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HOUSE BILL 41

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Zachary J. Cook

AN ACT

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

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

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

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

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

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

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

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

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

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

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

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1 water rights, if still held in the trust, shall be distributed  
2 in accordance with the following provisions:

3 (1) if the trust instrument contains  
4 provisions regarding the distribution of the interest in real  
5 property or water or water rights upon termination of the  
6 trust, the property shall be distributed as though termination  
7 occurred at that time;

8 (2) if no such provisions pursuant to  
9 Paragraph (1) of this subsection exist, the property shall be  
10 distributed to the beneficiaries then entitled to receive the  
11 income of the trust in proportion to the amount of the income  
12 so receivable by such beneficiaries, or in equal shares if  
13 specific proportions are not specified in the trust instrument;

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

24 (4) for purposes of this subsection, an  
25 "interest in real property or water or water rights" does not

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1 include any intangible personal property such as an interest in  
2 a corporation, limited liability company, partnership,  
3 statutory trust, business trust or other entity, regardless of  
4 whether the entity is the owner of any interest in real  
5 property or water or water rights, unless the real property or  
6 water or water rights are located in New Mexico. If the real  
7 property or water or water rights are located in New Mexico, an  
8 "interest in real property or water or water rights" includes  
9 any interest in real property or water or water rights located  
10 in New Mexico that is held in trust, whether directly or  
11 indirectly, through one or more intermediaries, including any  
12 held through an intangible personal property interest in an  
13 entity. Such interest in real property or water or water  
14 rights shall be distributed as required by the provisions of  
15 this subsection."

16 SECTION 2. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is July 1, 2013.

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