UNANNOTATED

CHAPTER 45
Uniform Probate Code

ARTICLE 1
Uniform Probate Code

PART 1
SHORT TITLE, CONSTRUCTION AND GENERAL PROVISIONS

45-1-101. Short title.

Chapter 45 NMSA 1978 may be cited as the "Uniform Probate Code".

History: 1953 Comp., § 32A-1-101, enacted by Laws 1975, ch. 257, § 1-101; 1993, ch. 174, § 2.

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 policies.

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

(1) to simplify, clarify and modernize certain laws concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons;

(2) to discover and make effective the intent of a decedent in distribution of the decedent's property;

(3) to promote a speedy and efficient system for the settlement and distribution of the estate of the decedent;

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

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

(6) to facilitate the use and enforcement of governing instruments;

(7) to apportion taxes on estates; and

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

History: 1953 Comp., § 32A-1-102, enacted by Laws 1975, ch. 257, § 1-102; 2011, ch. 124, § 1.

45-1-103. Supplementary general principles of law applicable.

The principles of law and equity supplement the [Uniform] Probate Code's provisions, unless specifically displaced by particular provisions of the code.

History: 1953 Comp., § 32A-1-103, enacted by Laws 1975, ch. 257, § 1-103.

45-1-104. Severability.

If any provision of the Uniform Probate Code or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of that code that can be given effect without the invalid provision or application, and to this end, the provisions of the code are severable.

History: 1953 Comp., § 32A-1-104, enacted by Laws 1975, ch. 257, § 1-104; 2011, ch. 124, § 2.

45-1-105. Construction against implied repeal, amendment or expansion.

The [Uniform] Probate Code is a general act intended as a unified coverage of its subject matter and no part of it shall be deemed impliedly repealed, amended or expanded by subsequent legislation.

History: 1953 Comp., § 32A-1-105, enacted by Laws 1975, ch. 257, § 1-105.

45-1-106. Effect of fraud and evasion.

A. If fraud has been perpetrated in connection with any proceeding or in any statement filed under the [Uniform] Probate Code or if fraud is used to avoid or circumvent the provisions or purposes of the code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud including restitution from any person (other than a bona fide purchaser) benefiting from the fraud, whether innocent or not. Any proceeding must be commenced within two years after the discovery of the fraud. No proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud.

B. Subsection A of this section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

History: 1953 Comp., § 32A-1-106, enacted by Laws 1975, ch. 257, § 1-106.

45-1-107. Evidence of death or status.

In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a determination of death and status apply:

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

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

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

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

B. an authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place, date and time of death and the identity of the decedent;

C. an authenticated copy of a record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead or alive is prima facie evidence of the status and of the dates, circumstances and places disclosed by the record or report;

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

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

F. in the absence of evidence disputing the time of death stated on a document described in Subsection B or C of this section, a document described in Subsection B or C of this section that states a time of death one hundred twenty hours or more after the time of death of another individual, however the time of death of the other individual is

determined, establishes by clear and convincing evidence that the individual survived the other individual by one hundred twenty hours.

History: 1953 Comp., § 32A-1-107, enacted by Laws 1975, ch. 257, § 1-107; repealed and reenacted by Laws 1993, ch. 174, § 3; 2011, ch. 124, § 3.

45-1-108. Acts by holder of general power.

For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative or trustee, including relief from liability or penalty for failure to post bond, or to perform other duties, and for purposes of consenting to modification or termination of a trust or deviation from its terms, the sole holder or all co-holders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests, as objects, takers in default or otherwise, are subject to the power.

History: 1953 Comp., § 32A-1-108, enacted by Laws 1975, ch. 257, § 1-108; 2016, ch. 69, § 701.

45-1-109. Security interests not affected.

No provision of the [Uniform] Probate Code alters or affects the right of a secured creditor to enforce his security interest against secured property included in the estate of a decedent.

History: 1953 Comp., § 32A-1-109, enacted by Laws 1975, ch. 257, § 1-109.

45-1-110. Time of taking effect; provisions for transition.

Except as provided elsewhere in the Uniform Probate Code, on the effective date of this code or of any amendment to this code:

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

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

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

D. an act done before the effective date in any proceeding and any accrued right is not impaired by this code or the amendment. If a right is acquired, extinguished or barred upon the expiration of a prescribed period of time that has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right; and

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

History: 1978 Comp., § 45-1-110, enacted by Laws 1995, ch. 210, § 1; 2011, ch. 124, § 4.

PART 2
DEFINITIONS

45-1-201. Definitions.

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

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

(2) "application" means a written request to a court for an order of informal probate or appointment pursuant to Chapter 45, Article 3 NMSA 1978;

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

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

(5) "beneficiary designation" refers to a governing instrument naming a beneficiary of an insurance or annuity policy, of an account with POD designation, of a

security registered in beneficiary form (TOD) or of a pension, profit-sharing, retirement or similar benefit plan or other nonprobate transfer at death;

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

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

(8) "conservator" has the same meaning as set forth in Section 45-5-101 NMSA 1978;

(9) "descendant" of an individual means all of the individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in the Uniform Probate Code;

(10) "devise", when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will;

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

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

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

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

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

(b) is a member of the active or reserve components of the army, navy, air force, space force, marine corps or coast guard of the United States who is on active duty or a member of the national guard who is on activated status; or

(c) has received a declaration of emancipation pursuant to the Emancipation of Minors Act [32A-21-1 to 32A-21-7 NMSA 1978];

(15) "estate" includes the property of the decedent, trust or other person whose affairs are subject to the Uniform Probate Code as the property was originally constituted and as it exists from time to time during administration;

(16) "exempt property" means that property of a decedent's estate that is described in Sections 45-2-402 and 45-2-403 NMSA 1978;

(17) "fiduciary" includes a personal representative, guardian, guardian ad litem, conservator and trustee;

(18) "foreign personal representative" means a personal representative appointed by another jurisdiction;

(19) "formal proceedings" means proceedings conducted before a district judge with notice to interested persons;

(20) "governing instrument" means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), transfer on death (TOD) deed, pension, profit-sharing, retirement or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney or a dispositive, appointive or nominative instrument of a similar type;

(21) "guardian" means a person who has qualified to provide for the care, custody or control of the person of a minor or incapacitated person pursuant to parental or court appointment. "Guardian" includes a limited, emergency and temporary guardian but not a guardian ad litem;

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

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

(24) "incapacitated person" means an individual described in Section 45-5-101 NMSA 1978;

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

(26) "interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent, a minor protected person or an incapacitated person. "Interested person" also includes persons having priority for appointment as personal representatives and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, a proceeding;

(27) "issue" of an individual means the individual's descendants;

(28) "lease" includes an oil, gas or other mineral lease;

(29) "letters" includes letters testamentary, letters of guardianship, letters of administration and letters of conservatorship;

(30) "minor" means an unemancipated individual who has not reached eighteen years of age;

(31) "mortgage" means any conveyance, agreement or arrangement in which property is encumbered or used as security;

(32) "nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death;

(33) "organization" means a corporation, business trust, limited liability company, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency or any other legal or commercial entity;

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

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

(36) "person" means an individual or an organization;

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

(38) "petition" means a written motion or other request to the district court for an order after notice;

(39) "proceeding" includes action at law and suit in equity;

(40) "property" includes both real and personal property or any right or interest therein and means anything that may be the subject of ownership;

(41) "protected person" has the same meaning as set forth in Section 45-5-101 NMSA 1978;

(42) "protective proceeding" means a conservatorship proceeding pursuant to Section 45-5-401 NMSA 1978;

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

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

(45) "settlement", in reference to a decedent's estate, includes the full process of administration, distribution and closing;

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

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

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

(47) "special administrator" means a personal representative as described by Sections 45-3-614 through 45-3-618 NMSA 1978;

(48) "state" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico or any territory or insular possession subject to the

jurisdiction of the United States. "State" also includes any Indian nation, tribe, pueblo or band located within the United States and recognized by federal law or formally acknowledged by a state of the United States;

(49) "successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative;

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

(51) "supervised administration" refers to the proceedings described in Article 3, Part 5 of the Uniform Probate Code;

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

(53) "testacy proceeding" means a proceeding to establish a will or determine intestacy;

(54) "testator" includes an individual of either gender;

(55) "trust" includes an express trust, private or charitable, with additions thereto, wherever and however created. "Trust" also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts and excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in Article 6 of the Uniform Probate Code, custodial arrangements, including those created under the Uniform Transfers to Minors Act [46-7-11 to 46-7-34 NMSA 1978], business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions or employee benefits of any kind and any arrangement under which a person is nominee or escrowee for another;

(56) "trustee" includes an original, additional or successor trustee, whether or not appointed or confirmed by court; and

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

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

History: 1953 Comp., § 32A-1-201, enacted by Laws 1975, ch. 257, § 1-201; 1983, ch. 194, § 1; 1989, ch. 252, 2; repealed and reenacted by Laws 1993, ch. 174, § 4; 1995, ch. 210, § 2; 2009, ch. 159, § 20; 2011, ch. 124, § 5; 2024, ch. 21, § 7.

PART 3
SCOPE, JURISDICTION AND COURTS

45-1-301. Application.

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

(1) the affairs and estates of decedents, missing persons and protected persons domiciled in New Mexico;

(2) the property of nonresidents located in New Mexico or property coming into the control of a fiduciary who is subject to the laws of New Mexico;

(3) incapacitated persons, minors and protected persons in New Mexico;

(4) survivorship and related accounts and similar property interests in New Mexico;

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

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

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

B. The Uniform Probate Code does not create, enlarge, modify or diminish parental rights or duties pursuant to the New Mexico Uniform Parentage Act [40-11A-101 to 40-11A-903 NMSA 1978], the Adoption Act [Chapter 32A, Article 5 NMSA 1978], the Children's Code [Chapter 32A NMSA 1978] or other law of New Mexico. The definition or use of terms in the Uniform Probate Code shall not be used to interpret, by analogy or otherwise, the same or other terms in the New Mexico Uniform Parentage Act, the Adoption Act, the Children's Code or other law of New Mexico.

History: 1953 Comp., § 32A-1-301, enacted by Laws 1975, ch. 257, § 1-301; 2011, ch. 124, § 6.

45-1-302. Subject matter jurisdiction of district and probate courts.

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

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

(2) estates of missing and protected persons;

(3) protection of incapacitated persons and minors;

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

(5) disclaimer of interests in property;

(6) apportionment of taxes on estates; and

(7) governing instruments except wills.

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

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

History: 1953 Comp., § 32A-1-302, enacted by Laws 1975, ch. 257, § 1-302; 1978, ch. 159, § 2; 2011, ch. 124, § 7.

45-1-302.1. Concurrent jurisdiction.

The district courts have concurrent jurisdiction with the probate courts in each county within their respective judicial district as to all matters concerning informal probate.

History: 1953 Comp., § 32A-1-302.1, enacted by Laws 1977, ch. 121, § 2.

45-1-303. Venue; multiple proceedings; transfer.

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

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

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

History: 1953 Comp., § 32A-1-303, enacted by Laws 1975, ch. 257, § 1-303; 2009, ch. 159, § 21; 2011, ch. 124, § 8.

45-1-304. Civil practice.

Unless specifically provided to the contrary in the [Uniform] Probate Code, or unless inconsistent with its provisions, the Rules of Civil Procedure govern formal and informal proceedings under the code.

History: 1953 Comp., § 32A-1-304, enacted by Laws 1975, ch. 257, § 1-304; 1978, ch. 159, § 3.

45-1-305. Records and certified copies.

A. The clerk of the district court and the clerk of the probate court shall each keep a record for each decedent, protected person or trust involved in any document that may be filed with the clerk's respective court under the Uniform Probate Code, including petitions and applications, demands for notices or bonds and orders by the respective court, and responses relating thereto, and shall establish and maintain a system for indexing, filing or recording that is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law, the clerk shall issue certified copies of any probated wills, letters issued to personal representatives or any other record or paper filed or recorded. Certificates relating to probated wills shall indicate whether the decedent was domiciled in New Mexico and whether the probate was formal or informal. Such certificates shall also indicate the names and addresses of any known heirs. Certificates relating to letters shall show the date of appointment.

B. If convenient or desirable for any reason, the presiding district judge for each judicial district shall have the power, at the judge's discretion, to order that the records of informal probate proceedings of a particular county be kept under the supervision of the probate court or clerk of the probate court of that county for such period of time as the district judge may determine.

History: 1953 Comp., § 32A-1-305, enacted by Laws 1975, ch. 257, § 1-305; 1983, ch. 194, § 2; 2009, ch. 159, § 22.

45-1-306. Jury trial.

If demanded, in the manner provided by the Rules of Civil Procedure, a party is entitled to a trial by jury in a formal testacy proceeding and in any proceeding in which any controverted question of fact arises as to which any party has a constitutional right to trial by jury.

History: 1953 Comp., § 32A-1-306, enacted by Laws 1975, ch. 257, § 1-306.

45-1-307. Repealed.

History: 1953 Comp., § 32A-1-307, enacted by Laws 1975, ch. 257, § 1-307; 1978 Comp., § 45-1-307, repealed by Laws 2023, ch. 44, § 16.

45-1-308. Appeals from district court.

Appellate review, including the right to appellate review, interlocutory appeal, provisions as to time, manner, notice, appeal bond, stays, scope of review, record on appeal, briefs, arguments and power of the appellate court, is governed by the rules applicable to civil appeals to the court of appeals from the district court.

History: 1953 Comp., § 32A-1-308, enacted by Laws 1975, ch. 257, § 1-308.

45-1-309. Reserved.

45-1-310. Oath or affirmation on filed documents.

Except as otherwise specifically provided in the [Uniform] Probate Code or by rule, every document filed with the court under the code, including applications, petitions and demands for notice, shall be deemed to include an oath, affirmation or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed, and penalties for perjury may follow deliberate falsification therein.

History: 1953 Comp., § 32A-1-310, enacted by Laws 1975, ch. 257, § 1-310.

PART 4
NOTICE, PARTIES AND REPRESENTATION IN ESTATE LITIGATION AND OTHER MATTERS

45-1-401. Notice; method and time of giving.

A. If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and

place of hearing of any petition to be given to any interested person or, if the interested person is represented by an attorney, to the attorney. Notice shall be given:

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

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

(3) if the address or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing a copy thereof once a week for three consecutive weeks in a newspaper of general circulation in the county in which the hearing is to be held, the last publication of which is to be at least ten days before the time set for the hearing.

B. The court for good cause shown may provide for a different method or time of giving notice for a hearing.

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

History: 1953 Comp., § 32A-1-401, enacted by Laws 1975, ch. 257, § 1-401; 2016, ch. 69, § 702.

45-1-402. Notice; waiver.

A person, including a guardian ad litem, conservator or other fiduciary, may waive notice either by a writing signed by the person and filed in the proceeding or by appearance in the proceeding. A person for whom a guardianship or other protective order is sought or a protected person may not waive notice.

History: 1953 Comp., § 32A-1-402, enacted by Laws 1975, ch. 257, § 1-402; 1995, ch. 210, § 3; 2009, ch. 159, § 23.

45-1-403. Pleadings.

In formal proceedings involving trusts, or estates of decedents, minors, protected persons or incapacitated persons, and in judicially supervised settlements, interests to be affected shall be described in pleadings that give reasonable information to owners by name or class, by reference to the instrument creating the interests or in another appropriate manner.

History: 1953 Comp., § 32A-1-403, enacted by Laws 1975, ch. 257, § 1-403; 2009, ch. 159, § 24; 2011, ch. 124, § 9; 2016, ch. 69, § 703.

45-1-403.1. Representation; basic effect.

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

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

C. Except as otherwise provided in Sections 46A-4-411 and 46A-6-602 NMSA 1978, a person who, pursuant to the provisions of Chapter 45 NMSA 1978, may represent a settlor who lacks capacity, may receive notice and give a binding consent on the settlor's behalf.

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

History: 1978 Comp., § 45-1-403.1, enacted by Laws 2016, ch. 69, § 704.

45-1-403.2. Representation by holder of general testamentary power of appointment.

To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default or otherwise, are subject to the power.

History: 1978 Comp., § 45-1-403.2, enacted by Laws 2016, ch. 69, § 705.

45-1-403.3. Representation by fiduciaries and parents.

To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

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

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

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

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

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

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

History: 1978 Comp., § 45-1-403.3, enacted by Laws 2016, ch. 69, § 706.

45-1-403.4. Representation by person having substantially identical interest.

Unless otherwise represented, a minor, incapacitated or unborn person, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent that there is no conflict of interest between the representative and the person represented.

History: 1978 Comp., § 45-1-403.4, enacted by Laws 2016, ch. 69, § 707.

45-1-403.5. Appointment of representative.

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

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

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

History: 1978 Comp., § 45-1-403.5, enacted by Laws 2016, ch. 69, § 708.

45-1-404. Real property outside county of administration; notice required; contents; effect.

A. If real property is included in an estate and is situate in a county other than the county wherein the estate is being administered, the personal representative shall, or any other interested person may, record with the county clerk of the other county a notice of administration setting forth:

(1) the name of the decedent;

(2) the title and docket number of the administration proceedings;

(3) a description of the type of administration;

(4) the court wherein instituted;

(5) the name, address and title of the personal representative; and

(6) a complete description of the real property situate in such county.

B. The recorded notice shall constitute full and complete notice of all proceedings had, and to be had, in the administration proceedings, and it shall not be necessary to file or record in the county where the real property is located any other instruments or records relating to the administration of the estate.

History: 1953 Comp., § 32A-1-404, enacted by Laws 1975, ch. 257, § 1-404.

ARTICLE 2
Intestate Succession and Wills

PART 1
INTESTATE SUCCESSION

SUBPART 1. General Provisions

45-2-101. Intestate estate.

A. Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in the Uniform Probate Code, except as modified by the decedent's will.

B. A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that

individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed his intestate share.

History: 1953 Comp., § 32A-2-101, enacted by Laws 1975, ch. 257, § 2-101; repealed and reenacted by Laws 1993, ch. 174, § 5.

45-2-102. Share of the spouse.

The intestate share of the surviving spouse is determined as follows:

A. as to separate property:

(1) if there is no surviving issue of the decedent, the entire intestate estate; or

(2) if there is surviving issue of the decedent, one-fourth of the intestate estate; and

B. as to community property, the one-half of the community property as to which the decedent could have exercised the power of testamentary disposition passes to the surviving spouse.

History: 1953 Comp., § 32A-2-102, enacted by Laws 1975, ch. 257, § 2-102.

45-2-103. Share of heirs other than surviving spouse.

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

(1) to the decedent's descendants by representation;

(2) if there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent if only one survives;

(3) if there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation;

(4) if there is no surviving descendant, parent or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents, on both grandparents' sides:

(a) half to the decedent's grandparents on one side equally if both survive, or to the survivor of them if only one survives, or to the descendants of the decedent's

grandparents on this side or either of them if both are deceased, the descendants taking by representation; and

(b) half to the decedent's grandparents on the other side equally if both survive, or to the survivor of them if only one survives, or to the descendants of the decedent's grandparents or either of them if both are deceased, the descendants taking by representation; and

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

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

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

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

C. For purposes of Subsection B of this section, the term "deceased spouse" means an individual to whom the decedent was married at the individual's death, and does not include a spouse who was divorced from, or treated pursuant to Section 45-2-802 or Section 45-2-804 NMSA 1978 as divorced from, the decedent at the time of the decedent's death.

History: 1953 Comp., § 32A-2-103, enacted by Laws 1975, ch. 257, § 2-103; 1977, ch. 121, § 3; repealed and reenacted by Laws 1993, ch. 174, § 6; 2011, ch. 124, § 10; 2017, ch. 41, § 14.

45-2-104. Requirement of survival by one hundred twenty hours; individual in gestation.

A. For purposes of intestate succession and allowances, and except as otherwise provided in Subsection B of this section, the following rules apply:

(1) an individual born before a decedent's death who fails to survive the decedent by one hundred twenty hours is deemed to have predeceased the decedent. If it is not established by clear and convincing evidence that an individual born before the decedent's death survived the decedent by one hundred twenty hours, it is deemed that the individual failed to survive for the required period; and

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

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

History: 1953 Comp., § 32A-2-104, enacted by Laws 1975, ch. 257, § 2-104; 1976 (S.S.), ch. 37, § 1; repealed and reenacted by Laws 1993, ch. 174, § 7; 2011, ch. 124, § 11.

45-2-105. No taker.

If there is no taker under the provisions of Chapter 45, Article 2 NMSA 1978, the intestate estate passes to the state.

History: 1953 Comp., § 32A-2-105, enacted by Laws 1975, ch. 257, § 2-105; 1993, ch. 174, § 8.

45-2-106. Representation.

A. As used in this section:

(1) "deceased descendant", "deceased parent" or "deceased grandparent" means a descendant, parent or grandparent who either predeceased the decedent or is deemed to have predeceased the decedent pursuant to Section 45-2-104 NMSA 1978; and

(2) "surviving descendant" means a descendant who neither predeceased the decedent nor is deemed to have predeceased the decedent pursuant to Section 45-2-104 NMSA 1978.

B. If, pursuant to Section 45-2-103 NMSA 1978, a decedent's intestate estate or a part thereof passes "by representation" to the decedent's descendants, the estate or part thereof is divided into as many equal shares as there are:

(1) surviving descendants in the generation nearest to the decedent that contains one or more surviving descendants; and

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

Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the

surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

C. If, pursuant to Section 45-2-103 NMSA 1978, a decedent's intestate estate or a part thereof passes "by representation" to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part thereof is divided into as many equal shares as there are:

(1) surviving descendants in the generation nearest the deceased parents or either of them or the deceased grandparents or either of them that contains one or more surviving descendants; and

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

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

History: 1953 Comp., § 32A-2-106, enacted by Laws 1975, ch. 257, § 2-106; repealed and reenacted by Laws 1993, ch. 174, § 9.

45-2-107. Kindred of half blood.

Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

History: 1953 Comp., § 32A-2-107, enacted by Laws 1975, ch. 257, § 2-107.

45-2-108. Repealed.

History: 1953 Comp., § 32A-2-108, enacted by Laws 1975, ch. 257, § 2-108; repealed and reenacted by Laws 1993, ch. 174, § 10; repealed by Laws 2011, ch. 124, § 97.

45-2-109. Advancements.

A. If an individual dies intestate as to all or a portion of his estate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the heir's intestate share only if:

(1) the decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement; or

(2) the decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.

B. For purpose of Subsection A of this section, property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death, whichever first occurs.

C. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate estate, unless the decedent's contemporaneous writing provides otherwise.

History: 1953 Comp., § 32A-2-109, enacted by Laws 1975, ch. 257, § 2-109; 1976 (S.S.), ch. 37, § 2; repealed and reenacted by Laws 1993, ch. 174, § 11.

45-2-110. Debts to decedent.

A debt owed to a decedent is not charged against the intestate share of any individual except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's descendants.

History: 1953 Comp., § 32A-2-110, enacted by Laws 1975, ch. 257, § 2-110; repealed and reenacted by Laws 1993, ch. 174, § 12.

45-2-111. Alienage.

A. No individual is disqualified to take as an heir because the individual or an individual through whom he claims is or has been an alien.

B. Aliens shall have full power and authority to acquire or hold real property and personal property by deed, will, inheritance or otherwise and to alienate, sell, assign and transfer any property to their heirs or other persons, whether the heirs or other persons are, or are not, citizens of the United States.

C. When an alien having title or interest in any real property dies, the real property shall descend and vest in the same manner as if the alien were a citizen of the United States. The heir of an alien, whether the heir is an alien or not, shall have the same rights and resources and shall, in all respects, be treated on the same footing as a native citizen of the United States with respect to the personal estate of an alien dying intestate, and all persons interested in the estate, under the laws of New Mexico, whether aliens or not.

History: 1953 Comp., § 32A-2-112, enacted by Laws 1975, ch. 257, § 2-112; 1977, ch. 121, § 4; repealed and reenacted by Laws 1993, ch. 174, § 13; 1995, ch. 210, § 4.

45-2-112. Dower and curtesy abolished.

The estates of dower and curtesy are abolished.

History: 1953 Comp., § 32A-2-113, enacted by Laws 1975, ch. 257, § 2-113; repealed and reenacted by Laws 1993, ch. 174, § 14.

45-2-113. Individuals related to decedent through two lines.

An individual who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle the individual to the larger share.

History: 1953 Comp., § 32A-2-113, enacted by Laws 1975, ch. 257, § 2-113; repealed and reenacted by Laws 1993, ch. 174, § 15.

45-2-114. Parent barred from inheriting in certain circumstances.

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

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

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

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

History: 1978 Comp., § 45-2-114, enacted by Laws 1993, ch. 174, § 16; 2004, ch. 72, § 1; 2011, ch. 124, § 12.

SUBPART 2. Parent-Child Relationship

45-2-115. Definitions.

As used in Subpart 2 of Part 1 of Article 2 of the Uniform Probate Code:

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

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

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

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

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

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

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

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

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

History: 1978 Comp., § 45-2-115, enacted by Laws 2011, ch. 124, § 13.

45-2-116. Effect of parent-child relationship.

Except as otherwise provided in Subsections B through E of Section 45-2-119 NMSA 1978, if a parent-child relationship exists or is established pursuant to Subpart 2 of Part 1 of Article 2 of the Uniform Probate Code, the parent is a parent of the child and the child is a child of the parent for the purpose of intestate succession.

History: 1978 Comp., § 45-2-116, enacted by Laws 2011, ch. 124, § 14.

45-2-117. No distinction based on marital status.

Except as otherwise provided in Section 45-2-114, 45-2-119, 45-2-120 or 45-2-121 NMSA 1978, a parent-child relationship exists between a child and the child's genetic parents, regardless of the parents' marital status.

History: 1978 Comp., § 45-2-117, enacted by Laws 2011, ch. 124, § 15.

45-2-118. Adoptee and adoptee's adoptive parent or parents.

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

B. For purposes of Subsection A of this section:

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

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

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

History: 1978 Comp., § 45-2-118, enacted by Laws 2011, ch. 124, § 16.

45-2-119. Adoptee and adoptee's genetic parents.

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

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

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

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

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

D. A parent-child relationship exists between both genetic parents and an individual who is adopted after the death of both genetic parents, but only for the purpose of the

right of the adoptee or a descendant of the adoptee to inherit through either genetic parent.

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

History: 1978 Comp., § 45-2-119, enacted by Laws 2011, ch. 124, § 17.

45-2-120. Child conceived by assisted reproduction other than child born to gestational carrier.

A. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: 1978 Comp., § 45-2-120, enacted by Laws 2011, ch. 124, § 18.

45-2-121. Child born to gestational carrier.

A. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: 1978 Comp., § 45-2-121, enacted by Laws 2011, ch. 124, § 19.

45-2-122. Equitable adoption.

Subpart 2 of Part 1 of Article 2 of the Uniform Probate Code does not affect the doctrine of equitable adoption.

History: 1978 Comp., § 45-2-122, enacted by Laws 2011, ch. 124, § 20.

PART 2
Reserved

45-2-201 to 45-2-207. Reserved.

PART 3
SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS

45-2-301. Entitlement of spouse; premarital will.

A. If a testator's surviving spouse married the testator after the testator executed his will, the surviving spouse is entitled to receive, as an intestate share, no less than the value of the share of the estate he would have received if the testator had died intestate as to that portion of the testator's estate, if any, that neither is devised to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse nor is devised to a descendant of such a child or passes pursuant to Section 45-2-603 or 45-2-604 NMSA 1978 to such a child or to a descendant of such a child, unless:

(1) it appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse;

(2) the will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or

(3) the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

B. In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse, if any, are applied first, and other devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse or a devise or substitute gift pursuant to Section 45-2-603 or 45-2-604 NMSA 1978 to a descendant of such a child, abate as provided in Section 45-3-902 NMSA 1978.

History: 1953 Comp., § 32A-2-301, enacted by Laws 1975, ch. 257, § 2-301; 1977, ch. 121, § 5; repealed and reenacted by Laws 1993, ch. 174, § 17; 1995, ch. 210, § 5.

45-2-302. Omitted children.

A. Except as provided in Subsection B of this section, if a testator fails to provide in his will for any of his children born or adopted after the execution of the will, the omitted after-born or after-adopted child receives a share in the estate as follows:

(1) if the testator had no child living when he executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all of the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will; or

(2) if the testator had one or more children living when he executed the will and the will devised property or an interest in property to one or more of the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate as follows:

(a) the portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will;

(b) the omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in Subparagraph (a) of Paragraph (2) of Subsection A of this section, that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child;

(c) to the extent feasible, the interest granted an omitted after-born or after-adopted child under this section must be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will; and

(d) in satisfying a share provided by Paragraph (2) of Subsection A of this section, devises to the testator's children who were living when the will was executed abate ratably. In abating the devices of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.

