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BILL

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PROBATE; 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

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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~~

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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;

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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

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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

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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. A new Section 45-1-109 NMSA 1978 is enacted to
10 read:

11 "45-1-109. [~~NEW MATERIAL~~] COST OF LIVING ADJUSTMENT OF
12 CERTAIN DOLLAR AMOUNTS.--

13 A. As used in this section:

14 (1) "CPI" means the consumer price index
15 (annual average) for all urban consumers (CPI-U): U.S. city
16 average - all items, reported by the bureau of labor
17 statistics, United States department of labor or its successor
18 or, if the index is discontinued, an equivalent index reported
19 by a federal authority. If no such index is reported, the term
20 means the substitute index chosen by the taxation and revenue
21 department; and

22 (2) "reference base index" means the CPI for
23 calendar year 2010.

24 B. The dollar amounts stated in Sections 45-2-402,
25 45-2-403, 45-3-1201 and 45-3-1205 NMSA 1978 shall be increased
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1 or decreased with respect to decedents dying after December 31,
2 2011 if the CPI for the calendar year immediately preceding the
3 year of death exceeds or is less than the reference base index.
4 The amount of any increase or decrease is computed by
5 multiplying each dollar amount by the percentage by which the
6 CPI for the calendar year immediately preceding the year of
7 death exceeds or is less than the reference base index. If any
8 increase or decrease produced by the computation is not a
9 multiple of one hundred dollars (\$100), the increase or
10 decrease is rounded down, if an increase, or rounded up, if a
11 decrease, to the next multiple of one hundred dollars (\$100).
12 If the CPI for 2010 is changed by the bureau of labor
13 statistics, the reference base index shall be revised using the
14 rebasing factor reported by the bureau of labor statistics or
15 other comparable data if a rebasing factor is not reported.

16 C. Before February 1, 2012 and before February 1 of
17 each succeeding year, the taxation and revenue department shall
18 promulgate a rule containing a cumulative list, beginning with
19 the dollar amounts effective for the estate of a decedent who
20 died in 2012, of each dollar amount as increased or decreased
21 under this section. The taxation and revenue department shall
22 send a copy of the rule to the administrative office of the
23 courts, which shall send the list to the clerk of each district
24 court and probate court in New Mexico."

25 Section 6. Section 45-1-201 NMSA 1978 (being Laws 1993,

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1 Chapter 174, Section 4, as amended) is amended to read:

2 "45-1-201. DEFINITIONS.--

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

6 (1) "agent" includes an attorney-in-fact under
7 a durable or nondurable power of attorney, an individual
8 authorized to make decisions concerning another's health care
9 and an individual authorized to make decisions for another
10 under a natural death act;

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

15 (3) "authenticated", with reference to copies,
16 includes certified and exemplified;

17 [~~(3)~~] (4) "beneficiary", as it relates to a
18 trust beneficiary, includes a person who has any present or
19 future interest, vested or contingent, and also includes the
20 owner of an interest by assignment or other transfer; as it
21 relates to a charitable trust, includes any person entitled to
22 enforce the trust; as it relates to a "beneficiary of a
23 beneficiary designation", refers to a beneficiary of an
24 insurance or annuity policy, of an account with POD
25 designation, of a security registered in beneficiary form (TOD)

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1 or of a pension, profit-sharing, retirement or similar benefit
2 plan or other nonprobate transfer at death; and, as it relates
3 to a "beneficiary designated in a governing instrument",
4 includes a grantee of a deed, a devisee, a trust beneficiary, a
5 beneficiary of a beneficiary designation, a donee, appointee or
6 taker in default of a power of appointment or a person in whose
7 favor a power of attorney or a power held in any individual,
8 fiduciary or representative capacity is exercised;

9 [~~(4)~~] (5) "beneficiary designation" refers to
10 a governing instrument naming a beneficiary of an insurance or
11 annuity policy, of an account with POD designation, of a
12 security registered in beneficiary form (TOD) or of a pension,
13 profit-sharing, retirement or similar benefit plan or other
14 nonprobate transfer at death;

15 [~~(5)~~] (6) "child" includes an individual
16 entitled to take as a child pursuant to the Uniform Probate
17 Code by intestate succession from the parent whose relationship
18 is involved and excludes a person who is only a stepchild, a
19 foster child, a grandchild or any more remote descendant;

20 [~~(6)~~] (7) "claims", in respect to estates of
21 decedents and protected persons, includes liabilities of the
22 decedent or protected person, whether arising in contract, in
23 tort or otherwise and liabilities of the estate that arise at
24 or after the death of the decedent or after the appointment of
25 a conservator, including funeral expenses and expenses of

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1 administration. "Claims" does not include estate or
2 inheritance taxes or demands or disputes regarding title of a
3 decedent, an incapacitated person or a minor protected person
4 to specific assets alleged to be included in the estate;

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

10 [~~(8)~~] (9) "descendant" of an individual means
11 all of the individual's descendants of all generations, with
12 the relationship of parent and child at each generation being
13 determined by the definition of child and parent contained in
14 the Uniform Probate Code;

15 [~~(9)~~] (10) "devise", when used as a noun,
16 means a testamentary disposition of real or personal property
17 and, when used as a verb, means to dispose of real or personal
18 property by will;

19 [~~(10)~~] (11) "devisee" means a person
20 designated in a will to receive a devise. For the purposes of
21 Chapter 45, Article 3 NMSA 1978, in the case of a devise to an
22 existing trust or trustee or to a trustee or trust described by
23 will, the trust or trustee is the devisee and the beneficiaries
24 are not devisees;

25 [~~(11)~~] (12) "distributee" means a person who

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1 has received property of a decedent from the decedent's
2 personal representative other than as a creditor or purchaser.
3 A testamentary trustee is a distributee only to the extent of
4 distributed assets or increment thereto remaining in the
5 testamentary trustee's hands. A beneficiary of a testamentary
6 trust to whom the trustee has distributed property received
7 from a personal representative is a distributee of the personal
8 representative. For the purposes of this paragraph,
9 "testamentary trustee" includes a trustee to whom assets are
10 transferred by will, to the extent of the devised assets;

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

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

16 (a) has entered into a valid marriage,
17 whether or not the marriage was terminated by dissolution;

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

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

22 [~~(12)~~] (15) "estate" includes the property of
23 the decedent, trust or other person whose affairs are subject
24 to the Uniform Probate Code as the property was originally
25 constituted and as it exists from time to time during

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1 administration;

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

5 [~~(14)~~] (17) "fiduciary" includes a personal
6 representative, guardian, guardian ad litem, conservator and
7 trustee;

8 [~~(15)~~] (18) "foreign personal representative"
9 means a personal representative appointed by another
10 jurisdiction;

11 [~~(16)~~] (19) "formal proceedings" means
12 proceedings conducted before a district judge with notice to
13 interested persons;

14 [~~(17)~~] (20) "governing instrument" means a
15 deed, will, trust, insurance or annuity policy, account with
16 POD designation, security registered in beneficiary form (TOD),
17 pension, profit-sharing, retirement or similar benefit plan,
18 instrument creating or exercising a power of appointment or a
19 power of attorney or a dispositive, appointive or nominative
20 instrument of a similar type;

21 [~~(18)~~] (21) "guardian" means a person who has
22 qualified to provide for the care, custody or control of the
23 person of a minor or incapacitated person pursuant to
24 [~~testamentary~~] parental or court appointment [~~but excludes one~~
25 ~~who is merely~~]. "Guardian" includes a limited, emergency and

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1 temporary guardian but not a guardian ad litem;

2 [~~(19)~~] (22) "guardian ad litem" means a person
3 appointed by the district court to represent and protect the
4 interests of a minor or an incapacitated person in connection
5 with litigation or any other court proceeding;

6 [~~(20)~~] (23) "heirs", except as controlled by
7 Section 45-2-711 NMSA 1978, means persons, including the
8 surviving spouse and the state, who are entitled under the
9 statutes of intestate succession to the property of a decedent;

10 [~~(21)~~] (24) "incapacitated person" means an
11 individual described in Section 45-5-101 NMSA 1978;

12 [~~(22)~~] (25) "informal proceedings" means those
13 proceedings conducted without notice to interested persons
14 before the [~~probate~~] court for probate of a will or appointment
15 of a personal representative, except as provided for in Section
16 45-3-306 NMSA 1978;

17 [~~(23)~~] (26) "interested person" includes
18 heirs, devisees, children, spouses, creditors, beneficiaries
19 and any others having a property right in or claim against a
20 trust estate or the estate of a decedent, a minor protected
21 person or an incapacitated person. "Interested person" also
22 includes persons having priority for appointment as personal
23 representatives and other fiduciaries representing interested
24 persons. The meaning as it relates to particular persons may
25 vary from time to time and [~~must~~] shall be determined according

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1 to the particular purposes of, and matter involved in, a
2 proceeding; [~~"Interested person" does not apply to the~~
3 ~~provisions of Chapter 45, Article 5 NMSA 1978;~~

4 ~~(24)]~~ (27) "issue" of [~~a person~~] an individual
5 means [~~all of~~] the [~~person's~~] individual's descendants; [~~of all~~
6 ~~generations, with the relationship of parent and child at each~~
7 ~~generation being determined by the definition of child and~~
8 ~~parent contained in the Uniform Probate Code;~~

9 ~~(25)]~~ (28) "lease" includes an oil, gas or
10 other mineral lease;

11 [~~(26)]~~ (29) "letters" includes letters
12 testamentary, letters of guardianship, letters of
13 administration and letters of conservatorship;

14 [~~(27)]~~ (30) "minor" means [~~a person~~] an
15 unemancipated individual who has not reached eighteen years of
16 age;

17 [~~(28)]~~ (31) "mortgage" means any conveyance,
18 agreement or arrangement in which property is encumbered or
19 used as security;

20 [~~(29)]~~ (32) "nonresident decedent" means a
21 decedent who was domiciled in another jurisdiction at the time
22 of death;

23 [~~(30)]~~ (33) "organization" means a
24 corporation, business trust, limited liability company, estate,
25 trust, partnership, joint venture, association, government or

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1 governmental subdivision or agency or any other legal or
2 commercial entity;

3 ~~(31)~~ (34) "parent" includes any person
4 entitled to take, or who would be entitled to take if the child
5 died without a will, as a parent pursuant to the Uniform
6 Probate Code by intestate succession from the child whose
7 relationship is in question and excludes any person who is only
8 a stepparent, foster parent or grandparent;

9 ~~(32)~~ (35) "payor" means a trustee, insurer,
10 business entity, employer, government, governmental agency or
11 subdivision or any other person authorized or obligated by law
12 or a governing instrument to make payments;

13 ~~(33)~~ (36) "person" means an individual or an
14 organization;

15 ~~(34)~~ (37) "personal representative" includes
16 executor, administrator, successor personal representative,
17 special administrator and persons who perform substantially the
18 same function under the law governing their status. "General
19 personal representative" excludes special administrator;

20 ~~(35)~~ (38) "petition" means a written motion
21 or other request to the ~~[probate]~~ district court for an order
22 after notice;

23 ~~(36)~~ (39) "proceeding" includes action at
24 law and suit in equity;

25 ~~(37)~~ (40) "property" includes both real and

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1 personal property or any right or interest therein and means
2 anything that may be the subject of ownership;

3 ~~(38)~~ (41) "protected person" ~~[is as defined]~~
4 has the same meaning as set forth in Section 45-5-101 NMSA
5 1978;

6 ~~(39)~~ (42) "protective proceeding" means a
7 conservatorship proceeding ~~[described in Section 45-5-101]~~
8 pursuant to Section 45-5-401 NMSA 1978;

9 (43) "record" means information that is
10 inscribed on a tangible medium or that is stored in an
11 electronic or other medium and is retrievable in perceivable
12 form;

13 ~~(40)~~ (44) "security" includes any note,
14 stock, treasury stock, bond, debenture, evidence of
15 indebtedness, certificate of interest or participation in an
16 oil, gas or mining title or lease or in payments out of
17 production under such a title or lease, collateral trust
18 certificate, transferable share, voting trust certificate or,
19 in general, any interest or instrument commonly known as a
20 security or any certificate of interest or participation, any
21 temporary or interim certificate, receipt or certificate of
22 deposit for or any warrant or right to subscribe to or purchase
23 any of the foregoing;

24 ~~(41)~~ (45) "settlement", in reference to a
25 decedent's estate, includes the full process of administration,

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1 distribution and closing;

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

4 (a) to execute or adopt a tangible
5 symbol; or

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

8 [~~(42)~~] (47) "special administrator" means a
9 personal representative as described by Sections 45-3-614
10 through 45-3-618 NMSA 1978;

11 [~~(43)~~] (48) "state" means a state of the
12 United States, the District of Columbia, the commonwealth of
13 Puerto Rico or any territory or insular possession subject to
14 the jurisdiction of the United States. "State" also includes
15 any Indian nation, tribe, pueblo or band located within the
16 United States and recognized by federal law or formally
17 acknowledged by a state of the United States;

18 [~~(44)~~] (49) "successor personal
19 representative" means a personal representative, other than a
20 special administrator, who is appointed to succeed a previously
21 appointed personal representative;

22 [~~(45)~~] (50) "successors" means persons, other
23 than creditors, who are entitled to property of a decedent
24 under the decedent's will or the Uniform Probate Code;

25 [~~(46)~~] (51) "supervised administration" refers

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1 to the proceedings described in Article [~~III~~] 3, Part 5 of the
2 Uniform Probate Code;

3 [~~(47)~~] (52) "survive" means that an individual
4 has neither predeceased an event, including the death of
5 another individual, nor is deemed to have predeceased an event
6 pursuant to Section 45-2-104 or 45-2-702 NMSA 1978. "Survive"
7 includes its derivatives, such as "survives", "survived",
8 "survivor" and "surviving";

9 [~~(48)~~] (53) "testacy proceeding" means a
10 proceeding to establish a will or determine intestacy;

11 [~~(49)~~] (54) "testator" includes an individual
12 of either [~~sex~~] gender;

13 [~~(50)~~] (55) "trust" includes an express trust,
14 private or charitable, with additions thereto, wherever and
15 however created. "Trust" also includes a trust created or
16 determined by judgment or decree under which the trust is to be
17 administered in the manner of an express trust. "Trust"
18 excludes other constructive trusts and excludes resulting
19 trusts, conservatorships, personal representatives, trust
20 accounts as defined in Article [~~VI~~] 6 of the Uniform Probate
21 Code, custodial arrangements, including those created under the
22 Uniform [~~Transfer~~] Transfers to Minors Act, business trusts
23 providing for certificates to be issued to beneficiaries,
24 common trust funds, voting trusts, security arrangements,
25 liquidation trusts, trusts for the primary purpose of paying

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1 debts, dividends, interest, salaries, wages, profits, pensions
2 or employee benefits of any kind and any arrangement under
3 which a person is nominee or escrowee for another;

4 [~~51~~] (56) "trustee" includes an original,
5 additional or successor trustee, whether or not appointed or
6 confirmed by court; and

7 [~~52~~] (57) "will" includes a codicil and any
8 testamentary instrument that merely appoints a personal
9 representative, revokes or revises another will, nominates a
10 guardian or expressly excludes or limits the right of an
11 individual or class to succeed to property of the decedent
12 passing by intestate succession. "Will" does not include a
13 holographic will.

14 B. The definitions in Subsection A of this section
15 are made subject to additional definitions contained in
16 subsequent articles that are applicable to specific articles,
17 parts or sections."

18 Section 7. Section 45-1-301 NMSA 1978 (being Laws 1975,
19 Chapter 257, Section 1-301) is amended to read:

20 "45-1-301. APPLICATION.--

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

23 [~~A-~~] (1) the affairs and estates of decedents,
24 missing persons and protected persons domiciled in New Mexico;

25 [~~B-~~] (2) the property of nonresidents located

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1 in New Mexico or property coming into the control of a
2 fiduciary who is subject to the laws of New Mexico;

3 ~~[G.]~~ (3) incapacitated persons, ~~[and]~~ minors
4 and protected persons in New Mexico;

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

7 ~~E. trusts subject to administration in New~~
8 ~~Mexico;]~~

9 (5) the disclaimer of property interests by
10 persons in New Mexico;

11 (6) certain kinds of trusts and other
12 governing instruments that are governed by the laws of New
13 Mexico; and

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

16 B. The Uniform Probate Code does not create,
17 enlarge, modify or diminish parental rights or duties pursuant
18 to the New Mexico Uniform Parentage Act, the Children's Code or
19 other law of New Mexico. The definition or use of terms in the
20 Uniform Probate Code shall not be used to interpret, by analogy
21 or otherwise, the same or other terms in the New Mexico Uniform
22 Parentage Act, the Adoption Act or other law of New Mexico."

23 Section 8. Section 45-1-302 NMSA 1978 (being Laws 1975,
24 Chapter 257, Section 1-302, as amended) is amended to read:

25 "45-1-302. SUBJECT MATTER JURISDICTION OF DISTRICT AND

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1 PROBATE COURTS.--

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

4 (1) formal proceedings with respect to the
5 estates of decedents, including determinations of testacy,
6 appointment of personal representatives, constructions of
7 wills, administration and expenditure of funds of estates,
8 determination of heirs and successors of decedents and
9 distribution and closing of estates;

10 (2) estates of missing and protected persons;

11 (3) protection of incapacitated persons and
12 minors; ~~and~~

13 (4) survivorship and related accounts and
14 similar property interests;

15 (5) disclaimer of interests in property;

16 (6) apportionment of taxes on estates; and

17 ~~(4)~~ (7) trusts and other governing
18 instruments except wills.

19 B. The district court in formal proceedings shall
20 have jurisdiction to determine title to and value of real or
21 personal property as between the estate and any interested
22 person, including strangers to the estate claiming adversely
23 thereto. The district court has full power to make orders,
24 judgments and decrees and to take all other action necessary
25 and proper to administer justice in matters ~~which~~ that come

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1 before it.

2 C. The probate court and the district court have
3 original jurisdiction over informal proceedings for probate of
4 a will or appointment of a personal representative."

5 Section 9. Section 45-1-303 NMSA 1978 (being Laws 1975,
6 Chapter 257, Section 1-303, as amended) is amended to read:

7 "45-1-303. VENUE--MULTIPLE PROCEEDINGS--TRANSFER.--

8 A. Subject to the provisions of [~~Section~~] Sections
9 45-1-302 and 45-3-201 NMSA 1978 [where] and Chapter 45, Article
10 5 NMSA 1978 and the Uniform Adult Guardianship and Protective
11 Proceedings Jurisdiction Act, if a proceeding under the Uniform
12 Probate Code could be maintained in more than one place in New
13 Mexico, the court in which the proceeding is first commenced
14 has the exclusive right to proceed.

15 B. If proceedings concerning the same estate,
16 protected person or trust are commenced in more than one court
17 of New Mexico, the court in which the proceeding was first
18 commenced shall continue to hear the matter and the other
19 courts shall hold the matter in abeyance until the question of
20 venue is decided. If the ruling court determines that venue is
21 properly in another court, it shall transfer the proceeding to
22 the other court.

23 C. If a court finds that in the interest of justice
24 a proceeding or a file should be located in another court of
25 New Mexico, the court making the finding may transfer the

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1 proceeding or file to the other court."

