.--The provisions of Section 87
6 of this act apply to a trust described in Subsection D of
7 Section 46-3A-409 NMSA 1978 on and after the following dates:

8 A. if the trust is not funded as of January 1, 2012,
9 the date of the decedent's death;

10 B. if the trust is initially funded in the calendar
11 year beginning January 1, 2012, the date of the decedent's
12 death; or

13 C. if the trust is not described in Subsection A or B
14 of this section, January 1, 2012.

15 SECTION 105. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is January 1, 2012.