B. Subsection A of this section does not apply if:

(1) it appears from the will that the omission was intentional; or

(2) the testator provided for the omitted after-born or after-adopted child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

C. If at the time of execution of the will the testator fails to provide in his will for a living child solely because he believes the child to be dead, the child is entitled to share in the estate as if the child were an omitted after-born or after-adopted child.

D. In satisfying a share provided by Paragraph (1) of Subsection A of this section, devises made by the will abate pursuant to Section 45-3-902 NMSA 1978.

History: 1953 Comp., § 32A-2-302, enacted by Laws 1975, ch. 257, § 2-302; 1977, ch. 121, § 6; repealed and reenacted by Laws 1993, ch. 174, § 18; 1995, ch. 210, § 6.

PART 4
EXEMPT PROPERTY AND ALLOWANCES

45-2-401. Applicable law.

Chapter 45, Article 2, Part 4 NMSA 1978 applies to the estate of a decedent who dies domiciled in this state. Rights to family allowance and personal property allowance for a decedent who dies not domiciled in this state are governed by the laws of the decedent's domicile at death.

History: 1953 Comp., § 32A-2-401, enacted by Laws 1975, ch. 257, § 2-401; repealed and reenacted by Laws 1993, ch. 174, § 19.

45-2-402. Family allowance.

A decedent's surviving spouse is entitled to a family allowance of thirty thousand dollars ($30,000). If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a family allowance amounting to thirty thousand dollars ($30,000) divided by the number of minor and dependent children of the decedent. The family allowance is exempt from and has priority over all claims against the estate. Family allowance is in addition to any share passing to the surviving spouse or minor or dependent children by intestate succession or by the decedent's will, unless otherwise provided by the decedent in the will or other governing instrument.

History: 1953 Comp., § 32A-2-402, enacted by Laws 1975, ch. 257, § 2-402; repealed and reenacted by Laws 1993, ch. 174, § 20; 1995, ch. 210, § 7.

45-2-403. Personal property allowance.

In addition to the family allowance, the decedent's surviving spouse is entitled from the estate to a value, not exceeding fifteen thousand dollars ($15,000) in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances and personal effects. If there is no surviving spouse, the decedent's children who are devisees under the will, who are entitled to a share of the estate pursuant to Section 45-2-302 NMSA 1978 or, if there is no will, who are intestate heirs are entitled jointly to the same value. If encumbered chattels are selected and the value in excess of security interests plus that of other exempt property is less than fifteen thousand dollars ($15,000) or if there is not fifteen thousand dollars ($15,000) worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to

the extent necessary to make up the fifteen thousand dollar ($15,000) value. Rights to specific property for the personal property allowance and assets needed to make up a deficiency in the property have priority over all claims against the estate, but the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment of the family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by intestate succession or by the decedent's will, unless otherwise provided by the decedent in the will or other governing instrument.

History: 1978 Comp., § 45-2-403, enacted by Laws 1993, ch. 174, § 21; 1995, ch. 210, § 8; 1997, ch. 95, § 1; 1999, ch. 79, § 1; 2011, ch. 124, § 21.

45-2-404. Reserved.

45-2-405. Source, determination and documentation.

If the estate is otherwise sufficient, property specifically devised may not be used to satisfy rights to family allowance or personal property allowance. Subject to this restriction, the surviving spouse, guardians of minor children or children who are adults may select property of the estate as family allowance and personal property allowance. The personal representative may make those selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or there is no guardian of a minor child. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as family allowance or personal property allowance. The personal representative or an interested person aggrieved by any selection, determination, payment, proposed payment or failure to act under this section may petition the court for appropriate relief, which may include a family allowance or personal property allowance other than that which the personal representative determined or could have determined.

History: 1953 Comp., § 32A-2-405, enacted by Laws 1975, ch. 257, § 2-405; repealed and reenacted by Laws 1993, ch. 174, § 23.

45-2-406. Modification of exemptions.

With respect to the estate of a decedent, the allowances granted pursuant to Sections 45-2-402 and 45-2-403 NMSA 1978 are in lieu of the exemptions provided in Sections 42-10-1, 42-10-2, 42-10-9 and 42-10-10 NMSA 1978.

History: 1978 Comp., § 45-2-406, enacted by Laws 1993, ch. 174, § 24; 1995, ch. 210, § 9.

45-2-407. Waiver of rights.

A. The rights of the surviving spouse to family allowance and personal property allowance, or either of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement or waiver signed by the surviving spouse.

B. A surviving spouse's waiver is not enforceable if the surviving spouse proves that:

(1) the surviving spouse did not execute the waiver voluntarily; or

(2) the waiver was unconscionable when it was executed and, before execution of the waiver, the surviving spouse:

(a) was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;

(b) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and

(c) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the decedent.

C. An issue of unconscionability or voluntariness of a waiver is for decision by the court as a matter of law.

D. Unless it provides to the contrary, a waiver of "all rights", or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights of family allowance and personal property allowance by each spouse in the property of the other and a renunciation by each of all benefits that would otherwise pass to each from the other by intestate succession or by virtue of any will executed before the waiver or property settlement.

History: 1978 Comp., § 45-2-407, enacted by Laws 1995, ch. 210, § 10.

PART 5
WILLS

45-2-501. Who may make will.

An individual eighteen or more years of age who is of sound mind or an emancipated minor who is of sound mind may make a will.

History: 1953 Comp., § 32A-2-501, enacted by Laws 1975, ch. 257, § 2-501; repealed and reenacted by Laws 1993, ch. 174, § 25; 2011, ch. 124, § 22.

45-2-502. Execution; witnessed wills.

Except as provided in Sections 45-2-506 and 45-2-513 NMSA 1978, a will must be:

A. in writing;

B. signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and

C. signed by at least two individuals, each of whom signed in the presence of the testator and of each other after each witnessed the signing of the will as described in Subsection B of this section.

History: 1953 Comp., § 32A-2-502, enacted by Laws 1975, ch. 257, § 2-502; repealed and reenacted by Laws 1993, ch. 174, § 26; 1995, ch. 210, § 11.

45-2-503. Reserved.

45-2-504. Self-proved will.

A. A will may be simultaneously executed, attested and made self-proved by acknowledgment thereof by the testator and affidavits or affirmations under penalty of perjury of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

"I, _____, the testator, swear or affirm under penalty of perjury on this _____ day of _____, that I request _____ and _____ to act as witnesses to my will; that I declare to them and the undersigned authority that this document is my will; that I sign this will in the presence of both witnesses; that they sign the will as witnesses in my presence and in the presence of each other; that the will was read by me (or read and explained to me) after being prepared and before I sign it; that it clearly and accurately expresses my wishes; that I sign it willingly (or willingly directed another to sign for me); that I make and sign the will as my free and voluntary act for the purposes expressed in the will; that I am eighteen years of age or older; that I am mentally capable of disposing of my estate by will; and that I am not acting under duress, menace, fraud or undue influence of any person.

_____

Testator

We, _____ and _____, the witnesses, do hereby swear or affirm under penalty of perjury on this _____ day of _____ to the undersigned authority that the testator, _____, declares that the attached document is his or her will; that the testator signs it willingly (or willingly directs

another to sign for him or her); that the testator signs it in the presence of both of us and requests both of us to sign as witnesses; that each of us, in the presence of the testator and in the presence of each other, signs this will as witness to the testator's signing; that so far as we can determine, the testator is eighteen years of age or older; that the testator is not acting under duress, menace, fraud or undue influence of any person; and that the testator, in our opinion, is mentally capable of disposing of his or her estate by will.

_____
Witness

_____
Witness

State of _____

County of _____

Subscribed and sworn to, or affirmed under penalty of perjury, and acknowledged before me by _____, the testator, and subscribed and sworn to, or affirmed under penalty of perjury, before me by _____ and _____, witnesses, this _____ day of _____.

(Seal)

(Signed) _____
_____
(Official capacity of officer)".

B. An attested will may be made self-proved at any time after its execution by the acknowledgment thereof by the testator and the affidavits or affirmation under penalty of perjury of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under official seal, attached or annexed to the will in substantially the following form:

"I, _____, the testator, swear or affirm under penalty of perjury on this _____ day of _____ that I requested _____ and _____ to act as witnesses to my will; that I declared to them and the undersigned authority that this document is my will; that I signed this will in the presence of both witnesses; that they signed the will as witnesses in my presence and in the presence of each other; that the will was read by me (or read and explained to me) after being prepared and before I signed it; that it clearly and accurately expresses my wishes; that I signed it willingly (or willingly directed another to sign for me); that I made and signed the will as my free and voluntary act for the purposes expressed in the will; that I am eighteen years of age or older; that I am mentally capable of disposing of my

estate by will; and that I am not acting under duress, menace, fraud or undue influence of any person.

_____
Testator

We, _____ and _____, witnesses, do hereby swear or affirm under penalty of perjury on this _____ day of _____ that the testator, _____, declared the attached document to be his or her will; that the testator signed it willingly (or willingly directed another to sign for the testator); that the testator signed it in the presence of both of us and requested both of us to sign as witnesses; that each of us, in the presence of the testator and in the presence of each other, signed this will as witness to the testator's signing; that so far as we could determine, the testator is eighteen years of age or older; that the testator was not acting under duress, menace, fraud or undue influence of any person; and that the testator, in our opinion, was mentally capable of disposing of the testator's estate by will.

_____
Witness

_____
Witness

State of _____

County of _____

Subscribed and sworn to, or affirmed under penalty of perjury, and acknowledged before me by _____, the testator, and subscribed and sworn to, or affirmed under penalty of perjury, before me by _____ and _____, witnesses, this _____ of _____.

(Seal)

(Signed) _____

_____
(Official capacity of officer)".

C. A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will if necessary to prove the will's due execution.

History: 1953 Comp., § 32A-2-504, enacted by Laws 1975, ch. 257, § 2-504; repealed and reenacted by Laws 1993, ch. 174, § 27; 1995, ch. 210, § 12; 2017, ch. 41, § 15.

45-2-505. Who may witness.

A. An individual generally competent to be a witness may act as a witness to a will.

B. The signing of a will by an interested witness does not invalidate the will or any provision of it.

History: 1953 Comp., § 32A-2-505, enacted by Laws 1975, ch. 257, § 2-505; repealed and reenacted by Laws 1993, ch. 174, § 28.

45-2-506. Choice of law as to execution.

A written will is valid if executed in compliance with Section 45-2-502 NMSA 1978 or if its execution complies with the law at the time of execution of the place where the will is executed or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode or is a national.

History: 1953 Comp., § 32A-2-506, enacted by Laws 1975, ch. 257, § 2-506; repealed and reenacted by Laws 1993, ch. 174, § 29; 2016, ch. 69, § 709.

45-2-507. Revocation by writing or by act.

A. A will or any part thereof is revoked:

(1) by executing a subsequent will that revokes the previous will or part expressly or by inconsistency;

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

(3) by performing a revocatory act on the will if the testator performed the act with the intent and for the purpose of revoking the will or part or if another individual performed the act in the testator's conscious presence and by the testator's direction. For purposes of this paragraph, "revocatory act on the will" includes burning, tearing, canceling, obliterating or destroying the will or any part of it. A burning, tearing or canceling is a "revocatory act on the will", whether or not the burn, tear or cancellation touched any of the words on the will.

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

C. The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and

convincing evidence, the previous will is revoked; only the subsequent will is operative on the testator's death.

D. The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent that the subsequent will is inconsistent with the previous will; each will is fully operative on the testator's death to the extent that the wills are not inconsistent.

History: 1953 Comp., § 32A-2-507, enacted by Laws 1975, ch. 257, § 2-507; repealed and reenacted by Laws 1993, ch. 174, § 30; 2011, ch. 124, § 23.

45-2-508. Revocation by change of circumstances.

Except as provided in Sections 45-2-803 and 45-2-804 NMSA 1978, a change of circumstances does not revoke a will or any part of it.

History: 1953 Comp., § 32A-2-508, enacted by Laws 1975, ch. 257, § 2-508; repealed and reenacted by Laws 1993, ch. 174, § 31.

45-2-509. Revival of revoked will.

A. If a subsequent will that wholly revoked a previous will is thereafter revoked by a revocatory act pursuant to Paragraph (2) of Subsection A of Section 45-2-507 NMSA 1978, the previous will remains revoked unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent written declarations that the testator intended the previous will to take effect as executed.

B. If a subsequent will that partly revoked a previous will is thereafter revoked by a revocatory act pursuant to Paragraph (2) of Subsection A of Section 45-2-507 NMSA 1978, a revoked part of the previous will is revived unless it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent written declarations that the testator did not intend the revoked part to take effect as executed.

C. If a subsequent will that revoked a previous will in whole or in part is thereafter revoked by another, later, will, the previous will remains revoked in whole or in part unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent it appears from the terms of the later will that the testator intended the previous will to take effect.

History: 1953 Comp., § 32A-2-509, enacted by Laws 1975, ch. 257, § 2-509; repealed and reenacted by Laws 1993, ch. 174, § 32.

45-2-510. Incorporation by reference.

A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

History: 1953 Comp., § 32A-2-510, enacted by Laws 1975, ch. 257, § 2-510; 1993, ch. 174, § 33.

45-2-511. Testamentary additions to trust.

A. A will may validly devise property to the trustee of a trust established or to be established:

(1) during the testator's lifetime by the testator, by the testator and some other person or by some other person, including a funded or unfunded life insurance trust, although the settlor has reserved any or all rights of ownership of the insurance contracts; or

(2) at the testator's death by the testator's devise to the trustee if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, concurrently with or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator regardless of the existence, size or character of the corpus of the trust.

The devise is not invalid because the trust is amendable or revocable or because the trust was amended after the execution of the will or the testator's death.

B. Unless the testator's will provides otherwise, property devised to a trust described in Subsection A of this section is not held under a testamentary trust of the testator, but it becomes a part of the trust to which it is devised and must be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

C. Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse.

History: 1953 Comp., § 32A-2-511, enacted by Laws 1975, ch. 257, § 2-511; repealed and reenacted by Laws 1993, ch. 174, § 34.

45-2-512. Events of independent significance.

A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before

or after the execution of the will or before or after the testator's death. The execution or revocation of another individual's will is such an event.

History: 1953 Comp., § 32A-2-512, enacted by Laws 1975, ch. 257, § 2-512; 1993, ch. 174, § 35.

45-2-513. Separate writing identifying devise of certain types of tangible personal property.

A will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money. To be admissible under this section as evidence of the intended disposition, the writing must be signed by the testator and must describe the items and the devisees with reasonable certainty. The writing may be:

A. referred to as one to be in existence at the time of the testator's death;

B. prepared before or after the execution of the will;

C. altered by the testator after its preparation; or

D. a writing that has no significance apart from its effect on the dispositions made by the will.

History: 1953 Comp., § 32A-2-513, enacted by Laws 1975, ch. 257, § 2-513; repealed and reenacted by Laws 1993, ch. 174, § 36.

45-2-514. Contracts concerning succession.

A. A contract to make a will or devise or not to revoke a will or devise or to die intestate, if executed after the effective date of this article, may be established only by:

(1) provisions of a will stating material provisions of the contract;

(2) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or

(3) a writing signed by the decedent evidencing the contract.

B. The execution of a joint will or of mutual wills does not create a presumption of a contract not to revoke the will or wills.

History: 1978 Comp., § 45-2-514, enacted by Laws 1993, ch. 174, § 37.

45-2-515. Deposit of will with court in testator's lifetime.

A will may be deposited by the testator or his agent with the clerk of any district court in New Mexico for safekeeping pursuant to rules of that court. The will shall be kept confidential. During the testator's lifetime, a deposited will shall be delivered only to him or to a person authorized in writing signed by him to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under district court procedures designed to maintain the confidential character of the document to the extent possible and to assure that it will be resealed and left on deposit after the examination. Upon being informed of the testator's death, the district court clerk shall notify any person designated to receive the will and deliver it to him on request, or the court clerk may deliver the will to the appropriate court.

History: 1978 Comp., § 45-2-515, enacted by Laws 1993, ch. 174, § 38.

45-2-516. Duty of custodian of will; liability.

A. Any person having custody of a will shall, as soon as he is informed of the death of the testator, deliver the will to a person able to secure its probate or, if none is known, to an appropriate court.

B. If any person having the custody of a will fails to produce the will as provided for in Subsection A of this section, after receiving a reasonable notice to do so, he is liable to any person aggrieved for the damages that may be sustained by the failure.

C. Any person who refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.

History: 1978 Comp., § 45-2-516, enacted by Laws 1993, ch. 174, § 39.

45-2-517. Penalty clause for contest.

A provision in a governing instrument purporting to penalize an interested person for contesting the governing instrument or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

History: 1978 Comp., § 45-2-517, enacted by Laws 1995, ch. 210, § 13; 2016, ch. 69, § 710.

PART 6
RULES OF CONSTRUCTION FOR WILLS

45-2-601. Scope.

In the absence of a finding of a contrary intention, the rules of construction in Chapter 45, Article 2, Part 6 NMSA 1978 control the construction of a will.

History: 1953 Comp., § 32A-2-601, enacted by Laws 1975, ch. 257, § 2-601; 1976 (S.S.), ch. 37, § 3; repealed and reenacted by Laws 1993, ch. 174, § 40.

45-2-602. Will may pass all property and after-acquired property.

A will may provide for the passage of all property the testator owns at death and all property acquired by the estate after the testator's death, subject to the provisions of Section 45-2-101 NMSA 1978.

History: 1978 Comp., § 45-2-602, enacted by Laws 1993, ch. 174, § 41.

45-2-603. Antilapse; deceased devisee; class gifts.

A. As used in this section:

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

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

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

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

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

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

(5) "devise" includes an alternative devise, a devise in the form of a class gift and an exercise of a power of appointment;

(6) "devisee" includes:

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

(b) an individual or class member who was deceased at the time the testator executed the testator's will as well as an individual or class member who was then living but who failed to survive the testator; and

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

(7) "stepchild" means a child of the surviving, deceased or former spouse of the testator or of the donor of a power of appointment and not of the testator or donor;

(8) "surviving", as used in the phrase "surviving devisees" or "surviving descendants", means devisees or descendants who neither predeceased the testator nor are deemed to have predeceased the testator pursuant to the provisions of Section 45-2-702 NMSA 1978; and

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

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

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

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

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

(4) if the will creates an alternative devise with respect to a devise for which a substitute gift is created by Paragraph (1) or (2) of this subsection, the substitute gift is superseded by the alternative devise if:

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

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

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

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

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

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

(3) as used in this subsection:

(a) "primary devise" means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator;

(b) "primary substitute gift" means the substitute gift created with respect to the primary devise;

(c) "younger-generation devise" means a devise that: 1) is to a descendant of a devisee of the primary devise; 2) is an alternative devise with respect to the primary devise; 3) is a devise for which a substitute gift is created; and 4) would have taken effect had all the deceased devisees who left surviving descendants survived the testator except the deceased devisee or devisees of the primary devise; and

(d) "younger-generation substitute gift" means the substitute gift created with respect to the younger-generation devise.

History: 1953 Comp., § 32A-2-603, enacted by Laws 1975, ch. 257, § 2-603; repealed and reenacted by Laws 1993, ch. 174, § 42; 1995, ch. 210, § 14; 2011, ch. 124, § 24.

45-2-604. Failure of testamentary provision.

A. Except as provided in Section 45-2-603 NMSA 1978, a devise, other than a residuary devise, that fails for any reason becomes a part of the residue.

B. Except as provided in Section 45-2-603 NMSA 1978, if the residue is devised to two or more persons, the share of a residuary devisee that fails for any reason passes to the other residuary devisee or to other residuary devisees in proportion to the interest of each in the remaining part of the residue.

History: 1953 Comp., § 32A-2-604, enacted by Laws 1975, ch. 257, § 2-604; repealed and reenacted by Laws 1993, ch. 174, § 43.

45-2-605. Increase in securities; accessions.

A. If a testator executes a will that devises securities and the testator then owned securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities were acquired by the testator after the will was executed as a result of the testator's ownership of the described securities and are securities of any of the following types:

(1) securities of the same organization acquired by reason of action initiated by the organization or any successor, related or acquiring organization, excluding any acquired by exercise of purchase options;

(2) securities of another organization acquired as a result of merger, consolidation, reorganization or other distribution by the organization or any successor, related or acquiring organization; or

(3) securities of the same organization acquired as a result of a plan of reinvestment.

B. Distributions in cash before death with respect to a described security are not part of the devise.

History: 1953 Comp., § 32A-2-605, enacted by Laws 1975, ch. 257, § 2-605; 1976 (S.S.), ch. 37, § 4; repealed and reenacted by Laws 1993, ch. 174, § 44.

45-2-606. Nonademption of specific devises; unpaid proceeds of sale, condemnation or insurance; sale by conservator or agent.

A. A specific devisee has a right to specifically devised property in the testator's estate at the testator's death and:

(1) any balance of the purchase price, together with any security agreement, owed by a purchaser at the testator's death by reason of sale of the property;

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

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

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

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

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

B. If specifically devised property is sold or mortgaged by a conservator or by an agent acting within the authority of a durable power of attorney for an incapacitated person or if a condemnation award, insurance proceeds or recovery for injury to the property is paid to a conservator or to an agent acting within the authority of a durable power of attorney for an incapacitated person, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds or the recovery.

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

D. Subsection B of this section does not apply if, after the sale, mortgage, condemnation, casualty or recovery, it is adjudicated that the testator's incapacity has ceased and the testator survives the adjudication for at least one year.

E. For the purposes of the references in Subsection B of this section to an agent acting within the authority of a durable power of attorney for an incapacitated person:

(1) no adjudication of incapacity before death is necessary; and

(2) the acts of an agent within the authority of a durable power of attorney are presumed to be for the incapacitated person.

History: 1953 Comp., § 32A-2-606, enacted by Laws 1975, ch. 257, § 2-606; repealed and reenacted by Laws 1993, ch. 174, § 45; 2011, ch. 124, § 25.

45-2-607. Nonexoneration.

A specific devise passes subject to any mortgage interest existing at the date of death without right of exoneration regardless of a general directive in the will to pay debts.

History: 1953 Comp., § 32A-2-607, enacted by Laws 1975, ch. 257, § 2-607; repealed and reenacted by Laws 1993, ch. 174, § 46.

45-2-608. Exercise of power of appointment.

In the absence of a requirement that a power of appointment be exercised by a reference or by an express or specific reference to the power, a general residuary clause in a will or a will making general disposition of all of the testator's property expresses an intention to exercise a power of appointment held by the testator only if:

A. the power is a general power exercisable in favor of the powerholder's estate and the creating instrument does not contain an effective gift if the power is not exercised; or

B. the testator's will manifests an intention to include the property subject to the power.

History: 1978 Comp., § 45-2-608, as enacted by Laws 2019, ch. 221, § 1.

45-2-609. Ademption by satisfaction.

A. Property a testator gave in his lifetime to a person is treated as a satisfaction of a devise in whole or in part only if:

(1) the will provides for deduction of the gift;

(2) the testator declared in a contemporaneous writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise; or

(3) the devisee acknowledged in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.

B. For purposes of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or at the testator's death, whichever occurs first.

C. If the devisee fails to survive the testator, the gift is treated as a full or partial satisfaction of the devise, as appropriate, in applying Sections 45-2-603 and 45-2-604 NMSA 1978, unless the testator's contemporaneous writing provides otherwise.

History: 1953 Comp., § 32A-2-609, enacted by Laws 1975, ch. 257, § 2-609; repealed and reenacted by Laws 1993, ch. 174, § 48.

45-2-610 to 45-2-612. Repealed.

PART 7
RULES OF CONSTRUCTION FOR GOVERNING INSTRUMENTS

45-2-701. Scope.

In the absence of a finding of a contrary intention, the rules of construction in Chapter 45, Article 2, Part 7 NMSA 1978 control the construction of a governing instrument. The rules of construction in Chapter 45, Article 2, Part 7 NMSA 1978 apply to a governing instrument of any type, except as the application of a particular section is limited by its terms to a specific type or types of provision or governing instrument.

History: 1953 Comp., § 32A-2-701, enacted by Laws 1975, ch. 257, § 2-701; repealed and reenacted by Laws 1993, ch. 174, § 49.

45-2-702. Requirement of survival by one hundred twenty hours.

A. For the purposes of the Uniform Probate Code, except as provided in Subsection D of this section, an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by one hundred twenty hours is deemed to have predeceased the event.

B. Except as provided in Subsection D of this section, for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by one hundred twenty hours is deemed to have predeceased the event.

C. Except as provided in Subsection D of this section:

(1) if it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by one hundred twenty hours, one-half of the property passes as if one had survived by one hundred twenty hours and one-half as if the other had survived by one hundred twenty hours; and

(2) if there are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by one hundred twenty hours, the property passes in the proportion that one bears to the whole number of co-owners.

For the purposes of this subsection, "co-owners with right of survivorship" includes joint tenants and other co-owners of property or accounts held under circumstances that entitles one or more to the whole of the property or account on the death of the other or others.

D. Survival by one hundred twenty hours is not required if:

(1) the governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

(2) the governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period, but survival of the event or specified period must be established by clear and convincing evidence;

(3) the imposition of a one-hundred-twenty-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity pursuant to the provisions of Paragraph (1) of Subsection A, Paragraph (1) of Subsection B or Paragraph (1) of Subsection C of Section 45-2-901 NMSA 1978 or to become invalid pursuant to the provisions of Paragraph (2) of Subsection A, Paragraph (2) of Subsection B or Paragraph (2) of Subsection C of Section 45-2-901 NMSA 1978, but survival must be established by clear and convincing evidence; or

(4) the application of a one-hundred-twenty-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition, but survival must be established by clear and convincing evidence.

E. A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument who, under this section, is not entitled to the payment or item of property or for having taken any other action in good faith reliance on the beneficiary's apparent entitlement under the terms of the governing instrument before the payor or other third

party received written notice of a claimed lack of entitlement under this section. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this section.

Written notice of a claimed lack of entitlement pursuant to the provisions of this subsection must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

F. A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who is entitled to it under this section.

G. If this section or any part of this section is pre-empted by federal law with respect to a payment, an item of property or any other benefit covered by this section, a person who, not for value, receives the payment, item of property or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who would have been entitled to it were this section or part of this section not pre-empted.

History: 1978 Comp., § 45-2-702, enacted by Laws 1993, ch. 174, § 50; 1995, ch. 210, § 15.

45-2-703. Choice of law as to meaning and effect of governing instrument.

The meaning and legal effect of a governing instrument is determined by the local law of the state selected in the governing instrument unless the application of that law is

contrary to the provisions relating to allowances described in Chapter 45, Article 2, Part 4 NMSA 1978 or any other public policy of this state otherwise applicable to the disposition.

History: 1978 Comp., § 45-2-703, enacted by Laws 1993, ch. 174, § 51; 1995, ch. 210, § 16.

45-2-704. Power of appointment; compliance with specific reference requirement.

A powerholder's substantial compliance with a formal requirement of appointment imposed in a governing instrument by the donor, including a requirement that the instrument exercising the power of appointment make reference or specific reference to the power, is sufficient if:

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

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

History: 1978 Comp., § 45-2-704, enacted by Laws 2019, ch. 221, § 2.

45-2-705. Class gifts construed to accord with intestate succession; exceptions.

A. As used in this section:

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

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

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

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

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

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

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

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

B. A class gift that uses a term of relationship to identify the class members includes a child of assisted reproduction, a gestational child and, except as otherwise provided in Subsections E and F of this section, an adoptee and a child born to parents who are not married to each other and their respective descendants if appropriate to the class in accordance with the rules for intestate succession regarding parent-child relationships. For the purpose of determining whether a contrary intent exists pursuant to Section 45-2-701 NMSA 1978, a provision in a governing instrument that relates to the inclusion or exclusion in a class gift of a child born to parents who are not married to each other but that does not specifically refer to a child of assisted reproduction or a gestational child does not apply to a child of assisted reproduction or a gestational child.

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

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

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

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

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

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

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

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

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

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

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

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

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

History: 1978 Comp., § 45-2-705, enacted by Laws 1993, ch. 174, § 53; 2011, ch. 124, § 26.

45-2-706. Life insurance; retirement plan; account with pod designation; transfer-on-death registration; deceased beneficiary.

A. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

(8) "surviving", as used in the phrase "surviving beneficiaries" or "surviving descendants", means beneficiaries or descendants who neither predeceased the decedent nor are deemed to have predeceased the decedent pursuant to the provisions of Section 45-2-702 NMSA 1978.