2 Section 10. Section 45-1-403 NMSA 1978 (being Laws 1975,
3 Chapter 257, Section 1-403, as amended) is amended to read:

4 "45-1-403. PLEADINGS--WHEN PARTIES BOUND BY OTHERS--
5 NOTICE.--In judicial proceedings involving trusts, or estates
6 of decedents, minors, protected persons or incapacitated
7 persons, and in judicially supervised settlements, the
8 following rules apply:

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

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

15 (1) [~~orders~~] an order binding the sole holder
16 or all co-holders of a power of revocation or a presently
17 exercisable general power of appointment, including one in the
18 form of a power of amendment, [~~bind~~] binds other persons to the
19 extent their interests as objects, takers in default or
20 otherwise are subject to the power;

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

23 (a) [~~orders~~] an order binding a
24 conservator [~~bind~~] binds the person whose estate the
25 conservator controls;

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

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

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

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

19 (3) ~~[an]~~ unless otherwise represented, a minor
20 or an incapacitated, unborn or unascertained person ~~[who is not~~
21 ~~otherwise represented]~~ is bound by an order to the extent the
22 minor's or the incapacitated, unborn or unascertained person's
23 interest is adequately represented by another party having a
24 substantially identical interest in the proceeding;

25 C. if no conservator or guardian has been

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1 appointed, a parent may represent a minor child;

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

3 (1) the notice ~~[as]~~ prescribed by Section
4 45-1-401 NMSA 1978 shall be given to ~~[any]~~ every person having
5 an interest in the subject of the hearing or to one who can
6 bind ~~[that]~~ an interested person as described in Paragraph (1)
7 or (2) of Subsection B of this section. Notice may be given
8 both to ~~[a]~~ an interested person and to another who may bind
9 that person; and

10 (2) notice is given to unborn or unascertained
11 persons who are not represented under Paragraph (1) or (2) of
12 Subsection B of this section by giving notice to all known
13 persons whose interests in the proceedings are substantially
14 identical to those of the unborn or unascertained persons; and

15 ~~[D.]~~ E. at any point in a proceeding, the district
16 court shall appoint a guardian ad litem to represent the
17 interest of a minor; an incapacitated, unborn or unascertained
18 person; or a person whose identity or address is unknown, if
19 the district court determines that representation of the
20 interest would otherwise be inadequate. If not precluded by
21 conflict of interests, a guardian ad litem may be appointed to
22 represent several persons or interests. The district court
23 shall ~~[set out]~~ state its reasons for appointing a guardian ad
24 litem as a part of the record of the proceeding."

25 Section 11. Section 45-2-103 NMSA 1978 (being Laws 1993,

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1 Chapter 174, Section 6) is amended to read:

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

3 A. Any part of the intestate estate not passing to
4 ~~[the]~~ a decedent's surviving spouse pursuant to Section
5 45-2-102 NMSA 1978, or the entire intestate estate if there is
6 no surviving spouse, passes in the following order to the
7 individuals ~~[designated below]~~ who survive the decedent:

8 ~~[A-]~~ (1) to the decedent's descendants by
9 representation;

10 ~~[B-]~~ (2) if there is no surviving descendant,
11 to the decedent's parents equally if both survive, or to the
12 surviving parent if only one survives;

13 ~~[C-]~~ (3) if there is no surviving descendant
14 or parent, to the descendants of the decedent's parents or
15 either of them by representation; and

16 ~~[D-]~~ (4) if there is no surviving descendant,
17 parent or descendant of a parent, but the decedent is survived
18 on both the paternal and maternal sides by one or more
19 grandparents or descendants of grandparents:

20 (a) half ~~[of the estate passes]~~ to the
21 decedent's paternal grandparents equally if both survive, ~~[or]~~
22 to the surviving paternal grandparent if only one survives, or
23 to the descendants of the decedent's paternal grandparents or
24 either of them if both are deceased, the descendants taking by
25 representation; and ~~[the other half passes to the decedent's~~

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1 ~~maternal relatives in the same manner; but if there is no~~
2 ~~surviving grandparent or descendant of a grandparent on either~~
3 ~~the paternal or the maternal side, the entire estate passes to~~
4 ~~the decedent's relatives on the other side in the same manner~~
5 ~~as the half]~~

6 (b) half to the decedent's maternal
7 grandparents equally if both survive, to the surviving maternal
8 grandparent if only one survives, or to the descendants of the
9 decedent's maternal grandparents or either of them if both are
10 deceased, the descendants taking by representation; and

11 (5) if there is no surviving descendant
12 parent, or descendant of a parent, but the decedent is survived
13 by one or more grandparents or descendants of grandparents on
14 the paternal but not the maternal side, or on the maternal but
15 not the paternal side, to the decedent's relatives on the side
16 with one or more surviving members in the manner described in
17 Paragraph (4) of this subsection.

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

20 (1) one deceased spouse who has one or more
21 descendants who survive the decedent, the estate or part
22 thereof passes to that spouse's descendants by representation;
23 or

24 (2) more than one deceased spouse who has one
25 or more descendants who survive the decedent, an equal share of

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1 the estate or part thereof passes to each set of descendants by
2 representation.

3 C. For purposes of Subsection B of this section,
4 the term "deceased spouse" means an individual to whom the
5 decendent was married at the individual's death, and does not
6 include a spouse who was divorced from, or treated as divorced
7 from, the decendent at the time of the decendent's death."

8 Section 12. Section 45-2-104 NMSA 1978 (being Laws 1993,
9 Chapter 174, Section 7) is amended to read:

10 "45-2-104. REQUIREMENT [~~THAT HEIR SURVIVE DECEDENT~~] OF
11 SURVIVAL BY ONE HUNDRED TWENTY HOURS--INDIVIDUAL IN
12 GESTATION.--

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

16 (1) an individual born before a decendent's
17 death who fails to survive the decendent by one hundred twenty
18 hours is deemed to have predeceased the decendent [~~for purposes~~
19 ~~of family allowance, personal property allowance and intestate~~
20 ~~succession, and the decendent's heirs are determined~~
21 ~~accordingly~~]. If it is not established by clear and convincing
22 evidence that an individual [~~who would otherwise be an heir~~]
23 born before the decendent's death survived the decendent by one
24 hundred twenty hours, it is deemed that the individual failed
25 to survive for the required period; [~~this section is not to be~~

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1 ~~applied if its application would result in a taking of~~
2 ~~intestate estate by the state pursuant to Section 45-2-105 NMSA~~
3 ~~1978] and~~

4 (2) an individual in gestation at a decedent's
5 death is deemed to be living at the decedent's death if the
6 individual lives one hundred twenty hours after birth. If it
7 is not established by clear and convincing evidence that an
8 individual in gestation at the decedent's death lived one
9 hundred twenty hours after birth, it is deemed that the
10 individual failed to survive for the required period.

11 B. This section does not apply if its application
12 would cause the estate to pass to the state under Section
13 45-2-105 NMSA 1978."

14 Section 13. Section 45-2-114 NMSA 1978 (being Laws 1993,
15 Chapter 174, Section 16, as amended) is amended to read:

16 "45-2-114. PARENT ~~[AND CHILD RELATIONSHIP]~~ BARRED FROM
17 INHERITING IN CERTAIN CIRCUMSTANCES.--

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

24 ~~B. An adopted individual is the child of his~~
25 ~~adopting parent or parents and not of his natural parents, but~~

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1 ~~adoption of a child by the spouse of either natural parent has~~
2 ~~no effect on:~~

3 ~~(1) the relationship between the child and~~
4 ~~that natural parent; or~~

5 ~~(2) the right of the child or a descendant of~~
6 ~~the child to inherit from or through that nonsevered natural~~
7 ~~parent.~~

8 ~~C. Inheritance from or through a child by either~~
9 ~~natural parent or his kindred is precluded unless that natural~~
10 ~~parent has openly treated the child as his and has not refused~~
11 ~~to support the child.]~~

12 A. A parent is barred from inheriting from or
13 through a child of the parent if:

14 (1) the parent's parental rights were
15 terminated and the parent-child relationship was not judicially
16 reestablished; or

17 (2) the child died before reaching eighteen
18 years of age and there is clear and convincing evidence that
19 immediately before the child's death the parental rights of the
20 parent could have been terminated under law of New Mexico other
21 than the Uniform Probate Code on the basis of nonsupport,
22 abandonment, abuse, neglect or other actions or inactions of
23 the parent toward the child.

24 B. For the purpose of intestate succession from or
25 through the deceased child, a parent who is barred from

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1 inheriting under this section is treated as if the parent
2 predeceased the child."

3 Section 14. A new Section 45-2-115 NMSA 1978 is enacted
4 to read:

5 "45-2-115. [NEW MATERIAL] DEFINITIONS.--As used in
6 Subpart 2 of Part 1 of Article 2 of the Uniform Probate Code:

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

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

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

12 D. "functioned as a parent of the child" means
13 behaving toward a child in a manner consistent with being the
14 child's parent and performing functions that are customarily
15 performed by a parent, including fulfilling parental
16 responsibilities toward the child, recognizing or holding out
17 the child as the individual's child, materially participating
18 in the child's upbringing and residing with the child in the
19 same household as a regular member of that household;

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

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

3 G. "genetic parent" means a child's genetic father
4 or genetic mother;

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

8 I. "relative" means a grandparent or a descendant
9 of a grandparent."

10 Section 15. A new Section 45-2-116 NMSA 1978 is enacted
11 to read:

12 "45-2-116. [NEW MATERIAL] EFFECT OF PARENT-CHILD
13 RELATIONSHIP.--Except as otherwise provided in Subsections B
14 through E of Section 45-2-119 NMSA 1978, if a parent-child
15 relationship exists or is established pursuant to Subpart 2 of
16 Part 1 of Article 2 of the Uniform Probate Code, the parent is
17 a parent of the child and the child is a child of the parent
18 for the purpose of intestate succession."

19 Section 16. A new Section 45-2-117 NMSA 1978 is enacted
20 to read:

21 "45-2-117. [NEW MATERIAL] NO DISTINCTION BASED ON MARITAL
22 STATUS.--Except as otherwise provided in Section 45-2-114,
23 45-2-119, 45-2-120 or 45-2-121 NMSA 1978, a parent-child
24 relationship exists between a child and the child's genetic
25 parents, regardless of the parents' marital status."

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1 Section 17. A new Section 45-2-118 NMSA 1978 is enacted
2 to read:

3 "45-2-118. [NEW MATERIAL] ADOPTEE AND ADOPTEE'S ADOPTIVE
4 PARENT OR PARENTS.--

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

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

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

12 (2) a child of a genetic parent who is in the
13 process of being adopted by a genetic parent's spouse when the
14 spouse dies is treated as adopted by the deceased spouse if the
15 genetic parent survives the deceased spouse by one hundred
16 twenty hours.

17 C. If, after a parent-child relationship is
18 established between a child of assisted reproduction and a
19 parent pursuant to Section 45-2-120 NMSA 1978 or between a
20 gestational child and a parent pursuant to Section 45-2-121
21 NMSA 1978, the child is in the process of being adopted by the
22 parent's spouse when that spouse dies, the child is treated as
23 adopted by the deceased spouse for the purpose of Paragraph (2)
24 of Subsection B of this section."

25 Section 18. A new Section 45-2-119 NMSA 1978 is enacted

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1 to read:

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

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

7 B. A parent-child relationship exists between an
8 individual who is adopted by the spouse of either genetic
9 parent and:

10 (1) the genetic parent whose spouse adopted
11 the individual; and

12 (2) the other genetic parent, but only for the
13 purpose of the right of the adoptee or a descendant of the
14 adoptee to inherit from or through the other genetic parent.

15 C. A parent-child relationship exists between both
16 genetic parents and an individual who is adopted by a relative
17 of a genetic parent or by the spouse or surviving spouse of a
18 relative of a genetic parent, but only for the purpose of the
19 right of the adoptee or a descendant of the adoptee to inherit
20 from or through either genetic parent.

21 D. A parent-child relationship exists between both
22 genetic parents and an individual who is adopted after the
23 death of both genetic parents, but only for the purpose of the
24 right of the adoptee or a descendant of the adoptee to inherit
25 through either genetic parent.

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1 E. If, after a parent-child relationship is
2 established between a child of assisted reproduction and a
3 parent or parents pursuant to Section 45-2-120 NMSA 1978 or
4 between a gestational child and a parent or parents pursuant to
5 Section 45-2-121 NMSA 1978, the child is adopted by another or
6 others, the child's parent or parents pursuant to Section
7 45-2-120 or 45-2-121 NMSA 1978 are treated as the child's
8 genetic parent or parents for the purpose of this section."

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

11 "45-2-120. [NEW MATERIAL] CHILD CONCEIVED BY ASSISTED
12 REPRODUCTION OTHER THAN CHILD BORN TO GESTATIONAL CARRIER.--

13 A. As used in this section:

14 (1) "birth mother" means a woman, other than a
15 gestational carrier pursuant to Section 45-2-121 NMSA 1978, who
16 gives birth to a child of assisted reproduction. The term is
17 not limited to a woman who is the child's genetic mother;

18 (2) "child of assisted reproduction" means a
19 child conceived by means of assisted reproduction by a woman
20 other than a gestational carrier pursuant to Section 45-2-121
21 NMSA 1978; and

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

25 (a) a husband who provides sperm or a

1 wife who provides eggs that are used for assisted reproduction
2 by the wife;

3 (b) the birth mother of a child of
4 assisted reproduction; or

5 (c) an individual who has been
6 determined pursuant to Subsection E or F of this section to
7 have a parent-child relationship with a child of assisted
8 reproduction.

9 B. A parent-child relationship does not exist
10 between a child of assisted reproduction and a third-party
11 donor.

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

14 D. Except as otherwise provided in Subsections I
15 and J of this section, a parent-child relationship exists
16 between a child of assisted reproduction and the husband of the
17 child's birth mother if the husband provided the sperm that the
18 birth mother used during his lifetime for assisted
19 reproduction.

20 E. A birth certificate identifying an individual
21 other than the birth mother as the other parent of a child of
22 assisted reproduction presumptively establishes a parent-child
23 relationship between the child and that individual.

24 F. Except as otherwise provided in Subsections G, I
25 and J of this section, and unless a parent-child relationship

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1 is established pursuant to Subsection D or E of this section, a
2 parent-child relationship exists between a child of assisted
3 reproduction and an individual other than the birth mother who
4 consented to assisted reproduction by the birth mother with
5 intent to be treated as the other parent of the child. Consent
6 to assisted reproduction by the birth mother with intent to be
7 treated as the other parent of the child is established if the
8 individual:

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

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

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

16 (b) intended to function as a parent of
17 the child no later than two years after the child's birth but
18 was prevented from carrying out that intent by death,
19 incapacity or other circumstances; or

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

23 G. For the purpose of Paragraph (1) of Subsection F
24 of this section, neither an individual who signed a record more
25 than two years after the birth of the child nor a relative of

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1 that individual who is not also a relative of the birth mother
2 inherits from or through the child unless the individual
3 functioned as a parent of the child before the child reached
4 eighteen years of age.

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

7 (1) if the birth mother is married and no
8 divorce proceeding is pending, in the absence of clear and
9 convincing evidence to the contrary, her spouse satisfies
10 Subparagraph (a) or (b) of Paragraph (2) of Subsection F of
11 this section; and

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

17 I. If a married couple is divorced before placement
18 of eggs, sperm or embryos, a child resulting from the assisted
19 reproduction is not a child of the birth mother's former
20 spouse, unless the former spouse consented in a record that if
21 assisted reproduction were to occur after divorce, the child
22 would be treated as the former spouse's child.

23 J. If, in a record, an individual withdraws consent
24 to assisted reproduction before placement of eggs, sperm or
25 embryos, a child resulting from the assisted reproduction is

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1 not a child of that individual, unless the individual
2 subsequently satisfies Subsection F of this section.

3 K. If, pursuant to this section, an individual is a
4 parent of a child of assisted reproduction who is conceived
5 after the individual's death, the child is treated as in
6 gestation at the individual's death for purposes of Paragraph
7 (2) of Subsection A of Section 45-2-104 NMSA 1978 if the child
8 is:

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

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

13 Section 20. A new Section 45-2-121 NMSA 1978 is enacted
14 to read:

15 "45-2-121. [NEW MATERIAL] CHILD BORN TO GESTATIONAL
16 CARRIER.--

17 A. As used in this section:

18 (1) "gestational agreement" means an
19 enforceable or unenforceable agreement for assisted
20 reproduction in which a woman agrees to carry a child to birth
21 for an intended parent, intended parents or an individual
22 described in Subsection E of this section;

23 (2) "gestational carrier" means a woman who is
24 not an intended parent who gives birth to a child pursuant to a
25 gestational agreement. The term is not limited to a woman who

1 is the child's genetic mother;

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

4 (4) "intended parent" means an individual who
5 entered into a gestational agreement providing that the
6 individual will be the parent of a child born to a gestational
7 carrier by means of assisted reproduction. The term is not
8 limited to an individual who has a genetic relationship with
9 the child.

10 B. A parent-child relationship is conclusively
11 established by a court order designating the parent or parents
12 of a gestational child.

13 C. A parent-child relationship between a
14 gestational child and the child's gestational carrier does not
15 exist unless the gestational carrier is:

16 (1) designated as a parent of the child in a
17 court order described in Subsection B of this section; or

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

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

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

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

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

6 (b) there were two intended parents, the
7 other intended parent also died while the gestational carrier
8 was pregnant and a relative of either deceased intended parent
9 or the spouse or surviving spouse of a relative of either
10 deceased intended parent functioned as a parent of the child no
11 later than two years after the child's birth; or

12 (c) there was no other intended parent
13 and a relative of or the spouse or surviving spouse of a
14 relative of the deceased intended parent functioned as a parent
15 of the child no later than two years after the child's birth.

16 E. In the absence of a court order pursuant to
17 Subsection B of this section, a parent-child relationship
18 exists between a gestational child and an individual whose
19 sperm or eggs were used after the individual's death or
20 incapacity to conceive a child pursuant to a gestational
21 agreement entered into after the individual's death or
22 incapacity if the individual intended to be treated as the
23 parent of the child. The individual's intent may be shown by:

24 (1) a record signed by the individual that,
25 considering all the facts and circumstances, evidences the

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1 individual's intent; or

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

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

9 (1) the individual, before death or
10 incapacity, deposited the sperm or eggs that were used to
11 conceive the child;

12 (2) when the individual deposited the sperm or
13 eggs, the individual was married and no divorce proceeding was
14 pending; and

15 (3) the individual's spouse or surviving
16 spouse functioned as a parent of the child no later than two
17 years after the child's birth.

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

20 (1) a court order pursuant to Subsection B of
21 this section; or

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

24 H. If, pursuant to this section, an individual is a
25 parent of a gestational child who is conceived after the

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1 individual's death, the child is treated as in gestation at the
2 individual's death for purposes of Paragraph (2) of Subsection
3 A of Section 45-2-104 NMSA 1978 if the child is:

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

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

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

12 J. Subject to Subsection I of this section, the
13 Uniform Probate Code does not authorize or prohibit a
14 gestational agreement."