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

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

(2) except as provided in Paragraph (4) of this subsection, if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives" or "family" or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For the purposes of this paragraph, "deceased beneficiary" means a class member who failed to survive the decedent and left one or more surviving descendants;

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

(4) if a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by Paragraph (1) or (2) of this subsection, the substitute gift is superseded by the alternative beneficiary designation if:

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

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

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

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

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

(3) as used in this subsection:

(a) "primary beneficiary designation" means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent;

(b) "primary substitute gift" means the substitute gift created with respect to the primary beneficiary designation;

(c) "younger-generation beneficiary designation" means as a beneficiary designation that: 1) is to a descendant of a beneficiary of the primary beneficiary designation; 2) is an alternative beneficiary designation with respect to the primary beneficiary designation; 3) is a beneficiary designation for which a substitute gift is created; and 4) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation; and

(d) "younger-generation substitute gift" means the substitute gift created with respect to the younger-generation beneficiary designation.

D. A payor is protected from liability in making payments under the terms of the beneficiary designation until the payor has received written notice of a claim to a substitute gift under this section. Payment made before the receipt of written notice of a claim to a substitute gift under this section discharges the payor, but not the recipient, from all claims for the amounts paid. A payor is liable for a payment made after the payor has received written notice of the claim. A recipient is liable for a payment received whether or not written notice of the claim is given.

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

E. A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated pursuant to the provisions of this section to return the payment, item of property or benefit nor liable pursuant to the provisions of this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property or any other benefit to which the person is not entitled pursuant to the provisions of this section is obligated to return the payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who is entitled to it pursuant to the provisions of this section.

F. If this section or any part of this section is preempted by federal law with respect to a payment, an item of property or any other benefit covered by this section, a person who, not for value, receives the payment, item of property or any other benefit to which the person is not entitled pursuant to the provisions of this section is obligated to return the payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who would have been entitled to it were this section or part of this section not preempted.

History: 1978 Comp., § 45-2-706, enacted by Laws 1993, ch. 174, § 54; 1995, ch. 210, § 17; 2011, ch. 124, § 27.

45-2-707. Survivorship with respect to future interests under terms of trust; substitute takers.

A. As used in this section:

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

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

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

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

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

(6) "future interest" includes an alternative future interest and a future interest in the form of a class gift;

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

(8) "surviving", as used in the phrase "surviving beneficiaries" or "surviving descendants", means beneficiaries or descendants who neither predeceased the distribution date nor are deemed to have predeceased the distribution date pursuant to the provisions of Section 45-2-702 NMSA 1978.

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

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

(2) except as provided in Paragraph (4) of this subsection, if the future interest is in the form of a class gift, other than a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives" or "family" or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For the purposes of this paragraph, "deceased beneficiary" means a class member who failed to survive the distribution date and left one or more surviving descendants;

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

(4) if a governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by Paragraph (1) or (2) of this subsection, the substitute gift is superseded by the alternative future interest if:

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

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

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

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

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

(3) as used in this subsection:

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

(b) "primary substitute gift" means the substitute gift created with respect to the primary future interest;

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

(d) "younger-generation substitute gift" means the substitute gift created with respect to the younger-generation future interest.

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

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

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

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

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

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

History: 1978 Comp., § 45-2-707, enacted by Laws 1993, ch. 174, § 55; 1995, ch. 210, § 18; 2011, ch. 124, § 28.

45-2-708. Class gifts to descendants, issue or heirs of the body; form of distribution if none specified.

If a class gift in favor of "descendants", "issue" or "heirs of the body" does not specify the manner in which the property is to be distributed among the class members, the property is distributed among the class members who are living when the interest is to take effect in possession or enjoyment in such shares as they would receive pursuant to the applicable law of intestate succession if the designated ancestor had then died intestate owning the subject matter of the class gift.

History: 1978 Comp., § 45-2-708, enacted by Laws 1993, ch. 174, § 56.

45-2-709. Representation; per capita at each generation; per stirpes.

A. As used in this section:

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

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

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

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

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

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

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

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

(1) surviving children of the designated ancestor; and

(2) deceased children who left surviving descendants.

Each surviving child, if any, is allocated one share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

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

History: 1978 Comp., § 45-2-709, enacted by Laws 1993, ch. 174, § 57; 1995, ch. 210, § 19; 2011, ch. 124, § 29.

45-2-710. Worthier-title doctrine abolished.

The doctrine of worthier title is abolished as a rule of law and as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor's "heirs", "heirs at law", "next of kin", "distributees", "relatives" or "family" or language of similar import does not create or presumptively create a reversionary interest in the transferor.

History: 1978 Comp., § 45-2-710, enacted by Laws 1993, ch. 174, § 58.

45-2-711. Future interests in heirs and like.

If an applicable statute or a governing instrument calls for a present or future distribution to or creates a present or future interest in a designated individual's "heirs", "heirs at law", "next of kin", "relatives" or "family" or language of similar import, the property passes to those persons, including the state, and in such shares as would succeed to the designated individual's intestate estate under the intestate succession law of the designated individual's domicile if the designated individual died when the disposition is to take effect in possession or enjoyment. If the designated individual's surviving spouse is living but is remarried at the time the disposition is to take effect in

possession or enjoyment, the surviving spouse is not an heir of the designated individual.

History: 1978 Comp., § 45-2-711, enacted by Laws 1993, ch. 174, § 59; 1995, ch. 210, § 20.

PART 8
GENERAL PROVISIONS

45-2-801. Repealed.

45-2-802. Effect of divorce, annulment and decree of separation.

A. An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, the individual is married to the decedent at the time of death. A decree of separation that does not terminate the status of spouse is not a divorce for purposes of this section.

B. For purposes of Chapter 45, Article 2, Parts 1 through 4 and Section 45-3-203 NMSA 1978, a surviving spouse does not include:

(1) an individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless subsequently they participate in a marriage ceremony purporting to marry each to the other or live together as spouses;

(2) an individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual; or

(3) an individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights, including a property division judgment entered pursuant to the provisions of Section 40-4-20 NMSA 1978.

History: 1953 Comp., § 32A-2-802, enacted by Laws 1975, ch. 257, § 2-802; repealed and reenacted by Laws 1993, ch. 174, § 61; 1995, ch. 210, § 22; 2019, ch. 221, § 3.

45-2-803. Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance and beneficiary designations.

A. As used in this section:

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

(2) "revocable", with respect to a disposition, appointment, provision or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate the decedent's own self in place of the decedent's killer and the decedent then had capacity to exercise the power.

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

C. The felonious and intentional killing of the decedent:

(1) revokes any revocable:

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

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

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

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

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

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

F. An acquisition of property or interest by a killer not covered by this section shall be treated in accordance with the principle that a killer cannot profit from the killer's wrong.

G. After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. In the absence of a conviction, the court upon the petition of an interested person shall determine whether under the preponderance of evidence standard the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that under that standard the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.

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

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

I. A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated pursuant to the provisions of this section to return the payment, item of property or benefit nor liable pursuant to the provisions of this section for the amount of the payment or the value of the item of property or benefit. But a

person who, not for value, receives a payment, item of property or any other benefit to which the person is not entitled pursuant to the provisions of this section is obligated to return the payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who is entitled to it pursuant to the provisions of this section.

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

History: 1953 Comp., § 32A-2-803, enacted by Laws 1975, ch. 257, § 2-803; repealed and reenacted by Laws 1993, ch. 174, § 62; 1995, ch. 210, § 23; 2011, ch. 124, § 30.

45-2-804. Revocation of probate and nonprobate transfers by divorce; no revocation by other changes of circumstances.

A. As used in this section:

(1) "disposition or appointment of property" includes a transfer of an item of property or other benefit to a beneficiary designated in a revocable trust or other governing instrument;

(2) "divorce or annulment" means a divorce, annulment or dissolution or declaration of invalidity of a marriage that would exclude the spouse as a surviving spouse within the meaning of Section 45-2-802 NMSA 1978 or the commencement of a valid proceeding concluded either before or after an individual's death by an order purporting to terminate all marital property rights, including a property division judgment entered pursuant to the provisions of Section 40-4-20 NMSA 1978. A decree of separation that does not terminate the status of spouse is not a divorce for purposes of this section;

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

(4) "governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of the divorced individual's marriage to the former spouse;

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

(6) "revocable", with respect to a disposition, appointment, provision or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered by law or under the governing instrument to cancel the designation in favor of the former spouse or former spouse's relative whether or not the divorced individual was then empowered to designate the divorced individual's own self in place of the former spouse or in place of the former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

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

(1) revokes any revocable:

(a) disposition or appointment of property made by a divorced individual to the former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

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

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

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

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

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

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

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

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

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

H. A person who purchases property from a former spouse, relative of a former spouse or any other person for value and without notice or who receives from a former spouse, relative of a former spouse or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated pursuant to the provisions of this section to return the payment, item of property or benefit nor is liable pursuant to the provisions of this section for the amount of the payment or the value of the item of property or benefit. But a former spouse, relative of a former spouse or other person who, not for value, received a payment, item of property or any other benefit to which that person is not entitled pursuant to the provisions of this section is obligated to return the payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who is entitled to it pursuant to the provisions of this section.

I. If this section or any part of this section is preempted by federal law with respect to a payment, an item of property or any other benefit covered by this section, a former spouse, relative of the former spouse or any other person who, not for value, received a

payment, item of property or any other benefit to which that person is not entitled pursuant to the provisions of this section is obligated to return that payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who would have been entitled to it were this section or part of this section not preempted.

History: 1978 Comp., § 45-2-804, enacted by Laws 1993, ch. 174, § 63; 1995, ch. 210, § 24; 2011, ch. 124, § 31; 2019, ch. 221, §4.

45-2-805. Reformation to correct mistakes.

The district court may reform the terms of a governing instrument, even if unambiguous, to conform the terms to the transferor's intention if it is proved by clear and convincing evidence what the transferor's intention was and that the terms of the governing instrument were affected by a mistake of fact or law, whether in expression or inducement.

History: 1978 Comp., § 45-2-805, enacted by Laws 2011, ch. 124, § 32.

45-2-806. Modification to achieve transferor's tax objectives.

To achieve the transferor's tax objectives, the district court may modify the terms of a governing instrument in a manner that is not contrary to the transferor's probable intention. The district court may provide that the modification has retroactive effect.

History: 1978 Comp., § 45-2-806, enacted by Laws 2011, ch. 124, § 33.

45-2-807. Death of spouse; community property.

A. Upon the death of either spouse, one-half of the community property belongs to the surviving spouse, and the other half is subject to the testamentary disposition of the decedent, except that community property that is joint tenancy property under Subsection B of Section 40-3-8 NMSA 1978 shall not be subject to the testamentary disposition of the decedent.

B. Upon the death of either spouse, the entire community property is subject to the payment of community debts. The deceased spouse's separate debts and funeral expenses and the charge and expenses of administration are to be satisfied first from his separate property, excluding property held in joint tenancy. Should such property be insufficient, then the deceased spouse's undivided one-half interest in the community property shall be liable.

C. The provisions of the 1984 amendments to this section shall not affect the right of any creditor, which right accrued prior to the effective date of those amendments.

History: 1953 Comp., § 32A-2-804, enacted by Laws 1975, ch. 257, § 2-804; 1984, ch. 122, § 2; 1978 Comp., § 45-2-804, recompiled as 1978 Comp., § 45-2-805 by Laws 1993, ch. 174, § 64; recompiled as 1978 Comp., § 45-2-807 by Laws 2011, ch. 124, § 32.

45-2-808. Validity and effect of will executed by a wife prior to July 1, 1973.

If a wife has executed a will prior to July 1, 1973, which remains unrevoked or unamended and in which she has not exercised a power of testamentary disposition over her one-half interest in the community property by specific reference thereto and affirmative disposition thereof, her interest in the community property goes to her surviving husband. The wife's will shall be valid in disposing of any other property over which she has testamentary disposition notwithstanding her legal disability under prior law to exercise a power of testamentary disposition of her interest in the community property.

History: 1953 Comp., § 29-1-32, enacted by Laws 1973, ch. 276, § 8; 1978 Comp., § 45-8-9, recompiled as 1978 Comp., § 45-2-806 by Laws 1993, ch. 174, § 65; recompiled as 1978 Comp., § 45-2-808 by Laws 2011, ch. 124, § 33.

PART 9
UNIFORM STATUTORY RULE AGAINST PERPETUITIES; HONORARY TRUSTS; TRUSTS FOR PETS; TIME LIMITS ON OPTIONS IN GROSS AND CERTAIN OTHER INTERESTS IN REAL PROPERTY

SUBPART 1. Uniform Statutory Rule Against Perpetuities

45-2-901. Statutory rule against perpetuities.

A. A nonvested property interest is invalid unless:

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

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

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

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

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

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

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

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

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

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

History: 1978 Comp., § 45-2-1001, enacted by Laws 1992, ch. 66, § 1; recompiled as 1978 Comp., § 45-2-901 by Laws 1993, ch. 174, § 66; 2011, ch. 124, § 34.

45-2-902. Nonvested property interest or power of appointment created.

A. Except as provided in Subsections B and C of this section and except as provided in Subsection A of Section 45-2-905 NMSA 1978, the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

B. Under Sections 45-2-901 through 45-2-905 NMSA 1978, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified owner of either a nonvested property interest or a property interest subject to a power of appointment as described in Subsection B or C of Section 45-2-901 NMSA 1978, the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates. Under Sections 45-2-901 through 45-2-905 NMSA 1978, a joint power with respect to community property or to marital property under the Uniform Marital Property Act held by individuals married to each other is a power exercisable by one person alone.

C. Under Sections 45-2-901 through 45-2-905 NMSA 1978, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

History: 1978 Comp., § 45-2-1002, enacted by Laws 1992, ch. 66, § 2; recompiled as 1978 Comp., § 45-2-902 by Laws 1993, ch. 174, § 66; 1995, ch. 210, § 25.

45-2-903. Reformation.

Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the ninety years allowed by each Paragraph (2) of Subsections A, B or C of Section 45-2-901 NMSA 1978 if:

A. a nonvested property interest or a power of appointment becomes invalid under Section 45-2-901 NMSA 1978;

B. a class gift is not but might become invalid under Section 45-2-901 NMSA 1978 and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

C. a nonvested property interest that is not validated by Paragraph (1) of Subsection A of Section 45-2-901 NMSA 1978 can vest but not within ninety years after its creation.

History: 1978 Comp., § 45-2-1003, enacted by Laws 1992, ch. 66, § 3; recompiled as 1978 Comp., § 45-2-903 by Laws 1993, ch. 174, § 66; 1995, ch. 210, § 26.

45-2-904. Exclusions.

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

(1) a nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of:

(a) a premarital or postmarital agreement;

(b) a separation or divorce settlement;

(c) a spouse's election;

(d) a similar arrangement arising out of a prospective, existing or previous marital relationship between the parties;

(e) a contract to make or not to revoke a will or trust;

(f) a contract to exercise or not to exercise a power of appointment;

(g) a transfer in satisfaction of a duty of support; or

(h) a reciprocal transfer;

(2) a fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease or mortgage property and the power of a fiduciary to determine principal and income;

(3) a power to appoint a fiduciary;

(4) a discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

(5) a nonvested property interest held by a charity, government or governmental agency or subdivision if the nonvested property interest is preceded by an interest held by another charity, government or governmental agency or subdivision;

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

(7) a property interest, power of appointment or arrangement that was not subject to the common-law rule against perpetuities or that is excluded by another statute of New Mexico; or

(8) a property interest held in trust.

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

(1) provides for the distribution of the interest upon termination of the trust, the property shall be distributed as though termination occurred at that time;

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

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

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

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

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

(1) a trust holds an interest in a corporation, a limited liability company, a partnership, a statutory trust, a business trust or another business entity;

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

(3) the entity terminates; and

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

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

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

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

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

(1) intangible personal property; or

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

History: 1978 Comp., § 45-2-1004, enacted by Laws 1992, ch. 66, § 4; recompiled as 1978 Comp., § 45-2-904 by Laws 1993, ch. 174, § 66; 1995, ch. 210, § 27; 2016, ch. 69, § 713; 2016, ch. 72, § 2-101.

45-2-905. Prospective application.

A. Except as extended by Subsection B of this section, Sections 45-2-901 through 45-2-905 NMSA 1978 apply to a nonvested property interest or a power of appointment that is created on or after July 1, 1992. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

B. If a nonvested property interest or a power of appointment was created before July 1, 1992 and is determined in a judicial proceeding, commenced on or after July 1, 1992, to violate the New Mexico rule against perpetuities as that rule existed before July 1, 1992, a court, upon the petition of an interested person, may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

History: 1978 Comp., § 45-2-1005, enacted by Laws 1992, ch. 66, § 5; recompiled as 1978 Comp., § 45-2-905 by Laws 1993, ch. 174, § 66; 1995, ch. 210, § 28.

45-2-906. Supersession.

Sections 45-2-901 through 45-2-905 NMSA 1978 supersede the rule of the common law known as the rule against perpetuities.

History: 1978 Comp., § 45-2-1006, enacted by Laws 1992, ch. 66, § 6; recompiled as 1978 Comp., § 45-2-906 by Laws 1993, ch. 174, § 66; 1995, ch. 210, § 29.

SUBPART 2. Honorary Trusts; Trusts For Pets

45-2-907. Repealed.

History: 1978 Comp., § 45-2-907, enacted by Laws 1995, ch. 210, § 30; repealed by Laws 2016, ch. 69, § 725.

SUBPART 3. Time Limits On Options In Gross And Certain Other Interests In Real Property

45-2-908. Definitions.

As used in Sections 45-2-909 through 45-2-914 NMSA 1978:

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

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

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

History: 1978 Comp., § 45-2-908, enacted by Laws 2011, ch. 124, § 35.

45-2-909. Interest in real property.

An option in gross with respect to an interest in real property or a preemptive right in the nature of a right of first refusal in gross with respect to an interest in real property becomes invalid if it is not actually exercised within thirty years after its creation.

History: 1978 Comp., § 45-2-909, enacted by Laws 2011, ch. 124, § 36.

45-2-910. Lease to commence in the future.

A lease of real property to commence at a time certain or upon the occurrence or nonoccurrence of a future event becomes invalid if its term does not actually commence in possession within thirty years after its execution.

History: 1978 Comp., § 45-2-910, enacted by Laws 2011, ch. 124, § 37.

45-2-911. Nonvested easement.

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

History: 1978 Comp., § 45-2-911, enacted by Laws 2011, ch. 124, § 38.

45-2-912. Possibility of reverter, right of entry, executory interest.

A possibility of reverter preceded by a fee simple determinable, a right of entry preceded by a fee simple subject to a condition subsequent or an executory interest preceded by either a fee simple determinable or a fee simple subject to an executory limitation becomes invalid, and the preceding fee simple becomes a fee simple absolute, if the right to vest in possession of the possibility of reverter, right of entry or executory interest depends on an event or events affecting the use of real property and if the possibility of reverter, right of entry or executory interest does not actually vest in possession within thirty years after its creation.

History: 1978 Comp., § 45-2-911, enacted by Laws 2011, ch. 124, § 39.

45-2-913. Exclusions.

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

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

History: 1978 Comp., § 45-2-911, enacted by Laws 2011, ch. 124, § 40.

45-2-914. Application.

Sections 45-2-908 through 45-2-913 NMSA 1978 apply only to a property interest or arrangement affecting real property that is created on or after January 1, 2012.

History: 1978 Comp., § 45-2-911, enacted by Laws 2011, ch. 124, § 41.

PART 10
INTERNATIONAL WILLS

45-2-1001. Definitions.

As used in Sections 45-2-1101 through 45-2-1110 NMSA 1978 [45-2-1001 to 45-2-1010 NMSA 1978]:

A. "international will" means a will executed in conformity with Sections 45-2-1102 through 45-2-1105 NMSA 1978 [45-2-1002 to 45-2-1005 NMSA 1978]; and

B. "authorized person" or "person authorized to act in connection with international wills" means a person who, by Section 45-2-1109 NMSA 1978 [45-2-1009 NMSA 1978] or by the laws of the United States, including members of the diplomatic and consular service of the United States designated by foreign service regulations, is empowered to supervise the execution of international wills.

History: 1978 Comp., § 45-2-1101, enacted by Laws 1992, ch. 66, § 7; recompiled as 1978 Comp., § 45-2-1001 by Laws 1993, ch. 174, § 67.

45-2-1002. International will; validity.

A. A will is valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the requirements of Sections 45-2-1101 through 45-2-1110 NMSA 1978 [45-2-1001 to 45-2-1010 NMSA 1978].

B. The invalidity of the will as an international will does not affect its formal validity as a will of another kind.

C. Sections 45-2-1101 through 45-2-1110 NMSA 1978 [45-2-1001 to 45-2-1010 NMSA 1978] do not apply to the form of testamentary dispositions made by two or more persons in one instrument.

History: 1978 Comp., § 45-2-1102, enacted by Laws 1992, ch. 66, § 8; recompiled as 1978 Comp., § 45-2-1002 by Laws 1993, ch. 174, § 67.

45-2-1003. International will; requirements.

A. The will must be made in writing. It need not be written by the testator himself. It may be written in any language, by hand or by any other means.

B. The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents thereof. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

C. In the presence of the witnesses, and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.

D. If the testator is unable to sign, the absence of his signature does not affect the validity of the international will if the testator indicates the reason for his inability to sign and the authorized person makes note thereof on the will. In that case, it is permissible

for any other person present, including the authorized person or one of the witnesses, at the direction of the testator, to sign the testator's name for him if the authorized person makes note of this on the will, but it is not required that any person sign the testator's name for him.

E. The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

History: 1978 Comp., § 45-2-1103, enacted by Laws 1992, ch. 66, § 9; recompiled as 1978 Comp., § 45-2-1003 by Laws 1993, ch. 174, § 67.

45-2-1004. International will; other points of form.

A. The signatures shall be placed at the end of the will. If the will consists of several sheets, each sheet shall be signed by the testator or, if he is unable to sign, by the person signing on his behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

B. The date of the will shall be the date of its signature by the authorized person. That date shall be noted at the end of the will by the authorized person.

C. The authorized person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so and at the express request of the testator, the place where he intends to have his will kept shall be mentioned in the certificate provided for in Section 45-2-1105 NMSA 1978 [45-2-1005 NMSA 1978].

D. A will executed in compliance with Section 45-2-1103 NMSA 1978 is not invalid merely because it does not comply with this section.

History: 1978 Comp., § 45-2-1104, enacted by Laws 1992, ch. 66, § 10; recompiled as 1978 Comp., § 45-2-1004 by Laws 1993, ch. 174, § 67.

45-2-1005. International will; certificate.

The authorized person shall attach to the will a certificate to be signed by him establishing that the requirements of Sections 45-2-1101 through 45-2-1110 NMSA 1978 [45-2-1001 to 45-2-1010 NMSA 1978] for valid execution of an international will have been fulfilled. The authorized person shall keep a copy of the certificate and deliver another to the testator. The certificate must be substantially in the following form:

CERTIFICATE

1. I, _____ (name, address, and capacity), a person authorized to act in connection with international wills,

2. certify that on _____ (date) at _____ (place)

3. (testator) ____ (name, address, date and place of birth) in my presence and that of the witnesses

4. (a) _____ (name, address, date and place of birth)

(b) _____ (name, address, date and place of birth) has declared that the attached document is his will and that he knows the contents thereof.

5. I furthermore certify that:

6. (a) in my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged his signature previously affixed;

*(2) following a declaration of the testator stating that he was unable to sign his will for the following reason _____, I have mentioned this declaration on the will,

*and the signature has been affixed by _____ (name and address);

7. (b) the witnesses and I have signed the will;

8. *(c) each page of the will has been signed by _____ and numbered;

9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;

10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;

11. *(f) the testator has requested me to include the following statement concerning the safekeeping of his will:

_____
_____

12. PLACE OF EXECUTION

13. DATE

14. SIGNATURE and, if necessary, SEAL

*to be completed if appropriate.

History: 1978 Comp., § 45-2-1105, enacted by Laws 1992, ch. 66, § 11; recompiled as 1978 Comp., § 45-2-1005 by Laws 1993, ch. 174, § 67.

45-2-1006. International will; effect of certificate.

In the absence of evidence to the contrary, the certificate of the authorized person is conclusive of the formal validity of the instrument as a will under Sections 45-2-1101 through 45-2-1110 NMSA 1978 [45-2-1001 to 45-2-1010 NMSA 1978]. The absence or irregularity of a certificate does not affect the formal validity of a will under Sections 45-2-1101 through 45-2-1110 NMSA 1978.

History: 1978 Comp., § 45-2-1106, enacted by Laws 1992, ch. 66, § 12; recompiled as 1978 Comp., § 45-2-1006 by Laws 1993, ch. 174, § 67.

45-2-1007. International will; revocation.

An international will is subject to the ordinary rules of revocation of wills.

History: 1978 Comp., § 45-2-1107, enacted by Laws 1992, ch. 66, § 13; recompiled as 1978 Comp., § 45-2-1007 by Laws 1993, ch. 174, § 67.

45-2-1008. Source and construction.

Sections 45-2-1101 through 45-2-1107 NMSA 1978 [45-2-1001 to 45-2-1007 NMSA 1978] derive from annex to convention of October 26, 1973, providing a uniform law on the form of an international will. In interpreting and applying Sections 45-2-1101 through 45-2-1110 NMSA 1978 [45-2-1001 to 45-2-1010 NMSA 1978], regard shall be had to its international origin and to the need for uniformity in its interpretation.

History: 1978 Comp., § 45-2-1108, enacted by Laws 1992, ch. 66, § 14; recompiled as 1978 Comp., § 45-2-1008 by Laws 1993, ch. 174, § 67.

45-2-1009. Persons authorized to act in relation to international will; eligibility; recognition by authorizing agency.

Individuals who have been admitted to practice law before the courts of this state and are currently licensed so to do are authorized persons in relation to international wills.

History: 1978 Comp., § 45-2-1109, enacted by Laws 1992, ch. 66, § 15; recompiled as 1978 Comp., § 45-2-1009 by Laws 1993, ch. 174, § 67.

45-2-1010. International will; information registration.

The secretary of state shall establish a registry system by which authorized persons may register, in a central information center, information regarding the execution of international wills, keeping that information in strictest confidence until the death of the maker and then making it available to any person desiring information about any will who presents a death certificate or other satisfactory evidence of the testator's death to the center. Information that may be received, preserved in confidence until death and reported as indicated is limited to the name, social security or any other individual identifying number established by law, address and date and place of birth of the testator, and the intended place of deposit or safekeeping of the instrument pending the death of the maker. The secretary of state, at the request of the authorized person, may cause the information it receives about execution of any international will to be transmitted to the registry system of another jurisdiction as identified by the testator, if that other system adheres to rules protecting the confidentiality of the information similar to those established in this state.

History: 1978 Comp., § 45-2-1110, enacted by Laws 1992, ch. 66, § 16; recompiled as 1978 Comp., § 45-2-1010 by Laws 1993, ch. 174, § 67.

PART 11
PROPERTY INTERESTS

45-2-1101. Short title.

Chapter 45, Article 2, Part 11 NMSA 1978 [45-2-1101 to 45-2-1116 NMSA 1978] may be cited as the "Uniform Disclaimer of Property Interests Act".

History: Laws 2001, ch. 290, § 1; 1978 Comp., § 46-10-1 recompiled and amended as § 45-2-1101 NMSA 1978 by Laws 2011, ch. 124, § 89.

45-2-1102. Definitions.

As used in the Uniform Disclaimer of Property Interests Act:

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

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

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

D. "fiduciary" means a personal representative, trustee, agent acting under a power of attorney or other person authorized to act as a fiduciary with respect to the property of another person;

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

F. "trust" means:

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

(2) a trust created pursuant to a statute, judgment or decree that requires the trust to be administered in the manner of an express trust.

History: Laws 2001, ch. 290, § 2; 1978 Comp., § 46-10-2 recompiled and amended as § 45-2-1102 NMSA 1978 by Laws 2011, ch. 124, § 90.

45-2-1103. Scope.

The Uniform Disclaimer of Property Interests Act applies to disclaimers of any interest in or power over property, whenever created.

History: Laws 2001, ch. 290, § 3; 1978 Comp., § 46-10-3 recompiled as § 45-2-1103 by Laws 2011, ch. 124, § 101.

45-2-1104. Uniform Disclaimer of Property Interests Act supplemented by other law.

A. Unless displaced by a provision of the Uniform Disclaimer of Property Interests Act, the principles of law and equity supplement that act.

B. The Uniform Disclaimer of Property Interests Act does not limit any right of a person to waive, release, disclaim or renounce an interest in or power over property under a law other than that act.

History: Laws 2001, ch. 290, § 4; 1978 Comp., § 46-10-4 recompiled as § 45-2-1104 by Laws 2011, ch. 124, § 101.

45-2-1105. Power to disclaim; general requirements; when irrevocable.

A. A person may disclaim, in whole or part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

B. Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute of this state or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim, or an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

C. To be effective, a disclaimer must be in a writing or other record, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed in the manner provided in Section 12 [45-2-1112 NMSA 1978] of the Uniform Disclaimer of Property Interests Act. As used in this subsection, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

D. A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power or any other interest or estate in the property.

E. A disclaimer becomes irrevocable when it is delivered or filed pursuant to Section 12 of the Uniform Disclaimer of Property Interests Act or when it becomes effective as provided in Sections 6 through 11 of that act [45-2-1106 to 45-2-1111 NMSA 1978], whichever occurs later.

F. A disclaimer made under the Uniform Disclaimer of Property Interests Act is not a transfer, assignment or release.

History: Laws 2001, ch. 290, § 5; 1978 Comp., § 46-10-5 recompiled as § 45-2-1105 by Laws 2011, ch. 124, § 101.

45-2-1106. Disclaimer of interest in property.

A. As used in this section:

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

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

B. Except for a disclaimer governed by Section 45-2-1107 or 45-2-1108 NMSA 1978, the following rules apply to a disclaimer of an interest in property:

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

(2) The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

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

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

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

(c) If, by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution.

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

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

History: Laws 2001, ch. 290, § 6; 1978 Comp., § 46-10-6 recompiled and amended as § 45-2-1106 NMSA 1978 by Laws 2011, ch. 124, § 91.

45-2-1107. Disclaimer of rights of survivorship in jointly held property.

A. Upon the death of a holder of jointly held property, a surviving holder may disclaim, in whole or part, the greater of:

(1) a fractional share of the property determined by dividing the number one by the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates; or

(2) all of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.

B. A disclaimer under Subsection (a) [A] takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

C. An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

History: Laws 2001, ch. 290, § 7; 1978 Comp., § 46-10-7 recompiled as § 45-2-1107 by Laws 2011, ch. 124, § 101.

45-2-1108. Disclaimer of interest by trustee.

If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

History: Laws 2001, ch. 290, § 8; 1978 Comp., § 46-10-8 recompiled as § 45-2-1108 by Laws 2011, ch. 124, § 101.

45-2-1109. Disclaimer of power of appointment or other power not held in fiduciary capacity.

If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules apply:

A. If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

B. If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

C. The instrument creating the power is construed as if the power expired when the disclaimer became effective.

History: Laws 2001, ch. 290, § 9; 1978 Comp., § 46-10-9 recompiled as § 45-2-1109 by Laws 2011, ch. 124, § 101.

45-2-1110. Disclaimer by appointee, object or taker in default of exercise of power of appointment.

A. A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

B. A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

History: Laws 2001, ch. 290, § 10; 1978 Comp., § 46-10-10 recompiled as § 45-2-1110 by Laws 2011, ch. 124, § 101.

45-2-1111. Disclaimer of power held in fiduciary capacity.

A. If a fiduciary disclaims a power held in a fiduciary capacity that has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

B. If a fiduciary disclaims a power held in a fiduciary capacity that has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

C. A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust or other person for whom the fiduciary is acting.

History: Laws 2001, ch. 290, § 11; 1978 Comp., § 46-10-11 recompiled as § 45-2-1111 by Laws 2011, ch. 124, § 101.

45-2-1112. Delivery or filing.

A. As used in this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

(1) an annuity or insurance policy;

(2) an account with a designation for payment on death;

(3) a security registered in beneficiary form;

(4) a pension, profit-sharing, retirement or other employment-related benefit plan; or

(5) any other nonprobate transfer at death.

B. Subject to Subsections C through L of this section, delivery of a disclaimer may be effected by personal delivery, first-class mail or any other method likely to result in its receipt.

C. In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(1) a disclaimer must be delivered to the personal representative of the decedent's estate; or

(2) if no personal representative is then serving, it must be filed with a court having jurisdiction to appoint the personal representative.

D. In the case of an interest in a testamentary trust:

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

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

E. In the case of an interest in an inter vivos trust:

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

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

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

F. In the case of an interest, created by a beneficiary designation, that is disclaimed before the designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary designation.

G. In the case of an interest, created by a beneficiary designation, that is disclaimed after the designation becomes irrevocable:

(1) the disclaimer of an interest in personal property must be delivered to the person obligated to distribute the interest; and

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

H. In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

I. In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at any time after the power was created:

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

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

J. In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

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

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

K. In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in Subsection C, D or E of this section, as if the power disclaimed were an interest in property.

L. In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

History: Laws 2001, ch. 290, § 12; 1978 Comp., § 46-10-12 recompiled and amended as § 45-2-1112 NMSA 1978 by Laws 2011, ch. 124, § 92.

45-2-1113. When disclaimer barred or limited.

A. A disclaimer is barred by a written waiver of the right to disclaim.

B. A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

(1) the disclaimant accepts the interest sought to be disclaimed;

(2) the disclaimant voluntarily assigns, conveys, encumbers, pledges or transfers the interest sought to be disclaimed or contracts to do so; or

(3) a judicial sale of the interest sought to be disclaimed occurs.

C. A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

D. A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

E. A disclaimer is barred or limited if so provided by law other than the Uniform Disclaimer of Property Interests Act.

F. A disclaimer of a power over property that is barred by this section is ineffective. A disclaimer of an interest in property that is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under the Uniform Disclaimer of Property Interests Act had the disclaimer not been barred.

History: Laws 2001, ch. 290, § 13; 1978 Comp., § 46-10-13 recompiled as § 45-2-1113 by Laws 2011, ch. 124, § 101.

45-2-1114. Tax qualified disclaimer.

Notwithstanding any other provision of the Uniform Disclaimer of Property Interests Act, if as a result of a disclaimer or transfer, the disclaimed or transferred interest is treated pursuant to the provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under the Uniform Disclaimer of Property Interests Act.

History: Laws 2001, ch. 290, § 14; 1978 Comp., § 46-10-14 recompiled as § 45-2-1114 by Laws 2011, ch. 124, § 101.

45-2-1115. Recording of disclaimer.

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

History: Laws 2001, ch. 290, § 15; 1978 Comp., § 46-10-15 recompiled and amended as § 45-2-1115 NMSA 1978 by Laws 2011, ch. 124, § 93.

45-2-1116. Application to existing relationships.

Except as otherwise provided in Section 13 [45-2-1113 NMSA 1978] of the Uniform Disclaimer of Property Interests Act, an interest in or power over property existing on the effective date of that act as to which the time for delivering or filing a disclaimer under law superseded by that act has not expired may be disclaimed after the effective date of that act.

History: Laws 2001, ch. 290, § 16; 1978 Comp., § 46-10-16 recompiled as § 45-2-1116 by Laws 2011, ch. 124, § 101.

ARTICLE 2A
Uniform Statutory Will Act

45-2A-1. Short title.

This act [45-2A-1 to 45-2A-17 NMSA 1978] may be cited as the "Uniform Statutory Will Act".

History: Laws 1991, ch. 173, § 1.

45-2A-2. Definitions.

As used in the Uniform Statutory Will Act:

A. "child" means, except as modified by this subsection, a child of a natural parent whose relationship is involved; an adopted individual is the child of the adopting parents and not of the natural parents, but an individual adopted by the spouse of a natural parent is also the child of either natural parent; an individual born out of wedlock is not the child of the father unless the individual is openly and notoriously so treated by the father; the term does not include an individual who is a stepchild, a foster child, a grandchild or a more remote descendant;

B. "issue" of an individual means all lineal descendants of all generations, with the status of a child at each generation being determined by the definition of child in Subsection A of this section;

C. "personal representative" includes executor, administrator, successor personal representative, special administrator and a person who performs substantially the same functions relating to the estate of a decedent under the law governing their status;

D. "property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property;

E. "representation" means the estate is divided into as many equal shares as there are surviving issue in the nearest degree of kinship and deceased individuals in the same degree who left issue surviving the decedent, each surviving issue in the nearest

degree receiving one share and the share of each deceased individual in the same degree being divided among issue of that individual in the same manner;

F. "statutory-will estate" means the entire testamentary estate, except as otherwise provided in the will;

G. "surviving spouse" means the individual to whom the testator was married at the time of death except a spouse from whom the testator was then separated under a decree of separation, whether or not final, or written separation agreement signed by both parties; an individual separated from the testator whose marriage to the testator continues in effect under the law of this state solely because a judgment of divorce or annulment of the marriage is not recognized as valid in this state is not the testator's surviving spouse; an individual whose marriage to the testator at the time of death is not recognized in this state solely because a judgment of divorce or annulment of a previous marriage of either or both of them is not recognized as valid in this state is the testator's surviving spouse;

H. "testamentary estate" includes every interest in property subject to disposition or appointed by a will of the decedent;

I. "testator's residence" means one or more properties normally used at the time of the testator's death by the testator or the surviving spouse as a residence for any part of the year; if the property used as a residence is a unit in a cooperative or other entity, it includes all rights and interests relating to that unit; if the property is used in part for a commercial, agricultural or other business purpose, the testator's residence is an area not exceeding three acres, which includes the structure used in whole or in part as a residence and structures normally used by the testator in connection with the dwelling and excludes structures and areas outside the dwelling used primarily for a commercial, agricultural or other business purpose; and

J. "trustee" includes an original, additional or successor trustee, whether or not appointed or confirmed by the court.

History: Laws 1991, ch. 173, § 2.

45-2A-3. Making statutory will.

An individual having capacity to make a will under the laws of this state may make a statutory will under the Uniform Statutory Will Act. The will must be executed in a manner recognized as valid under the laws of this state.

History: Laws 1991, ch. 173, § 3.

45-2A-4. Incorporation by reference.

A. A will may incorporate by reference the provisions of the Uniform Statutory Will Act in whole or in part and with any modifications and additions the will provides. To the extent an express provision of a will conflicts with that act, the will governs.

B. A provision that all or part of the testator's testamentary estate is to be disposed of in accordance with the Uniform Statutory Will Act incorporates by reference provisions of that act in effect on the date the will is executed.

C. An incorporation by reference of provisions of the Uniform Statutory Will Act may be in the following or a substantially similar form:

"Except as otherwise provided in this will, I direct that my testamentary estate be disposed of in accordance with the New Mexico's Uniform Statutory Will Act."

History: Laws 1991, ch. 173, § 4.

45-2A-5. Shares under statutory will.

The statutory-will estate passes as provided in Sections 6 through 10 [45-2A-6 to 45-2A-10 NMSA 1978] of the Uniform Statutory Will Act.

History: Laws 1991, ch. 173, § 5.

45-2A-6. Share of spouse.

A. The share of the surviving spouse is:

(1) if there is no surviving issue, the entire statutory-will estate; or

(2) if there is a surviving issue:

(a) subject to any lien or encumbrance, the testator's residence and tangible personal property, except personal property held primarily for investment or for a commercial, agricultural or other business purpose;

(b) the greater of one hundred fifty thousand dollars ($150,000) or one-half of the balance of the statutory-will estate; and

(c) subject to Subsection B of this section, an interest in the remaining portion of the statutory-will estate, including any property that would pass under Subparagraph (a) of this paragraph but disclaimed by the surviving spouse, in a trust upon the terms set forth in Section 7 [45-2A-7 NMSA 1978] of the Uniform Statutory Will Act.

B. If the personal representative, other than the surviving spouse, determines that the trust under Section 7 of the Uniform Statutory Will Act would be uneconomical, the entire statutory-will estate passes to the surviving spouse.

History: Laws 1991, ch. 173, § 6.

45-2A-7. Trust for spouse and issue.

A. Property held in trust under Subparagraph (c) of Paragraph (2) of Subsection A of Section 6 [45-2A-6 NMSA 1978] is held upon the terms of Subsections B through D of this section.

B. During the life of the surviving spouse, the entire net income must be paid to or for the benefit of the surviving spouse in quarterly or more frequent installments; net income accrued or undistributed on the death of the surviving spouse must be paid to the estate of the spouse; if unproductive property is held in the trust, the surviving spouse at any time by written instrument delivered to the trustee may compel conversion of the unproductive property to productive property.

C. During the life of the surviving spouse, the trustee at any time may pay to or for the benefit of the surviving spouse and issue of the testator amounts of the principal the trustee deems advisable, giving reasonable consideration to other resources available to the distributee, for the individual's needs for health, education, support or maintenance; for the purpose of making those discretionary payments, the principal must be administered as two separate shares, which at the inception of the trust must be equal; one share is the surviving spouse's share of the principal; during the life of the surviving spouse, payments may not be made from the surviving spouse's share to anyone other than the surviving spouse; primary consideration must be given to the needs of the surviving spouse and the children of the testator who are under the age of twenty-three years or under disability. The trustee may rely in good faith on a written statement furnished by a beneficiary. The discretion to pay principal to or for the benefit of any individual includes the discretion after that individual's death to pay expenses incurred before the individual's death and to pay funeral and burial expenses. If the trustee, other than the surviving spouse, determines that continuation of the trust is uneconomical, the trustee may terminate the trust by distribution of principal to the surviving spouse. Principal that in the exercise of the trustee's discretion is paid to or for the benefit of any issue may be charged against any share of income or principal thereafter existing for that issue or for any ancestor or descendant of that issue if the trustee upon equitable considerations so determines. If the surviving spouse or any issue is serving as trustee, the trustee's discretion pursuant to this subsection is not exercisable in favor of that trustee except as necessary for the trustee's needs for health, education, support or maintenance, nor is the trustee's discretion exercisable in favor of the trustee's estate, the trustee's creditors or creditors of the trustee's estate.

D. On the death of the surviving spouse, the principal, unless retained in trust under Section 9 or 10 [45-2A-9, 45-2A-10 NMSA 1978] of the Uniform Statutory Will Act, must be paid, subject to any charges made by the trustee under Subsection C of this section, to the children of the testator in equal shares if all of the children are then living, otherwise to the then living issue of the testator by representation or, if no issue of the testator is then living, to the individuals who would be entitled to receive the estate as if

the property were located in this state and the testator had then died intestate domiciled in this state in proportions determined under the law then existing.

History: Laws 1991, ch. 173, § 7.

45-2A-8. Shares of heirs when no surviving spouse.

A. If there is no surviving spouse, the statutory-will estate passes, subject to Sections 9 and 10 [45-2A-9, 45-2A-10 NMSA 1978], as follows:

(1) if there is surviving issue, in equal shares to the children of the testator if all of them survive, otherwise to the surviving issue of the testator by representation; or

(2) if there is no surviving issue, to the individuals entitled to receive the estate as if the property were located in this state and the testator had died intestate domiciled in this state in the proportions so determined.

B. Unless the personal representative determines that a trust would be uneconomical, property to which Section 9 or 10 applies must be distributed to the trustee. If the personal representative determines that a trust would be uneconomical, the property passes under Subsection A of this section free of trust. The discretion provided in this subsection to the personal representative is not exercisable by any of the testator's issue serving as personal representative.

History: Laws 1991, ch. 173, § 8.

45-2A-9. Trust if child under specified age.

A. If property is distributable under Section 8 [45-2A-8 NMSA 1978] or Subsection D of Section 7 [45-2A-7 NMSA 1978] of the Uniform Statutory Will Act to a child of the testator who is under the age specified in the will or, if the will does not specify an age, under the age of twenty-three years, all shares distributable to issue of the testator must be held in a trust under this section. In exercising powers under Subsections B and C of this section, primary consideration must be given to the needs of children of the testator who are under the age of twenty-three years or under disability.

B. Until no living child of the testator is under the age determined under Subsection A of this section, the trustee shall pay the income and principal of the trust to or for the benefit or account of one or more of the issue of the testator in amounts the trustee deems advisable for their needs for health, education, support or maintenance. Income not so paid may be added to principal.

C. The trustee at any time in its discretion may distribute to a beneficiary the share, in whole or in part, of the trust to which the distributee would be entitled if the trust then terminated. If the whole of a share has been distributed under this subsection, the

trustee thereafter must not make any further distribution of income or principal to that distributee or issue of that distributee.

D. The trust terminates when no living child of the testator is under the age determined under Subsection A of this section or the trustee determines that continuation of the trust is uneconomical.

E. Subject to section 10 [45-2A-10 NMSA 1978] of the Uniform Statutory Will Act and Subsection C of this section, the property in the trust must be distributed upon termination to the issue of the testator in proportion to the shares determined at the death of the surviving spouse under Subsection D of Section 7 of the Uniform Statutory Will Act, or at the death of the testator under Section 8 of that act if there is no surviving spouse. In determining the amount to be distributed to any distributee, the trustee shall charge the share of that distributee with any partial distribution made under Subsection C of this section and may charge, in its discretion, the share of that distributee with distributions under Subsection B of this section to or for the benefit or account of the distributee, or issue or ancestor of the distributee. If any issue whose share is held in trust under this section dies before the complete distribution of the share, the property to which the issue would have been entitled if living must be distributed to the assignees, or, if none, to the estate of the deceased issue.

F. If an issue is serving as trustee, the discretion of the trustee under this section is not exercisable, except as necessary for that individual's needs for health, education, support or maintenance, in favor of that individual, that individual's estate, that individual's creditors or the creditors of that individual's estate.

History: Laws 1991, ch. 173, § 9.

45-2A-10. Effect of disability at distribution.

A. If property becomes distributable by a personal representative or trustee to an individual under the age specified in the will or, if the will does not specify an age, under the age of twenty-three years, or to an individual who the personal representative or trustee determines cannot effectively manage or apply the property by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause:

(1) the personal representative or trustee, as to principal or income, may distribute part or all of the property to the distributee directly, by deposit or investment in the distributee's name or for the distributee's account, or to a guardian or conservator for the distributee;

(2) the personal representative may distribute to the trustee in trust under Paragraph (3); or

(3) the trustee may retain all or any of the property in trust for the distributee and thereafter at any time the trustee may distribute or apply part or all of the principal or income to or for the benefit or account of the distributee.

B. Unless terminated earlier, a trust under Paragraph (3) of Subsection A of this section terminates upon the attainment of the required age, removal of the disability or death of the distributee. Upon termination, the trustee shall distribute the remaining trust property to the distributee or personal representative of the distributee's estate.

C. This section does not apply to distributions to a surviving spouse of the testator.

History: Laws 1991, ch. 173, § 10.

45-2A-11. Powers of appointment.

A. A will incorporating by reference the terms of the Uniform Statutory Will Act does not exercise a power of appointment unless:

(1) the will complies with any conditions imposed on the exercise of the power;

(2) the appointment is within the scope of the power; and

(3) the will expressly refers to the power or expresses an intent to exercise any power of appointment held by the testator.

B. If a power of appointment is exercised as provided in Subsection A of this section, the appointed property passes as part of the statutory-will estate unless the will provides otherwise.

History: Laws 1991, ch. 173, § 11.

45-2A-12. Survival.

An individual who does not survive the testator by thirty days or more is treated as if the individual predeceased the testator.

History: Laws 1991, ch. 173, § 12.

45-2A-13. Appointment of personal representative and trustee.

A. The person named in the will as personal representative or trustee is entitled to serve, if qualified, as personal representative or trustee.

B. If a qualified person is not named in the will as personal representative, or the named person is incapacitated, unwilling to serve or dead, and a qualified alternate is

not named in the will, priority for appointment as personal representative is determined by the law of the state of decedent's domicile at death.

C. If a qualified person is not named in the will as trustee, or the named person is incapacitated, unwilling to serve or dead, and a qualified alternate is not named in the will, the personal representative may appoint, without court approval, a qualified person, including a person serving as personal representative, to serve as trustee.

D. If a personal representative or trustee resigns, is removed, becomes incapacitated or dies, the surviving spouse, or if there is no surviving spouse or the surviving spouse is unable or unwilling to act, a majority of the adult children of the testator may appoint a qualified successor personal representative or trustee.

E. In all other cases, personal representatives and trustees must be appointed by the court.

History: Laws 1991, ch. 173, § 13.

45-2A-14. Powers.

A. Subject to Subsection C of this section and except as expressly provided by will, a trustee, in addition to any other powers conferred by law, without prior approval of any court may:

(1) retain property in the form in which it is received, including assets in which the trustee is personally interested;

(2) make ordinary or extraordinary repairs, store, insure or otherwise care for any tangible personal property and pay shipping or other expense relating to the property as the trustee considers advisable;

(3) abandon property the trustee determines to be worthless;

(4) invest principal and income in any property the trustee determines and, without limiting the generality of the foregoing, invest in shares of an investment company or in shares or undivided portions of any common trust fund established by the trustee;

(5) sell, exchange or otherwise dispose of property at public or private sale on terms the trustee determines, no purchaser being bound to see to the application of any proceeds;

(6) lease property on terms the trustee determines even if the term extends beyond the time the property becomes distributable;

(7) allocate items of income or expense to income or principal, as provided by law;

(8) keep registered securities in the name of a nominee;

(9) pay, compromise or contest claims or controversies, including claims for estate or inheritance taxes, in any manner the trustee determines;

(10) participate in any manner the trustee determines in any reorganization, merger or consolidation of any entity whose securities constitute part of the property held;

(11) deposit securities with a voting trustee or committee of security holders even if under the terms of deposit the securities may remain deposited beyond the time they become distributable;

(12) vote any security in person or by special, limited or general proxy, with or without power of substitution, and otherwise exercise all the rights that may be exercised by any security holder in an individual capacity;

(13) borrow any amount the trustee considers advisable to obtain cash for any purpose of the trust, and in connection therewith, mortgage or otherwise encumber any property on any conditions the trustee determines even if the term of the loan may extend beyond the term of the trust;

(14) allot in or towards satisfaction of any payment, distribution or division, in any manner the trustee determines, any property held at the then current fair market value;

(15) hold trusts and shares undivided or at any time hold them or any of them set apart one from another;

(16) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(17) sell or exercise stock subscription or conversion rights;

(18) employ persons, including attorneys, auditors, investment advisers or agents, even if associated with the trustee, to advise or assist the trustee in the performance of duties, act without independent investigation upon their recommendations and, instead of acting personally, employ agents to perform any act of administration, whether or not discretionary;

(19) continue any unincorporated business or venture in which the decedent was engaged at the time of death;

(20) incorporate any business or venture in which the decedent was engaged at the time of death;

(21) distribute property distributable to the estate of an individual directly to the devisees or heirs of the individual; and

(22) perform any other act necessary or appropriate to administer the trust.

B. Except as expressly provided in the will, the personal representative, in the administration of the estate, has all of the powers of a personal representative under the [Uniform] Probate Code and all of the powers of a trustee conferred under Subsection A of this section. In addition, the personal representative has the power to satisfy written charitable pledges of the decedent, irrespective of whether the pledges constitute binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges satisfied under the circumstances.

C. Except as expressly provided in the will, the personal representative or trustee shall observe the standards in dealing with the estate which would be observed by a prudent person dealing with the property of another. If the personal representative or trustee has special skills or is named personal representative or trustee on the basis or representation of special skills or expertise, the person is under a duty to use those skills. Except to the extent qualified property is not available, only property that qualifies for the estate tax marital deduction under the Internal Revenue Code, as amended, may be allocated to the surviving spouse under Section 6 [45-2A-6 NMSA 1978] of the Uniform Statutory Will Act or to the surviving spouse's share of principal in a trust established under Section 7 [45-2A-7 NMSA 1978] of that act.

History: Laws 1991, ch. 173, § 14.

45-2A-15. Bond or surety.

A personal representative or trustee under the Uniform Statutory Will Act shall serve without giving bond or surety unless the testator by will, or the court upon the application of any person interested in the estate, provides otherwise.

History: Laws 1991, ch. 173, § 15.

45-2A-16. Uniformity of application and construction.

The Uniform Statutory Will Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of that act among states enacting it.

History: Laws 1991, ch. 173, § 16.

45-2A-17. Form of statutory will.

I, _____, of the City of _____, County of _____, and State of _____, declare this to be my Last Will and hereby revoke all of my prior wills and codicils.

1. I direct that my testamentary estate be disposed of in accordance with the Uniform Statutory Will Act, as in effect on the date of execution of this will.

2. I appoint _____ as personal representative of my estate under this will. If a trust becomes applicable under the provision of the Act, I appoint _____ as trustee hereunder. If either of them does not serve, or at any time ceases to serve, in either capacity, I appoint _____ to serve in the vacant capacity or capacities. I appoint _____ as guardian and conservator of my minor children. I, _____, the testator, sign my name to this instrument this _____ day of _____, 19 ____, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and that I (sign it willingly) (willingly direct another to sign for me) (cross out the one of these two alternatives that is inapplicable), that I execute one of these two alternatives that is inapplicable [sic], that I execute it as my free and voluntary act for the purpose therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

_____ Testator

We, _____ and _____ the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as (his) (her) Last Will and that (he) (she) (signs it willingly) (willingly directs another to sign) (her) (him) (cross out the inapplicable word or phrase in each of these instances), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

_____ Witness

_____ Witness

State of _____

County of _____

Subscribed, sworn to and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____ and _____, witnesses, this _____ day of _____, 19 ____.

(Seal)

(Signed) _____

_____

(official capacity of officer)

History: Laws 1991, ch. 173, § 17.

ARTICLE 3
Probate of Wills and Administration

PART 1
GENERAL PROVISIONS

45-3-101. Devolution of estate at death; administration on deaths of husband and wife.

A. The power of a person to leave property by will and the rights of creditors, devisees and heirs to the person's property are subject to the restrictions and limitations contained in Chapter 45, Article 3 NMSA 1978 to facilitate the prompt settlement of estates.

B. Upon the death of a person, the person's separate property and the person's share of community property devolves:

(1) to the persons to whom the property is devised by the person's last will;

(2) to those indicated as substitutes for them in cases involving revocation, lapse, disclaimer or other circumstances pursuant to Chapter 45, Article 2 NMSA 1978 affecting the devolution of testate estates; or

(3) in the absence of testamentary disposition, to the person's heirs or to those indicated as substitutes for them in cases involving revocation, lapse, disclaimer or other circumstances pursuant to Chapter 45, Article 2, Parts 3, 4, 10 and 11 NMSA 1978 affecting the devolution of intestate estates.

C. The devolution of separate property and the decedent's share of community property is subject to rights to the family allowance and personal property allowance, to rights of creditors and to administration as provided in Chapter 45, Article 3 NMSA 1978. The surviving spouse's share of the community property is subject to administration until the time for presentation of claims has expired, and thereafter only to the extent necessary to pay community claims.

History: 1953 Comp., § 32A-3-101, enacted by Laws 1975, ch. 257, § 3-101; 2011, ch. 124, § 42.

45-3-102. Necessity of order of probate for will.

Except as provided in Sections 45-3-1201, 45-3-1205 and 45-3-1301 NMSA 1978, to be effective to prove the transfer of any property or to nominate a personal representative, a will must be declared to be valid by an order of informal probate by the probate court or an adjudication of probate by the district court.

History: 1953 Comp., § 32A-3-102, enacted by Laws 1975, ch. 257, § 3-102; 1995, ch. 210, § 31; 2005, ch. 143, § 1.

45-3-103. Necessity of appointment for administration.

Except as otherwise provided in Sections 4-101 through 4-401 [45-4-101 to 45-4-401 NMSA 1978], to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the district court or probate court, qualify and be issued letters. Administration of an estate is commenced by the issuance of letters.

History: 1953 Comp., § 32A-3-103, enacted by Laws 1975, ch. 257, § 3-103.

45-3-104. Claims against decedent; necessity of administration.

A. No proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by Sections 3-101 through 3-1204 [45-3-101 to 45-3-1204 NMSA 1978]. After distribution a creditor whose claim has not been barred may recover from the distributees as provided in Section 3-1004 [45-3-1004 NMSA 1978] or from a personal representative individually liable as provided in Section 3-1005 [45-3-1005 NMSA 1978].

B. Subsection A of this section shall have no application to a proceeding by a secured creditor of the decedent to enforce his right to his security except as to any deficiency judgment which might be sought therein.

History: 1953 Comp., § 32A-3-104, enacted by Laws 1975, ch. 257, § 3-104.

45-3-105. Proceedings affecting devolution and administration.

Persons interested in decedents' estates may apply to the probate court for determination in the informal proceedings provided in Sections 3-101 through 3-1204

[45-3-101 to 45-3-1204 NMSA 1978], and may petition the district court for orders in formal proceedings within its jurisdiction.

History: 1953 Comp., § 32A-3-105, enacted by Laws 1975, ch. 257, § 3-105.

45-3-105.1. Repealed.

45-3-106. Proceedings before district court; service; jurisdiction over persons.

In proceedings before the district court where notice is required by the Uniform Probate Code or by rule, and in proceedings to construe probated wills or determine heirs which concern estates that have not been and cannot now be opened for administration, interested persons may be bound by the orders of the district court in respect to property in or subject to the laws of New Mexico by notice in conformity with Section 45-1-401 NMSA 1978. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.

History: 1953 Comp., § 32A-3-106, enacted by Laws 1975, ch. 257, § 3-106; 1995, ch. 210, § 32.

45-3-107. Scope of proceedings; proceedings independent; exception.