15 Section 21. A new Section 45-2-122 NMSA 1978 is enacted
16 to read:

17 "45-2-122. [NEW MATERIAL] EQUITABLE ADOPTION.--Subpart 2
18 of Part 1 of Article 2 of the Uniform Probate Code does not
19 affect the doctrine of equitable adoption."

20 Section 22. Section 45-2-403 NMSA 1978 (being Laws 1993,
21 Chapter 174, Section 21, as amended) is amended to read:

22 "45-2-403. PERSONAL PROPERTY ALLOWANCE.--In addition to
23 the family allowance, the decedent's surviving spouse is
24 entitled from the estate to a value, not exceeding fifteen
25 thousand dollars (\$15,000) in excess of any security interests

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1 therein, in household furniture, automobiles, furnishings,
2 appliances and personal effects. If there is no surviving
3 spouse, the decedent's children who are devisees under the
4 will, who are entitled to a share of the estate pursuant to
5 Section 45-2-302 NMSA 1978 or, if there is no will, who are
6 intestate heirs are entitled jointly to the same value. If
7 encumbered chattels are selected and the value in excess of
8 security interests plus that of other exempt property is less
9 than fifteen thousand dollars (\$15,000) or if there is not
10 fifteen thousand dollars (\$15,000) worth of exempt property in
11 the estate, the spouse or children are entitled to other assets
12 of the estate, if any, to the extent necessary to make up the
13 fifteen thousand dollar (\$15,000) value. Rights to specific
14 property for the ~~[family]~~ personal property allowance and
15 assets needed to make up a deficiency in the property have
16 priority over all claims against the estate, but the right to
17 any assets to make up a deficiency of exempt property abates as
18 necessary to permit earlier payment of the family allowance.
19 These rights are in addition to any benefit or share passing to
20 the surviving spouse or children by intestate succession or by
21 the decedent's will, unless otherwise provided by the decedent
22 in the will or other governing instrument."

23 Section 23. Section 45-2-501 NMSA 1978 (being Laws 1993,
24 Chapter 174, Section 25) is amended to read:

25 "45-2-501. WHO MAY MAKE WILL.--An individual eighteen or

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1 more years of age who is of sound mind or an emancipated minor
2 who is of sound mind may make a will."

3 Section 24. Section 45-2-507 NMSA 1978 (being Laws 1993,
4 Chapter 174, Section 30) is amended to read:

5 "45-2-507. REVOCATION BY WRITING OR BY ACT.--

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

7 (1) by executing a subsequent will that
8 revokes the previous will or part expressly or by
9 inconsistency; [~~or~~]

10 (2) by executing another subsequent document
11 in the manner provided for in Section 45-2-502 or 45-2-504 NMSA
12 1978, or both, that expressly revokes the previous will or part
13 thereof; or

14 [~~(2)~~] (3) by performing a revocatory act on
15 the will if the testator performed the act with the intent and
16 for the purpose of revoking the will or part or if another
17 individual performed the act in the testator's conscious
18 presence and by the testator's direction. For purposes of this
19 paragraph, "revocatory act on the will" includes burning,
20 tearing, canceling, obliterating or destroying the will or any
21 part of it. A burning, tearing or canceling is a "revocatory
22 act on the will", whether or not the burn, tear or cancellation
23 touched any of the words on the will.

24 B. If a subsequent will does not expressly revoke a
25 previous will, the execution of the subsequent will wholly

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1 revokes the previous will by inconsistency if the testator
2 intended the subsequent will to replace rather than supplement
3 the previous will.

4 C. The testator is presumed to have intended a
5 subsequent will to replace rather than supplement a previous
6 will if the subsequent will makes a complete disposition of the
7 testator's estate. If this presumption arises and is not
8 rebutted by clear and convincing evidence, the previous will is
9 revoked; only the subsequent will is operative on the
10 testator's death.

11 D. The testator is presumed to have intended a
12 subsequent will to supplement rather than replace a previous
13 will if the subsequent will does not make a complete
14 disposition of the testator's estate. If this presumption
15 arises and is not rebutted by clear and convincing evidence,
16 the subsequent will revokes the previous will only to the
17 extent that the subsequent will is inconsistent with the
18 previous will; each will is fully operative on the testator's
19 death to the extent [~~they~~] that the wills are not
20 inconsistent."

21 Section 25. Section 45-2-603 NMSA 1978 (being Laws 1993,
22 Chapter 174, Section 42, as amended) is amended to read:

23 "45-2-603. ANTILAPSE--DECEASED DEVISEE--CLASS GIFTS.--

24 A. As used in this section:

25 (1) "alternative devise" means a devise that

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1 is expressly created by the will and, under the terms of the
2 will, can take effect instead of another devise on the
3 happening of one or more events, including survival of the
4 testator or failure to survive the testator, whether an event
5 is expressed in condition-precedent, condition-subsequent or
6 any other form. A residuary clause constitutes an alternative
7 devise with respect to a nonresiduary devise only if the will
8 specifically provides that, upon lapse or failure, the
9 nonresiduary devise, or nonresiduary devises in general, pass
10 under the residuary clause;

11 (2) "class member" includes an individual who
12 fails to survive the testator but who would have taken under a
13 devise in the form of a class gift had ~~he~~ the class member
14 survived the testator;

15 (3) "descendant of a grandparent", as used in
16 Subsection B of this section, means an individual who qualifies
17 as a descendant of a grandparent of the testator or of the
18 donor of a power of appointment pursuant to:

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

22 (b) rules for intestate succession if
23 the devise or exercise of the power is not in the form of a
24 class gift;

25 (4) "descendants", as used in the phrase

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

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

8 [~~(4)~~] (6) "devisee" includes:

9 (a) a class member if the devise is in
10 the form of a class gift;

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

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

17 [~~(5)~~] (7) "stepchild" means a child of the
18 surviving, deceased or former spouse of the testator or of the
19 donor of a power of appointment and not of the testator or
20 donor;

21 [~~(6)~~ "~~surviving devisee" or "surviving~~
22 ~~descendant"~~]

23 (8) "surviving", as used in the phrase
24 "surviving devisees" or "surviving descendants", means [a
25 ~~devisee]~~ devisees or [a descendant] descendants who neither

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1 predeceased the testator nor [~~is~~] are deemed to have
2 predeceased the testator pursuant to the provisions of Section
3 45-2-702 NMSA 1978; and

4 ~~(7)~~ (9) "testator" includes the donee of a
5 power of appointment if the power is exercised in the
6 testator's will.

7 B. If a devisee fails to survive the testator and
8 is a grandparent, a descendant of a grandparent or a stepchild
9 of either the testator or the donor of a power of appointment
10 exercised by the testator's will, the following apply:

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

18 (2) except as provided in Paragraph (4) of
19 this subsection, if the devise is in the form of a class gift,
20 other than a devise to "issue", "descendants", "heirs of the
21 body", "heirs", "next of kin", "relatives" or "family" or a
22 class described by language of similar import, a substitute
23 gift is created in the surviving descendants of any deceased
24 devisee. The property to which the devisees would have been
25 entitled had all of them survived the testator passes to the

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

12 (3) for the purposes of Section 45-2-601 NMSA
13 1978, words of survivorship, such as in a devise to an
14 individual "if he survives me" or in a devise to "my surviving
15 children" are not, in the absence of additional evidence, a
16 sufficient indication of an intent contrary to the application
17 of this section;

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

24 (a) the alternative devise is in the
25 form of a class gift and one or more members of the class is

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1 entitled to take under the will; or

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

5 (5) unless the language creating a power of
6 appointment expressly excludes the substitution of the
7 descendants of an appointee for the appointee, a surviving
8 descendant of a deceased appointee of a power of appointment
9 can be substituted for the appointee pursuant to the provisions
10 of this section whether or not the descendant is an object of
11 the power.

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

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

21 (2) if there is a younger-generation devise,
22 the devised property passes under the younger-generation
23 substitute gift and not under the primary substitute gift; and

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

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

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

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

16 [~~4~~] (d) "younger-generation substitute
17 gift" means the substitute gift created with respect to the
18 younger-generation devise."

19 Section 26. Section 45-2-606 NMSA 1978 (being Laws 1993,
20 Chapter 174, Section 45) is amended to read:

21 "45-2-606. NONADEMPTION OF SPECIFIC DEVICES--UNPAID
22 PROCEEDS OF SALE, CONDEMNATION OR INSURANCE--SALE BY
23 CONSERVATOR OR AGENT.--

24 A. A specific devisee has a right to [~~the~~]
25 specifically devised property in the testator's estate at the

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1 testator's death and:

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

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

8 (3) any proceeds unpaid at death on fire or
9 casualty insurance on or other recovery for injury to the
10 property;

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

15 (5) any real property or tangible personal
16 property owned by the testator at death that the testator
17 acquired as a replacement for specifically devised real
18 property or tangible personal property; and

19 (6) if not covered by Paragraphs (1) through
20 (5) of this subsection, a pecuniary devise equal to the value
21 as of its date of disposition of other specifically devised
22 property disposed of during the testator's lifetime but only to
23 the extent it is established that ademption would be
24 inconsistent with the testator's manifested plan of
25 distribution or that at the time the will was made, the date of

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1 disposition or otherwise, the testator did not intend ademption
2 of the devise.

3 B. If specifically devised property is sold or
4 mortgaged by a conservator or by an agent acting within the
5 authority of a durable power of attorney for an incapacitated
6 [~~principal~~] person or if a condemnation award, insurance
7 proceeds or recovery for injury to the property [~~are~~] is paid
8 to a conservator or to an agent acting within the authority of
9 a durable power of attorney for an incapacitated [~~principal~~]
10 person, the specific devisee has the right to a general
11 pecuniary devise equal to the net sale price, the amount of the
12 unpaid loan, the condemnation award, the insurance proceeds or
13 the recovery.

14 C. The right of a specific devisee pursuant to
15 Subsection B of this section is reduced by any right the
16 devisee has pursuant to Subsection A of this section.

17 D. [~~For the purposes of the references in~~
18 ~~Subsection B of this section to a conservator~~] Subsection B of
19 this section does not apply if, after the sale, mortgage,
20 condemnation, casualty or recovery, it [~~was~~] is adjudicated
21 that the testator's incapacity has ceased and the testator
22 [~~survived~~] survives the adjudication [~~by~~] for at least one
23 year.

24 E. For the purposes of the references in Subsection
25 B of this section to an agent acting within the authority of a

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1 durable power of attorney for an incapacitated [~~principal~~]
2 person:

3 [~~(1)~~] "~~incapacitated principal~~" means a
4 ~~principal who is an incapacitated person;~~

5 ~~(2)]~~ (1) no adjudication of incapacity before
6 death is necessary; and

7 [~~(3)]~~ (2) the acts of an agent within the
8 authority of a durable power of attorney are presumed to be for
9 [~~an~~] the incapacitated [~~principal~~] person."

10 Section 27. Section 45-2-705 NMSA 1978 (being Laws 1993,
11 Chapter 174, Section 53) is amended to read:

12 "45-2-705. CLASS GIFTS CONSTRUED TO ACCORD WITH INTESTATE
13 SUCCESSION--EXCEPTIONS--

14 [~~A. Adopted individuals and individuals born out of~~
15 ~~wedlock and their respective descendants if appropriate to the~~
16 ~~class are included in class gifts and other terms of~~
17 ~~relationship in accordance with the rules for intestate~~
18 ~~succession. Terms of relationship that do not differentiate~~
19 ~~relationships by blood from those by affinity, such as~~
20 ~~"uncles", "aunts", "nieces" or "nephews", are construed to~~
21 ~~exclude relatives by affinity. Terms of relationship that do~~
22 ~~not differentiate relationships by the half blood from those by~~
23 ~~the whole blood, such as "brothers", "sisters", "nieces" or~~
24 ~~"nephews", are construed to include both types of~~
25 ~~relationships.~~

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1 ~~B. In addition to the requirements of Subsection A~~
2 ~~of this section, in construing a dispositive provision of a~~
3 ~~transferor who is not the natural parent, an individual born to~~
4 ~~the natural parent is not considered the child of that parent~~
5 ~~unless the individual lived while a minor as a regular member~~
6 ~~of the household of that natural parent or of that parent's~~
7 ~~parent, brother, sister, spouse or surviving spouse.~~

8 ~~C. In addition to the requirements of Subsection A~~
9 ~~of this section, in construing a dispositive provision of a~~
10 ~~transferor who is not the adopting parent, an adopted~~
11 ~~individual is not considered the child of the adopting parent~~
12 ~~unless the adopted individual lived while a minor, either~~
13 ~~before or after the adoption, as a regular member of the~~
14 ~~household of the adopting parent.]~~

15 A. As used in this section:

16 (1) "adoptee" has the meaning set forth in
17 Section 45-2-115 NMSA 1978;

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

20 (3) "distribution date" means the date when an
21 immediate or postponed class gift takes effect in possession or
22 enjoyment;

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

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

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

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

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

9 B. A class gift that uses a term of relationship to
10 identify the class members includes a child of assisted
11 reproduction, a gestational child and, except as otherwise
12 provided in Subsections E and F of this section, an adoptee and
13 a child born to parents who are not married to each other and
14 their respective descendants if appropriate to the class in
15 accordance with the rules for intestate succession regarding
16 parent-child relationships. For the purpose of Section
17 45-2-701 NMSA 1978, a provision in a governing instrument that
18 does not specifically refer to a child of assisted reproduction
19 or a gestational child, such as a provision that relates to the
20 inclusion or exclusion of a child born to parents who are not
21 married to each other, does not apply to a child of assisted
22 reproduction or a gestational child.

23 C. Terms of relationship in a governing instrument
24 that do not differentiate relationships by blood from those by
25 marriage, such as uncles, aunts, nieces or nephews, are

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1 construed to exclude relatives by marriage, unless:

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

4 (2) the language or circumstances otherwise
5 establish that relatives by marriage were intended to be
6 included.

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

11 E. In construing a dispositive provision of a
12 transferor who is not the genetic parent, a child of a genetic
13 parent is not considered the child of the genetic parent unless
14 the genetic parent, a relative of the genetic parent, or the
15 spouse or surviving spouse of the genetic parent or of a
16 relative of the genetic parent functioned as a parent of the
17 child before the child reached eighteen years of age.

18 F. In construing a dispositive provision of a
19 transferor who is not the adoptive parent, an adoptee is not
20 considered the child of the adoptive parent unless:

21 (1) the adoption took place before the adoptee
22 reached eighteen years of age;

23 (2) the adoptive parent was the adoptee's
24 stepparent or foster parent; or

25 (3) the adoptive parent functioned as a parent

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1 of the adoptee before the adoptee reached eighteen years of
2 age.

3 G. The following rules apply for purposes of the
4 class-closing rules:

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

8 (2) if a child of assisted reproduction or a
9 gestational child is conceived posthumously and the
10 distribution date is the deceased parent's death, the child is
11 treated as living on the distribution date if the child lives
12 one hundred twenty hours after birth and was in utero not later
13 than thirty-six months after the deceased parent's death or
14 born not later than forty-five months after the deceased
15 parent's death; and

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

19 Section 28. Section 45-2-706 NMSA 1978 (being Laws 1993,
20 Chapter 174, Section 54, as amended) is amended to read:

21 "45-2-706. LIFE INSURANCE--RETIREMENT PLAN--ACCOUNT WITH
22 POD DESIGNATION--TRANSFER-ON-DEATH REGISTRATION--DECEASED
23 BENEFICIARY.--

24 A. As used in this section:

25 (1) "alternative beneficiary designation"

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1 means a beneficiary designation that is expressly created by
2 the governing instrument and, under the terms of the governing
3 instrument, can take effect instead of another beneficiary
4 designation on the happening of one or more events, including a
5 person's survival of the decedent or failure to survive the
6 decedent, whether an event is expressed in condition-precedent,
7 condition-subsequent or any other form;

8 (2) "beneficiary" means the beneficiary of a
9 beneficiary designation under which the beneficiary must
10 survive the decedent and includes:

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

13 (b) an individual or class member who
14 was deceased at the time the beneficiary designation was
15 executed as well as an individual or class member who was then
16 living but who failed to survive the decedent, but excludes a
17 joint tenant of a joint tenancy with the right of survivorship
18 and a party to a joint and survivorship account;

19 (3) "beneficiary designation" includes an
20 alternative beneficiary designation and a beneficiary
21 designation in the form of a class gift;

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

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

4 (a) rules of construction applicable to
5 a class gift created in the decedent's beneficiary designation
6 if the beneficiary designation is in the form of a class gift;
7 or

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

10 (6) "descendants", as used in the phrase
11 "surviving descendants" of a deceased beneficiary or class
12 member in Paragraphs (1) and (2) of Subsection B of this
13 section, means the descendants of a deceased beneficiary or
14 class member who would take under a class gift created in the
15 beneficiary designation;

16 [~~(5)~~] (7) "stepchild" means a child of the
17 decedent's surviving, deceased or former spouse and not of the
18 decedent; and

19 [~~(6)~~] "~~surviving beneficiary" or "surviving~~
20 ~~descendant"~~]

21 (8) "surviving", as used in the phrase
22 "surviving beneficiaries" or "surviving descendants", means [a
23 beneficiary] beneficiaries or [a descendant] descendants who
24 neither predeceased the decedent nor [is] are deemed to have
25 predeceased the decedent pursuant to the provisions of Section

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1 45-2-702 NMSA 1978.

2 B. If a beneficiary fails to survive the decedent
3 and is a grandparent, a descendant of a grandparent or a
4 stepchild of the decedent, the following apply:

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

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

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1 substituted for the deceased beneficiary take by representation
2 the share to which the deceased beneficiary would have been
3 entitled had the deceased beneficiary survived the decedent.
4 For the purposes of this paragraph, "deceased beneficiary"
5 means a class member who failed to survive the decedent and
6 left one or more surviving descendants;

7 (3) for the purposes of Section 45-2-701 NMSA
8 1978, words of survivorship, such as in a beneficiary
9 designation to an individual "if he survives me" or in a
10 beneficiary designation to "my surviving children", are not, in
11 the absence of additional evidence, a sufficient indication of
12 an intent contrary to the application of this section; and

13 (4) if a governing instrument creates an
14 alternative beneficiary designation with respect to a
15 beneficiary designation for which a substitute gift is created
16 by Paragraph (1) or (2) of this subsection, the substitute gift
17 is superseded by the alternative beneficiary designation ~~[only]~~
18 if ~~[an expressly designated beneficiary of the alternative~~
19 ~~beneficiary designation is entitled to take]~~;

20 (a) the alternative beneficiary
21 designation is in the form of a class gift and one or more
22 members of the class is entitled to take; or

23 (b) the alternative beneficiary
24 designation is not in the form of a class gift and the
25 expressly designated beneficiary of the alternative beneficiary

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1 designation is entitled to take.