Unless supervised administration as described in Sections 3-501 through 3-505 [45-3-501 to 45-3-505 NMSA 1978] is involved, each proceeding before the district court or probate court is independent of any other proceeding involving the same estate. Petitions for orders of the district court may combine various requests for relief in a single proceeding. Except as required for proceedings which are particularly described in Sections 3-101 through 3-1204 [45-3-101 to 45-3-1204 NMSA 1978], no petition is defective because it fails to embrace all matters which might then be the subject of a final order. Proceedings for probate of wills or adjudications of no will may be combined with proceedings for appointment of personal representatives. A proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.

History: 1953 Comp., § 32A-3-107, enacted by Laws 1975, ch. 257, § 3-107.

45-3-108. Probate, testacy and appointment proceedings; ultimate time limit.

A. No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile or appointment proceedings relating to an estate in which there has

been a prior appointment, may be commenced more than three years after the decedent's death, except:

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

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

(3) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of twelve months from the informal probate or three years from the decedent's death;

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

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

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

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

History: 1953 Comp., § 32A-3-108, enacted by Laws 1975, ch. 257, § 3-108; 1993, ch. 174, § 68; 1995, ch. 210, § 33; 2011, ch. 124, § 43.

45-3-109. Statutes of limitation on decedent's claim for relief.

No statute of limitation running on a claim for relief belonging to a decedent which had not been barred as of the date of his death, shall apply to bar a claim for relief surviving the decedent's death sooner than four months after death. A claim for relief belonging to a decedent which, but for this section, would have been barred less than four months after death, is barred after four months unless the statute of limitation is otherwise tolled.

History: 1953 Comp., § 32A-3-109, enacted by Laws 1975, ch. 257, § 3-109.

PART 2
VENUE FOR PROBATE AND ADMINISTRATION; PRIORITY TO ADMINISTER; DEMAND FOR NOTICE

45-3-201. Venue for first and subsequent estate proceedings; location of property.

A. Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:

(1) in the county where the decedent had his domicile at the time of his death; or

(2) if the decedent was not domiciled in New Mexico, in any county where property of the decedent was located at the time of his death.

B. Venue for all subsequent proceedings is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in Section 1-303 [45-1-303 NMSA 1978] or Subsection C of this section.

C. If the first proceeding was informal, on petition of an interested person and after notice to the proponent in the first proceeding, the district court in the place where the initial proceeding occurred, upon finding that venue is improper, may transfer the proceeding and the file to a court where venue is proper.

D. For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving non-domiciliaries, a debt, other than one evidenced by investment or commercial paper or other instrument in favor of a non-domiciliary, is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued.

History: 1953 Comp., § 32A-3-201, enacted by Laws 1975, ch. 257, § 3-201.

45-3-202. Appointment or testacy proceedings; conflicting claim of domicile in another state.

If conflicting claims as to the domicile of a decedent are made in a formal testacy or appointment proceeding commenced in New Mexico, and in a testacy or appointment proceeding after notice pending at the same time in another state, the district court of New Mexico must stay, dismiss or permit suitable amendment in, the proceeding here unless it is determined that the local proceeding was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced must be accepted as determinative in the proceeding in New Mexico.

History: 1953 Comp., § 32A-3-202, enacted by Laws 1975, ch. 257, § 3-202.

45-3-203. Priority among persons seeking appointment as personal representative.

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

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

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

(3) other devisees of the decedent;

(4) the surviving spouse of the decedent;

(5) other heirs of the decedent; and

(6) forty-five days after the death of the decedent, any creditor.

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

(1) if the estate appears to be more than adequate to meet allowances and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person; and

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

C. A person entitled to letters under Paragraphs (2) through (5) of Subsection A of this section or a person who has not reached the age of majority and who would be entitled to letters but for the person's age may nominate a qualified person to act as personal representative by an appropriate writing filed with the court and thereby confer the person's relative priority for appointment on the person's nominee. Any person who has reached the age of majority may renounce the right to nominate or to an appointment by an appropriate writing filed with the court. When two or more persons entitled to letters under Paragraphs (2) through (5) of Subsection A of this section share a priority, all those who do not renounce must concur in nominating another to act for them or in applying for appointment by an appropriate writing filed with the court. The person so nominated shall have the same priority as those who nominated the person. A nomination or renunciation shall be signed by each person making it, the person's attorney or the person's representative authorized by Subsection D of this section.

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

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

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

(1) under the age of majority; or

(2) a person whom the court finds unsuitable in formal proceedings.

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

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

History: 1953 Comp., § 32A-3-203, enacted by Laws 1975, ch. 257, § 3-203; 2009, ch. 159, § 25; 2011, ch. 124, § 44; 2017, ch. 41, § 16.

45-3-204. Demand for notice of order or filing concerning decedent's estate.

Any interested person desiring notice of any order or filing pertaining to a decedent's estate may at any time after the death of the decedent file a demand for notice with the clerk of the court in which the proceedings for the decedent's estate are being conducted or in the district court of the county where they would be pending if commenced. A person commencing a proceeding for a decedent's estate in probate court shall inquire of the clerk of the district court for that county whether any demand for notice has been filed prior to commencing a proceeding in the probate court. The demand for notice shall state the name of the decedent, the nature of the demandant's interest in the estate and the demandant's address or that of his attorney. The clerk shall mail a copy of the demand to the personal representative if one has been appointed. After filing of a demand, no order or filing to which the demand relates shall be made or accepted without notice as prescribed in Section 45-1-401 NMSA 1978 to the demandant or his attorney. The validity of an order which is issued, or filing which is accepted, without compliance with this requirement shall not be affected by the error, but the applicant or petitioner receiving the order or the person making the filing may be liable for any damage caused by the absence of notice. The requirement of notice arising from a demand under this provision may be waived in writing by the demandant and shall cease upon the termination of his interest in the estate.

History: 1953 Comp., § 32A-3-204, enacted by Laws 1975, ch. 257, § 3-204; 1983, ch. 194, § 4.

PART 3
INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS

45-3-301. Informal probate or appointment proceedings; application; contents.

Applications for informal probate or informal appointment must be directed to the probate or district court and verified by the applicant to be accurate and complete to the best of his knowledge and belief as to the information found in Subsections A through F of this section.

A. Every application for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative, shall contain the following:

(1) a statement of the interest of the applicant;

(2) the name and date of death of the decedent; his age and the county and state of his domicile at the time of death; and the names and addresses of the spouse, children, heirs and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;

(3) if the decedent was not domiciled in New Mexico at the time of his death, a statement showing venue;

(4) a statement identifying and indicating the address of any personal representative of the decedent appointed in New Mexico or elsewhere whose appointment has not been terminated;

(5) a statement indicating whether the applicant has received a demand for notice, or is aware of any demand for notice, of any probate or appointment proceeding concerning the decedent that may have been filed in New Mexico or elsewhere; and

(6) a statement that the time limit for informal probate or appointment as provided in Sections 45-3-101 through 45-3-1204 NMSA 1978 has not expired either because three years or less have passed since the decedent's death, or, if more than three years from death have passed, that circumstances as described by Section 45-3-108 NMSA 1978 authorizing tardy probate or appointment have occurred.

B. An application for informal probate of a will shall state the following in addition to the statements required by Subsection A of this section:

(1) that the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of his will probated in another jurisdiction accompanies the application;

(2) that the applicant, to the best of his knowledge, believes the will to have been validly executed; and

(3) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will.

C. An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address and priority for appointment of the person whose appointment is sought.

D. An application for informal appointment of a personal representative in intestacy shall state in addition to the statements required by Subsection A of this section:

(1) that after the exercise of a reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in New Mexico under Section 45-1-301 NMSA 1978; and

(2) the priority of the person whose appointment is sought and the names of any other person having a prior or equal right to the appointment under Section 45-3-203 NMSA 1978.

E. An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.

F. An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in Subsection C of Section 45-3-610 NMSA 1978 or whose appointment has been terminated by death or removal, shall:

(1) adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected;

(2) state the name and address of the person who seeks appointment as successor; and

(3) describe the priority of the applicant.

G. By verifying an application for informal probate, or informal appointment, the applicant submits personally to the jurisdiction of the court in any proceeding for relief from fraud relating to the application, or for perjury, that may be instituted against him.

History: 1953 Comp., § 32A-3-301, enacted by Laws 1975, ch. 257, § 3-301; 1976 (S.S.), ch. 37, § 6; 1978, ch. 159, § 4.

45-3-302. Informal probate; duty of court; effect of informal probate.

Upon receipt of an application requesting informal probate of a will, the probate or the district court, upon making the findings required by Section 45-3-303 NMSA 1978, shall issue a written statement of informal probate if at least one hundred twenty hours have elapsed since the decedent's death. Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding. No defect in the application or procedure relating thereto which leads to informal probate of a will renders the probate void.

History: 1953 Comp., § 32A-3-302, enacted by Laws 1975, ch. 257, § 3-302; 1976 (S.S.), ch. 37, § 7; 1978, ch. 159, § 5.

45-3-303. Informal probate; proof and findings required.

A. In an informal proceeding for original probate of a will, the probate or the district court shall determine whether:

(1) the application is complete;

(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in Paragraph (2) [(23)] of Subsection A of Section 45-1-201 NMSA 1978;

(4) on the basis of the statements in the application, venue is proper;

(5) an original, duly executed and apparently unrevoked will is in the possession of the probate or the district court;

(6) any notice required by Section 45-3-204 NMSA 1978 has been given; and

(7) it appears from the application that the time limit for original probate has not expired.

B. The application shall be denied if it indicates that a personal representative has been appointed in another county of New Mexico or, except as provided in Subsection D of this section, if it appears that this or another will of the decedent has been the subject of a previous informal probate order.

C. A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under Section 45-2-502 or 45-2-506 NMSA 1978 have been met shall be probated without further proof. In other cases, the probate or the district court may presume execution if the will appears to have been properly executed, or it may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

D. Informal probate of a will which has been previously probated in another state or foreign country may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the order or statement probating it from the office or court where it was first probated.

E. A will from a place which does not provide for probate of a will after death and which is not eligible for probate under Subsection A of this section, may be probated in

New Mexico upon receipt by the probate or the district court of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

History: 1953 Comp., § 32A-3-303, enacted by Laws 1975, ch. 257, § 3-303; 1978, ch. 159, § 6.

45-3-304. Reserved.

45-3-305. Informal probate; court not satisfied.

The probate or the district court may decline application for informal probate of a will for any reason. A declination of informal probate is not an adjudication and does not preclude formal probate proceedings.

History: 1953 Comp., § 32A-3-305, enacted by Laws 1975, ch. 257, § 3-305; 1978, ch. 159, § 7.

45-3-306. Informal probate; notice requirements.

A. The applicant shall give notice as described by Section 45-1-401 NMSA 1978 of his application for informal probate to any person demanding it pursuant to Section 45-3-204 NMSA 1978 and to any personal representative of the decedent whose appointment has not been terminated. No other notice of informal probate is required.

B. If an informal probate is granted, within 30 days thereafter the applicant shall give written information of the probate to the heirs and devisees. The information shall include the name and address of the applicant, the name and location of the court granting the informal probate, and the date of the probate. The information shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the applicant. No duty to give information is incurred under this section if a personal representative is appointed who is required to give written information pursuant to the provisions of Section 45-3-705 NMSA 1978. An applicant's failure to give information as required by this section is a breach of the applicant's duty to the heirs and devisees but does not affect the validity of the probate.

History: 1953 Comp., § 32A-3-306, enacted by Laws 1975, ch. 257, § 3-306; 1995, ch. 210, § 34.

45-3-307. Informal appointment proceedings; delay in order; duty of court; effect of appointment.

A. Upon receipt of an application for informal appointment of a personal representative (other than a special administrator as provided in Section 45-3-614

NMSA 1978), if at least one hundred twenty hours have elapsed since the decedent's death, the probate or the district court, after making the findings required by Section 45-3-308 NMSA 1978, shall appoint the applicant subject to qualification and acceptance. However, if the decedent was a nonresident, the probate or the district court shall delay the order of appointment until thirty days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant, or unless the decedent's will directs that his estate be subject to the laws of New Mexico.

B. The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An appointment, and the office of personal representative created thereby, is subject to termination as provided in Sections 45-3-608 through 45-3-612 NMSA 1978, but is not subject to retroactive vacation.

History: 1953 Comp., § 32A-3-307, enacted by Laws 1975, ch. 257, § 3-307; 1976 (S.S.), ch. 37, § 8; 1978, ch. 159, § 8.

45-3-308. Informal appointment proceedings; proof and findings required.

A. In informal appointment proceedings, the probate or the district court must determine whether:

(1) the application for informal appointment of a personal representative is complete;

(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in Paragraph (20) [(23)] of Subsection A of Section 45-1-201 NMSA 1978;

(4) on the basis of the statements in the application, venue is proper;

(5) any will to which the requested appointment relates has been formally or informally probated; but this requirement does not apply to the appointment of a special administrator;

(6) any notice required by Section 45-3-204 NMSA 1978 has been given; and

(7) from the statements in the application, from the contents of the probated will, if any, and from any nominations and renunciations pursuant to Section 45-3-203 NMSA 1978 that have been filed before or at the time of the application, the person whose appointment is sought has priority entitling him to the appointment.

B. Unless Section 45-3-612 NMSA 1978 controls, the application must be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in Subsection C of Section 45-3-610 NMSA 1978 has been appointed in New Mexico, that (unless the applicant is the domiciliary personal representative or his nominee) the decedent was not domiciled in New Mexico and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile, or that other requirements of this section have not been met.

C. If the applicant is the domiciliary personal representative and the decedent was not domiciled in New Mexico, informal appointment proceedings may be allowed.

History: 1953 Comp., § 32A-3-308, enacted by Laws 1975, ch. 257, § 3-308; 1978, ch. 159, § 9.

45-3-309. Informal appointment proceedings; court not satisfied.

The probate or the district court may decline an application for informal appointment of a personal representative for any reason. A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.

History: 1953 Comp., § 32A-3-309, enacted by Laws 1975, ch. 257, § 3-309; 1978, ch. 159, § 10; 2011, ch. 124, § 45.

45-3-310. Informal appointment proceedings; notice requirements.

The applicant must give notice as described by Section 1-401 [45-1-401 NMSA 1978] of his intention to seek an appointment informally to any person demanding it pursuant to Section 3-204 [45-3-204 NMSA 1978]. No other notice of an informal appointment proceeding is required, except that the personal representative shall give notice pursuant to the provisions of Section 3-705 [45-3-705 NMSA 1978].

History: 1953 Comp., § 32A-3-310, enacted by Laws 1975, ch. 257, § 3-310.

45-3-311. Informal appointment unavailable in certain cases.

If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument which may relate to property subject to the laws of New Mexico, and which is not filed for probate in the probate or the district court, the probate or the district court shall decline the application; however, such declination of informal probate is not an adjudication and does not preclude appointment in formal proceedings.

History: 1953 Comp., § 32A-3-311, enacted by Laws 1975, ch. 257, § 3-311; 1978, ch. 159, § 11.

PART 4
FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

45-3-401. Formal testacy proceedings; nature; when commenced.

A. A formal testacy proceeding is litigation to determine whether a decedent left a valid will. A formal testacy proceeding may be commenced by an interested person filing:

(1) a petition as described in Subsection A of Section 3-402 [45-3-402 NMSA 1978] in which he requests that the court, after notice and hearing, enter an order probating a will; or

(2) a petition to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application; or

(3) a petition in accordance with Subsection C of Section 3-402 [45-3-402 NMSA 1978] for an order that the decedent died intestate.

B. A petition may request formal probate of a will without regard to whether or not the same or a conflicting will has been informally probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative.

C. During the pendency of a formal testacy proceeding, the probate court shall not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the decedent.

D. Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously-appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, must refrain from exercising his power to make any further distribution of the estate during the pendency of the formal proceeding. If a petitioner requests the appointment of a different personal representative in a formal proceeding, the previously-appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate, or unless the district court orders otherwise.

History: 1953 Comp., § 32A-3-401, enacted by Laws 1975, ch. 257, § 3-401.

45-3-402. Formal testacy or appointment proceedings; petition; contents.

A. Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the district court, request a judicial order after notice and hearing, and contain further statements as indicated in this section. A petition for formal probate of a will:

(1) contains the original will, unless excused under the provisions of Subsection B of this section;

(2) requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs; and

(3) contains the statements required for informal applications as stated in Subsection A of Section 3-301 [45-3-301 NMSA 1978] and the statements required by Paragraphs (1) through (3) of Subsection B of Section 3-301 [45-3-301 NMSA 1978].

B. If the original will is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will and why it is unavailable.

C. A petition for adjudication of intestacy and appointment of a personal representative must request a judicial finding and order that the decedent left no will and, determining the heirs, contain the statements required by Subsections A and D of Section 3-301 [45-3-301 NMSA 1978] and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of a personal representative, in which case, the statements required by Paragraph (2) of Subsection D of Section 3-301 [45-3-301 NMSA 1978] may be omitted.

History: 1953 Comp., § 32A-3-402, enacted by Laws 1975, ch. 257, § 3-402.

45-3-403. Formal testacy proceeding; notice of hearing on petition.

A. Upon commencement of a formal testacy proceeding, the district court shall fix a time and place of hearing. Notice shall be given in the manner prescribed by Section 1-401 [45-1-401 NMSA 1978] by the petitioner to the persons enumerated in this section and to any additional person who has filed a demand for notice under Section 3-204 [45-3-204 NMSA 1978] of the [Uniform] Probate Code.

B. Notice shall be given to the following persons: the surviving spouse, children and other heirs of the decedent (who would have taken had the decedent died intestate); the devisees and personal representatives named in any will that is being, or has been, probated, or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere; and any personal representative of the decedent whose appointment has not been terminated. Notice may be given to other persons. In addition, the petitioner shall give

notice by publication to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated.

C. If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the notice of the hearing on the petition shall be sent by registered or certified mail to the alleged decedent at his last known address. The district court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods:

(1) by inserting in one or more suitable periodicals, a notice requesting information from any person having knowledge of the where-abouts of the alleged decedent;

(2) by notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent; and

(3) by engaging the services of an investigator. The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration.

History: 1953 Comp., § 32A-3-403, enacted by Laws 1975, ch. 257, § 3-403.

45-3-404. Formal testacy proceedings; written objections to probate.

In a formal testacy proceeding, any interested person who opposes the probate of a will for any reason shall state in his pleadings his objections to probate of the will.

History: 1953 Comp., § 32A-3-404, enacted by Laws 1975, ch. 257, § 3-404.

45-3-405. Formal testacy proceedings; uncontested cases; hearings and proof.

A. If a petition in a formal testacy proceeding is unopposed, the district court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of Section 3-409 [45-3-409 NMSA 1978] have been met, or conduct a hearing in open court and require proof of the matters necessary to support the order requested.

B. If evidence concerning execution of a will which is not self-proved is necessary in uncontested cases, the affidavit or testimony of at least one of the attesting witnesses is required if he is within New Mexico, competent and able to testify. Otherwise, due execution of a will may be proved by other evidence.

C. If the will is self-proved in an uncontested case, compliance with signature requirements for execution is conclusively presumed and other requirements of execution are presumed, subject to rebuttal without the testimony of any witness, upon filing the will and the acknowledgment and affidavits annexed or attached thereto, unless there is proof of fraud or forgery affecting the acknowledgment or affidavit.

History: 1953 Comp., § 32A-3-405, enacted by Laws 1975, ch. 257, § 3-405.

45-3-406. Formal testacy proceedings; contested cases; testimony of attesting witnesses.

A. If evidence concerning execution of a will which is not self-proved is necessary in contested cases, the testimony of at least one of the attesting witnesses is required if he is within New Mexico, competent and able to testify. Otherwise, due execution of a will may be proved by other evidence.

B. If the will is self-proved in a contested case, compliance with signature requirements for execution is conclusively presumed and other requirements of execution are presumed, subject to rebuttal without the testimony of any witness, upon filing the will and the acknowledgment and affidavits annexed or attached thereto, unless there is proof of fraud or forgery affecting the acknowledgment or affidavit.

History: 1953 Comp., § 32A-3-406, enacted by Laws 1975, ch. 257, § 3-406.

45-3-407. Formal testacy proceedings; burdens in contested cases.

In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate. If a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.

History: 1953 Comp., § 32A-3-407, enacted by Laws 1975, ch. 257, § 3-407.

45-3-408. Formal testacy proceedings; will construction; effect of final order in another jurisdiction.

A final order of a court of another state determining testacy, the validity or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons, must be accepted as determinative by the courts of

New Mexico if it includes, or is based upon, a finding that the decedent was domiciled at his death in the state where the order was made.

History: 1953 Comp., § 32A-3-408, enacted by Laws 1975, ch. 257, § 3-408.

45-3-409. Formal testacy proceedings; order; foreign will.

A. After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, if the district court finds that the testator is dead, venue is proper and that the proceeding was commenced within the limitation prescribed by Section 3-108 [45-3-108 NMSA 1978], it shall determine the decedent's domicile at death, his heirs and his state of testacy. Any will found to be valid and unrevoked shall be formally probated. Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by Section 3-612 [45-3-612 NMSA 1978]. The petition shall be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead.

B. A will from a foreign jurisdiction which does not provide for probate of a will after death, may be proved for probate in New Mexico by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become operative under the law of the foreign jurisdiction.

History: 1953 Comp., § 32A-3-409, enacted by Laws 1975, ch. 257, § 3-409.

45-3-410. Formal testacy proceedings; probate of more than one instrument.

If two or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than one instrument may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication. If more than one instrument is probated, the order shall indicate what provisions control in respect to the nomination of a personal representative, if any. The order may, but need not, indicate how any provisions of a particular instrument are affected by the other instrument. After a final order in a testacy proceeding has been entered, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the time limits of Section 3-412 [45-3-412 NMSA 1978].

History: 1953 Comp., § 32A-3-410, enacted by Laws 1975, ch. 257, § 3-410.

45-3-411. Formal testacy proceedings; partial intestacy.

If it becomes evident in the course of a formal testacy proceeding that, though one or more instruments are entitled to be probated, the decedent's estate is or may be partially intestate, the district court shall enter an order to that effect.

History: 1953 Comp., § 32A-3-411, enacted by Laws 1975, ch. 257, § 3-411.

45-3-412. Formal testacy proceedings; effect of order; vacation.

A. Subject to appeal and subject to vacation as provided in this section and in Section 45-3-413 NMSA 1978, a formal testacy order under Sections 45-3-409 through 45-3-411 NMSA 1978, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will and to the determination of heirs, except that:

(1) the court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will were unaware of:

(a) its existence at the time of the earlier proceeding; or

(b) the earlier proceeding and were given no notice thereof except by publication;

(2) if intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons were:

(a) unaware of their relationship to the decedent;

(b) were unaware of his death; or

(c) were given no notice of any proceeding concerning his estate except by publication;

(3) a petition for vacation under either Paragraph (1) or (2) of this subsection shall be filed prior to the earliest of the following time limits:

(a) if a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate or, if the estate is closed by statement, six months after the filing of the closing statement;

(b) whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by Section 45-3-108 NMSA 1978 when it is no longer possible to initiate an original proceeding to probate a will of the decedent; or

(c) twelve months after the entry of the order sought to be vacated;

(4) the order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs; and

(5) the finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at his last known address and the court finds that a search under Subsection C of Section 45-3-403 NMSA 1978 was made.

B. If the alleged decedent is not dead, even if notice was sent and search was made, he may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands or the value of distributions received by them to the extent that any recovery from distributees is equitable in view of all of the circumstances.

History: 1953 Comp., § 32A-3-412, enacted by Laws 1975, ch. 257, § 3-412; 1995, ch. 210, § 35.

45-3-413. Formal testacy proceedings; vacation of order for other cause.

For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal as provided by the Rules Governing Appeals to the Supreme Court and Court of Appeals and Original Proceedings in the Supreme Court [12-101 NMRA].

History: 1953 Comp., § 32A-3-413, enacted by Laws 1975, ch. 257, § 3-413.

45-3-414. Formal proceedings concerning appointment of personal representative.

A. A formal proceeding for adjudication regarding the priority or qualification of one who is an applicant for appointment as personal representative, or of one who previously has been appointed personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by Section 3-402 [45-3-402 NMSA 1978], as well as by this section. In other cases, the petition shall contain or adopt the statements required by Subsection A of Section 3-301 [45-3-301 NMSA 1978] and describe the question relating to priority or qualification of the personal representative which is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal

appointment proceedings as well as any commenced thereafter. If the proceeding is commenced after appointment, the previously-appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the district court orders otherwise.

B. After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously-appointed personal representative, and any person having or claiming priority for appointment as personal representative, the district court shall determine who is entitled to appointment under Section 3-203 [45-3-203 NMSA 1978], make a proper appointment and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under Section 3-611 [45-3-611 NMSA 1978].

History: 1953 Comp., § 32A-3-414, enacted by Laws 1975, ch. 257, § 3-414.

PART 5
SUPERVISED ADMINISTRATION

45-3-501. Supervised administration; nature of proceeding.

A. Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the district court which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding.

B. A supervised personal representative is responsible to the district court, as well as to the interested persons, and is subject to directions concerning the estate made by the district court on its own motion or on the motion of any interested person.

C. Except as otherwise provided in Sections 3-501 through 3-505 [45-3-501 to 45-3-505 NMSA 1978], or as otherwise ordered by the district court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

History: 1953 Comp., § 32A-3-501, enacted by Laws 1975, ch. 257, § 3-501.

45-3-502. Supervised administration; petition; order.

A. A petition for supervised administration may be filed by any interested person at any time or the request for supervised administration may be joined with a petition in a testacy or appointment proceeding. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for supervised administration shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a

formal testacy proceeding apply. If not previously adjudicated, the district court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for supervised administration, even though the request for supervised administration may be denied.

B. After notice to interested persons, the district court shall order supervised administration of a decedent's estate:

(1) if the decedent's will directs supervised administration, unless the district court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration;

(2) if the decedent's will directs unsupervised administration, only upon a finding that supervised administration is necessary for protection of persons interested in the estate; or

(3) in other cases if the district court finds that supervised administration is necessary under the circumstances.

History: 1953 Comp., § 32A-3-502, enacted by Laws 1975, ch. 257, § 3-502.

45-3-503. Supervised administration; effect on other proceedings.

A. The pendency of a proceeding for supervised administration of a decedent's estate stays action on any informal application then pending or thereafter filed.

B. If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy proceedings by Section 3-401 [45-3-401 NMSA 1978].

C. After he has received notice of the filing of a petition for supervised administration, a personal representative who has been appointed previously shall not exercise his power to distribute any estate. The filing of the petition does not affect his other powers and duties unless the district court restricts the exercise of any of them pending full hearing on the petition.

History: 1953 Comp., § 32A-3-503, enacted by Laws 1975, ch. 257, § 3-503.

45-3-504. Supervised administration; powers of personal representative.

Unless restricted by the district court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under the [Uniform] Probate Code, but he shall not exercise his power

to make any distribution of the estate without prior order of the district court. Any other restriction on the power of a personal representative which may be ordered by the district court must be endorsed on his letters of appointment and, unless so endorsed, is ineffective as to persons dealing in good faith with the personal representative.

History: 1953 Comp., § 32A-3-504, enacted by Laws 1975, ch. 257, § 3-504.

45-3-505. Supervised administration; interim orders; distribution and closing orders.

A. Unless otherwise ordered by the district court, supervised administration is terminated by order in accordance with time restrictions, notices and contents of orders prescribed for proceedings under Section 3-1001 [45-3-1001 NMSA 1978].

B. Interim orders approving or directing partial distributions or granting other relief may be issued by the district court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person.

C. A supervised personal representative shall file an account with the district court not less than annually during his administration and, on closing, shall file a final account to be approved under Section 3-1001 [45-3-1001 NMSA 1978]. The supervised personal representative shall also account to the district court on resignation or removal.

D. In connection with any account, the district court may require the supervised personal representative to submit to a physical check of the estate in his control, to be made in any manner the court may specify.

History: 1953 Comp., § 32A-3-505, enacted by Laws 1975, ch. 257, § 3-505.

PART 6
PERSONAL REPRESENTATIVE; APPOINTMENT, CONTROL AND TERMINATION OF AUTHORITY

45-3-601. Qualification.

Prior to receiving letters, a personal representative shall qualify by filing with the appointing probate court or district court any required bond and a statement of acceptance of the duties of the office.

History: 1953 Comp., § 32A-3-601, enacted by Laws 1975, ch. 257, § 3-601.

45-3-602. Acceptance of appointment; consent to jurisdiction.

By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the personal representative or mailed to him at his address as listed in the application or petition for appointment or as thereafter reported to the court.

History: 1953 Comp., § 32A-3-602, enacted by Laws 1975, ch. 257, § 3-602.

45-3-603. Bond requirements.

A. No bond is required of a personal representative appointed in informal proceedings, except:

(1) upon the appointment of a special administrator;

(2) when a personal representative is appointed to administer an estate under a will containing an express requirement of bond; or

(3) when bond is required under Section 3-605 [45-3-605 NMSA 1978].

B. Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding, except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond, unless bond has been requested by an interested person in accordance with Section 3-605 and the district court so orders. Bond required by any will may be dispensed with in formal proceedings upon determination by the district court that it is not necessary.

C. No bond is required of any personal representative who, pursuant to statute, is exempt or has deposited cash or collateral with an agency of New Mexico to secure performance of his duties.

History: 1953 Comp., § 32A-3-603, enacted by Laws 1975, ch. 257, § 3-603.

45-3-604. Bond amount; security; procedure; reduction.

A. If bond is required and the provisions of the will or order do not specify the amount, unless stated in his application or petition, the person qualifying shall file a statement under oath indicating his best estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and he shall execute and file a bond, or give other suitable security, in an amount no less than the estimate. The court shall determine that the bond is executed by a corporate surety, or one or more individual sureties, acceptable to the court.

B. The court may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution, as defined in Section 6-101 [45-6-101 NMSA 1978], in a manner that prevents their unauthorized disposition.

C. On petition of the personal representative or another interested person, the district court may:

(1) excuse a requirement of bond;

(2) increase or reduce the amount of the bond;

(3) release sureties; or

(4) permit the substitution of another bond with the same or different sureties.

History: 1953 Comp., § 32A-3-604, enacted by Laws 1975, ch. 257, § 3-604.

45-3-605. Demand for bond by interested person.

Any person apparently having an interest in the estate worth in excess of seven thousand five hundred dollars ($7,500), or any creditor having a claim in excess of seven thousand five hundred [dollars] ($7,500), may make a written demand that a personal representative give bond. The demand must be filed with the court and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereafter, the personal representative shall post bond or petition the district court to determine the bond requirement. If bond is required, the requirement ceases if the person demanding bond ceases to be interested in the estate, or if bond is excused as provided in Sections 3-603 [45-3-603 NMSA 1978] or 3-604 [45-3-604 NMSA 1978]. After he has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of his office except as necessary to preserve the estate. Failure of the personal representative to meet a bond requirement within thirty days is cause for his removal.

History: 1953 Comp., § 32A-3-605, enacted by Laws 1975, ch. 257, § 3-605.

45-3-606. Terms and conditions of bonds.

A. The following requirements and provisions apply to any bond required by Sections 3-601 through 3-618 [45-3-601 to 45-3-618 NMSA 1978]:

(1) bonds shall name New Mexico as obligee for the benefit of the interested persons in the estate and shall be conditioned upon the faithful discharge by the personal representative of all duties according to law;

(2) unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties shall be stated in the bond;

(3) by executing an approved bond of a personal representative, the surety consents to the jurisdiction of the probate court or district court which issued letters to the primary obligor in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed;

(4) on petition of a successor personal representative, any other personal representative of the same decedent or any interested person, a proceeding in the district court may be initiated against a surety for breach of the obligation of the bond of the personal representative; and

(5) the bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

B. No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

History: 1953 Comp., § 32A-3-606, enacted by Laws 1975, ch. 257, § 3-606.

45-3-607. Order restraining personal representative.

A. On petition of any person who appears to have an interest in the estate, the district court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement or distribution, or exercise of any powers or discharge of any duties of his office, or make any other order to secure proper performance of his duty. Persons with whom the personal representative may transact business may be made parties.

B. The matter shall be set for hearing within ten days. Notice shall be given to the personal representative and his attorney of record, if any, and to such other persons as the district court may direct.

History: 1953 Comp., § 32A-3-607, enacted by Laws 1975, ch. 257, § 3-607.

45-3-608. Termination of appointment; general.

A. Termination of appointment of a personal representative occurs as indicated in Sections 3-609 through 3-612 [45-3-609 to 45-3-612 NMSA 1978]. Termination ends the right and power pertaining to the office of personal representative as conferred by the [Uniform] Probate Code or any will, except that a personal representative, at any

time prior to distribution or until restrained or enjoined by district court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative.

B. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve him of the duty to preserve assets subject to his control, to account therefor and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative, but terminates his authority to represent the estate in any pending or future proceeding.

History: 1953 Comp., § 32A-3-608, enacted by Laws 1975, ch. 257, § 3-608.

45-3-609. Termination of appointment; death or disability.

A. The death of a personal representative, or the appointment of a conservator for the estate of a personal representative, terminates his appointment.

B. Termination by death or appointment of a conservator imposes upon the personal representative of the deceased personal representative, or the conservator appointed for a living personal representative, the duty to protect the estate which has been possessed or is being administered by the personal representative at the time of his termination, and confers the power to perform acts necessary to protect the estate and account for, and deliver the assets to, a successor personal representative or special administrator upon his appointment and qualification.

History: 1953 Comp., § 32A-3-609, enacted by Laws 1975, ch. 257, § 3-609.

45-3-610. Termination of appointment; voluntary.

A. An appointment of a personal representative terminates as provided in Section 3-1003 [45-3-1003 NMSA 1978], one year after the filing of a closing statement.

B. An order closing an estate as provided in Sections 3-1001 [45-3-1001 NMSA 1978] or 3-1002 [45-3-1002 NMSA 1978] terminates an appointment of a personal representative.

C. A personal representative may resign his position by filing a written statement of resignation with the court after he has given at least fifteen days written notice to the known interested persons. If the person resigning is a sole representative and if no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to him. If the person resigning is a co-representative, such resignation is effective only upon delivery of the assets in his possession to any remaining co-representatives.

History: 1953 Comp., § 32A-3-610, enacted by Laws 1975, ch. 257, § 3-610.

45-3-611. Termination of appointment by removal; cause; procedure.

A. Any interested person may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the district court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative, and to such other persons as the district court may direct. Except as otherwise ordered as provided in Section 3-607 [45-3-607 NMSA 1978], after receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration or preserve the estate. If removal is ordered, the district court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.

B. Cause for removal exists when:

(1) removal would be in the best interests of the estate;

(2) it is shown that a personal representative or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment;

(3) the personal representative has disregarded an order of the district court;

(4) the personal representative has become incapable of discharging the duties of his office;

(5) the personal representative has mismanaged the estate; or

(6) the personal representative failed to perform any duty pertaining to the office.

C. Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing appointment of himself or his nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in New Mexico to administer local assets.

History: 1953 Comp., § 32A-3-611, enacted by Laws 1975, ch. 257, § 3-611.

45-3-612. Termination of appointment; change of testacy status.

Except as otherwise ordered in formal proceedings, if a personal representative is appointed and then, at a later time, the will under which he is acting is invalidated or if a will is later proved, changing an assumption of intestacy under which the personal representative is acting, his office is not automatically terminated although his powers

may be reduced as provided in Section 3-401 [45-3-401 NMSA 1978]. The personal representative's office terminates only on appointment of a new personal representative. If no new personal representative is sought, the existing personal representative can continue to act under the new testacy status.

History: 1953 Comp., § 32A-3-612, enacted by Laws 1975, ch. 257, § 3-612.

45-3-613. Successor personal representative.

A. Sections 3-301 through 3-311 [45-3-301 to 45-3-311 NMSA 1978] and 3-401 through 3-414 [45-3-401 to 45-3-414 NMSA 1978] govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated.

B. After appointment and qualification, a successor personal representative shall be substituted in all actions and proceedings to which the former personal representative was a party, and no notice, process or claim which was given or served upon the former personal representative need be given or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative.

C. Except as otherwise ordered by the district court, the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if his appointment had not been terminated.

History: 1953 Comp., § 32A-3-613, enacted by Laws 1975, ch. 257, § 3-613.

45-3-614. Special administrator; appointment.

A special administrator may be appointed:

A. informally by the probate court on the application of any interested person when necessary to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated by death or disability as provided in Section 3-609 [45-3-609 NMSA 1978]; or

B. in a formal proceeding by order of the district court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the district court that an emergency exists, appointment may be ordered without notice.

History: 1953 Comp., § 32A-3-614, enacted by Laws 1975, ch. 257, § 3-614.

45-3-615. Special administrator; who may be appointed.

A. If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named personal representative in the will shall be appointed if available, and qualified.

B. In all other cases, any proper person may be appointed special administrator.

History: 1953 Comp., § 32A-3-615, enacted by Laws 1975, ch. 257, § 3-615.

45-3-616. Special administrator; appointed informally; powers and duties.

A special administrator appointed by the probate court in informal proceedings pursuant to Subsection A of Section 3-614 [45-3-614 NMSA 1978] has the duty to collect and manage the assets of the estate, to preserve them, to account for and to deliver such assets to the general personal representative upon his qualification. The special administrator appointed in informal proceedings has the power of a personal representative under the [Uniform] Probate Code necessary to perform his duties.

History: 1953 Comp., § 32A-3-616, enacted by Laws 1975, ch. 257, § 3-616.

45-3-617. Special administrator; formal proceedings; powers and duties.

A special administrator appointed by order of the district court in any formal proceeding has the power of a general personal representative except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, or to perform particular acts or on other terms as the district court may direct.

History: 1953 Comp., § 32A-3-617, enacted by Laws 1975, ch. 257, § 3-617.

45-3-618. Termination of appointment; special administrator.

The appointment of a special administrator pursuant to Section 3-614 [45-3-614 NMSA 1978] terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In other cases, the appointment of a special administrator is subject to termination by resignation, or upon removal for cause, as provided in Sections 3-608 through 3-611 [45-3-608 to 45-3-611 NMSA 1978].

History: 1953 Comp., § 32A-3-618, enacted by Laws 1975, ch. 257, § 3-618.

PART 7
DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

45-3-701. Time of accrual of duties and powers.

A. The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter.

B. Prior to appointment, a person named personal representative in a will may carry out written instructions of the decedent relating to his body, funeral and burial arrangements.

C. A personal representative may ratify and accept acts on behalf of the estate done by others prior to the appointment of the personal representative where the acts would have been proper for a personal representative.

History: 1953 Comp., § 32A-3-701, enacted by Laws 1975, ch. 257, § 3-701.

45-3-702. Priority among different letters.

A person to whom general letters are rightly issued first has exclusive authority under the letters until his appointment is terminated or modified. If, through error, general letters are issued to another, the first rightly appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the erroneously-appointed personal representative done in good faith before notice of the first letters are not void for want of validity of appointment.

History: 1953 Comp., § 32A-3-702, enacted by Laws 1975, ch. 257, § 3-702.

45-3-703. General duties; relation and liability to persons interested in estate; standing to sue.

A. A personal representative is a fiduciary who shall observe the same standards of care applicable to trustees. A personal representative is under a duty to settle and distribute the estate of a decedent in accordance with the terms of any probated and effective will and the Uniform Probate Code and as expeditiously and efficiently as is consistent with the best interests of the estate. The personal representative shall use the authority conferred upon the personal representative by the Uniform Probate Code, the terms of the will, if any, and any order in proceedings to which the personal representative is party for the best interests of successors to the estate.

B. A personal representative may not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will authorizes a personal representative to administer and distribute the estate according to its terms.

C. An order of appointment of a personal representative, whether issued in informal or formal proceedings, authorizes a personal representative to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of:

(1) a pending testacy proceeding;

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

(3) a formal proceeding questioning the personal representative's appointment or fitness to continue; or

(4) a supervised administration proceeding.

D. This section does not affect the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants whose claims have been allowed, the surviving spouse, any minor and dependent children and any pretermitted child of the decedent.

E. Except as to proceedings that do not survive the death of the decedent, a personal representative of a decedent domiciled in New Mexico at the decedent's death has the same standing to sue and be sued in the courts of New Mexico and the courts of any other jurisdiction as the decedent had immediately prior to death.

F. The personal representative must not delay distribution of an estate pending the possible birth of a posthumously conceived child unless the personal representative:

(1) has received written notice or has actual knowledge that there is an intention to use a decedent's genetic material to create a child; and

(2) the birth of the child pursuant to the provisions of Section 45-2-120 NMSA 1978 or other law could have an effect on the personal representative's distribution of the estate. As used in this subsection, "genetic material" means eggs, sperm or embryos.

History: 1953 Comp., § 32A-3-703, enacted by Laws 1975, ch. 257, § 3-703; 2011, ch. 124, § 46; 2017, ch. 41, § 17.

45-3-704. Personal representative to proceed without court order; exception.

A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified or ordered in regard to a supervised personal representative, do so without adjudication, order or direction of the district court. However, the personal representative may invoke the jurisdiction of the district court, in proceedings authorized by the [Uniform] Probate Code, to resolve questions concerning the estate or its administration.

History: 1953 Comp., § 32A-3-704, enacted by Laws 1975, ch. 257, § 3-704.

45-3-705. Duty of personal representative; notice to heirs and devisees.

A. Not later than thirty days after appointment, every personal representative, except a special administrator, shall give notice of the appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application or petition for appointment of a personal representative.

B. The notice shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require notice to persons:

(1) who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate; or

(2) who are born more than thirty days after the personal representative's appointment, including children born by posthumous conception.

C. The notice shall:

(1) include the name and address of the personal representative;

(2) indicate that it is being sent to persons who have or may have some interest in the estate being administered;

(3) indicate whether bond has been filed; and

(4) describe the court where papers relating to the estate are on file.

D. The notice shall state that the estate is being administered by the personal representative pursuant to the provisions of the Uniform Probate Code without supervision by the court but that recipients are entitled to information regarding the administration from the personal representative and can petition the court in any matter relating to the estate, including distribution of assets and expenses of administration.

E. The personal representative shall file a statement with the appointing court giving the names and addresses of those persons notified pursuant to Subsection A of this section.

F. The personal representative's failure to give notice pursuant to this section is a breach of duty to the persons concerned but does not affect the validity of the appointment, the personal representative's powers or other duties. A personal representative may inform other persons of the appointment by delivery or ordinary mail.

History: 1953 Comp., § 32A-3-705, enacted by Laws 1975, ch. 257, § 3-705; 1993, ch. 174, § 69; 2017, ch. 41, § 18.

45-3-706. Duty of personal representative; inventory and appraisement.

A. Within three months after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare an inventory of property owned by the decedent at the time of his death, listing it with reasonable detail and indicating as to each listed item its estimated value as of the date of the decedent's death and the type and amount of any encumbrance that may exist with reference to any item.

B. The personal representative shall send a copy of the inventory to interested persons who request it. He may also file the original of the inventory with the appropriate court.

History: 1953 Comp., § 32A-3-706, enacted by Laws 1975, ch. 257, § 3-706; 1976 (S.S.), ch. 37, § 9; 1977, ch. 121, § 7; 1983, ch. 194, § 5.

45-3-707. Employment of appraisers.

The personal representative may employ one or more qualified and disinterested appraisers to assist the personal representative in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. The name and address of any appraiser shall be indicated on the inventory with the item or items he appraised.

History: 1978 Comp., § 45-3-707, enacted by Laws 1995, ch. 210, § 36.

45-3-708. Duty of personal representative; supplementary inventory.

A. If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or

description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisement showing the estimated value as of the date of the decedent's death of the new item or the revised estimated value or descriptions.

B. The personal representative shall send a copy of the inventory to interested persons who request it. He may also file the original of the inventory with the appropriate court.

History: 1953 Comp., § 32A-3-708, enacted by Laws 1975, ch. 257, § 3-708; 1993, ch. 174, § 70.

45-3-709. Duty of personal representative; possession of estate.

Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by the personal representative will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall take all steps reasonably necessary for the management, protection and preservation of the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto.

History: 1953 Comp., § 32A-3-709, enacted by Laws 1975, ch. 257, § 3-709.

45-3-710. Power to avoid transfers.

The property liable for the payment of unsecured debts of a decedent includes all property transferred by him by any means which is in law void or voidable as against his creditors. Subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, rests with the personal representative or upon petition of an interested person, with a person designated by order of the district court.

History: 1953 Comp., § 32A-3-710, enacted by Laws 1975, ch. 257, § 3-710.

45-3-711. Powers of personal representatives; in general.

A. Until termination of a personal representative's appointment, a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of creditors whose claims

have been allowed and others interested in the estate. This power may be exercised without notice, hearing or order of court.

B. A personal representative has access to and authority over a digital asset of the decedent to the extent provided by the Revised Uniform Fiduciary Access to Digital Assets Act [46-13-1 to 46-13-18 NMSA 1978].

History: 1953 Comp., § 32A-3-711, enacted by Laws 1975, ch. 257, § 3-711; 2017, ch. 72, § 19.

45-3-712. Improper exercise of power; breach of fiduciary duty.

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

History: 1953 Comp., § 32A-3-712, enacted by Laws 1975, ch. 257, § 3-712; 2016, ch. 69, § 714.

45-3-713. Sale, encumbrance or transaction involving conflict of interest; voidable; exceptions.

A. Any sale or encumbrance to the personal representative, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the personal representative, is voidable by any interested person except one who has consented after fair disclosure, unless:

(1) the will or a contract entered into by the decedent expressly authorized the transaction; or

(2) the transaction is approved by the district court after notice to interested persons.

B. An interested person must petition the district court to void the sale, encumbrance or transaction within the time limits set out by Section 3-1005 [45-3-1005 NMSA 1978].

History: 1953 Comp., § 32A-3-713, enacted by Laws 1975, ch. 257, § 3-713.

45-3-714. Persons dealing with personal representative; protection.

A. A person who in good faith either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives which are endorsed on letters as provided in Section 3-504 [45-3-504 NMSA 1978], no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection expressed in this section extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive.

B. The protection expressed in this section in [is] not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

History: 1953 Comp., § 32A-3-714, enacted by Laws 1975, ch. 257, § 3-714.

45-3-715. Transactions authorized for personal representatives; exceptions.

A. Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in Section 45-3-902 NMSA 1978, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) retain assets owned by the decedent pending distribution or liquidation, including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries or other sources;

(3) perform, compromise or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(a) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(b) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent as designated in the escrow agreement;

(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including money received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally;

(6) acquire or dispose of an asset, including land in New Mexico or another state, for cash or on credit, at public or private sale, and manage, develop, improve, partition or change the character of an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, or raze existing or erect new party walls or buildings;

(8) subdivide, develop or dedicate land to public use, make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation on exchange or partition by giving or receiving considerations or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) abandon property when, in the opinion of the personal representative, it is valueless or is so encumbered or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by general or limited proxy;

(13) pay calls, assessments and other sums chargeable or accruing against or on account of securities unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate, but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) insure the assets of the estate against damage, loss and liability and himself against liability as to third persons;

(16) borrow money with or without security to be repaid from the estate assets or otherwise and advance money when necessary for the protection or preservation of the estate;

(17) effect a fair and reasonable compromise with any debtor or obligor or extend, renew or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner of the assets in satisfaction of the indebtedness secured by lien;

(18) pay taxes, assessments, compensation of the personal representative and other expenses incident to the administration of the estate;

(19) sell or exercise stock subscription or conversion rights or consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise;

(20) allocate items of income or expense to either estate income or principal as permitted or provided by law;

(21) employ persons, including attorneys, accountants, investment advisors, appraisers or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and, instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;

(23) sell, transfer, exchange or otherwise dispose of the estate or any interest in the estate for cash or on credit or for part cash and part credit at public or private sale. Security shall be taken for unpaid balances unless waived by order of the district court upon petition and good cause shown;

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of his death:

(a) in the same business form for a period of not more than four months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business, including good will;

(b) in the same business form for any additional period of time that may be approved by order of the district court in a formal proceeding to which the persons interested in the estate are parties; or

(c) throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;

(25) incorporate any business or venture in which the decedent was engaged at the time of his death;

(26) provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate; and

(27) satisfy and settle claims and distribute the estate as provided in the Uniform Probate Code.

B. The powers granted in Subsection A of this section are given subject to those limitations contained in other sections of the Uniform Probate Code.

History: 1953 Comp., § 32A-3-715, enacted by Laws 1975, ch. 257, § 3-715; 1995, ch. 210, § 37.

45-3-716. Powers and duties of successor personal representative.

A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate, as expeditiously as possible, but he shall not exercise any power expressly made personally to any personal representative named in the will.

History: 1953 Comp., § 32A-3-716, enacted by Laws 1975, ch. 257, § 3-716.

45-3-717. Co-representatives; when joint action required.

A. If two or more persons are appointed co-representatives, the concurrence of all is required, unless the will provides otherwise, on all acts connected with the administration and distribution of the estate. This restriction does not apply when:

(1) any co-representative receives and receipts for property due the estate;

(2) the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate; or

(3) a co-representative has been delegated to act for the others.

B. Persons dealing with a co-representative, if actually unaware that another has been appointed to serve with him or if advised by the personal representative with whom they are dealing that he has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.

C. A co-representative who abdicates his responsibility to coadminister the estate by a blanket delegation breaches his duty to interested persons as provided by Section 3-703 [45-3-703 NMSA 1978].

History: 1953 Comp., § 32A-3-717, enacted by Laws 1975, ch. 257, § 3-717.

45-3-718. Powers of surviving personal representative.

Unless the terms of the will otherwise provide, when one or more of several personal representatives fails or refuses to qualify as a personal representative or when one or more of several personal representatives, after appointment, dies, becomes disabled or is removed, the remaining personal representatives shall proceed to administer the estate and have all powers vested in all the personal representatives incident to the office.

History: 1953 Comp., § 32A-3-718, enacted by Laws 1975, ch. 257, § 3-718.

45-3-719. Compensation for personal representatives.

A personal representative is entitled to reasonable compensation for his services. If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, he may renounce the provision before qualifying and be entitled to reasonable compensation. A personal representative also may renounce his right to all or any part of the compensation. A written renunciation of the fee may be filed with the court.

History: 1953 Comp., § 32A-3-719, enacted by Laws 1976 (S.S.), ch. 37, § 10; repealed and reenacted by Laws 1995, ch. 210, § 38.

45-3-720. Expenses in estate litigation.

If any personal representative or person nominated as a personal representative defends or prosecutes any proceeding in good faith, whether successful or not, he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorneys' fees incurred.

History: 1953 Comp., § 32A-3-720, enacted by Laws 1976 (S.S.), ch. 37, § 11; repealed and reenacted by Laws 1995, ch. 210, § 39.

45-3-721. Proceedings for review of employment and compensation.

After notice to all interested persons or on petition of an interested person or an appropriate motion if administration is supervised, the court may review the propriety of employment of any person by a personal representative including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed or the reasonableness of the compensation determined by the personal representative for his own services. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

History: 1978 Comp., § 45-3-721, enacted by Laws 1995, ch. 210, § 40.

PART 8
CREDITORS' CLAIMS

45-3-801. Notice to creditors.

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

B. A personal representative may give written notice by mail or other delivery to a creditor, announcing the personal representative's appointment and address and notifying the creditor to present the creditor's claim within four months after the published notice, if given as provided in Subsection A of this section, or within sixty days after the mailing or other delivery of the notice, whichever is later, or be forever barred.

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

History: 1953 Comp., § 32A-3-801, enacted by Laws 1975, ch. 257, § 3-801; 1993, ch. 174, § 71; repealed and reenacted by Laws 2016, ch. 69, § 715.

45-3-802. Statutes of limitations.

A. Unless an estate is insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim that was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid.

B. The running of a statute of limitations measured from an event other than death or the giving of notice to creditors is suspended for four months after the decedent's death but resumes thereafter as to claims not barred by other sections.

C. For purposes of a statute of limitations, the presentation of a claim pursuant to Section 45-3-804 NMSA 1978 is equivalent to commencement of a proceeding on the claim.

History: 1953 Comp., § 32A-3-802, enacted by Laws 1975, ch. 257, § 3-802; 1993, ch. 174, § 72; 1995, ch. 210, § 41.

45-3-803. Limitations on presentation of claims.

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

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

(2) the time provided by Subsection B of Section 45-3-801 NMSA 1978 for creditors who are given actual notice and the time provided in Subsection A of Section 45-3-801 NMSA 1978 for all creditors barred by publication.

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

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

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

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

D. Nothing in this section affects or prevents:

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

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

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

History: 1953 Comp., § 32A-3-803, enacted by Laws 1975, ch. 257, § 3-803; 1993, ch. 174, § 73; 2011, ch. 124, § 47; 2016, ch. 69, § 716.

45-3-804. Manner of presentation of claims.

Claims against a decedent's estate may be presented as follows:

A. the claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant and the amount claimed, or he may file a written statement of the claim with the appropriate court. The claim is presented on the first to occur of receipt of the written statement of claim by the personal representative or the filing of the claim with the appropriate court. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty and the due date of a claim not yet due does not invalidate the presentation made;

B. the claimant, without the necessity of filing a claim, may commence a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction, to obtain payment of his claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of his death; and

C. if a claim is presented under Subsection A of this section, no proceeding thereon may be commenced more than sixty days after the personal representative has mailed a notice of disallowance. However, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the sixty-day period, or, to avoid injustice, the district court on petition may order an extension of the sixty-day period, but in no event shall the extension run beyond the applicable statute of limitations.

History: 1953 Comp., § 32A-3-804, enacted by Laws 1975, ch. 257, § 3-804; 1983, ch. 194, § 6.

45-3-805. Classification of claims.

A. If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(1) costs and expenses of administration, including compensation of personal representatives and of persons employed by the personal representatives;

(2) reasonable funeral expenses;

(3) debts and taxes with preference under federal law;

(4) reasonable medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent;

(5) debts and taxes with preference under other laws of New Mexico; and

(6) all other claims.

B. No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

History: 1953 Comp., § 32A-3-805, enacted by Laws 1975, ch. 257, § 3-805; 1976 (S.S.), ch. 37, § 12; 1995, ch. 210, § 42.

45-3-806. Allowance of claims.

A. As to claims presented in the manner described in Section 45-3-804 NMSA 1978 within the time limit prescribed in Section 45-3-803 NMSA 1978, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If after allowing or disallowing a claim the personal representative changes his decision concerning the claim, he shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim that is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the district court or commences a proceeding against the personal representative not later than sixty days after the mailing of the notice of disallowance or partial allowance. Failure of the personal representative to mail notice to a claimant of action on his claim for sixty days after the time for original presentation of the claim has expired has the effect of a notice of allowance.

B. After allowing or disallowing a claim the personal representative may change the allowance or disallowance as hereafter provided. The personal representative may prior to payment change the allowance to a disallowance in whole or in part but not after

allowance by a court order or judgment or an order directing payment of the claim. He shall notify the claimant of the change to disallowance, and the disallowed claim is then subject to bar as provided in Subsection A of this section. The personal representative may change a disallowance to an allowance, in whole or in part, until it is barred pursuant to Subsection A of this section; after it is barred, it may be allowed and paid only if the estate is solvent and all successors whose interests would be affected consent.

C. Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the district court may allow in whole or in part any claim presented to the personal representative or filed with the clerk of the district court in due time and not barred by Subsection A of this section. Notice in this proceeding shall be given to the claimant, the personal representative and those other persons interested in the estate, as the court may direct by order entered at the time the proceeding is commenced.

D. A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

E. Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear interest at the legal rate for the period commencing sixty days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

History: 1953 Comp., § 32A-3-806, enacted by Laws 1975, ch. 257, § 3-806; 1993, ch. 174, § 74.

45-3-807. Payment of claims.

A. Upon the expiration of the earlier of the time limitations provided in Section 45-3-803 NMSA 1978, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority described, after making provision for family and personal property allowances, for claims already presented that have not yet been allowed or whose allowance has been appealed and for unbarred claims that may yet be presented, including costs and expenses of administration. By petition to the district court in a proceeding for the purpose or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid may secure an order directing the personal representative to pay the claim to the extent funds of the estate are available to pay it.

B. The personal representative at any time may pay any just claim that has not been barred, with or without formal presentation, but he is personally liable to any other claimant whose claim is allowed and who is injured by its payment if:

(1) payment was made before the expiration of the time limit stated in Subsection A of this section and the personal representative failed to require the payee

to give adequate security for the refund of any of the payment necessary to pay other claimants; or

(2) payment was made, due to negligence or willful fault of the personal representative, in such manner as to deprive the injured claimant of priority.

History: 1953 Comp., § 32A-3-807, enacted by Laws 1975, ch. 257, § 3-807; 1993, ch. 174, § 75.

45-3-808. Individual liability of personal representative.

A. Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity.

B. A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

C. Claims based on contracts entered into by a personal representative in his fiduciary capacity, on obligations arising from ownership or control of the estate or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the personal representative in his fiduciary capacity, whether or not the personal representative is individually liable therefor.

D. Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge or indemnification or other appropriate proceeding.

History: 1953 Comp., § 32A-3-808, enacted by Laws 1975, ch. 257, § 3-808.

45-3-809. Secured claims.

Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders his security; otherwise payment is upon the basis of one of the following:

A. if the creditor exhausts his security before receiving payment (unless precluded by other law), upon the amount of the claim allowed less the fair value of the security; or

B. if the creditor does not have the right to exhaust his security or has not done so, upon the amount of the claim allowed less the fair value of the security determined, if applicable, by the terms of the agreement pursuant to which the security was delivered to the creditor, or by the creditor and personal representative by agreement, arbitration, compromise or litigation.