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

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

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

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

18 ~~[(1)]~~ (a) "primary beneficiary
19 designation" means the beneficiary designation that would have
20 taken effect had all the deceased beneficiaries of the
21 alternative beneficiary designations who left surviving
22 descendants survived the decedent;

23 ~~[(2)]~~ (b) "primary substitute gift"
24 means the substitute gift created with respect to the primary
25 beneficiary designation;

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1 the payor's main office or home by registered or certified
2 mail, return receipt requested, or served upon the payor in the
3 same manner as a summons in a civil action. Upon receipt of
4 written notice of the claim, a payor may pay any amount owed by
5 it to the court having jurisdiction of the probate proceedings
6 relating to the decedent's estate or, if no proceedings have
7 been commenced, to the court having jurisdiction of probate
8 proceedings relating to decedents' estates located in the
9 county of the decedent's residence. The court shall hold the
10 funds and, upon its determination under this section, shall
11 order disbursement in accordance with the determination.
12 Payment made to the court discharges the payor from all claims
13 for the amounts paid.

14 ~~[F-]~~ E. A person who purchases property for value
15 and without notice or who receives a payment or other item of
16 property in partial or full satisfaction of a legally
17 enforceable obligation is neither obligated pursuant to the
18 provisions of this section to return the payment, item of
19 property or benefit nor ~~[is]~~ liable pursuant to the provisions
20 of this section for the amount of the payment or the value of
21 the item of property or benefit. But a person who, not for
22 value, receives a payment, item of property or any other
23 benefit to which the person is not entitled pursuant to the
24 provisions of this section is obligated to return the payment,
25 item of property or benefit or is personally liable for the

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1 amount of the payment or the value of the item of property or
2 benefit to the person who is entitled to it pursuant to the
3 provisions of this section.

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

15 Section 29. Section 45-2-707 NMSA 1978 (being Laws 1993,
16 Chapter 174, Section 55, as amended) is amended to read:

17 "45-2-707. SURVIVORSHIP WITH RESPECT TO FUTURE INTERESTS
18 UNDER TERMS OF TRUST--SUBSTITUTE TAKERS.--

19 A. As used in this section:

20 (1) "alternative future interest" means an
21 expressly created future interest that can take effect in
22 possession or enjoyment instead of another future interest on
23 the happening of one or more events, including survival of an
24 event or failure to survive an event, whether an event is
25 expressed in condition-precedent, condition-subsequent or any

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1 other form. A residuary clause in a will does not create an
2 alternative future interest with respect to a future interest
3 created in a nonresiduary devise in the will, whether or not
4 the will specifically provides that lapsed or failed devises
5 are to pass under the residuary clause;

6 (2) "beneficiary" means the beneficiary of a
7 future interest and includes a class member if the future
8 interest is in the form of a class gift;

9 (3) "class member" includes an individual who
10 fails to survive the distribution date but who would have taken
11 under a future interest in the form of a class gift had [~~he~~]
12 the individual survived the distribution date;

13 (4) "descendants", as used in the phrase
14 "surviving descendants" of a deceased beneficiary or class
15 member in Paragraphs (1) and (2) of Subsection B of this
16 section, means the descendants of a deceased beneficiary or
17 class member who would take under a class gift created in the
18 trust;

19 [~~(4)~~] (5) "distribution date", with respect to
20 a future interest, means the time when the future interest is
21 to take effect in possession or enjoyment. The distribution
22 date need not occur at the beginning or end of a calendar day,
23 but can occur at a time during the course of a day;

24 [~~(5)~~] (6) "future interest" includes an
25 alternative future interest and a future interest in the form

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1 of a class gift;

2 [~~(6)~~] (7) "future interest under the terms of
3 a trust" means a future interest that was created by a transfer
4 creating a trust or to an existing trust or by an exercise of a
5 power of appointment to an existing trust, directing the
6 continuance of an existing trust, designating a beneficiary of
7 an existing trust or creating a trust; and

8 [~~(7)~~ "~~surviving beneficiary~~" or "~~surviving~~
9 ~~descendant~~"]

10 (8) "surviving", as used in the phrase
11 "surviving beneficiaries" or "surviving descendants", means [~~a~~
12 ~~beneficiary~~] beneficiaries or [~~a descendant~~] descendants who
13 neither predeceased the distribution date nor [~~is~~] are deemed
14 to have predeceased the distribution date pursuant to the
15 provisions of Section 45-2-702 NMSA 1978.

16 B. A future interest under the terms of a trust is
17 contingent on the beneficiary's surviving the distribution
18 date. If a beneficiary of a future interest under the terms of
19 a trust fails to survive the distribution date, the following
20 apply:

21 (1) except as provided in Paragraph (4) of
22 this subsection, if the future interest is not in the form of a
23 class gift and the deceased beneficiary leaves surviving
24 descendants, a substitute gift is created in the beneficiary's
25 surviving descendants. They take by representation the

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1 property to which the beneficiary would have been entitled had
2 the beneficiary survived the distribution date;

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

24 (3) for the purposes of Section 45-2-701 NMSA
25 1978, words of survivorship attached to a future interest are

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1 not, in the absence of additional evidence, a sufficient
2 indication of an intent contrary to the application of this
3 section. Words of survivorship include words of survivorship
4 that relate to the distribution date or to an earlier or an
5 unspecified time, whether those words of survivorship are
6 expressed in condition-precedent, condition-subsequent or any
7 other form; and

8 (4) if a governing instrument creates an
9 alternative future interest with respect to a future interest
10 for which a substitute gift is created by Paragraph (1) or (2)
11 of this subsection, the substitute gift is superseded by the
12 alternative future interest ~~[only] if [an expressly designated~~
13 ~~beneficiary of the alternative future interest is entitled to~~
14 ~~take in possession or enjoyment]~~:

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

18 (b) the alternative future interest is
19 not in the form of a class gift and the expressly designated
20 beneficiary of the alternative future interest is entitled to
21 take in possession or enjoyment.

22 C. If, pursuant to the provisions of Subsection B
23 of this section, substitute gifts are created and not
24 superseded with respect to more than one future interest and
25 the future interests are alternative future interests, one to

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1 the other, the determination of which of the substitute gifts
2 takes effect is resolved as follows:

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

6 (2) if there is a younger-generation future
7 interest, the property passes under the younger-generation
8 substitute gift and not under the primary substitute gift; and

9 (3) as used in this subsection:

10 ~~(1)~~ (a) "primary future interest"
11 means the future interest that would have taken effect had all
12 the deceased beneficiaries of the alternative future interests
13 who left surviving descendants survived the distribution date;

14 ~~(2)~~ (b) "primary substitute gift"
15 means the substitute gift created with respect to the primary
16 future interest;

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

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1 interest; and

2 [(4)] (d) "younger-generation substitute
3 gift" means the substitute gift created with respect to the
4 younger-generation future interest.

5 D. Except as provided in Subsection E of this
6 section, if after the application of Subsections B and C of
7 this section there is no surviving taker, the property passes
8 in the following order:

9 (1) if the trust was created in a nonresiduary
10 devise in the transferor's will or in a codicil to the
11 transferor's will, the property passes under the residuary
12 clause in the transferor's will; for purposes of this section,
13 the residuary clause is treated as creating a future interest
14 under the terms of a trust; and

15 (2) if no taker is produced by the application
16 of Paragraph (1) of this subsection, the property passes to the
17 transferor's heirs pursuant to the provisions of Section
18 45-2-711 NMSA 1978.

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

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

25 (2) if no taker is produced by the application

1 of Paragraph (1) of this subsection, the property passes as
2 provided in Subsection [E] D of this section. For purposes of
3 Subsection [E] D of this section, "transferor" means the donor
4 if the power was a nongeneral power and means the donee if the
5 power was a general power."

6 Section 30. Section 45-2-709 NMSA 1978 (being Laws 1993,
7 Chapter 174, Section 57, as amended) is amended to read:

8 "45-2-709. REPRESENTATION--PER CAPITA AT EACH
9 GENERATION--PER STIRPES.--

10 A. As used in this section:

11 (1) "deceased child" or "deceased descendant"
12 means a child or a descendant who either predeceased the
13 distribution date or is deemed to have predeceased the
14 distribution date pursuant to the provisions of Section
15 45-2-702 NMSA 1978;

16 (2) "distribution date", with respect to an
17 interest, means the time when the interest is to take effect in
18 possession or enjoyment. The distribution date need not occur
19 at the beginning or end of a calendar day, but can occur at a
20 time during the course of a day; and

21 (3) "surviving ancestor", "surviving child" or
22 "surviving descendant" means an ancestor, a child or a
23 descendant who neither predeceased the distribution date nor is
24 deemed to have predeceased the distribution date pursuant to
25 the provisions of Section 45-2-702 NMSA 1978.

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

5 (1) surviving descendants in the generation
6 nearest to the designated ancestor that contains one or more
7 surviving descendants; and

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

10 Each surviving descendant in the nearest generation is
11 allocated one share. The remaining shares, if any, are
12 combined and then divided in the same manner among the
13 surviving descendants of the deceased descendants as if the
14 surviving descendants who were allocated a share and their
15 surviving descendants had predeceased the distribution date.

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

19 (1) surviving children of the designated
20 ancestor; and

21 (2) deceased children who left surviving
22 descendants.

23 Each surviving child, if any, is allocated one share. The
24 share of each deceased child [~~if any~~] with surviving
25 descendants is divided in the same manner, with subdivision

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1 repeating at each succeeding generation until the property is
2 fully allocated among surviving descendants.

3 D. For the purposes of Subsections B and C of this
4 section, an individual who is deceased and left no surviving
5 descendant is disregarded and an individual who leaves a
6 surviving ancestor who is a descendant of the designated
7 ancestor is not entitled to a share."

8 Section 31. Section 45-2-803 NMSA 1978 (being Laws 1993,
9 Chapter 174, Section 62, as amended) is amended to read:

10 "45-2-803. EFFECT OF HOMICIDE ON INTESTATE SUCCESSION,
11 WILLS, TRUSTS, JOINT ASSETS, LIFE INSURANCE AND BENEFICIARY
12 DESIGNATIONS.--

13 A. As used in this section:

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

17 (2) "revocable", with respect to a
18 disposition, appointment, provision or nomination, means one
19 under which the decedent, at the time of or immediately before
20 death, was alone empowered, by law or under the governing
21 instrument, to cancel the designation in favor of the killer,
22 whether or not the decedent was then empowered to designate
23 ~~[himself]~~ the decedent's own self in place of ~~[his]~~ the
24 decedent's killer and the decedent then had capacity to
25 exercise the power.

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

9 C. The felonious and intentional killing of the
10 decedent:

11 (1) revokes any revocable:

12 (a) disposition or appointment of
13 property made by the decedent to the killer in a governing
14 instrument;

15 (b) provision in a governing instrument
16 executed by the decedent conferring a general or nongeneral
17 power of appointment on the killer; and

18 (c) nomination of the killer in a
19 governing instrument executed by the decedent, nominating or
20 appointing the killer to serve in any fiduciary or
21 representative capacity, including a personal representative,
22 executor, trustee or agent; and

23 (2) severs the interests of the decedent and
24 killer in property held by them at the time of the killing as
25 joint tenants with the right of survivorship, transforming the

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1 interests of the decedent and killer into equal tenancies in
2 common.

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

12 E. Provisions of a governing instrument executed by
13 the decedent are given effect as if the killer disclaimed all
14 provisions revoked by this section or, in the case of a revoked
15 nomination in a fiduciary or representative capacity, as if the
16 killer predeceased the decedent.

17 F. An acquisition of property or interest by a
18 killer not covered by this section [~~must~~] shall be treated in
19 accordance with the principle that a killer cannot profit from
20 [~~his~~] the killer's wrong.

21 G. After all right to appeal has been exhausted, a
22 judgment of conviction establishing criminal accountability for
23 the felonious and intentional killing of the decedent
24 conclusively establishes the convicted individual as the
25 decedent's killer for purposes of this section. In the absence

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1 of a conviction, the court upon the petition of an interested
2 person [~~must~~] shall determine whether under the preponderance
3 of evidence standard the individual would be found criminally
4 accountable for the felonious and intentional killing of the
5 decedent. If the court determines that under that standard the
6 individual would be found criminally accountable for the
7 felonious and intentional killing of the decedent, the
8 determination conclusively establishes that individual as the
9 decedent's killer for purposes of this section.

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

23 Written notice of a claimed forfeiture or revocation
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

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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 written
4 notice of a claimed forfeiture or revocation pursuant to the
5 provisions of this section, a payor or other third party may
6 pay any amount owed or transfer or deposit any item of property
7 held by it to or with the court having jurisdiction of the
8 probate proceedings relating to the decedent's estate or, if no
9 proceedings have been commenced, to or with the court having
10 jurisdiction of probate proceedings relating to decedents'
11 estates located in the county of the decedent's residence. The
12 court shall hold the funds or item of property and, upon its
13 determination pursuant to the provisions of this section, shall
14 order disbursement in accordance with the determination.

15 Payments, transfers or deposits made to or with the court
16 discharge the payor or other third party from all claims for
17 the value of amounts paid to or items of property transferred
18 to or deposited with the court.

19 I. A person who purchases property for value and
20 without notice or who receives a payment or other item of
21 property in partial or full satisfaction of a legally
22 enforceable obligation is neither obligated pursuant to the
23 provisions of this section to return the payment, item of
24 property or benefit nor ~~[is]~~ liable pursuant to the provisions
25 of this section for the amount of the payment or the value of

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1 the item of property or benefit. But a person who, not for
2 value, receives a payment, item of property or any other
3 benefit to which the person is not entitled pursuant to the
4 provisions of this section is obligated to return the payment,
5 item of property or benefit or is personally liable for the
6 amount of the payment or the value of the item of property or
7 benefit to the person who is entitled to it pursuant to the
8 provisions of this section.

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

19 Section 32. Section 45-2-804 NMSA 1978 (being Laws 1993,
20 Chapter 174, Section 63, as amended) is amended to read:

21 "45-2-804. REVOCATION OF PROBATE AND NONPROBATE TRANSFERS
22 BY DIVORCE--NO REVOCATION BY OTHER CHANGES OF CIRCUMSTANCES.--

23 A. As used in this section:

24 (1) "disposition or appointment of property"
25 includes a transfer of an item of property or any other benefit

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1 to a beneficiary designated in a governing instrument;

2 (2) "divorce or annulment" means [~~any~~] a
3 divorce or annulment or [~~any~~] a dissolution or declaration of
4 invalidity of a marriage that would exclude the spouse as a
5 surviving spouse within the meaning of Section 45-2-802 NMSA
6 1978. A decree of separation that does not terminate the
7 status of husband and wife is not a divorce for purposes of
8 this section;

9 (3) "divorced individual" includes an
10 individual whose marriage has been annulled;

11 (4) "governing instrument" means a governing
12 instrument executed by the divorced individual before the
13 divorce or annulment of [~~his~~] the divorced individual's
14 marriage to [~~his~~] the former spouse;

15 (5) "relative of the divorced individual's
16 former spouse" means an individual who is related to the
17 divorced individual's former spouse by blood, adoption or
18 affinity and who, after the divorce or annulment, is not
19 related to the divorced individual by blood, adoption or
20 affinity; and

21 (6) "revocable", with respect to a
22 disposition, appointment, provision or nomination, means one
23 under which the divorced individual, at the time of the divorce
24 or annulment, was alone empowered by law or under the governing
25 instrument to cancel the designation in favor of [~~his~~] the

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1 former spouse or former spouse's relative whether or not the
2 divorced individual was then empowered to designate [~~himself~~]
3 the divorced individual's own self in place of [~~his~~] the former
4 spouse or in place of [~~his~~] the former spouse's relative and
5 whether or not the divorced individual then had the capacity to
6 exercise the power.

7 B. Except as provided by the express terms of a
8 governing instrument, a court order or a contract relating to
9 the division of the marital estate made between the divorced
10 individuals before or after the marriage, divorce or annulment,
11 the divorce or annulment of a marriage:

12 (1) revokes any revocable:

13 (a) disposition or appointment of
14 property made by a divorced individual to [~~his~~] the former
15 spouse in a governing instrument and any disposition or
16 appointment created by law or in a governing instrument to a
17 relative of the divorced individual's former spouse;

18 (b) provision in a governing instrument
19 conferring a general or nongeneral power of appointment on the
20 divorced individual's former spouse or on a relative of the
21 divorced individual's former spouse; and

22 (c) nomination in a governing
23 instrument, nominating a divorced individual's former spouse or
24 a relative of the divorced individual's former spouse to serve
25 in any fiduciary or representative capacity, including a

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1 personal representative, executor, trustee, conservator, agent
2 or guardian; and

3 (2) severs the interests of the former spouses
4 in property held by them at the time of the divorce or
5 annulment as joint tenants with the right of survivorship,
6 transforming the interests of the former spouses into equal
7 tenancies in common.

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

17 D. Provisions of a governing instrument are given
18 effect as if the former spouse and relatives of the former
19 spouse disclaimed all provisions revoked by this section or, in
20 the case of a revoked nomination in a fiduciary or
21 representative capacity, as if the former spouse and relatives
22 of the former spouse died immediately before the divorce or
23 annulment.

24 E. Provisions revoked solely by this section are
25 revived by the divorced individual's remarriage to the former

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1 spouse or by a nullification of the divorce or annulment.

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

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

16 Written notice of the divorce, annulment or remarriage
17 pursuant to the provisions of this section [~~must~~] shall be
18 mailed to the payor's or other third party's main office or
19 home by registered or certified mail, return receipt requested,
20 or served upon the payor or other third party in the same
21 manner as a summons in a civil action. Upon receipt of the
22 written notice of the divorce, annulment or remarriage, a payor
23 or other third party may pay any amount owed or transfer or
24 deposit any item of property held by it to or with the court
25 having jurisdiction of the probate proceedings relating to the

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1 decedent's estate or, if no proceedings have been commenced, to
2 or with the court having jurisdiction of probate proceedings
3 relating to decedents' estates located in the county of the
4 decedent's residence. The court shall hold the funds or item
5 of property and, upon its determination pursuant to the
6 provisions of this section, shall order disbursement or
7 transfer in accordance with the determination. Payments,
8 transfers or deposits made to or with the court discharge the
9 payor or other third party from all claims for the value of
10 amounts paid to or items of property transferred to or
11 deposited with the court.

12 H. A person who purchases property from a former
13 spouse, relative of a former spouse or any other person for
14 value and without notice or who receives from a former spouse,
15 relative of a former spouse or any other person a payment or
16 other item of property in partial or full satisfaction of a
17 legally enforceable obligation is neither obligated pursuant
18 to the provisions of this section to return the payment, item
19 of property or benefit nor is liable pursuant to the
20 provisions of this section for the amount of the payment or
21 the value of the item of property or benefit. But a former
22 spouse, relative of a former spouse or other person who, not
23 for value, received a payment, item of property or any other
24 benefit to which that person is not entitled pursuant to the
25 provisions of this section is obligated to return the payment,

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1 item of property or benefit or is personally liable for the
2 amount of the payment or the value of the item of property or
3 benefit to the person who is entitled to it pursuant to the
4 provisions of this section.

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

17 Section 33. A new section of the Uniform Probate Code,
18 Section 45-2-805 NMSA 1978, is enacted to read:

19 "45-2-805. [NEW MATERIAL] REFORMATION TO CORRECT
20 MISTAKES.--The district court may reform the terms of a
21 governing instrument, even if unambiguous, to conform the
22 terms to the transferor's intention if it is proved by clear
23 and convincing evidence what the transferor's intent was and
24 that the terms of the governing instrument were affected by a
25 mistake of fact or law, whether in expression or inducement."

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1 Section 34. A new section of the Uniform Probate Code,
2 Section 45-2-806 NMSA 1978, is enacted to read:

3 "45-2-806. [NEW MATERIAL] MODIFICATION TO ACHIEVE
4 TRANSFEROR'S TAX OBJECTIVES.--To achieve the transferor's tax
5 objectives, the district court may modify the terms of a
6 governing instrument in a manner that is not contrary to the
7 transferor's probable intention. The district court may
8 provide that the modification has retroactive effect."

9 Section 35. Section 45-2-901 NMSA 1978 (being Laws
10 1992, Chapter 66, Section 1) is amended to read:

11 "45-2-901. STATUTORY RULE AGAINST PERPETUITIES.--

12 A. A nonvested property interest is invalid
13 unless:

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

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

19 B. A general power of appointment not presently
20 exercisable because of a condition precedent is invalid
21 unless:

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

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

4 C. A nongeneral power of appointment or a general
5 testamentary power of appointment is invalid unless:

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

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

12 D. In determining whether a nonvested property
13 interest or a power of appointment is valid under each
14 Paragraph (1) of Subsections A, B and C of this section, the
15 possibility that a child will be born to an individual after
16 the individual's death shall be disregarded.

17 ~~[E. If, in measuring a period from the creation of~~
18 ~~a trust or other property arrangement, language in a governing~~
19 ~~instrument seeks to postpone the vesting or termination of any~~
20 ~~interest or trust until, seeks to disallow the vesting or~~
21 ~~termination of any interest or trust beyond, seeks to require~~
22 ~~all interests or trusts to vest or terminate no later than, or~~
23 ~~seeks to operate in effect in any similar fashion upon the~~
24 ~~later of:~~

25 ~~(1) the expiration of a period of time not~~

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1 ~~exceeding twenty-one years after the death of the survivor of~~
2 ~~specified lives in being at the creation of the trust or other~~
3 ~~property arrangement; or~~

4 ~~(2) the expiration of a period of time that~~
5 ~~exceeds or might exceed twenty-one years after the death of~~
6 ~~the survivor of lives in being at the creation of the trust or~~
7 ~~other property arrangement, then the portion of the language~~
8 ~~described in Paragraph (2) above is inoperative if and to the~~
9 ~~extent it produces a period of time that exceeds twenty-one~~
10 ~~years after the death of the survivor of the lives specified~~
11 ~~in Paragraph (1) above.]~~

12 E. If, in measuring a period from the creation of
13 a trust or other property arrangement, language in a governing
14 instrument (i) seeks to disallow the vesting or termination of
15 any interest or trust beyond, (ii) seeks to postpone the
16 vesting or termination of any interest or trust until or (iii)
17 seeks to operate in effect in any similar fashion upon, the
18 later of (1) the expiration of a period of time not exceeding
19 twenty-one years after the death of the survivor of specified
20 lives in being at the creation of the trust or other property
21 arrangement or (2) the expiration of a period of time that
22 exceeds or might exceed twenty-one years after the death of
23 the survivor of lives in being at the creation of the trust or
24 other property arrangement, that language is inoperative to
25 the extent it produces a period of time that exceeds twenty-

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1 one years after the death of the survivor of the specified
2 lives."

3 Section 36. A new section of the Uniform Probate Code,
4 Section 45-2-908 NMSA 1978, is enacted to read:

5 "45-2-908. [NEW MATERIAL] DEFINITIONS.--As used in
6 Sections 45-2-909 through 45-2-914 NMSA 1978:

7 A. "nonvested easement in gross" means a nonvested
8 easement that is not created to benefit or that does not
9 benefit the possessor of any real property in the possessor's
10 use of it as the possessor;

11 B. "option in gross with respect to an interest in
12 real property" means an option in which the holder of the
13 option does not own any leasehold or other interest in the
14 real property that is the subject of the option; and

15 C. "preemptive right in the nature of a right of
16 first refusal in gross with respect to an interest in real
17 property" means a preemptive right in which the holder of the
18 preemptive right does not own any leasehold or other interest
19 in the real property that is the subject of the preemptive
20 right."

21 Section 37. A new section of the Uniform Probate Code,
22 Section 45-2-909 NMSA 1978, is enacted to read:

23 "45-2-909. [NEW MATERIAL] INTEREST IN REAL PROPERTY.--
24 An option in gross with respect to an interest in real
25 property or a preemptive right in the nature of a right of

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1 first refusal in gross with respect to an interest in real
2 property becomes invalid if it is not actually exercised
3 within thirty years after its creation."

4 Section 38. A new section of the Uniform Probate Code,
5 Section 45-2-910 NMSA 1978, is enacted to read:

6 "45-2-910. [NEW MATERIAL] LEASE TO COMMENCE IN THE
7 FUTURE.--A lease of real property to commence at a time
8 certain or upon the occurrence or nonoccurrence of a future
9 event becomes invalid if its term does not actually commence
10 in possession within thirty years after its execution."

11 Section 39. A new section of the Uniform Probate Code,
12 Section 45-2-911 NMSA 1978, is enacted to read:

13 "45-2-911. [NEW MATERIAL] NONVESTED EASEMENT.--A
14 nonvested easement in gross becomes invalid if it does not
15 actually vest within thirty years after its creation."

16 Section 40. A new section of the Uniform Probate Code,
17 Section 45-2-912 NMSA 1978, is enacted to read:

18 "45-2-912. [NEW MATERIAL] POSSIBILITY OF REVERTER,
19 RIGHT OF ENTRY, EXECUTORY INTEREST.--A possibility of reverter
20 preceded by a fee simple determinable, a right of entry
21 preceded by a fee simple subject to a condition subsequent or
22 an executory interest preceded by either a fee simple
23 determinable or a fee simple subject to an executory
24 limitation becomes invalid, and the preceding fee simple
25 becomes a fee simple absolute, if the right to vest in

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1 possession of the possibility of reverter, right of entry or
2 executory interest depends on an event or events affecting the
3 use of real property and if the possibility of reverter, right
4 of entry or executory interest does not actually vest in
5 possession within sixty years after its creation."

6 Section 41. A new section of the Uniform Probate Code,
7 Section 45-2-913 NMSA 1978, is enacted to read:

8 "45-2-913. [NEW MATERIAL] EXCLUSIONS.--

9 A. Section 45-2-912 NMSA 1978 does not apply to a
10 possibility of reverter, right of entry or executory interest
11 that is held by a charity, a government or governmental agency
12 or subdivision excluded from the provisions of Section
13 45-2-901 NMSA 1978 by Subsection E of Section 45-2-904 NMSA
14 1978.

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

19 Section 42. A new section of the Uniform Probate Code,
20 Section 45-2-914 NMSA 1978, is enacted to read:

21 "45-2-914. [NEW MATERIAL] APPLICATION.--Sections
22 45-2-908 through 45-2-913 NMSA 1978 apply only to a property
23 interest or arrangement affecting real property that is
24 created on or after July 1, 1992."

25 Section 43. Section 45-3-108 NMSA 1978 (being Laws

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1 1975, Chapter 257, Section 3-108, as amended) is amended to
2 read:

3 "45-3-108. PROBATE, TESTACY AND APPOINTMENT
4 PROCEEDINGS--ULTIMATE TIME LIMIT.--

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

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

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

25 (3) a proceeding to contest an informally

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1 probated will and to secure appointment of the person with
2 legal priority for appointment in the event the contest is
3 successful may be commenced within the later of twelve months
4 from the informal probate or three years from the decedent's
5 death;

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

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

25 B. The limitations set out in Subsection A of this

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1 section do not apply to proceedings to construe probated wills
2 or determine heirs of an intestate.

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

9 Section 44. Section 46-3A-101 NMSA 1978 (being Laws
10 2001, Chapter 113, Section 101) is amended to read:

11 "46-3A-101. SHORT TITLE.--~~[This act]~~ Chapter 46,
12 Article 3A NMSA 1978 may be cited as the "Uniform Principal
13 and Income Act".

14 Section 45. Section 46-3A-409 NMSA 1978 (being Laws
15 2001, Chapter 113, Section 409) is amended to read:

16 "46-3A-409. DEFERRED COMPENSATION, ANNUITIES AND
17 SIMILAR PAYMENTS.--

18 [~~(a)~~] A. As used in this section:

19 (1) "payment" means a payment that a trustee
20 may receive over a fixed number of years or during the life of
21 one or more individuals because of services rendered or
22 property transferred to the payer in exchange for future
23 payments. The term includes a payment made in money or
24 property from the payer's general assets or from a separate
25 fund created by the payer. [~~including~~] For purposes of

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1 Subsections D, E, F and G of this section, "payment" also
2 includes any payment from any separate fund, regardless of the
3 reason for the payment; and

4 (2) "separate fund" includes a private or
5 commercial annuity, an individual retirement account and a
6 pension, profit-sharing, stock-bonus or stock-ownership plan.

7 ~~[(b)]~~ B. To the extent that a payment is
8 characterized as interest or a dividend or a payment made in
9 lieu of interest or a dividend, a trustee shall allocate ~~[(it)]~~
10 the payment to income. The trustee shall allocate to principal
11 the balance of the payment and any other payment received in
12 the same accounting period that is not characterized as
13 interest, a dividend or an equivalent payment.

14 ~~[(e)]~~ C. If no part of a payment is characterized
15 as interest, a dividend or an equivalent payment, and all or
16 part of the payment is required to be made, a trustee shall
17 allocate to income ten percent of the part that is required to
18 be made during the accounting period and the balance to
19 principal. If no part of a payment is required to be made or
20 the payment received is the entire amount to which the trustee
21 is entitled, the trustee shall allocate the entire payment to
22 principal. For purposes of this subsection, a payment is not
23 "required to be made" to the extent that it is made because the
24 trustee exercises a right of withdrawal.

25 ~~[(d) If, to obtain an estate tax marital deduction~~

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1 ~~for a trust, a trustee must allocate more of a payment to~~
2 ~~income than provided for by this section, the trustee shall~~
3 ~~allocate to income the additional amount necessary to obtain~~
4 ~~the marital deduction.]~~

5 D. Except as otherwise provided in Subsection E of
6 this section, Subsections F and G of this section apply and
7 Subsections B and C of this section do not apply in determining
8 the allocation of a payment made from a separate fund to:

9 (1) a trust to which an election to qualify
10 for a marital deduction pursuant to Section 2056(b)(7) of the
11 Internal Revenue Code of 1986, as amended, has been made; or

12 (2) a trust that qualifies for the marital
13 deduction pursuant to Section 2056(b)(5) of the Internal
14 Revenue Code of 1986, as amended.

15 E. Subsections D, F and G of this section do not
16 apply if, and to the extent that, the series of payments would,
17 without the application of Subsection D of this section,
18 qualify for the marital deduction pursuant to Section
19 2056(b)(7)(C) of the Internal Revenue Code of 1986, as amended.

20 F. A trustee shall determine the internal income of
21 each separate fund for the accounting period as if the separate
22 fund were a trust subject to the Uniform Principal and Income
23 Act. Upon request of the surviving spouse, the trustee shall
24 demand that the person administering the separate fund
25 distribute the internal income to the trust. The trustee shall

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1 allocate a payment from the separate fund to income to the
2 extent of the internal income of the separate fund and
3 distribute that amount to the surviving spouse. The trustee
4 shall allocate the balance of the payment to principal. Upon
5 request of the surviving spouse, the trustee shall allocate
6 principal to income to the extent the internal income of the
7 separate fund exceeds payments made from the separate fund to
8 the trust during the accounting period.

9 G. If a trustee cannot determine the internal
10 income of a separate fund but can determine the value of the
11 separate fund, the internal income of the separate fund is
12 deemed to equal four percent of the fund's value according to
13 the most recent statement of value preceding the beginning of
14 the accounting period. If the trustee can determine neither
15 the internal income of the separate fund nor the fund's value,
16 the internal income of the fund is deemed to equal the product
17 of the interest rate and the present value of the expected
18 future payments as determined pursuant to Section 7520 of the
19 Internal Revenue Code of 1986, as amended, for the month
20 preceding the accounting period for which the computation is
21 made.

22 [~~e~~] H. This section does not apply to [payments]
23 a payment to which Section [410] 46-3A-410 NMSA 1978 applies."

24 Section 46. Section 46-3A-505 NMSA 1978 (being Laws 2001,
25 Chapter 113, Section 505) is amended to read:

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1 "46-3A-505. INCOME TAXES.--

2 [~~(a)~~] A. A tax required to be paid by a trustee
3 based on receipts allocated to income must be paid from income.

4 [~~(b)~~] B. A tax required to be paid by a trustee
5 based on receipts allocated to principal must be paid from
6 principal, even if the tax is called an income tax by the
7 taxing authority.

8 [~~(c)~~] C. A tax required to be paid by a trustee on
9 the trust's share of an entity's taxable income must be paid
10 [~~proportionately~~]:

11 (1) from income to the extent that receipts
12 from the entity are allocated only to income; [~~and~~]

13 (2) from principal to the extent that [~~(A)~~]
14 receipts from the entity are allocated only to principal; [~~and~~

15 ~~(B) the trust's share of the entity's~~
16 ~~taxable income exceeds the total receipts described in~~
17 ~~Paragraphs (1) and (2)(A)]~~

18 (3) proportionately from principal and income
19 to the extent that receipts from the entity are allocated to
20 both income and principal; and

21 (4) from principal to the extent that the tax
22 exceeds the total receipts from the entity.

23 [~~(d)~~ For purposes of this section, receipts
24 allocated to principal or income must be reduced by the amount
25 distributed to a beneficiary from principal or income for which

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1 ~~the trust receives a deduction in calculating the tax.]~~

2 D. After applying Subsections A through C of this
3 section, the trustee shall adjust income or principal receipts
4 to the extent that the trust's taxes are reduced because the
5 trust receives a deduction for payments made to a beneficiary."

6 Section 47. Section 46-10-1 NMSA 1978 (being Laws 2001,
7 Chapter 290, Section 1) is recompiled as Section 45-2-1101 NMSA
8 1978 and is amended to read:

9 "45-2-1101. SHORT TITLE.--~~[This act]~~ Chapter 45, Article
10 2, Part 11 NMSA 1978 may be cited as the "Uniform Disclaimer of
11 Property Interests Act".

12 Section 48. Section 46-10-2 NMSA 1978 (being Laws 2001,
13 Chapter 290, Section 2) is recompiled as Section 45-2-1102 NMSA
14 1978 and is amended to read:

15 "45-2-1102. DEFINITIONS.--As used in the Uniform
16 Disclaimer of Property Interests Act:

17 A. "disclaimant" means the person to whom a
18 disclaimed interest or power would have passed had the
19 disclaimer not been made;

20 B. "disclaimed interest" means the interest that
21 would have passed to the disclaimant had the disclaimer not
22 been made;

23 C. "disclaimer" means the refusal to accept an
24 interest in or power over property;

25 D. "fiduciary" means a personal representative,

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1 trustee, agent acting under a power of attorney or other person
2 authorized to act as a fiduciary with respect to the property
3 of another person;

4 E. "jointly held property" means property held in
5 the name of two or more persons under an arrangement in which
6 all holders have concurrent interests and under which the last
7 surviving holder is entitled to the whole of the property; and

8 [~~F. "person" means an individual, corporation,~~
9 ~~business trust, estate, trust, partnership, limited liability~~
10 ~~company, association, joint venture, government governmental~~
11 ~~subdivision, agency or instrumentality, public corporation or~~
12 ~~any other legal or commercial entity;~~

13 ~~G. "state" means a state of the United States, the~~
14 ~~District of Columbia, Puerto Rico, the United States Virgin~~
15 ~~Islands or any territory or insular possession subject to the~~
16 ~~jurisdiction of the United States. The term includes an Indian~~
17 ~~tribe, an Indian band or an Alaskan native village recognized~~
18 ~~by federal law or formally acknowledged by a state; and~~

19 H.] F. "trust" means:

20 (1) an express trust, charitable or
21 noncharitable, with additions thereto, whenever and however
22 created; and

23 (2) a trust created pursuant to a statute,
24 judgment or decree [~~which~~] that requires the trust to be
25 administered in the manner of an express trust."

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1 Section 49. Section 46-10-6 NMSA 1978 (being Laws 2001,
2 Chapter 290, Section 6) is recompiled as Section 45-2-1106 NMSA
3 1978 and is amended to read:

4 "45-2-1106. DISCLAIMER OF INTEREST IN PROPERTY.--

5 ~~[(a)]~~ A. As used in this section:

6 ~~[(1) "time of distribution" means the time~~
7 ~~when a disclaimed interest would have taken effect in~~
8 ~~possession or enjoyment; and~~

9 ~~(2)]~~ (1) "future interest" means an interest
10 that takes effect in possession or enjoyment, if at all, later
11 than the time of its creation; and

12 (2) "time of distribution" means the time when
13 a disclaimed interest would have taken effect in possession or
14 enjoyment.

15 ~~[(b)]~~ B. Except for a disclaimer governed by
16 Section ~~[7 or 8 of the Uniform Disclaimer of Property Interests~~
17 ~~Act]~~ 45-2-1107 or 45-2-1108 NMSA 1978, the following rules
18 apply to a disclaimer of an interest in property:

19 (1) The disclaimer takes effect as of the time
20 the instrument creating the interest becomes irrevocable, or,
21 if the interest arose under the law of intestate succession, as
22 of the time of the intestate's death.

23 (2) The disclaimed interest passes according
24 to any provision in the instrument creating the interest
25 providing for the disposition of the interest, should it be

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1 disclaimed, or of disclaimed interests in general.

2 (3) If the instrument does not contain a
3 provision described in Paragraph (2) of this subsection, the
4 following rules apply:

5 ~~[(a) If the disclaimant is an~~
6 ~~individual, the disclaimed interest passes as if the~~
7 ~~disclaimant had died immediately before the time of~~
8 ~~distribution. However, if, by law or under the instrument, the~~
9 ~~descendants of the disclaimant would share in the disclaimed~~
10 ~~interest by any method of representation had the disclaimant~~
11 ~~died before the time of distribution, the disclaimed interest~~
12 ~~passes only to the descendants of the disclaimant who survive~~
13 ~~the time of distribution.~~

14 ~~(b) If the disclaimant is not an~~
15 ~~individual, the disclaimed interest passes as if the~~
16 ~~disclaimant did not exist.]~~

17 (a) If the disclaimant is not an
18 individual, the disclaimed interest passes as if the
19 disclaimant did not exist.

20 (b) If the disclaimant is an individual,
21 except as otherwise provided in Subparagraphs (c) and (d) of
22 this paragraph, the disclaimed interest passes as if the
23 disclaimant had died immediately before the time of
24 distribution.

25 (c) If, by law or under the instrument,

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1 the descendants of the disclaimant would share in the
2 disclaimed interest by any method of representation had the
3 disclaimant died before the time of distribution, the
4 disclaimed interest passes only to the descendants of the
5 disclaimant who survive the time of distribution.

6 (d) If the disclaimed interest would
7 pass to the disclaimant's estate had the disclaimant died
8 before the time of distribution, the disclaimed interest
9 instead passes by representation to the descendants of the
10 disclaimant who survive the time of distribution. If no
11 descendant of the disclaimant survives the time of
12 distribution, the disclaimed interest passes to those persons,
13 including the state but excluding the disclaimant, and in such
14 shares as would succeed to the transferor's intestate estate
15 under the intestate succession law of the transferor's domicile
16 had the transferor died at the time of distribution. However,
17 if the transferor's surviving spouse is living but is remarried
18 at the time of distribution, the transferor is deemed to have
19 died unmarried at the time of distribution.

20 (4) Upon the disclaimer of a preceding
21 interest, a future interest held by a person other than the
22 disclaimant takes effect as if the disclaimant had died or
23 ceased to exist immediately before the time of distribution,
24 but a future interest held by the disclaimant is not
25 accelerated in possession or enjoyment."

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1 Section 50. Section 46-10-12 NMSA 1978 (being Laws 2001,
2 Chapter 290, Section 12) is recompiled as Section 45-2-1112
3 NMSA 1978 and is amended to read:

4 "45-2-1112. DELIVERY OR FILING.--

5 ~~[(a)]~~ A. As used in this section, "beneficiary
6 designation" means an instrument, other than an instrument
7 creating a trust, naming the beneficiary of:

- 8 (1) an annuity or insurance policy;
- 9 (2) an account with a designation for payment
10 on death;
- 11 (3) a security registered in beneficiary form;
- 12 (4) a pension, profit-sharing, retirement or
13 other employment-related benefit plan; or
- 14 (5) any other nonprobate transfer at death.

15 ~~[(b)]~~ B. Subject to Subsections ~~[(e)]~~ C through
16 ~~[(l)]~~ L of this section, delivery of a disclaimer may be
17 effected by personal delivery, first-class mail or any other
18 method likely to result in its receipt.

19 ~~[(e)]~~ C. In the case of an interest created under
20 the law of intestate succession or an interest created by will,
21 other than an interest in a testamentary trust:

- 22 (1) a disclaimer must be delivered to the
23 personal representative of the decedent's estate; or
- 24 (2) if no personal representative is then
25 serving, it must be filed with a court having jurisdiction to

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1 appoint the personal representative.

2 [~~(d)~~] D. In the case of an interest in a
3 testamentary trust:

4 (1) a disclaimer must be delivered to the
5 trustee then serving or, if no trustee is then serving, to the
6 personal representative of the decedent's estate; or

7 (2) if no personal representative is then
8 serving, it must be filed with a court having jurisdiction to
9 enforce the trust.

10 [~~(e)~~] E. In the case of an interest in an inter
11 vivos trust:

12 (1) a disclaimer must be delivered to the
13 trustee then serving;

14 (2) if no trustee is then serving, it must be
15 filed with a court having jurisdiction to enforce the trust; or

16 (3) if the disclaimer is made before the time
17 the instrument creating the trust becomes irrevocable, it must
18 be delivered to the settlor of a revocable trust or the
19 transferor of the interest.

20 [~~(f)~~] F. In the case of an interest, created by a
21 beneficiary designation, [~~made~~] that is disclaimed before [~~the~~
22 ~~time~~] the designation becomes irrevocable, [~~a~~] the disclaimer
23 must be delivered to the person making the beneficiary
24 designation.

25 [~~(g)~~] G. In the case of an interest, created by a

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1 beneficiary designation, [~~made~~] that is disclaimed after [~~the~~
2 ~~time~~] the designation becomes irrevocable:

3 [~~a~~] (1) the disclaimer must be delivered to
4 the person obligated to distribute the interest; and

5 (2) the disclaimer of an interest in real
6 property must be recorded in the office of the county clerk of
7 each county where the real property that is the subject of the
8 disclaimer is located.

9 [~~h~~] H. In the case of a disclaimer by a surviving
10 holder of jointly held property, the disclaimer must be
11 delivered to the person to whom the disclaimed interest passes.

12 [~~i~~] I. In the case of a disclaimer by an object
13 or taker in default of exercise of a power of appointment at
14 any time after the power was created:

15 (1) the disclaimer must be delivered to the
16 holder of the power or to the fiduciary acting under the
17 instrument that created the power; or

18 (2) if no fiduciary is then serving, it must
19 be filed with a court having authority to appoint the
20 fiduciary.

21 [~~j~~] J. In the case of a disclaimer by an
22 appointee of a nonfiduciary power of appointment:

23 (1) the disclaimer must be delivered to the
24 holder, the personal representative of the holder's estate or
25 to the fiduciary under the instrument that created the power;

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1 or

2 (2) if no fiduciary is then serving, it must
3 be filed with a court having authority to appoint the
4 fiduciary.

5 [~~(k)~~] K. In the case of a disclaimer by a fiduciary
6 of a power over a trust or estate, the disclaimer must be
7 delivered as provided in Subsection [~~(c)~~, ~~(d)~~ or ~~(e)~~] C, D or E
8 of this section, as if the power disclaimed were an interest in
9 property.

10 [~~(l)~~] L. In the case of a disclaimer of a power by
11 an agent, the disclaimer must be delivered to the principal or
12 the principal's representative."

13 Section 51. Section 46-10-15 NMSA 1978 (being Laws 2001,
14 Chapter 290, Section 15) is recompiled as Section 45-2-1115
15 NMSA 1978 and is amended to read:

16 "45-2-1115. RECORDING OF DISCLAIMER.--If an instrument
17 transferring an interest in or power over property subject to a
18 disclaimer is required or permitted by law to be filed,
19 recorded or registered, the disclaimer may be so filed,
20 recorded or registered. Except as otherwise provided in
21 Paragraph (2) of Subsection G of Section 45-2-1112 NMSA 1978,
22 failure to file, record or register the disclaimer does not
23 affect its validity as between the disclaimant and persons to
24 whom the property interest or power passes by reason of the
25 disclaimer."

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1 Section 52. Section 45-3-101 NMSA 1978 (being Laws 1975,
2 Chapter 257, Section 3-101) is amended to read:

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

5 A. The power of a person to leave property by will
6 and the rights of creditors, devisees and heirs to [~~his~~] the
7 person's property are subject to the restrictions and
8 limitations contained in [~~Sections 3-101 through 3-1204~~]
9 Chapter 45, Article 3 NMSA 1978 to facilitate the prompt
10 settlement of estates.

11 B. Upon the death of a person, [~~his~~] the person's
12 separate property and [~~his~~] the person's share of community
13 property devolves:

14 (1) to the persons to whom the property is
15 devised by [~~his~~] the person's last will;

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

21 (3) in the absence of testamentary
22 disposition, to [~~his~~] the person's heirs or to those indicated
23 as substitutes for them in cases involving [~~renunciation~~]
24 revocation, lapse, disclaimer or other circumstances pursuant
25 to [~~Sections 2-301 through 2-405~~] Chapter 45, Article 2, Parts

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1 3, 4, 10 and 11 NMSA 1978 affecting the devolution of intestate
2 estates.

3 C. The devolution of separate property and the
4 decedent's share of community property is subject to rights to
5 the family allowance and personal property allowance, to rights
6 of creditors and to administration as provided in [~~Sections~~
7 ~~3-101 through 3-1204~~] Chapter 45, Article 3 NMSA 1978. The
8 surviving spouse's share of the community property is subject
9 to administration until the time for presentation of claims has
10 expired, and thereafter only to the extent necessary to pay
11 community claims."

12 Section 53. Section 45-3-203 NMSA 1978 (being Laws 1975,
13 Chapter 257, Section 3-203, as amended) is amended to read:

14 "45-3-203. PRIORITY AMONG PERSONS SEEKING APPOINTMENT AS
15 PERSONAL REPRESENTATIVE.--

16 A. Whether the proceedings are formal or informal,
17 persons who are not disqualified have priority for appointment
18 in the following order:

19 (1) the person with priority as determined by a
20 probated will, including a person nominated by a power
21 conferred in a will;

22 (2) the surviving spouse of the decedent who is
23 a devisee of the decedent;

24 (3) other devisees of the decedent;

25 (4) the surviving spouse of the decedent;

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1 (5) other heirs of the decedent; and

2 (6) on application or petition of an interested
3 person other than a spouse, devisee or heir, any qualified
4 person.

5 B. An objection to an appointment may be made only in
6 formal proceedings. In case of objection, the priorities
7 stated in Subsection A of this section apply except that:

8 (1) if the estate appears to be more than
9 adequate to meet [~~exemptions~~] allowances and costs of
10 administration but inadequate to discharge anticipated
11 unsecured claims, the court, on petition of creditors, may
12 appoint any qualified person; and

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

21 C. A person entitled to letters under Paragraphs (2)
22 through (5) of Subsection A of this section or a person who has
23 not reached the age of majority and who might be entitled to
24 letters but for the person's age may nominate a qualified
25 person to act as personal representative and thereby confer the

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1 person's relative priority for appointment on the person's
2 nominee. Any person who has reached the age of majority may
3 renounce the right to nominate or to an appointment by an
4 appropriate writing signed by the person and filed with the
5 court. When two or more persons entitled to letters under
6 Paragraphs (2) through (5) of Subsection A of this section
7 share a priority, all those [~~of them~~] who do not renounce shall
8 concur in nominating another to act for them or in applying for
9 appointment by an appropriate writing signed by the nominating
10 persons and filed with the court. The person so nominated
11 shall have the same priority as those who nominated the person.

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

19 E. Appointment of one who does not have highest
20 priority, including highest priority resulting from
21 renunciation or nomination determined pursuant to this section,
22 may be made only in formal proceedings. Before appointing one
23 without highest priority, the court shall determine that those
24 having highest priority, although given notice of the
25 proceedings, have failed to request appointment or to nominate

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1 another for appointment and that administration is necessary.

2 F. No person is qualified to serve as a personal
3 representative who is:

4 (1) under the age of majority;

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

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

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

17 H. This section governs priority for appointment of a
18 successor personal representative but does not apply to the
19 selection of a special administrator."

20 Section 54. Section 45-3-309 NMSA 1978 (being Laws 1975,
21 Chapter 257, Section 3-309, as amended) is amended to read:

22 "45-3-309. INFORMAL APPOINTMENT PROCEEDINGS--COURT NOT
23 SATISFIED.--The probate or the district court may decline an
24 application for informal appointment of a personal
25 representative for any reason. A declination of informal

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1 appointment is not an adjudication and does not preclude
2 appointment in formal proceedings."

3 Section 55. Section 45-3-703 NMSA 1978 (being Laws 1975,
4 Chapter 257, Section 3-703) is amended to read:

5 "45-3-703. GENERAL DUTIES--RELATION AND LIABILITY TO
6 PERSONS INTERESTED IN ESTATE--STANDING TO SUE.--

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

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

25 C. An order of appointment of a personal

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1 representative, whether issued in informal or formal
2 proceedings, [~~is authority~~] authorizes a personal
3 representative to distribute apparently intestate assets to the
4 heirs of the decedent if, at the time of distribution, the
5 personal representative is not aware of:

6 (1) a pending testacy proceeding;

7 (2) a proceeding to vacate an order entered in
8 an earlier testacy proceeding;

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

12 (4) a supervised administration proceeding.

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

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

25 Section 56. Section 45-3-803 NMSA 1978 (being Laws 1975,

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1 Chapter 257, Section 3-803, as amended) is amended to read:

2 "45-3-803. LIMITATIONS ON PRESENTATION OF CLAIMS.--

3 A. All claims against a decedent's estate that arose
4 before the death of the decedent, including claims of the state
5 and any political subdivision of the state, whether due or to
6 become due, absolute or contingent, liquidated or unliquidated
7 or founded on contract, tort or other legal basis, if not
8 barred earlier by another statute of limitations or nonclaim
9 statute, are barred against the estate, the personal
10 representative and the heirs, [~~and~~] devisees and nonprobate
11 transferees of the decedent unless presented within the earlier
12 of the following:

- 13 (1) one year after the decedent's death; or
- 14 (2) the time provided by Subsection A of Section
15 45-3-801 NMSA 1978 for creditors who are given actual notice
16 and the time provided in Subsection B of Section 45-3-801 NMSA
17 1978 for all creditors barred by publication.

18 B. A claim described in Subsection A of this section
19 that is barred by the nonclaim statute of the decedent's
20 domicile before the giving of notice to creditors in this state
21 is barred in this state.

22 C. All claims against a decedent's estate that arise
23 at or after the death of the decedent, including claims of the
24 state and any political subdivision of the state, whether due
25 or to become due, absolute or contingent, liquidated or

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1 unliquidated or founded on contract, tort or other legal basis,
2 are barred against the estate, the personal representative and
3 the heirs and devisees of the decedent unless presented as
4 follows:

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

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

11 D. Nothing in this section affects or prevents:

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

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

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

22 Section 57. Section 45-3-913 NMSA 1978 (being Laws 1975,
23 Chapter 257, Section 3-913, as amended) is amended to read:

24 "45-3-913. DISTRIBUTIONS TO TRUSTEE.--

25 A. Before distributing to a trustee, the personal

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1 representative may require that the trust be registered if the
2 state in which it is to be administered provides for
3 registration and that the trustee inform the beneficiaries as
4 provided in Section [~~45-7-303~~] 46A-8-813 NMSA 1978.

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

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

17 Section 58. Section 45-3-915 NMSA 1978 (being Laws 1975,
18 Chapter 257, Section 3-915, as amended) is amended to read:

19 "45-3-915. DISTRIBUTION TO PERSON UNDER DISABILITY.--

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

24 B. Unless contrary to an express provision in the
25 will or other governing instrument, the personal representative

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1 may discharge [~~his~~] an obligation to distribute to a minor or
2 person under other disability as authorized by Section
3 [~~45-5-101~~] 45-5-103 NMSA 1978 or any other statute. If the
4 personal representative knows that a conservator has been
5 appointed or that a proceeding for appointment of a conservator
6 is pending, the personal representative is authorized to
7 distribute only to the conservator.

8 C. If the heir or devisee is under disability other
9 than minority, the personal representative is authorized to
10 distribute to:

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

14 (2) the spouse, parent or other close relative
15 with whom the person under disability resides if the
16 distribution is of amounts not exceeding ten thousand dollars
17 (\$10,000) a year or property not exceeding ten thousand dollars
18 (\$10,000) in value unless the court authorizes a larger amount
19 or greater value.

20 D. Persons receiving money or property for the
21 disabled person are obligated to apply the money or property to
22 the support of the disabled person. Persons may not pay
23 themselves except by way of reimbursement for out-of-pocket
24 expenses for goods and services necessary for the support of
25 the disabled person. Excess sums must be preserved for future

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1 support of the disabled person. The personal representative is
2 not responsible for the proper application of money or property
3 distributed pursuant to this subsection."

4 Section 59. Section 45-3-1201 NMSA 1978 (being Laws 1975,
5 Chapter 257, Section 3-1201, as amended) is amended to read:

6 "45-3-1201. COLLECTION OF PERSONAL PROPERTY BY
7 AFFIDAVIT.--

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

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

20 (2) thirty days have elapsed since the death of
21 the decedent;

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

25 (4) the claiming successor is entitled to

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1 payment or delivery of the property.

2 B. A transfer agent of any security shall change the
3 registered ownership on the books of a corporation from the
4 decedent to the successor or successors upon the presentation
5 of an affidavit as provided in Subsection A of this section.

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

8 Section 60. Section 45-3-1205 NMSA 1978 (being Laws 1985,
9 Chapter 12, 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 county
21 in which the homestead is located an affidavit describing the
22 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;

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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 estate
7 need not be subject to any judicial probate proceeding either
8 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 intestate
16 succession as provided in Section 45-2-102 NMSA 1978 or by
17 devise under a valid last will of the decedent, the original of
18 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

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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 residence
6 because of illness or incapacitation and ~~[which]~~ that consists
7 of one or more dwellings together with appurtenant structures,
8 the land underlying both the dwellings and the appurtenant
9 structures and a quantity of land reasonably necessary for
10 parking and other uses that facilitates the use of the
11 dwellings and appurtenant structures, and provided the full
12 value of this property as assessed for property taxation
13 purposes does not exceed ~~[one hundred thousand dollars~~
14 ~~(\$100,000)]~~ five hundred thousand dollars (\$500,000)."

15 Section 61. Section 45-5-101 NMSA 1978 (being Laws 1975,
16 Chapter 257, Section 5-101, as amended) is amended to read:

17 "45-5-101. DEFINITIONS AND USE OF TERMS.--Unless
18 otherwise apparent from the context or unless otherwise
19 specifically defined in other sections that are applicable to
20 specific articles, parts or sections of the Uniform Probate
21 Code, as used in Chapter 45, Article 5 NMSA 1978:

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

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

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

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

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

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

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

25 H. "inability to manage the person's estate or

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

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

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

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

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

22 M. "limited conservatorship" means that an
23 incapacitated person is subject to a conservator's exercise of
24 some but not all of the powers enumerated in Sections
25 45-5-424 and 45-5-425 NMSA 1978;

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

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

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

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

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

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

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

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

25 [~~U.~~] V. "visitor" means a person who is an appointee

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

8 Section 62. Section 45-5-102 NMSA 1978 (being Laws 1975,
9 Chapter 257, Section 5-102) is amended to read:

10 "45-5-102. JURISDICTION OF SUBJECT MATTER--CONSOLIDATION
11 OF PROCEEDINGS.--

12 A. The court has exclusive jurisdiction over
13 protective proceedings [~~and guardianship proceedings~~] for
14 minors domiciled or having property in New Mexico. Except as
15 superseded by the Uniform Child-Custody Jurisdiction and
16 Enforcement Act, the court has exclusive jurisdiction over
17 guardianship proceedings for minors domiciled or present in New
18 Mexico.

19 B. The court has exclusive jurisdiction over
20 guardianship and protective proceedings for an adult as
21 provided in the Uniform Adult Guardianship and Protective
22 Proceedings Jurisdiction Act.

23 [~~B.~~] C. When both guardianship and protective
24 proceedings as to the same person are commenced or pending in
25 the same court, the proceedings may be consolidated.

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1 D. Chapter 45, Article 5 NMSA 1978 applies to
2 guardianship and protective proceedings over which the court
3 has jurisdiction and to property coming into the control of a
4 guardian or conservator who is subject to the laws of New
5 Mexico."

6 Section 63. Section 45-5-103 NMSA 1978 (being Laws 1975,
7 Chapter 257, Section 5-103) is amended to read:

8 "45-5-103. FACILITY OF PAYMENT OR DELIVERY.--

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

13 (1) the minor, if ~~[he]~~ the minor is married;

14 (2) ~~[any]~~ a person having the care and custody
15 of the minor and with whom the minor resides;

16 (3) a guardian of the minor; ~~[or]~~

17 (4) a financial institution for deposit in a
18 federally insured savings account in the sole name of the minor
19 and giving notice of the deposit to the minor; or

20 (5) a custodian for the minor pursuant to the
21 Uniform Transfers to Minors Act.

22 B. This section does not apply if the person making
23 payment or delivery has actual knowledge that a conservator has
24 been appointed or proceedings for appointment of a conservator
25 of the estate of the minor are pending. The persons, other

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

13 Section 64. Section 45-5-208 NMSA 1978 (being Laws 1975,
14 Chapter 257, Section 5-208) is amended to read:

15 "45-5-208. CONSENT TO SERVICE BY ACCEPTANCE OF
16 APPOINTMENT--NOTICE.--By accepting a ~~[testamentary]~~ parental or
17 court appointment as guardian, a guardian submits personally to
18 the jurisdiction of the court in any proceeding relating to the
19 guardianship that may be instituted by any interested person.
20 Notice of ~~[any]~~ a proceeding shall be delivered to the guardian
21 or mailed to ~~[him]~~ the guardian at ~~[his]~~ the address ~~[as]~~
22 listed in the court records and to ~~[his]~~ the address ~~[as]~~ then
23 known to the petitioner. Letters of guardianship ~~[must]~~ shall
24 indicate whether the guardian was appointed by ~~[will]~~ parental
25 appointment or by court order."

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1 Section 65. Section 45-5-210 NMSA 1978 (being Laws 1975,
2 Chapter 257, Section 5-210, as amended) is amended to read:

3 "45-5-210. TERMINATION OF APPOINTMENT OF GUARDIAN--
4 GENERAL.--A guardian's authority and responsibility terminate
5 upon the death, resignation or removal of the guardian or upon
6 the minor's death, adoption, emancipation, marriage or
7 attainment of majority, but termination does not affect the
8 guardian's liability for prior acts nor the guardian's
9 obligation to account for money and property of the protected
10 person. Resignation of a guardian does not terminate the
11 guardianship until it has been approved by the court. A
12 testamentary appointment under an informally probated will
13 terminates if the will is later denied probate in a formal
14 proceeding."

15 Section 66. Section 45-5-313 NMSA 1978 (being Laws 1975,
16 Chapter 257, Section 5-313, as amended) is amended to read:

17 "45-5-313. PROCEEDINGS SUBSEQUENT TO APPOINTMENT--
18 VENUE.--

19 A. The court where the protected person resides has
20 concurrent jurisdiction with the court that appointed the
21 guardian, or in which acceptance of a testamentary appointment
22 was filed, over resignation, removal, accounting and other
23 proceedings relating to the guardianship.

24 B. Subject to the transfer provisions of the Uniform
25 Adult Guardianship and Protective Proceedings Jurisdiction

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

11 Section 67. Section 45-5-417 NMSA 1978 (being Laws 1975,
12 Chapter 257, Section 5-417) is amended to read:

13 "45-5-417. GENERAL DUTY OF CONSERVATOR.--In the exercise
14 of [~~his~~] a conservator's powers, a conservator shall act as a
15 fiduciary and shall observe the standards of care applicable to
16 trustees as described by [~~Section 7-302~~] Sections 46A-8-801
17 through 46A-8-807 NMSA 1978."

18 Section 68. A new Section 45-5-434 NMSA 1978 is enacted
19 to read:

20 "45-5-434. [NEW MATERIAL] REGISTRATION OF GUARDIANSHIP
21 ORDERS.--If a guardian has been appointed in another state and
22 a petition for the appointment of a guardian is not pending in
23 New Mexico, the guardian appointed in the other state, after
24 giving notice to the appointing court of an intent to register,
25 may register the guardianship order in New Mexico by filing as

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1 a foreign judgment in a district court, in any appropriate
2 county of New Mexico, certified copies of the order and letters
3 of office."

4 Section 69. A new Section 45-5-435 NMSA 1978 is enacted
5 to read:

6 "45-5-435. [NEW MATERIAL] REGISTRATION OF PROTECTIVE
7 ORDERS.--If a conservator has been appointed in another state
8 and a petition for a protective order is not pending in New
9 Mexico, the conservator appointed in the other state, after
10 giving notice to the appointing court of an intent to register,
11 may register the protective order in New Mexico by filing as a
12 foreign judgment in a district court in New Mexico, in any
13 county in which property belonging to the protected person is
14 located, certified copies of the order and letters of office
15 and of any bond."

16 Section 70. A new Section 45-5-436 NMSA 1978 is enacted
17 to read:

18 "45-5-436. [NEW MATERIAL] EFFECT OF REGISTRATION.--

19 A. Upon registration of a guardianship or protective
20 order from another state, the guardian or conservator may
21 exercise in New Mexico all powers authorized in the order of
22 appointment except as prohibited under the laws of New Mexico,
23 including maintaining actions and proceedings in New Mexico
24 and, if the guardian or conservator is not a resident of New
25 Mexico, subject to any conditions imposed upon nonresident

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1 parties.

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

5 Section 71. A new Section 45-5A-101 NMSA 1978 is enacted
6 to read:

7 "45-5A-101. [NEW MATERIAL] SHORT TITLE.--Chapter 45,
8 Article 5A NMSA 1978 may be cited as the "Uniform Adult
9 Guardianship and Protective Proceedings Jurisdiction Act"."

10 Section 72. A new Section 45-5A-102 NMSA 1978 is enacted
11 to read:

12 "45-5A-102. [NEW MATERIAL] DEFINITIONS.--As used in the
13 Uniform Adult Guardianship and Protective Proceedings
14 Jurisdiction Act:

15 A. "adult" means an individual who has attained
16 eighteen years of age;

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

20 C. "court" means the district court;

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

24 E. "guardianship order" means an order appointing a
25 guardian;

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

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

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

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

11 J. "protective order" means an order appointing a
12 conservator or other order related to management of an adult's
13 property;

14 K. "protective proceeding" means a judicial
15 proceeding in which a protective order is sought or has been
16 issued; and

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

19 Section 73. A new Section 45-5A-103 NMSA 1978 is enacted
20 to read:

21 "45-5A-103. [NEW MATERIAL] INTERNATIONAL APPLICATION OF
22 THE UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS
23 JURISDICTION ACT.--A New Mexico court may treat a foreign
24 country as if it were a state for the purpose of applying Parts
25 1, 2, 3 and 5 of the Uniform Adult Guardianship and Protective

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1 Proceedings Jurisdiction Act."

2 Section 74. A new Section 45-5A-104 NMSA 1978 is enacted
3 to read:

4 "45-5A-104. [NEW MATERIAL] COMMUNICATION BETWEEN
5 COURTS.--

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

15 B. Except as otherwise provided by rules adopted by
16 the New Mexico supreme court, courts may communicate concerning
17 schedules, calendars, court records and other administrative
18 matters without making a record."

19 Section 75. A new Section 45-5A-105 NMSA 1978 is enacted
20 to read:

21 "45-5A-105. [NEW MATERIAL] COOPERATION BETWEEN COURTS.--

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

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- 1 (1) hold an evidentiary hearing;
- 2 (2) order a person in that state to produce
- 3 evidence or give testimony pursuant to procedures of that
- 4 state;
- 5 (3) order that an evaluation or assessment be
- 6 made of the respondent;
- 7 (4) order any appropriate investigation of a
- 8 person involved in a proceeding;
- 9 (5) forward to the New Mexico court a certified
- 10 copy of the transcript or other record of a hearing pursuant to
- 11 Paragraph (1) of this subsection or any other proceeding, any
- 12 evidence otherwise produced pursuant to Paragraph (2) of this
- 13 subsection and any evaluation or assessment prepared in
- 14 compliance with an order pursuant to Paragraph (3) or (4) of
- 15 this subsection;
- 16 (6) issue any order necessary to assure the
- 17 appearance in the proceeding of a person whose presence is
- 18 necessary for the court to make a determination, including the
- 19 respondent or the incapacitated or protected person; and
- 20 (7) issue an order authorizing the release of
- 21 medical, financial, criminal or other relevant information in
- 22 that state, including protected health information as defined
- 23 in 45 C.F.R. Section 164.504, as amended.
- 24 B. If a court of another state in which a
- 25 guardianship or protective proceeding is pending requests

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1 assistance of the kind provided in Subsection A of this
2 section, a New Mexico court has jurisdiction for the limited
3 purpose of granting the request or making reasonable efforts to
4 comply with the request."

5 Section 76. A new Section 45-5A-106 NMSA 1978 is enacted
6 to read:

7 "45-5A-106. [NEW MATERIAL] TAKING TESTIMONY IN ANOTHER
8 STATE.--

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

17 B. In a guardianship or protective proceeding, a New
18 Mexico court may permit a witness located in another state to
19 be deposed or to testify by telephone or audiovisual or other
20 electronic means. A New Mexico court shall cooperate with the
21 court of the other state in designating an appropriate location
22 for the deposition or testimony.

23 C. Except as otherwise provided by rules adopted by
24 the New Mexico supreme court, documentary evidence transmitted
25 from another state to a New Mexico court by technological means

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1 that do not produce an original writing shall not be excluded
2 from evidence on an objection based on the best evidence rule."

3 Section 77. A new Section 45-5A-201 NMSA 1978 is enacted
4 to read:

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

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

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

14 (2) "home state" means the state in which the
15 respondent was physically present, including any period of
16 temporary absence, for at least six consecutive months
17 immediately before the filing of a petition for a protective
18 order or the appointment of a guardian; or, if none, the state
19 in which the respondent was physically present, including any
20 period of temporary absence, for at least six consecutive
21 months ending within the six months prior to the filing of the
22 petition; and

23 (3) "significant-connection state" means a
24 state, other than the home state, with which a respondent has a
25 significant connection other than mere physical presence and in

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1 which substantial evidence concerning the respondent is
2 available.

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

7 (1) the location of the respondent's family and
8 other persons required to be notified of the guardianship or
9 protective proceeding;

10 (2) the length of time the respondent at any
11 time was physically present in the state and the duration of
12 any absence;

13 (3) the location of the respondent's property;
14 and

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

19 Section 78. A new Section 45-5A-202 NMSA 1978 is enacted
20 to read:

21 "45-5A-202. [NEW MATERIAL] EXCLUSIVE BASIS.--Part 2 of
22 the Uniform Adult Guardianship and Protective Proceedings
23 Jurisdiction Act provides the exclusive jurisdictional basis
24 for a New Mexico court to appoint a guardian or issue a
25 protective order for an adult."

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1 Section 79. A new Section 45-5A-203 NMSA 1978 is enacted
2 to read:

3 "45-5A-203. [NEW MATERIAL] JURISDICTION.--A New Mexico
4 court has jurisdiction to appoint a guardian or issue a
5 protective order for a respondent if:

6 A. New Mexico is the respondent's home state;

7 B. on the date the petition is filed, New Mexico is a
8 significant-connection state and:

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

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

16 (a) a petition for an appointment or order
17 is not filed in the respondent's home state;

18 (b) an objection to the court's jurisdiction
19 is not filed by a person required to be notified of the
20 proceeding; and

21 (c) the court in New Mexico concludes that
22 it is an appropriate forum pursuant to the factors set forth in
23 Section 45-5A-206 NMSA 1978;

24 C. New Mexico does not have jurisdiction pursuant
25 either to Subsection A or B of this section, the respondent's

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1 home state and all significant-connection states have declined
2 to exercise jurisdiction because New Mexico is the more
3 appropriate forum and jurisdiction in New Mexico is consistent
4 with the constitutions of New Mexico and the United States; or

5 D. the requirements for special jurisdiction pursuant
6 to Section 45-5A-204 NMSA 1978 are met."

7 Section 80. A new Section 45-5A-204 NMSA 1978 is enacted
8 to read:

9 "45-5A-204. [NEW MATERIAL] SPECIAL JURISDICTION.--

10 A. A New Mexico court lacking jurisdiction pursuant
11 to Section 45-5A-203 NMSA 1978 has special jurisdiction to do
12 any of the following:

13 (1) appoint a guardian in an emergency for a
14 term not exceeding ninety days for a respondent who is
15 physically present in New Mexico;

16 (2) issue a protective order with respect to
17 real or tangible personal property located in New Mexico; and

18 (3) appoint a guardian or conservator for an
19 incapacitated or protected person for whom a provisional order
20 to transfer the proceeding from another state has been issued
21 pursuant to procedures similar to Section 45-5A-301 NMSA 1978.

22 B. If a petition for the appointment of a guardian in
23 an emergency is brought in New Mexico and New Mexico was not
24 the respondent's home state on the date the petition was filed,
25 the court shall dismiss the proceeding at the request of the

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1 court of the home state, if any, whether dismissal is requested
2 before or after the emergency appointment."

3 Section 81. A new Section 45-5A-205 NMSA 1978 is enacted
4 to read:

5 "45-5A-205. [NEW MATERIAL] EXCLUSIVE AND CONTINUING
6 JURISDICTION.--Except as otherwise provided in Section
7 45-5A-204 NMSA 1978, a court that has appointed a guardian or
8 issued a protective order consistent with the Uniform Adult
9 Guardianship and Protective Proceedings Jurisdiction Act has
10 exclusive and continuing jurisdiction over the proceeding until
11 it is terminated by the court or the appointment or order
12 expires by its own terms."

13 Section 82. A new Section 45-5A-206 NMSA 1978 is enacted
14 to read:

15 "45-5A-206. [NEW MATERIAL] APPROPRIATE FORUM.--

16 A. A New Mexico court having jurisdiction pursuant to
17 Section 45-5A-203 NMSA 1978 to appoint a guardian or issue a
18 protective order may decline to exercise its jurisdiction if it
19 determines at any time that a court of another state is a more
20 appropriate forum.

21 B. If a New Mexico court declines to exercise its
22 jurisdiction pursuant to Subsection A of this section, it shall
23 either dismiss or stay the proceeding. The court may impose
24 any condition the court considers just and proper, including
25 the condition that a petition for the appointment of a guardian

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1 or issuance of a protective order be filed promptly in another
2 state.

3 C. In determining whether it is an appropriate forum,
4 the court shall consider all relevant factors, including:

5 (1) any expressed preference of the respondent;

6 (2) whether abuse, neglect or exploitation of
7 the respondent has occurred or is likely to occur and which
8 state could best protect the respondent from the abuse, neglect
9 or exploitation;

10 (3) the length of time the respondent was
11 physically present in or was a legal resident of New Mexico or
12 another state;

13 (4) the distance of the respondent from the
14 court in each state;

15 (5) the financial circumstances of the
16 respondent's estate;

17 (6) the nature and location of the evidence;

18 (7) the ability of the court in each state to
19 decide the issue expeditiously and the procedures necessary to
20 present evidence;

21 (8) the familiarity of the court of each state
22 with the facts and issues in the proceeding; and

23 (9) if an appointment of a guardian or
24 conservator were to be made, the court's ability to monitor the
25 conduct of the guardian or conservator."

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1 Section 83. A new Section 45-5A-207 NMSA 1978 is enacted
2 to read:

3 "45-5A-207. [NEW MATERIAL] JURISDICTION DECLINED BY
4 REASON OF CONDUCT.--

5 A. If at any time a New Mexico court determines that
6 it acquired jurisdiction to appoint a guardian or issue a
7 protective order because of unjustifiable conduct, the court
8 may:

- 9 (1) decline to exercise jurisdiction;
- 10 (2) exercise jurisdiction for the limited

11 purpose of fashioning an appropriate remedy to:

- 12 (a) ensure the health, safety and welfare of
- 13 the respondent or the protection of the respondent's property;
- 14 or

- 15 (b) prevent a repetition of the
- 16 unjustifiable conduct, including staying the proceeding until a
- 17 petition for the appointment of a guardian or issuance of a
- 18 protective order is filed in a court of another state having
- 19 jurisdiction; or

- 20 (3) continue to exercise jurisdiction after
- 21 considering:

- 22 (a) the extent to which the respondent and
- 23 all persons required to be notified of the proceedings have
- 24 acquiesced in the exercise of the court's jurisdiction;

- 25 (b) whether it is a more appropriate forum

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1 than the court of any other state pursuant to the factors set
2 forth in Subsection C of Section 45-5A-206 NMSA 1978; and

3 (c) whether the court of any other state
4 would have jurisdiction under factual circumstances in
5 substantial conformity with the jurisdictional standards of
6 Section 45-5A-203 NMSA 1978.

7 B. If a New Mexico court determines that it acquired
8 jurisdiction to appoint a guardian or to issue a protective
9 order because a party seeking to invoke its jurisdiction
10 engaged in unjustifiable conduct, it may assess against that
11 party necessary and reasonable expenses, including attorney
12 fees, investigative fees, court costs, communication expenses,
13 witness fees and expenses and travel expenses. The court shall
14 not assess fees, costs or expenses of any kind against New
15 Mexico or a governmental subdivision, agency or instrumentality
16 of New Mexico unless authorized by law other than the Uniform
17 Adult Guardianship and Protective Proceedings Jurisdiction
18 Act."

19 Section 84. A new Section 45-5A-208 NMSA 1978 is enacted
20 to read:

21 "45-5A-208. [NEW MATERIAL] NOTICE OF PROCEEDING.--If a
22 petition for the appointment of a guardian or issuance of a
23 protective order is brought in New Mexico and New Mexico was
24 not the respondent's home state on the date the petition was
25 filed, in addition to complying with the notice requirements of

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1 New Mexico, notice of the petition shall be given to those
2 persons who would be entitled to notice of the petition if a
3 proceeding were brought in the respondent's home state. The
4 notice shall be given in the same manner as notice is required
5 to be given in New Mexico."

6 Section 85. A new Section 45-5A-209 NMSA 1978 is enacted
7 to read:

8 "45-5A-209. [NEW MATERIAL] PROCEEDINGS IN MORE THAN ONE
9 STATE.--Except for a petition for the appointment of a guardian
10 in an emergency or issuance of a protective order limited to
11 property located in New Mexico pursuant to Paragraph (1) or (2)
12 of Subsection A of Section 45-5A-204 NMSA 1978, if a petition
13 for the appointment of a guardian or issuance of a protective
14 order is filed in New Mexico and in another state and neither
15 petition has been dismissed or withdrawn, the following rules
16 apply:

17 A. if the New Mexico court has jurisdiction pursuant
18 to Section 45-5A-203 NMSA 1978, it may proceed with the case
19 unless a court in another state acquires jurisdiction pursuant
20 to provisions similar to Section 45-5A-203 NMSA 1978 before the
21 appointment of the guardian or issuance of the protective
22 order; and

23 B. if the New Mexico court does not have jurisdiction
24 pursuant to Section 45-5A-203 NMSA 1978, whether at the time
25 the petition is filed or at any time before the appointment of

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1 the guardian or issuance of the protective order, the court
2 shall stay the proceeding and communicate with the court in the
3 other state. If the court in the other state has jurisdiction,
4 the New Mexico court shall dismiss the petition unless the
5 court in the other state determines that the New Mexico court
6 is a more appropriate forum."

7 Section 86. A new Section 45-5A-301 NMSA 1978 is enacted
8 to read:

9 "45-5A-301. [NEW MATERIAL] TRANSFER OF GUARDIANSHIP OR
10 CONSERVATORSHIP TO ANOTHER STATE.--

11 A. A guardian or conservator appointed in New Mexico
12 may petition the court to transfer the guardianship or
13 conservatorship to another state.

14 B. Notice of a petition pursuant to Subsection A of
15 this section shall be given to the persons that would be
16 entitled to notice of a petition in New Mexico for the
17 appointment of a guardian or conservator.

18 C. On the court's own motion, or on request of the
19 guardian or conservator, the incapacitated or protected person
20 or other person required to be notified of the petition, the
21 court shall hold a hearing on a petition filed pursuant to
22 Subsection A of this section.

23 D. The court shall issue an order provisionally
24 granting a petition to transfer a guardianship and shall direct
25 the guardian to petition for guardianship in the other state if

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1 the court is satisfied that the guardianship will be accepted
2 by the court in the other state and the court finds that:

3 (1) the incapacitated person is physically
4 present in or is reasonably expected to move permanently to the
5 other state;

6 (2) an objection to the transfer has not been
7 made or, if an objection has been made, the objector has not
8 established that the transfer would be contrary to the
9 interests of the incapacitated person; and

10 (3) plans for care and services for the
11 incapacitated person in the other state are reasonable and
12 sufficient.

13 E. The court shall issue a provisional order granting
14 a petition to transfer a conservatorship and shall direct the
15 conservator to petition for conservatorship in the other state
16 if the court is satisfied that the conservatorship will be
17 accepted by the court of the other state and the court finds
18 that:

19 (1) the protected person is physically present
20 in or is reasonably expected to move permanently to the other
21 state, or the protected person has a significant connection to
22 the other state considering the factors set forth in Subsection
23 B of Section 45-5A-201 NMSA 1978;

24 (2) an objection to the transfer has not been
25 made or, if an objection has been made, the objector has not

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1 established that the transfer would be contrary to the
2 interests of the protected person; and

3 (3) adequate arrangements will be made for
4 management of the protected person's property.

5 F. The court shall issue a final order confirming the
6 transfer and terminating the guardianship or conservatorship
7 upon its receipt of:

8 (1) a provisional order accepting the proceeding
9 from the court to which the proceeding is to be transferred
10 that is issued pursuant to provisions similar to those set
11 forth in Section 45-5A-302 NMSA 1978; and

12 (2) the documents required to terminate a
13 guardianship or conservatorship in New Mexico."

14 Section 87. A new Section 45-5A-302 NMSA 1978 is enacted
15 to read:

16 "45-5A-302. [NEW MATERIAL] ACCEPTING GUARDIANSHIP OR
17 CONSERVATORSHIP TRANSFERRED FROM ANOTHER STATE.--

18 A. To confirm transfer of a guardianship or
19 conservatorship transferred to New Mexico pursuant to
20 provisions similar to Section 45-5A-301 NMSA 1978, the guardian
21 or conservator shall petition the New Mexico court to accept
22 the guardianship or conservatorship. The petition shall
23 include a certified copy of the other state's provisional order
24 of transfer.

25 B. Notice of a petition pursuant to Subsection A of

1 this section shall be given to those persons that would be
2 entitled to notice if the petition were a petition for the
3 appointment of a guardian or issuance of a protective order in
4 both the transferring state and New Mexico. The notice shall
5 be given in the same manner as notice is required to be given
6 in New Mexico.

7 C. On the court's own motion, or on request of the
8 guardian or conservator, the incapacitated or protected person
9 or other person required to be notified of the proceeding, the
10 court shall hold a hearing on a petition filed pursuant to
11 Subsection A of this section.

12 D. The court shall issue an order provisionally
13 granting a petition filed pursuant to Subsection A of this
14 section unless:

15 (1) an objection is made and the objector
16 establishes that transfer of the proceeding would be contrary
17 to the interests of the incapacitated or protected person; or

18 (2) the guardian or conservator is ineligible
19 for appointment in New Mexico.

20 E. The court shall issue a final order accepting the
21 proceeding and appointing the guardian or conservator as
22 guardian or conservator in New Mexico upon its receipt from the
23 court from which the proceeding is being transferred of a final
24 order issued pursuant to provisions similar to Section
25 45-5A-301 NMSA 1978 transferring the proceeding to New Mexico.

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1 F. Not later than ninety days after issuance of a
2 final order accepting transfer of a guardianship or
3 conservatorship, the court shall determine whether the
4 guardianship or conservatorship needs to be modified to conform
5 to the laws of New Mexico.

6 G. In granting a petition pursuant to this section,
7 the court shall recognize a guardianship or conservatorship
8 order from the other state, including the determination of the
9 incapacitated or protected person's incapacity and the
10 appointment of the guardian or conservator.

11 H. The denial by a New Mexico court of a petition to
12 accept a guardianship or conservatorship transferred from
13 another state does not affect the ability of the guardian or
14 conservator to seek appointment as guardian or conservator in
15 New Mexico pursuant to Sections 45-5-301 and 45-5-401 NMSA 1978
16 if the court has jurisdiction to make an appointment other than
17 by reason of the provisional order of transfer."

18 Section 88. A new Section 45-5A-401 NMSA 1978 is enacted
19 to read:

20 "45-5A-401. [NEW MATERIAL] REGISTRATION OF GUARDIANSHIP
21 ORDERS.--If a guardian has been appointed in another state and
22 a petition for the appointment of a guardian is not pending in
23 New Mexico, the guardian appointed in the other state, after
24 giving notice to the appointing court of an intent to register,
25 may register the guardianship order in New Mexico by filing as

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1 a foreign judgment in a court, in any appropriate county of New
2 Mexico, certified copies of the order and letters of office."

3 Section 89. A new Section 45-5A-402 NMSA 1978 is enacted
4 to read:

5 "45-5A-402. [NEW MATERIAL] REGISTRATION OF PROTECTIVE
6 ORDERS.--If a conservator has been appointed in another state
7 and a petition for a protective order is not pending in New
8 Mexico, the conservator appointed in the other state, after
9 giving notice to the appointing court of an intent to register,
10 may register the protective order in New Mexico by filing as a
11 foreign judgment in a New Mexico court, in any county in which
12 property belonging to the protected person is located,
13 certified copies of the order and letters of office and of any
14 bond."

15 Section 90. A new Section 45-5A-403 NMSA 1978 is enacted
16 to read:

17 "45-5A-403. [NEW MATERIAL] EFFECT OF REGISTRATION.--

18 A. Upon registration of a guardianship or protective
19 order from another state, the guardian or conservator may
20 exercise in New Mexico all powers authorized in the order of
21 appointment except as prohibited pursuant to the laws of New
22 Mexico, including maintaining actions and proceedings in New
23 Mexico and, if the guardian or conservator is not a resident of
24 New Mexico, subject to any conditions imposed upon nonresident
25 parties.

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1 B. A New Mexico court may grant any relief available
2 pursuant to the Uniform Adult Guardianship and Protective
3 Proceedings Jurisdiction Act and other law of New Mexico to
4 enforce a registered order."

5 Section 91. A new Section 45-5A-501 NMSA 1978 is enacted
6 to read:

7 "45-5A-501. [NEW MATERIAL] RELATION TO ELECTRONIC
8 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform
9 Adult Guardianship and Protective Proceedings Jurisdiction Act
10 modifies, limits and supersedes the federal Electronic
11 Signatures in Global and National Commerce Act, 15 U.S.C.
12 Section 7001, et seq., but does not modify, limit or supersede
13 Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
14 authorize electronic delivery of any of the notices described
15 in Section 103(b) of that act, 15 U.S.C. Section 7003(b)."

16 Section 92. A new Section 45-5A-502 NMSA 1978 is enacted
17 to read:

18 "45-5A-502. [NEW MATERIAL] TRANSITIONAL PROVISION.--

19 A. Parts 1, 3 and 4 of the Uniform Adult Guardianship
20 and Protective Proceedings Jurisdiction Act and Section
21 45-5A-501 NMSA 1978 apply to proceedings begun before January
22 1, 2011, regardless of whether a guardianship or
23 protective order has been issued.

24 B. The Uniform Adult Guardianship and Protective
25 Proceedings Jurisdiction Act applies to guardianship and

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1 protective proceedings begun on or after January 1, 2011."

2 Section 93. Section 46B-1-104 NMSA 1978 (being Laws 2007,
3 Chapter 135, Section 104) is recompiled as Section 45-5B-104
4 NMSA 1978 and is amended to read:

5 "45-5B-104. POWER OF ATTORNEY IS DURABLE.--A power of
6 attorney created under the Uniform Power of Attorney Act is
7 durable unless it expressly provides that it is terminated by
8 the incapacity of the principal. A power of attorney described
9 in the Uniform Health-Care Decisions Act survives the death of
10 the principal until the earlier of:

- 11 A. one year after the death of the principal; or
- 12 B. the appointment of a personal representative for
13 the principal's estate, unless it expressly provides that it is
14 terminated by the death of the principal."

15 Section 94. Section 45-6-205 NMSA 1978 (being Laws 1992,
16 Chapter 66, Section 22) is amended to read:

- 17 "45-6-205. DESIGNATION OF AGENT.--
- 18 A. By a writing signed by all parties, the parties
19 may designate as agent of all parties on an account a person
20 other than a party.
 - 21 B. Unless the terms of an agency designation provide
22 that the authority of the agent terminates on disability or
23 incapacity of a party, the agent's authority survives
24 disability and incapacity. The agent may act for a disabled or
25 incapacitated party until the authority of the agent is

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1 terminated.

2 C. Death of the sole party or last surviving party
3 terminates the authority of an agent."

4 Section 95. Section 45-6-216 NMSA 1978 (being Laws 1992,
5 Chapter 66, Section 29, as amended) is amended to read:

6 "45-6-216. COMMUNITY PROPERTY.--

7 A. A deposit of community property in an account does
8 not alter the community character of the property or community
9 rights in the property, if any, but a right of survivorship
10 between parties married to each other arising from the express
11 terms of the account or Section 45-6-212 NMSA 1978 may not be
12 altered by will or other governing instrument.

13 B. This section does not affect or limit the right of
14 a financial institution to make payments pursuant to Sections
15 45-6-211 through 45-6-227 NMSA 1978 and the deposit agreement."

16 Section 96. Section 46A-1-107 NMSA 1978 (being Laws 2003,
17 Chapter 122, Section 1-107, as amended) is amended to read:

18 "46A-1-107. GOVERNING LAW.--The meaning and effect of the
19 terms of a trust are determined by:

20 [~~A. the law of the state designated in the terms;~~

21 ~~B.] A. the law of the jurisdiction designated in the~~

22 terms [~~which jurisdiction is not a state~~] unless the

23 designation of that jurisdiction's law is contrary to a strong

24 public policy of [~~this state or~~] the [~~state~~] jurisdiction

25 having the most significant relationship to the matter at

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1 issue; or

2 ~~[G-]~~ B. in the absence of a controlling designation
3 in the terms of the trust, the law of the jurisdiction having
4 the most significant relationship to the matter at issue."

5 Section 97. Section 46A-11-1104 NMSA 1978 (being Laws
6 2003, Chapter 122, Section 11-1104) is amended to read:

7 "46A-11-1104. APPLICATION TO EXISTING RELATIONSHIPS.--

8 A. Except as otherwise provided in the Uniform Trust
9 Code, on the effective date of the Uniform Trust Code or of any
10 amendment to that code:

11 (1) the Uniform Trust Code or the amendment
12 applies to all trusts created before, on or after its effective
13 date;

14 (2) the Uniform Trust Code or the amendment
15 applies to all judicial proceedings concerning trusts commenced
16 on or after its effective date;

17 (3) the Uniform Trust Code or the amendment
18 applies to judicial proceedings concerning trusts commenced
19 before its effective date, unless the court finds that
20 application of a particular provision of the Uniform Trust Code
21 or the amendment would substantially interfere with the
22 effective conduct of the judicial proceedings or prejudice the
23 rights of the parties, in which case the particular provision
24 of the Uniform Trust Code or the amendment does not apply and
25 the superseded law applies;

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1 (4) any rule of construction or presumption
2 provided in the Uniform Trust Code or the amendment applies to
3 trust instruments executed before the effective date of the
4 Uniform Trust Code or any amendment to that code unless there
5 is a clear indication of a contrary intent in the terms of the
6 trust; and

7 (5) an act done before the effective date of the
8 Uniform Trust Code or any amendment to that code is not
9 affected by the Uniform Trust Code or the amendment.

10 B. If a right is acquired, extinguished or barred
11 upon the expiration of a prescribed period that has commenced
12 to run under any other statute before the effective date of the
13 Uniform Trust Code or any amendment to that code, that statute
14 continues to apply to the right even if it has been repealed or
15 superseded.

16 C. The Uniform Trust Code or any amendment to that
17 code does not apply to the trust created by the Enabling Act
18 for New Mexico of June 20, 1910, 36 Stat. 557, Ch. 310."

19 Section 98. REPEAL.--Sections 45-2-108, 45-5-301.2,
20 45-5-432, 45-9A-12, 45-9A-13, 46-1-1 through 46-1-11 and
21 46-10-17 NMSA 1978 (being Laws 1993, Chapter 174, Section 10,
22 Laws 1993, Chapter 301, Section 24, Laws 1975, Chapter 257,
23 Section 5-432, Laws 2005, Chapter 143, Sections 16 and 17, Laws
24 1923, Chapter 26, Sections 1, 2 and 4 through 12 and Laws 2001,
25 Chapter 290, Section 17) are repealed.

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1 Section 99. TEMPORARY PROVISION--COMPILATION
2 INSTRUCTIONS.--

3 A. Sections 45-2-101 through 45-2-114 NMSA 1978 shall
4 be compiled as Subpart 1, General Provisions, of Part 1 of
5 Article 2 of the Uniform Probate Code.

6 B. Sections 45-2-115 through 45-2-122 NMSA 1978 shall
7 be compiled as Subpart 2, Parent-Child Relationship, of Part 1
8 of Article 2 of the Uniform Probate Code.

9 C. Sections 45-2-901 through 45-2-914 NMSA 1978 shall
10 be compiled as Part 9, Uniform Statutory Rule Against
11 Perpetuities; Honorary Trusts; Trusts For Pets; Time Limits On
12 Options In Gross And Certain Other Interests In Real Property,
13 of Article 2 of the Uniform Probate Code.

14 D. Sections 45-2-901 through 45-2-906 NMSA 1978 shall
15 be compiled as Subpart 1, Uniform Statutory Rule Against
16 Perpetuities, of Part 9 of Article 2 of the Uniform Probate
17 Code.

18 E. Section 45-2-907 NMSA 1978 shall be compiled as
19 Subpart 2, Honorary Trusts; Trusts For Pets, of Part 9 of
20 Article 2 of the Uniform Probate Code.

21 F. Sections 45-2-908 through 45-2-914 NMSA 1978 shall
22 be compiled as Subpart 3, Time Limits On Options In Gross And
23 Certain Other Interests In Real Property, of Part 9 of Article
24 2 of the Uniform Probate Code.

25 Section 100. TEMPORARY PROVISION--RECOMPILATION.--

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1 A. Sections 45-1-109 and 45-1-110 NMSA 1978 (being
2 Laws 1975, Chapter 257, Section 1-109 and Laws 1995, Chapter
3 210, Section 1) are recompiled as Sections 45-1-110 and
4 45-1-111 NMSA 1978.

5 B. Sections 45-2-805 and 45-2-806 NMSA 1978 (being
6 Laws 1975, Chapter 257, Section 2-804 and Laws 1973, Chapter
7 276, Section 8, as amended) are recompiled as Sections 45-2-807
8 and 45-2-808 NMSA 1978.

9 C. Sections 45-9A-1 through 45-9A-11 NMSA 1978 (being
10 Laws 2005, Chapter 143, Sections 5 through 15) are recompiled
11 as Sections 45-3-920 through 45-3-931 NMSA 1978 and shall be
12 compiled as Part 9A, the Uniform Estate Tax Apportionment Act,
13 of Article 3 of the Uniform Probate Code.

14 Section 101. TEMPORARY PROVISION--COMPILATION
15 INSTRUCTIONS.--

16 A. Sections 71 through 92 of this act shall be
17 compiled as Article 5A, the Uniform Adult Guardianship and
18 Protective Proceedings Jurisdiction Act, of the Uniform Probate
19 Code.

20 B. Sections 71 through 76 of this act shall be
21 compiled as Part 1, General Provisions, of Article 5A of the
22 Uniform Probate Code.

23 C. Sections 77 through 85 of this act shall be
24 compiled as Part 2, Jurisdiction, of Article 5A of the Uniform
25 Probate Code.

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1 D. Sections 86 and 87 of this act shall be compiled
2 as Part 3, Transfer of Guardianship or Conservatorship, of
3 Article 5A of the Uniform Probate Code.

4 E. Sections 88 through 90 of this act shall be
5 compiled as Part 4, Registration and Recognition of Orders from
6 Other States, of Article 5A of the Uniform Probate Code.

7 F. Sections 91 and 92 of this act shall be compiled
8 as Part 5, Miscellaneous Provisions, of Article 5A of the
9 Uniform Probate Code.

10 Section 102. TEMPORARY PROVISION--RECOMPILATION.--
11 Sections 46-10-3 through 46-10-5 NMSA 1978 (being Laws 2001,
12 Chapter 290, Sections 3 through 5) are recompiled as Sections
13 45-2-1103 through 45-2-1105 NMSA 1978. Sections 46-10-7
14 through 46-10-11 NMSA 1978 (being Laws 2001, Chapter 290,
15 Sections 7 through 11) are recompiled as Sections 45-2-1107
16 through 45-2-1111 NMSA 1978. Sections 46-10-13, 46-10-14 and
17 46-10-16 (being Laws 2001, Chapter 290, Sections 13, 14 and 16)
18 are recompiled as Sections 45-2-1113, 45-2-1114 and 45-2-1116
19 NMSA 1978.

20 Section 103. TEMPORARY PROVISION--RECOMPILATION.--
21 A. Sections 46B-1-101 through 46B-1-103 NMSA 1978
22 (being Laws 2007, Chapter 135, Sections 101 through 103) are
23 recompiled as Sections 45-5B-101 through 45-5B-103 NMSA 1978.
24 B. Sections 46B-1-105 through 46B-1-123 NMSA 1978
25 (being Laws 2007, Chapter 135, Sections 105 through 123) are

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1 recompiled as Sections 45-5B-105 through 45-5B-123 NMSA 1978.

2 C. Sections 46B-1-201 through 46B-1-217 NMSA 1978
3 (being Laws 2007, Chapter 135, Sections 201 through 217) are
4 recompiled as Sections 45-5B-201 through 45-5B-217 NMSA 1978.

5 D. Sections 46B-1-301 and 46B-1-302 (being Laws 2007,
6 Chapter 135, Sections 301 and 302) are recompiled as Sections
7 45-5B-301 and 45-5B-302 NMSA 1978.

8 E. Sections 46B-1-401 through 46B-1-403 NMSA 1978
9 (being Laws 2007, Chapter 135, Sections 401 through 403) are
10 recompiled as Sections 45-5B-401 through 45-5B-403 NMSA 1978.

11 Section 104. APPLICABILITY.--The provisions of Section 45
12 of this act apply to a trust described in Subsection D of
13 Section 46-3A-409 NMSA 1978 on and after the following dates:

14 A. if the trust is not funded as of January 1, 2011,
15 the date of the decedent's death;

16 B. if the trust is initially funded in the calendar
17 year beginning January 1, 2011, the date of the decedent's
18 death; or

19 C. if the trust is not described in Subsection A or B
20 of this section, January 1, 2011.

21 Section 105. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is January 1, 2011.