History: 1953 Comp., § 32A-3-809, enacted by Laws 1975, ch. 257, § 3-809.

45-3-810. Claims not due and contingent or unliquidated claims.

A. If a claim which will become due at a future time or if a contingent or unliquidated claim becomes due or certain before the distribution of the estate, and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.

B. In other cases the personal representative or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the district court, may provide for payment as follows:

(1) if the claimant consents, he may be paid the present or agreed value of the claim, taking any uncertainty into account; or

(2) arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation, may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee or otherwise.

History: 1953 Comp., § 32A-3-810, enacted by Laws 1975, ch. 257, § 3-810.

45-3-811. Counterclaims.

A. In allowing a claim, the personal representative may deduct any counterclaim which the estate has against the claimant.

B. In determining a claim against an estate the district court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess.

History: 1953 Comp., § 32A-3-811, enacted by Laws 1975, ch. 257, § 3-811.

45-3-812. Execution and levies prohibited.

No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section shall not be construed to prevent the enforcement of mortgages, pledges or liens upon real or personal property in an appropriate proceeding.

History: 1953 Comp., § 32A-3-812, enacted by Laws 1975, ch. 257, § 3-812.

45-3-813. Compromise of claims.

When a claim against the estate has been presented in any manner, the personal representative may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

History: 1953 Comp., § 32A-3-813, enacted by Laws 1975, ch. 257, § 3-813.

45-3-814. Encumbered assets.

If any assets of the estate are encumbered by mortgage, pledge, lien or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has presented a claim, if it appears to be for the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

History: 1953 Comp., § 32A-3-814, enacted by Laws 1975, ch. 257, § 3-814; 1976 (S.S.), ch. 37, § 13.

45-3-815. Administration in more than one state; duty of personal representative.

A. All assets of estates being administered in New Mexico are subject to all claims, allowances and charges existing or established against the personal representative wherever appointed.

B. If the estate, either in New Mexico or as a whole, is insufficient to cover all family exemptions and allowances (as determined by the law of the decedent's domicile), prior charges and claims, after satisfaction of the exemptions, allowances and charges, each claimant whose claim has been allowed, either in New Mexico or elsewhere in administrations of which the personal representative is aware, is entitled to receive payment of an equal proportion of his claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in New Mexico, the creditor so benefited is to receive distributions from local assets only upon the balance of his claim after deducting the amount of the benefit.

C. In case the family exemptions and allowances, prior charges and claims of the entire estate exceed the total value of the portions of the estate being administered separately, and New Mexico is not the state of the decedent's last domicile, the claims allowed in New Mexico shall be paid their proportion if local assets are adequate for that purpose, and the balance of local assets shall be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims owed in New Mexico in the amount to which they are entitled, local assets shall be marshalled so that each claim allowed in this state is paid its correct proportion as far as possible, after taking

into account all distributions on claims allowed in New Mexico from assets in other jurisdictions.

History: 1953 Comp., § 32A-3-815, enacted by Laws 1975, ch. 257, § 3-815.

45-3-816. Final distribution to domiciliary representative.

The estate of a nonresident decedent being administered by a personal representative appointed in New Mexico shall, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless:

A. by virtue of the decedent's will, if any, and applicable choice of law rules, the successors are identified pursuant to the local law of New Mexico without reference to the local law of the decedent's domicile;

B. the personal representative of New Mexico, after reasonable inquiry, is unaware of existence or identity of a domiciliary personal representative; or

C. the court orders otherwise in a proceeding for a closing order under Section 3-1001 [45-3-1001 NMSA 1978] or incident to the closing of a supervised administration.

History: 1953 Comp., § 32A-3-816, enacted by Laws 1975, ch. 257, § 3-816.

PART 9
SPECIAL PROVISIONS RELATING TO DISTRIBUTION

45-3-901. Successors' rights if no administration.

In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession. Devisees may establish title by the probated will to devised property. Persons entitled to property by the family allowance, personal property allowance or intestacy may establish title thereto by proof of the decedent's ownership, his death and their relationship to the decedent. Successors take subject to all charges incident to adminstration [administration], including the claims of creditors and allowances of surviving spouse and dependent children, and subject to the rights of others resulting from abatement, retainer, advancement and ademption.

History: 1953 Comp., § 32A-3-901, enacted by Laws 1975, ch. 257, § 3-901.

45-3-902. Distribution; order in which assets appropriated; abatement.

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

(1) property not disposed of by the will;

(2) residuary devises;

(3) general devises; and

(4) specific devises.

B. For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged and, upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

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

D. If an estate of a decedent consists partly of separate property and partly of community property, the debts and expenses of administration shall be apportioned and charged against the different kinds of property in accordance with the provisions of Subsection B of Section 45-2-807 NMSA 1978.

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

History: 1953 Comp., § 32A-3-902, enacted by Laws 1975, ch. 257, § 3-902; 1995, ch. 210, § 43; 2016, ch. 69, § 717.

45-3-903. Successor's indebtedness offset against interest; defenses.

The amount of a noncontingent indebtedness of a successor to the estate if due, or its present value if not due, shall be offset against the successor's interest; but the successor has the benefit of any defense which would be available to him in a direct proceeding for recovery of the debt.

History: 1953 Comp., § 32A-3-903, enacted by Laws 1975, ch. 257, § 3-903.

45-3-904. Interest on general pecuniary devise.

General pecuniary devises bear interest at five percent per annum beginning one year after the first appointment of a personal representative until payment, unless a contrary intent is indicated by the will or unless distribution is withheld under the provisions of a court order upon a showing of good cause by the personal representative.

History: 1953 Comp., § 32A-3-904, enacted by Laws 1975, ch. 257, § 3-904.

45-3-905. Penalty clause for contest.

A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

History: Laws 1975, ch. 257, § 3-905; repealed and reenacted by Laws 2016, ch. 69, § 718.

45-3-906. Distribution in kind; valuation; method.

A. Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:

(1) a specific devisee is entitled to distribution of the thing devised to him, and a spouse or child who has selected particular assets of an estate as provided in Section 45-2-402 NMSA 1978 shall receive the items selected;

(2) any family allowance, personal property allowance or devise of a stated sum of money may be satisfied in kind, provided:

(a) the person entitled to the payment has not demanded payment in cash;

(b) the property distributed in kind is valued at fair market value as of the date of its distribution; and

(c) no residuary devisee has requested that the asset in question remain a part of the residue of the estate; and

(3) the residuary estate shall be distributed in any equitable manner.

B. For the purpose of valuation pursuant to Paragraph (2) of Subsection A of this section, securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution or, if there was no sale on that day, at the median between amounts bid and

offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets that do not have readily ascertainable values, a valuation as of a date not more than thirty days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.

C. After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to object in writing received by the personal representative within thirty days after mailing or delivery of the proposal.

History: 1953 Comp., § 32A-3-906, enacted by Laws 1975, ch. 257, § 3-906; 1993, ch. 174, § 76.

45-3-907. Distribution in kind; evidence.

If distribution in kind is made, the personal representative shall execute an instrument or deed of distribution assigning, transferring or releasing the assets to the distributee as evidence of the distributee's title to the property.

History: 1953 Comp., § 32A-3-907, enacted by Laws 1975, ch. 257, § 3-907.

45-3-908. Distribution; right or title of distributee.

Proof that a distributee has received an instrument or deed of distribution of assets in kind, or payment in distribution, from a personal representative is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all interested persons. However, the personal representative may recover the assets or their value if the distribution was improper.

History: 1953 Comp., § 32A-3-908, enacted by Laws 1975, ch. 257, § 3-908.

45-3-909. Improper distribution; liability of distributee.

Unless the distribution or payment no longer can be questioned because of adjudication, estoppel or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable to return the property improperly received and its income since distribution if he has the property. If he does not have the property, then he is liable to return the value as of the date of disposition of the property improperly received and the income and gain from that property received by him.

History: 1953 Comp., § 32A-3-909, enacted by Laws 1975, ch. 257, § 3-909.

45-3-910. Purchases from distributees protected.

If property distributed in kind or a security interest therein is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from such distributee, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed. This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution.

History: 1953 Comp., § 32A-3-910, enacted by Laws 1975, ch. 257, § 3-910; repealed and reenacted by Laws 1993, ch. 174, § 77.

45-3-911. Partition for purpose of distribution.

A. When two or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs or devisees may petition the district court prior to the formal or informal closing of the estate to make partition.

B. After notice to the interested heirs or devisees, the district court shall partition the property pursuant to the provisions of the Uniform Partition of Heirs Property Act [42-5A-1 to 42-5A-13 NMSA 1978].

C. The district court may direct the personal representative to sell any property pursuant to the provisions of the Uniform Partition of Heirs Property Act.

History: 1953 Comp., § 32A-3-911, enacted by Laws 1975, ch. 257, § 3-911; 2017, ch. 41, § 19.

45-3-912. Private agreements among successors to decedent binding on personal representative.

Subject to the rights of creditors and taxing authorities, successors or their representatives may agree among themselves to alter the interests, shares or amounts to which they are entitled under the will of the decedent or under the laws of intestacy in

any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to the personal representative's obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration and to carry out the responsibilities of the personal representative's office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing in this section relieves trustees of any duties owed to beneficiaries of trusts.

History: 1953 Comp., § 32A-3-912, enacted by Laws 1975, ch. 257, § 3-912; 2016, ch. 69, § 719.

45-3-913. Distributions to trustee.

A. Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered provides for registration and that the trustee inform the beneficiaries as provided in Section 46A-8-813 NMSA 1978.

B. If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if the personal representative apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and the personal representative may withhold distribution until the court has acted.

C. No inference of negligence on the part of the personal representative shall be drawn from the personal representative's failure to exercise the authority conferred by Subsections A and B of this section.

History: 1953 Comp., § 32A-3-913, enacted by Laws 1975, ch. 257, § 3-913; 1995, ch. 210, § 44; 2011, ch. 124, § 48.

45-3-914. Disposition of unclaimed assets.

If an heir, devisee or claimant cannot be found, the personal representative shall distribute the share of the missing person to his conservator, if any. Otherwise, the personal representative shall sell the share of the missing person and distribute the proceeds to the state treasurer as prescribed by the Uniform Unclaimed Property Act [Chapter 7, Article 8A NMSA 1978].

History: 1953 Comp., § 32A-3-914, enacted by Laws 1975, ch. 257, § 3-914; 1993, ch. 174, § 78.

45-3-915. Distribution to person under disability.

A. A personal representative may discharge an obligation to distribute to a minor or person under other disability by distributing in a manner expressly provided in the will or other governing instrument.

B. Unless contrary to an express provision in the will or other governing instrument, the personal representative may discharge an obligation to distribute to a minor or person under other disability as authorized by Section 45-5-103 NMSA 1978 or any other statute. If the personal representative knows that a conservator has been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute only to the conservator.

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

(1) an agent who has authority under a power of attorney to receive property for that person; or

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

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

History: 1953 Comp., § 32A-3-915, enacted by Laws 1975, ch. 257, § 3-915; 1993, ch. 174, § 79; 2011, ch. 124, § 49.

45-3-916. Repealed.

History: 1953 Comp., § 32A-3-916, enacted by Laws 1975, ch. 257, § 3-916; 1993, ch. 174, § 80; 1978 Comp., § 45-3-916, repealed Laws 2005, ch. 143, § 18.

45-3-920. Short title.

Sections 5 through 17 [15] [45-3-920 to 45-3-930 NMSA 1978] of this act may be cited as the "Uniform Estate Tax Apportionment Act".

History: Laws 2005, ch. 143, § 5; 1978 Comp., § 45-9A-1 recompiled as § 45-3-920 by Laws 2011, ch. 124, § 99.

45-3-921. Definitions.

As used in the Uniform Estate Tax Apportionment Act [45-3-920 to 45-3-930 NMSA 1978]:

A. "apportionable estate" means the value of the gross estate as finally determined for purposes of the estate tax to be apportioned reduced by:

(1) any claim or expense allowable as a deduction for purposes of the tax;

(2) the value of any interest in property that, for purposes of the tax, qualifies for a marital or charitable deduction or otherwise is deductible or is exempt; and

(3) any amount added to the decedent's gross estate because of a gift tax on transfers made before death;

B. "estate tax" means a federal, state or foreign tax imposed because of the death of an individual and interest and penalties associated with the tax. The term does not include an inheritance tax, income tax or generation-skipping transfer tax other than a generation-skipping transfer tax incurred on a direct skip taking effect at death;

C. "gross estate" means, with respect to an estate tax, all interests in property subject to the tax;

D. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency or instrumentality, or any other legal or commercial entity;

E. "ratable" means apportioned or allocated pro rata according to the relative values of interests to which the term is to be applied. "Ratably" has a corresponding meaning;

F. "time-limited interest" means an interest in property which terminates on a lapse of time or on the occurrence or nonoccurrence of an event or which is subject to the exercise of discretion that could transfer a beneficial interest to another person. The term does not include a cotenancy unless the cotenancy itself is a time-limited interest; and

G. "value" means, with respect to an interest in property, fair market value as finally determined for purposes of the estate tax that is to be apportioned, reduced by any outstanding debt secured by the interest without reduction for taxes paid or required to be paid or for any special valuation adjustment.

History: Laws 2005, ch. 143, § 6; 1978 Comp., § 45-9A-2 recompiled as § 45-3-921 by Laws 2011, ch. 124, § 99.

45-3-922. Apportionment by will or other dispositive instrument.

A. Except as otherwise provided in Subsection C of this section, the following rules apply:

(1) to the extent that a provision of a decedent's will expressly and unambiguously directs the apportionment of an estate tax, the tax must be apportioned accordingly;

(2) any portion of an estate tax not apportioned pursuant to Paragraph (1) of this subsection must be apportioned in accordance with any provision of a revocable trust of which the decedent was the settlor that expressly and unambiguously directs the apportionment of an estate tax. If conflicting apportionment provisions appear in two or more revocable trust instruments, the provision in the most recently dated instrument prevails. For purposes of this paragraph:

(a) a trust is revocable if it was revocable immediately after the trust instrument was executed, even if the trust subsequently becomes irrevocable; and

(b) the date of an amendment to a revocable trust instrument is the date of the amended instrument only if the amendment contains an apportionment provision; and

(3) if any portion of an estate tax is not apportioned pursuant to Paragraph (1) or (2) of this subsection, and a provision in any other dispositive instrument expressly and unambiguously directs that any interest in the property disposed of by the instrument is or is not to be applied to the payment of the estate tax attributable to the interest disposed of by the instrument, the provision controls the apportionment of the tax to that interest.

B. Subject to Subsection C of this section, and unless the decedent expressly and unambiguously directs the contrary, the following rules apply:

(1) if an apportionment provision directs that a person receiving an interest in property under an instrument is to be exonerated from the responsibility to pay an estate tax that would otherwise be apportioned to the interest:

(a) the tax attributable to the exonerated interest must be apportioned among the other persons receiving interests passing under the instrument; or

(b) if the values of the other interests are less than the tax attributable to the exonerated interest, the deficiency must be apportioned ratably among the other persons receiving interests in the apportionable estate that are not exonerated from apportionment of the tax;

(2) if an apportionment provision directs that an estate tax is to be apportioned to an interest in property a portion of which qualifies for a marital or charitable deduction, the estate tax must first be apportioned ratably among the holders of the portion that does not qualify for a marital or charitable deduction and then apportioned ratably among the holders of the deductible portion to the extent that the value of the nondeductible portion is insufficient;

(3) except as otherwise provided in Paragraph (4) of this subsection, if an apportionment provision directs that an estate tax be apportioned to property in which one or more time-limited interests exist, other than interests in specified property under Section 11 [45-3-926 NMSA 1978] of this act, the tax must be apportioned to the principal of that property, regardless of the deductibility of some of the interests in that property; and

(4) if an apportionment provision directs that an estate tax is to be apportioned to the holders of interests in property in which one or more time-limited interests exist and a charity has an interest that otherwise qualifies for an estate tax charitable deduction, the tax must first be apportioned, to the extent feasible, to interests in property that have not been distributed to the persons entitled to receive the interests.

C. A provision that apportions an estate tax is ineffective to the extent that it increases the tax apportioned to a person having an interest in the gross estate over which the decedent had no power to transfer immediately before the decedent executed the instrument in which the apportionment direction was made. For purposes of this subsection, a testamentary power of appointment is a power to transfer the property that is subject to the power.

History: Laws 2005, ch. 143, § 7; 1978 Comp., § 45-9A-3 recompiled as § 45-3-922 by Laws 2011, ch. 124, § 99.

45-3-923. Statutory apportionment of estate taxes.

To the extent that apportionment of an estate tax is not controlled by an instrument described in Section 7 [45-3-922 NMSA 1978] of this act and except as otherwise provided in Sections 10 and 11 of this act [45-3-925, 45-3-926 NMSA 1978], the following rules apply:

A. subject to Subsections B, C and D of this section, the estate tax is apportioned ratably to each person that has an interest in the apportionable estate;

B. a generation-skipping transfer tax incurred on a direct skip taking effect at death is charged to the person to which the interest in property is transferred;

C. if property is included in the decedent's gross estate because of Section 2044 of the federal Internal Revenue Code of 1986 or any similar estate tax provision, the

difference between the total estate tax for which the decedent's estate is liable and the amount of estate tax for which the decedent's estate would have been liable if the property had not been included in the decedent's gross estate is apportioned ratably among the holders of interests in the property. The balance of the tax, if any, is apportioned ratably to each other person having an interest in the apportionable estate; and

D. except as otherwise provided in Paragraph (4) of Subsection B of Section 7 of this act [45-3-922 NMSA 1978] and except as to property to which Section 11 [45-3-926 NMSA 1978] of this act applies, an estate tax apportioned to persons holding interests in property subject to a time-limited interest must be apportioned, without further apportionment, to the principal of that property.

History: Laws 2005, ch. 143, § 8; 1978 Comp., § 45-9A-4 recompiled as § 45-3-923 by Laws 2011, ch. 124, § 99.

45-3-924. Credits and deferrals.

Except as otherwise provided in Sections 10 and 11 of this act [45-3-925, 45-3-926 NMSA 1978], the following rules apply to credits and deferrals of estate taxes:

A. a credit resulting from the payment of gift taxes or from estate taxes paid on property previously taxed inures ratably to the benefit of all persons to which the estate tax is apportioned;

B. a credit for state or foreign estate taxes inures ratably to the benefit of all persons to which the estate tax is apportioned, except that the amount of a credit for a state or foreign tax paid by a beneficiary of the property on which the state or foreign tax was imposed, directly or by a charge against the property, inures to the benefit of the beneficiary; and

C. if payment of a portion of an estate tax is deferred because of the inclusion in the gross estate of a particular interest in property, the benefit of the deferral inures ratably to the persons to which the estate tax attributable to the interest is apportioned. The burden of any interest charges incurred on a deferral of taxes and the benefit of any tax deduction associated with the accrual or payment of the interest charge is allocated ratably among the persons receiving an interest in the property.

History: Laws 2005, ch. 143, § 9; 1978 Comp., § 45-9A-5 recompiled as § 45-3-924 by Laws 2011, ch. 124, § 99.

45-3-925. Insulated property; advancement of tax.

A. In this section:

(1) "advanced fraction" means a fraction that has as its numerator the amount of the advanced tax and as its denominator the value of the interests in insulated property to which that tax is attributable;

(2) "advanced tax" means the aggregate amount of estate tax attributable to interests in insulated property that is required to be advanced by uninsulated holders under Subsection C of this section;

(3) "insulated property" means property subject to a time-limited interest that is included in the apportionable estate but is unavailable for payment of an estate tax because of impossibility or impracticability;

(4) "uninsulated holder" means a person who has an interest in uninsulated property; and

(5) "uninsulated property" means property included in the apportionable estate other than insulated property.

B. If an estate tax is to be advanced pursuant to Subsection C of this section by persons holding interests in uninsulated property subject to a time-limited interest other than property to which Section 11 of this act [45-3-926 NMSA 1978] applies, the tax must be advanced, without further apportionment, from the principal of the uninsulated property.

C. Subject to Subsections B and D of Section 13 [45-3-928 NMSA 1978] of this act, an estate tax attributable to interests in insulated property must be advanced ratably by uninsulated holders. If the value of an interest in uninsulated property is less than the amount of estate taxes otherwise required to be advanced by the holder of that interest, the deficiency must be advanced ratably by the persons holding interests in properties that are excluded from the apportionable estate under Paragraph (2) of Subsection A of Section 6 of this act [45-3-921 NMSA 1978] as if those interests were in uninsulated property.

D. A court having jurisdiction to determine the apportionment of an estate tax may require a beneficiary of an interest in insulated property to pay all or part of the estate tax otherwise apportioned to the interest if the court finds that it would be substantially more equitable for that beneficiary to bear the tax liability personally than for that part of the tax to be advanced by uninsulated holders.

E. When a distribution of insulated property is made, each uninsulated holder may recover from the distributee a ratable portion of the advanced fraction of the property distributed. To the extent that undistributed insulated property ceases to be insulated, each uninsulated holder may recover from the property a ratable portion of the advanced fraction of the total undistributed property.

F. Upon a distribution of insulated property for which, pursuant to Subsection D of this section, the distributee becomes obligated to make a payment to uninsulated holders, a court may award an uninsulated holder a recordable lien on the distributee's property to secure the distributee's obligation to that uninsulated holder.

History: Laws 2005, ch. 143, § 10; 1978 Comp., § 45-9A-6 recompiled as § 45-3-925 by Laws 2011, ch. 124, § 99.

45-3-926. Apportionment and recapture of special elective benefits.

A. In this section:

(1) "special elective benefit" means a reduction in an estate tax obtained by an election for:

(a) a reduced valuation of specified property that is included in the gross estate;

(b) a deduction from the gross estate, other than a marital or charitable deduction, allowed for specified property; or

(c) an exclusion from the gross estate of specified property; and

(2) "specified property" means property for which an election has been made for a special elective benefit.

B. If an election is made for one or more special elective benefits, an initial apportionment of a hypothetical estate tax must be computed as if no election for any of those benefits had been made. The aggregate reduction in estate tax resulting from all elections made must be allocated among holders of interests in the specified property in the proportion that the amount of deduction, reduced valuation or exclusion attributable to each holder's interest bears to the aggregate amount of deductions, reduced valuations and exclusions obtained by the decedent's estate from the elections. If the estate tax initially apportioned to the holder of an interest in specified property is reduced to zero, any excess amount of reduction reduces ratably the estate tax apportioned to other persons that receive interests in the apportionable estate.

C. An additional estate tax imposed to recapture all or part of a special elective benefit must be charged to the persons that are liable for the additional tax under the law providing for the recapture.

History: Laws 2005, ch. 143, § 11; 1978 Comp., § 45-9A-7 recompiled as § 45-3-926 by Laws 2011, ch. 124, § 99.

45-3-927. Securing payment of estate tax from property in possession of fiduciary.

A. A fiduciary may defer a distribution of property until the fiduciary is satisfied that adequate provision for payment of the estate tax has been made.

B. A fiduciary may withhold from a distributee an amount equal to the amount of estate tax apportioned to an interest of the distributee.

C. As a condition to a distribution, a fiduciary may require the distributee to provide a bond or other security for the portion of the estate tax apportioned to the distributee.

History: Laws 2005, ch. 143, § 12; 1978 Comp., § 45-9A-8 recompiled as § 45-3-927 by Laws 2011, ch. 124, § 99.

45-3-928. Collection of estate tax by fiduciary.

A. A fiduciary responsible for payment of an estate tax may collect from any person the tax apportioned to and the tax required to be advanced by the person.

B. Except as otherwise provided in Section 10 [45-3-925 NMSA 1978] of this act, any estate tax due from a person that cannot be collected from the person may be collected by the fiduciary from other persons in the following order of priority:

(1) any person having an interest in the apportionable estate that is not exonerated from the tax;

(2) any other person having an interest in the apportionable estate; and

(3) any person having an interest in the gross estate.

C. A domiciliary fiduciary may recover from an ancillary personal representative the estate tax apportioned to the property controlled by the ancillary personal representative.

D. The total tax collected from a person pursuant to the Uniform Estate Tax Apportionment Act [45-3-920 to 45-3-930 NMSA 1978] may not exceed the value of the person's interest.

History: Laws 2005, ch. 143, § 13; 1978 Comp., § 45-9A-9 recompiled as § 45-3-928 by Laws 2011, ch. 124, § 99.

45-3-929. Right of reimbursement.

A. A person required under Section 13 [45-3-928 NMSA 1978] of this act to pay an estate tax greater than the amount due from the person under Section 7 or 8 [45-3-922, 45-3-923 NMSA 1978] of this act has a right to reimbursement from another person to the extent that the other person has not paid the tax required by Section 7 or 8 of this act and a right to reimbursement ratably from other persons to the extent that each has

not contributed a portion of the amount collected under Subsection B of Section 13 of this act.

B. A fiduciary may enforce the right of reimbursement under Subsection A of this section on behalf of the person that is entitled to the reimbursement and shall take reasonable steps to do so if requested by the person.

History: Laws 2005, ch. 143, § 14; 1978 Comp., § 45-9A-10 recompiled as § 45-3-929 by Laws 2011, ch. 124, § 99.

45-3-930. Action to determine or enforce act.

A fiduciary, transferee or beneficiary of the gross estate may maintain an action for declaratory judgment to have a court determine and enforce the Uniform Estate Tax Apportionment Act [45-3-920 to 45-3-930 NMSA 1978].

History: Laws 2005, ch. 143, § 15; 1978 Comp., § 45-9A-11 recompiled as § 45-3-930 by Laws 2011, ch. 124, § 99.

PART 10
CLOSING ESTATES

45-3-1001. Formal proceedings terminating administration; testate or intestate; order of general protection.

A. A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may petition at any time, and any other interested person may petition after one year from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired.

B. The petition may request the district court to:

(1) determine testacy, if not previously determined;

(2) consider the final account or compel or approve an accounting and distribution;

(3) construe any will or determine heirs; and

(4) adjudicate the final settlement and distribution of the estate.

C. After notice to all interested persons and subsequent hearing, the district court may enter an order or orders, on appropriate conditions, determining the persons

entitled to distribution of the estate, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person.

D. If one or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the district court, on proper petition for an order of complete settlement of the estate under this section, and after notice to the omitted or unnotified persons and other interested persons determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs.

E. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding shall constitute prima facie proof of due execution of any will previously admitted to probate, or the fact that the decedent left no valid will if the prior proceedings determined this fact.

History: 1953 Comp., § 32A-3-1001, enacted by Laws 1975, ch. 257, § 3-1001.

45-3-1002. Formal proceedings terminating testate administration; order construing will without adjudicating testacy.

A. A personal representative administering an estate under an informally probated will, or any devisee under an informally probated will, may petition for an order of settlement of the estate which will not adjudicate the testacy status of the decedent. The personal representative may petition at any time, and a devisee may petition after one year from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired.

B. The petition may request the district court to consider the final account or compel or approve an accounting and distribution, to construe the will and adjudicate final settlement and distribution of the estate.

C. After notice to all devisees and the personal representative and hearing, the district court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any devisee who is a party to the proceeding and those he represents.

D. If it appears that a part of the estate is to pass intestate, the proceedings shall be dismissed or amendments made to meet the provisions of Section 3-1001 [45-3-1001 NMSA 1978].

History: 1953 Comp., § 32A-3-1002, enacted by Laws 1975, ch. 257, § 3-1002.

45-3-1003. Closing estates; by sworn statement of personal representative.

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

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

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

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

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

History: 1953 Comp., § 32A-3-1003, enacted by Laws 1975, ch. 257, § 3-1003; 1983, ch. 194, § 7; 1993, ch. 174, § 81; 2016, ch. 69, § 720.

45-3-1004. Liability of distributees to claimants.

A. After assets of an estate have been distributed and subject to Section 45-3-1006 NMSA 1978, an unpaid claim not barred may be prosecuted in a proceeding against one or more distributees.

B. No distributee shall be liable to claimants for amounts received as family or personal property allowances or for amounts in excess of the value of his distribution as

of the time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration.

C. Any distributee who fails to notify other distributees of the demand made upon him by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees.

History: 1953 Comp., § 32A-3-1004, enacted by Laws 1975, ch. 257, § 3-1004; 1995, ch. 210, § 45.

45-3-1005. Limitations on proceedings against personal representative.

Unless previously barred by adjudication and except as provided in the closing statement, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert such rights is commenced within six months after the filing of the closing statement. The rights thus barred do not include rights to recover from a personal representative for fraud, misrepresentation or inadequate disclosure related to the settlement of the decedent's estate.

History: 1953 Comp., § 32A-3-1005, enacted by Laws 1975, ch. 257, § 3-1005.

45-3-1006. Limitations on actions and proceedings against distributees.

Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or unless otherwise barred, the claim of a claimant to recover from a distributee who is liable to pay the claim and the right of an heir or devisee or of a successor personal representative acting in their behalf to recover property improperly distributed or its value from any distributee is forever barred at the later of three years after the decedent's death or one year after the time of its distribution, but all claims of creditors of the decedent are barred one year after the decedent's death. This section does not bar an action to recover property or value received as the result of fraud.

History: 1953 Comp., § 32A-3-1006, enacted by Laws 1975, ch. 257, § 3-1006; 1993, ch. 174, § 82.

45-3-1007. Certificate discharging liens securing fiduciary performance.

After his appointment has terminated, the personal representative, his sureties, or any successor of either such person, upon the filing of a verified application showing, so far as is known by the applicant, that no action concerning the estate is pending in any court, is entitled to receive a certificate from the court that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety, but does not preclude action against the personal representative or the surety.

History: 1953 Comp., § 32A-3-1007, enacted by Laws 1975, ch. 257, § 3-1007.

45-3-1008. Subsequent administration.

If other property of the estate is discovered after an estate has been settled and the personal representative discharged, or after one year after a closing statement has been filed, the district court, upon petition of any interested person and upon notice as it directs, may appoint the same or a successor personal representative to administer the subsequently discovered estate. If a new appointment is made, unless the district court orders otherwise, the provisions of the [Uniform] Probate Code apply as appropriate. However, no claim previously barred may be asserted in the subsequent administration.

History: 1953 Comp., § 32A-3-1008, enacted by Laws 1975, ch. 257, § 3-1008.

PART 11
COMPROMISE OF CONTROVERSIES

45-3-1101. Effect of approval of agreements involving trusts, inalienable interests or interests of third persons.

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

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

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

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

(4) the rights or interests of any successor; and

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

B. A court-approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities that are not parties to it.

History: 1953 Comp., § 32A-3-1101, enacted by Laws 1975, ch. 257, § 3-1101; 1995, ch. 210, § 46; 2016, ch. 69, § 721.

45-3-1102. Procedure for securing court approval of compromise.

The procedure for securing court approval of a compromise is as follows:

A. the terms of the compromise shall be set forth in an agreement in writing that shall be executed by all persons or their representatives having beneficial interests or having claims that will or may be affected by the compromise;

B. any interested person, or the person's representative, including the personal representative, if any, or a trustee, may then submit the agreement to the district court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust and other fiduciaries and representatives; and

C. after notice to all interested persons or their representatives, including the personal representative of any estate and all affected trustees of trusts, the district court, if it finds that an actual contest or controversy exists and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries under its supervision to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other persons or their representatives in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate shall then be made in accordance with the terms of the agreement.

History: 1953 Comp., § 32A-3-1102, enacted by Laws 1975, ch. 257, § 3-1102; 1995, ch. 210, § 47; 2016, ch. 69, § 722.

PART 12
COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT
AND SUMMARY ADMINISTRATION PROCEDURE FOR SMALL ESTATES

45-3-1201. Collection of personal property by affidavit.

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

(1) the value of the entire estate, wherever located, less liens and encumbrances, does not exceed fifty thousand dollars ($50,000);

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

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

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

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

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

History: 1953 Comp., § 32A-3-1201, enacted by Laws 1975, ch. 257, § 3-1201; 1983, ch. 194, § 8; 1995, ch. 210, § 48; 2011, ch. 124, § 50.

45-3-1202. Effect of affidavit.

The person paying, delivering, transferring or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right.

History: 1953 Comp., § 32A-3-1202, enacted by Laws 1975, ch. 257, § 3-1202.

45-3-1203. Small estates; summary administrative procedure.

If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed the family allowance, personal property allowance, costs and expenses of administration, reasonable and necessary medical and hospital expenses of the last illness of the decedent and reasonable funeral expenses, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in Section 3-1204 [45-3-1204 NMSA 1978].

History: 1953 Comp., § 32A-3-1203, enacted by Laws 1975, ch. 257, § 3-1203.

45-3-1204. Small estates; closing by sworn statement of personal representative.

A. Unless prohibited by order of the district court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of Section 45-3-1203 NMSA 1978 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(1) to the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed the family allowance, personal property allowance, costs and expenses of administration, reasonable necessary medical and hospital expenses of the last illness of the decedent and reasonable funeral expenses;

(2) the personal representative has fully administered the estate by disbursing and distributing it to the persons entitled thereto; and

(3) the personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected.

B. If no actions or proceedings involving the personal representative are pending in court one year after the closing statement is filed, the appointment of the personal representative terminates.

C. A closing statement filed under this section has the same effect as one filed under Section 45-3-1003 NMSA 1978.

History: 1953 Comp., § 32A-3-1204, enacted by Laws 1975, ch. 257, § 3-1204; 1983, ch. 194, § 9.

45-3-1205. Transfer of title to homestead to surviving spouse by affidavit.

A. Where a husband and wife own a homestead as community property and when either the husband or wife dies intestate or dies testate and by the husband's or wife's will devises the husband's or wife's interest in the homestead to the surviving spouse, the homestead passes to the survivor and no probate or administration is necessary.

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

(1) six months have elapsed since the death of the decedent as shown on the death certificate;

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

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

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

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

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

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

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

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

(10) the affiant affirms that all statements in the affidavit are true and correct and further acknowledges that any false statement may subject the person to penalties relating to perjury and subornation of perjury.

C. As used in this section, "homestead" means the principal place of residence of the decedent or surviving spouse or the last principal place of residence if neither the decedent nor the surviving spouse is residing in that residence because of illness or incapacitation and that consists of one or more dwellings together with appurtenant structures, the land underlying both the dwellings and the appurtenant structures and a

quantity of land reasonably necessary for parking and other uses that facilitates the use of the dwellings and appurtenant structures, and provided the full value of this property as assessed for property taxation purposes does not exceed five hundred thousand dollars ($500,000).

History: 1978 Comp., § 45-3-1205, enacted by Laws 1985, ch. 12, § 1; 1985, ch. 132, § 1; 2011, ch. 124, § 51; 2011, ch. 134, § 18.

45-3-1206. Effect of affidavit.

A purchaser of real property from or lender to the surviving spouse designated as such in the affidavit recorded under Section 45-3-1205 NMSA 1978 is entitled to the same protection as a person purchasing from or lending to a distributee who has received a deed of distribution from a personal representative as provided in Section 45-3-910 NMSA 1978.

History: 1978 Comp., § 45-3-1206, enacted by Laws 1985, ch. 12, § 2; 1985, ch. 132, § 2.

PART 13
PAYMENT OF EARNINGS, ETC., TO SURVIVING SPOUSE

45-3-1301. Collection of employee's final payment without administration.

The surviving spouse of a deceased person may, without procuring letters, collect any sum representing the final payment owed the decedent at the time of his death for wages, earnings, salary, commissions, travel or other reimbursement from the state or any of its political subdivisions or from any corporation, copartnership, association, individual, bank or trust company.

History: 1953 Comp., § 32A-3-1301, enacted by Laws 1978, ch. 159, § 12; 1983, ch. 194, § 10.

45-3-1302. Affidavit showing death of employee; payment.

Upon receiving an affidavit stating that a person previously in its employ is dead and that the affiant is the surviving spouse, the state or any of its political subdivisions, or any corporation, copartnership, association, individual, bank or trust company may pay to the affiant the amount of the wages, earnings, commissions, salary, travel or other reimbursement earned by the deceased and the affiant's receipt shall release the payor from all liability therefor.

History: 1953 Comp., § 32A-3-1302, enacted by Laws 1978, ch. 159, § 13.

ARTICLE 4
Foreign Personal Representatives; Ancillary Administration

PART 1
DEFINITIONS

45-4-101. Definitions.

In Sections 4-101 through 4-401 [45-4-101 to 45-4-401 NMSA 1978]:

A. "local administration" means administration by a personal representative appointed in New Mexico pursuant to appointment proceedings described in Sections 3-101 through 3-1204 [45-3-101 to 45-3-1204 NMSA 1978];

B. "local personal representative" includes any personal representative appointed in New Mexico pursuant to appointment proceedings described in Sections 3-101 through 3-1204 [45-3-101 to 45-3-1204 NMSA 1978] and excludes foreign personal representatives who acquire the power of a local personal representative pursuant to Section 4-205 [45-4-205 NMSA 1978]; and

C. "resident creditor" means a person domiciled in or doing business in New Mexico, who is, or could be, a claimant against an estate of a nonresident decedent.

History: 1953 Comp., § 32A-4-101, enacted by Laws 1975, ch. 257, § 4-101.

PART 2
POWERS OF FOREIGN PERSONAL REPRESENTATIVES

45-4-201. Payment of debt and delivery of property to domiciliary foreign personal representative without local administration.

At any time after the expiration of sixty days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock or chose in action belonging to the estate of the nonresident decedent, may pay the debt, deliver the personal property, or the instrument evidencing the debt, obligation, stock or chose in action, to the domiciliary foreign personal representative of

the nonresident decedent upon being presented with proof of his appointment and an affidavit made by or on behalf of the representative stating:

A. the date of the death of the nonresident decedent;

B. that no local administration, or application or petition therefor, is pending in this state; and

C. that the domiciliary foreign personal representative is entitled to payment or delivery.

History: 1953 Comp., § 32A-4-201, enacted by Laws 1975, ch. 257, § 4-201.

45-4-202. Payment or delivery discharges.

Payment or delivery made in good faith on the basis of the proof of authority and affidavit releases the debtor or person having possession of the personal property of his obligation to the same extent as if payment or delivery had been made to a local personal representative.

History: 1953 Comp., § 32A-4-202, enacted by Laws 1975, ch. 257, § 4-202.

45-4-203. Resident creditor notice.

Payment or delivery under Section 4-201 [45-4-201 NMSA 1978] may not be made if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary foreign personal representative.

History: 1953 Comp., § 32A-4-203, enacted by Laws 1975, ch. 257, § 4-203.

45-4-204. Proof of authority; bond.

If no local administration or application or petition therefor is pending in New Mexico, a domiciliary foreign personal representative may file with the court of a county in which property belonging to the decedent is located authenticated copies of his appointment and of any official bond he has given and a statement of the domiciliary foreign personal representative's address.

History: 1953 Comp., § 32A-4-204, enacted by Laws 1975, ch. 257, § 4-204; 1983, ch. 194, § 11.

45-4-205. Powers.

A domiciliary foreign personal representative who has complied with Section 4-204 [45-4-204 NMSA 1978] may exercise as to assets in New Mexico all powers of a local personal representative and may maintain actions and proceedings in New Mexico subject to any conditions imposed upon nonresident parties generally.

History: 1953 Comp., § 32A-4-205, enacted by Laws 1975, ch. 257, § 4-205.

45-4-206. Power of representatives in transition.

A. The power of a domiciliary foreign personal representative under Section 4-201 [45-4-201 NMSA 1978] or 4-205 [45-4-205 NMSA 1978] shall be exercised only if there is no administration or application for administration pending in New Mexico. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under Section 4-205, but the district court may allow the foreign personal representative to exercise limited powers to preserve the estate.

B. No person who, before receiving actual notice of a pending local administration, has changed his position in reliance upon the powers of a foreign personal representative shall be prejudiced by reason of the application or petition for, or grant of, local administration.

C. The local personal representative is subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for him in any action or proceedings in New Mexico.

History: 1953 Comp., § 32A-4-206, enacted by Laws 1975, ch. 257, § 4-206.

45-4-207. Ancillary and other local administrations; provisions governing.

A. Upon the filing of an authenticated copy of the will, if any, and an authenticated copy of the domiciliary letters with the court, a foreign personal representative may be granted ancillary letters of administration in formal proceedings in the same manner as provided in Section 3-414 [45-3-414 NMSA 1978] and subject to any bond requirement as provided in Sections 3-603 and 3-604 [45-3-603, 45-3-604 NMSA 1978].

B. In respect to a nonresident decedent, the provisions of Sections 3-101 through 3-1204 [45-3-101 to 45-3-1204 NMSA 1978] govern:

(1) proceedings, if any, in a court of New Mexico for probate of the will, appointment, removal, supervision and discharge of the local personal representative, and any other order concerning the estate; and

(2) the status, powers and duties and liabilities of any local personal representative and the rights of claimants, purchasers, distributees and others in regard to a local administration.

History: 1953 Comp., § 32A-4-207, enacted by Laws 1975, ch. 257, § 4-207.

PART 3
JURISDICTION OVER FOREIGN PERSONAL REPRESENTATIVES

45-4-301. Jurisdiction by act of foreign personal representative.

A. A foreign personal representative submits personally to the jurisdiction of the courts of New Mexico in any proceeding relating to the estate by:

(1) filing the documents and statement as provided in Section 4-204 [45-4-204 NMSA 1978];

(2) receiving payment of money or taking delivery of personal property under Section 4-201 [45-4-201 NMSA 1978]; or

(3) doing any act as a personal representative in New Mexico which would have given the state jurisdiction over him as an individual.

B. Jurisdiction under Paragraph (2) of Subsection A of this section is limited to the money or value of personal property collected.

History: 1953 Comp., § 32A-4-301, enacted by Laws 1975, ch. 257, § 4-301.

45-4-302. Jurisdiction by act of decedent.

In addition to jurisdiction conferred by Section 4-301 [45-4-301 NMSA 1978], a foreign personal representative is subject to the jurisdiction of the courts of New Mexico to the same extent that his decedent was subject to jurisdiction immediately prior to death.

History: 1953 Comp., § 32A-4-302, enacted by Laws 1975, ch. 257, § 4-302.

45-4-303. Notice to a foreign personal representative.

Notice shall be given to a foreign personal representative in the manner prescribed by Section 45-1-401 NMSA 1978.

History: 1953 Comp., § 32A-4-303, enacted by Laws 1975, ch. 257, § 4-303; 1977, ch. 121, § 8; repealed and reenacted by Laws 1978, ch. 159, § 14.

PART 4
ADJUDICATION

45-4-401. Effect of adjudication.

An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if the local personal representative were a party to the adjudication.

History: 1978 Comp., § 45-4-401, enacted by Laws 1995, ch. 210, § 49.

ARTICLE 5
Protection of Persons Under Disability and Their Property

PART 1
GENERAL PROVISIONS

45-5-101. Definitions and use of terms.

Unless otherwise apparent from the context or unless otherwise specifically defined in other sections that are applicable to specific articles, parts or sections of the Uniform Probate Code, as used in Chapter 45, Article 5 NMSA 1978:

A. "conservator" means a person who is appointed by a court to manage the property or financial affairs or both of a protected person;

B. "court" means the district court or the children's or family division of the district court where such jurisdiction is conferred by the Children's Code [Chapter 32A NMSA 1978];

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

D. "guardian" has the same meaning as set forth in Section 45-1-201 NMSA 1978;

E. "guardian ad litem" has the same meaning as set forth in Section 45-1-201 NMSA 1978;

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

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

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

I. "interested person" means any person who has an interest in the welfare of the person to be protected pursuant to Chapter 45, Article 5 NMSA 1978;

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

K. "letters" has the same meaning as set forth in Section 45-1-201 NMSA 1978;

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

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

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

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

P. "minor" has the same meaning as set forth in Section 45-1-201 NMSA 1978;

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

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

S. "professional conservator" means an individual or entity that serves as a conservator for more than two individuals who are not related to the conservator by marriage, adoption or third degree of blood or affinity;

T. "professional guardian" means an individual or entity that serves as a guardian for more than two individuals who are not related to the guardian by marriage, adoption or third degree of blood or affinity;

U. "protective proceeding" means a conservatorship proceeding under Section 45-5-401 NMSA 1978;

V. "protected person" means a minor or other person for whom a guardian or conservator has been appointed or other protective order has been made;

W. "qualified health care professional" means a physician, psychologist, physician assistant, nurse practitioner or other health care practitioner whose training and expertise aid in the assessment of functional impairment; and

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

History: 1953 Comp., § 32A-5-101, enacted by Laws 1975, ch. 257, § 5-101; 1987, ch. 12, § 1; 1989, ch. 252, § 3; 1993, ch. 301, § 1; 2008, ch. 9, § 4; 2009, ch. 159, § 26; 2011, ch. 124, § 52; 2019, ch. 228, § 1.

45-5-102. Jurisdiction of subject matter; consolidation of proceedings.

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

B. The court has exclusive jurisdiction over protective proceedings for minors domiciled in or having property located in New Mexico. Except to the extent that the guardianship is subject to the Uniform Child-Custody Jurisdiction and Enforcement Act

[40-10A-101 to 40-10A-403 NMSA 1978], the court has exclusive jurisdiction over guardianship proceedings for minors domiciled or present in New Mexico.

C. The court has exclusive jurisdiction over guardianship and protective proceedings for an adult individual as provided in the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act [Chapter 45, Article 5A NMSA 1978].

D. When both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.

History: 1953 Comp., § 32A-5-102, enacted by Laws 1975, ch. 257, § 5-102; 2011, ch. 124, § 53.

45-5-103. Facility of payment or delivery.

A. A person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding ten thousand dollars ($10,000) per year, by paying or delivering the money or property to:

(1) a person having the care and custody of the minor and with whom the minor resides;

(2) a guardian of the minor;

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

(4) a custodian for the minor pursuant to the Uniform Transfers to Minors Act [46-7-11 to 46-7-34 NMSA 1978].

B. This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending. The persons, other than the minor or any financial institution under Paragraph (4) of Subsection A of this section, receiving money or property for a minor are obligated to apply the money to the support and education of the minor but shall not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums shall be preserved for future support of the minor, and any balance not so used and any property received for the minor shall be turned over to the minor when the minor ceases to be a minor. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application of such payments.

History: 1953 Comp., § 32A-5-103, enacted by Laws 1975, ch. 257, § 5-103; 2011, ch. 124, § 54.

45-5-104. Delegation of powers by parent or guardian.

A parent or a guardian of a minor or an incapacitated person, by an acknowledged power of attorney, may delegate to another person, for a period not exceeding six months, any of the parent's or guardian's powers regarding care, custody or property of the minor child or protected person, except the power to consent to marriage or adoption of a minor protected person.

History: 1953 Comp., § 32A-5-104, enacted by Laws 1975, ch. 257, § 5-104; 2009, ch. 159, § 27.

45-5-105. Compensation and expenses.

If not otherwise compensated for services rendered, any visitor, attorney, qualified health care professional or guardian appointed in a guardianship proceeding is entitled to reasonable compensation from the estate of the incapacitated person.

History: Laws 1993, ch. 301, § 23.

45-5-106. Repealed.

45-5-107. Separate accounts and records.

A. A guardian or conservator shall not commingle the guardian's or conservator's funds or investments with those held by the guardian or conservator as a fiduciary for a minor or an adult. Funds and any investments held by the guardian or conservator as a fiduciary for the minor or the adult shall be held in accounts that are separate from those of the guardian or conservator. If a guardian or conservator serves as fiduciary for one or more individuals subject to guardianship or conservatorship, the guardian or conservator shall hold the funds and any investments held as a fiduciary in a separate account for each individual subject to guardianship or conservatorship. Except as otherwise provided in the Uniform Probate Code, and to the extent that is reasonable and customary, any other property held by the guardian or conservator as a fiduciary for one or more individuals subject to guardianship or conservatorship shall be titled separately:

(1) from the guardian's or conservator's property; and

(2) for each individual subject to guardianship or conservatorship.

B. A court at any time may require a guardian to bring a proceeding for a conservatorship if necessary or advisable to:

(1) protect property of a minor or an adult, including any property held by the guardian as a fiduciary for the minor or the adult;

(2) conserve for the minor's future needs all funds of the minor not expended for the minor's current needs; or

(3) conserve for the adult's future needs all funds of the adult not expended for the adult's current needs.

C. The guardian or conservator shall maintain those books and records that are in the possession, custody or control of the guardian or conservator and that concern the funds, investments or other property held by the guardian or conservator as a fiduciary for an individual for seven years, or for such other period as may be provided by the court.

History: 1978 Comp., § 45-5-107, enacted by Laws 2018, ch. 10, § 1.

45-5-108. Liability of guardian or conservator for act of individual subject to guardianship or conservatorship.

A guardian or conservator is not personally liable to another person solely because of the guardianship or conservatorship for an act or omission of the individual subject to guardianship or conservatorship.

History: 1978 Comp., § 45-5-108, enacted by Laws 2018, ch. 10, § 2.

45-5-109. Voting rights.

The voting rights of a protected person shall not be abridged or restricted except pursuant to Article 7, Section 1 of the constitution of New Mexico.

History: 1978 Comp., § 45-5-109, enacted by Laws 2018, ch. 10, § 3.

45-5-110. Grievance against guardian or conservator.

A. A protected person, or any interested person regardless of previous standing, who believes a guardian, conservator or representative payee is breaching the guardian, conservator or representative payee's fiduciary duty or otherwise acing in a manner inconsistent with the Uniform Probate Code or orders of appointment, may file a grievance with the court.

B. Subject to Subsection C of this section, after receiving a grievance filed pursuant to Subsection A of this section, the court:

(1) shall review the grievance and, if necessary to determine the appropriate response, court records related to the guardianship or conservatorship;

(2) shall schedule a hearing if the grievance supports a reasonable belief that:

(a) removal of the guardian or conservator and appointment of a successor may be appropriate;

(b) termination or modification of the guardianship or conservatorship may be appropriate; and

(c) transfer of accounts to a successor representative payee may be appropriate; and

(3) may take any action supported by the evidence, including:

(a) ordering the guardian or conservator to provide the court with a report, accounting, inventory or other specified information;

(b) appointing a guardian ad litem; and

(c) holding a hearing.

C. The court may decline to take the actions provided for in Subsection B of this section if a similar grievance had been filed within six months preceding the filing of the current grievance and the court took the actions provided for in that subsection in considering the earlier grievance.

D. As used in this section, "representative payee" means a person appointed by the federal social security administration to receive and manage the supplemental security income or social security disability income for individuals who cannot fully manage their own income.

History: Laws 2019, ch. 228, § 14.

45-5-111. Court visitor pilot program.

A. The supreme court shall designate three judicial districts to participate in a court visitor pilot program. The administrative office of the courts shall randomly select cases from each judicial district designated to participate in the pilot program, and in each selected case, the court shall appoint a volunteer court visitor post-adjudication, who shall be provided by the office of guardianship.

B. The visitor shall review any reports filed by the guardian, visit the protected person where the person resides, fulfill all responsibilities outlined in the volunteer court visitor agreement executed with the office of guardianship and submit a written report to the court. The report to the court shall include:

(1) any changes to the information provided in the guardian's last report;

(2) any changes in the protected person's needs since the filing of the guardian's last report;

(3) whether any grievances, as defined in Section 45-5-110 NMSA 1978, have been made, and resolutions of the grievances, if any;

(4) whether the guardian adequately meets the protected person's needs, including the protected person's living arrangements, medical and health care needs, and, if not, the reasons why the needs are not adequately met;

(5) a recommendation regarding the appropriateness of the guardianship, including whether the guardianship should be limited, increased or terminated; and

(6) any other information the court deems appropriate.

C. The court visitor pilot program shall be implemented no later than July 1, 2022.

History: Laws 2021, ch. 128, § 13.

PART 2
GUARDIAN OF MINORS

45-5-201. Appointment and status of guardian of minor; general.

A person becomes a guardian of a minor by parental appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian or minor protected person.

History: 1953 Comp., § 32A-5-201, enacted by Laws 1975, ch. 257, § 5-201; 1995, ch. 210, § 50; 2009, ch. 159, § 28.

45-5-202. Parental appointment of guardian of minor.

A. The parent of an unmarried minor may appoint a guardian for the minor by will, or other writing signed by the parent and attested by at least two witnesses.

B. Subject to the right of the minor under Section 45-5-203 NMSA 1978, if both parents are dead or incapacitated or the surviving parent has no parental rights or has been adjudged to be incapacitated, a parental appointment becomes effective when the guardian's acceptance is filed in the court in which a nominating instrument is probated, or, in the case of a non-testamentary nominating instrument, in the court at the place where the minor resides or is present. If both parents are dead, an effective appointment by the parent who died later has priority.

C. A parental appointment effected by filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this state.

D. Upon acceptance of appointment, the guardian shall give written notice of acceptance to the minor and to the person having the minor's care or the minor's nearest adult relative. If the minor is fourteen years of age or older, the notice shall state that the appointment may be terminated by filing a written objection in the court, as provided in Section 45-5-203 NMSA 1978.

History: 1953 Comp., § 32A-5-202, enacted by Laws 1975, ch. 257, § 5-202; repealed and reenacted by Laws 1995, ch. 210, § 51.

45-5-203. Objection by minor of fourteen or older to parental appointment.

A minor of fourteen or more years who is the subject of a parental appointment of a guardian may prevent the appointment or may cause it to terminate by filing in the court in which the will is probated or, in the case of a non-testamentary instrument, in the court where the minor resides or is present, a written objection to the appointment before it is accepted or after its acceptance. An objection may be withdrawn. An objection does not prevent appointment by the court in a proper proceeding of the parental nominee or any other suitable person.

History: 1953 Comp., § 32A-5-203, enacted by Laws 1975, ch. 257, § 5-203; 1976 (S.S.), ch. 37, § 14; 1995, ch. 210, § 52.

45-5-204. Court appointment of guardian of minor; conditions for appointment.

A. The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or suspended by circumstances or prior court order.

B. A guardian, appointed as provided in Section 45-5-202 NMSA 1978, whose appointment has not been prevented or terminated under Section 45-5-203 NMSA 1978, has priority over any guardian who may be appointed by the court, but the court may proceed with another appointment upon a finding that the parental nominee has failed to accept the appointment within thirty days after notice of the guardianship proceeding.

C. If necessary, and upon appropriate petition or application, the court may appoint a temporary guardian, who shall have the full authority of a general guardian of a minor, but the authority of a temporary guardian may not last longer than six months. The appointment of a temporary guardian for a minor may occur even though the conditions described in Subsection A of this section have not been established.

History: 1953 Comp., § 32A-5-204, enacted by Laws 1975, ch. 257, § 5-204; 1995, ch. 210, § 53.

45-5-205. Court appointment of guardian of minor; venue.

The venue for guardianship proceedings for a minor is in the judicial district where the minor resides or is present.

History: 1953 Comp., § 32A-5-205, enacted by Laws 1975, ch. 257, § 5-205.

45-5-205.1. Recompiled.

45-5-206. Court appointment of guardian of minor; qualifications; priority of minor's nominee.

The court may appoint as guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor, if the minor is fourteen years of age or older, unless the court finds the appointment contrary to the best interests of the minor.

History: 1953 Comp., § 32A-5-206, enacted by Laws 1975, ch. 257, § 5-206.

45-5-207. Court appointment of guardian of minor; notice; procedure.

A. Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by Section 1-401 [45-1-401 NMSA 1978] to:

(1) the minor, if he is fourteen or more years of age;

(2) the person who has had the principal care and custody of the minor during the sixty days preceding the date of the petition; and

(3) any living parent of the minor.

B. Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of Section 5-204 [45-5-204 NMSA 1978] have been met and the best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will serve the best interests of the minor.

C. If necessary, the court may appoint a temporary guardian, with the status of a permanent guardian of a minor, but the authority of a temporary guardian shall not last longer than six months.

D. If, at any time in the proceeding, the court finds the minor is or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen years of age or older.

History: 1953 Comp., § 32A-5-207, enacted by Laws 1975, ch. 257, § 5-207.

45-5-208. Consent to service by acceptance of appointment; notice.

By accepting a parental or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of a proceeding shall be delivered to the guardian or mailed to the guardian at the address listed in the court records and to the address then known to the petitioner. Letters of guardianship shall indicate whether the guardian was appointed by parental appointment or by court order.

History: 1953 Comp., § 32A-5-208, enacted by Laws 1975, ch. 257, § 5-208; 2011, ch. 124, § 55.

45-5-209. Powers and duties of guardian of minor.

A. A guardian of a minor protected person has the powers and responsibilities of a parent regarding the protected person's support, care and education, but a guardian is not personally liable for the protected person's expenses and is not liable to third persons by reason of the relationship for acts of the protected person.

B. In particular and without qualifying the foregoing, a guardian shall:

(1) become or remain personally acquainted with the protected person and maintain sufficient contact with the protected person to know of the protected person's capacities, limitations, needs, opportunities and physical and mental health;

(2) take reasonable care of the protected person's personal effects and commence protective proceedings if necessary to protect other property of the protected person;

(3) apply any available money of the protected person to the protected person's current needs for support, care and education;

(4) conserve any excess money of the protected person for the protected person's future needs, but if a conservator has been appointed for the estate of the protected person, the guardian, at least quarterly, shall pay to the conservator money of the protected person to be conserved for the protected person's future needs; and

(5) report the condition of the protected person and of the protected person's estate that has been subject to the guardian's possession or control, as ordered by the

court on petition of any person interested in the protected person's welfare or as required by court rule.

C. A guardian may:

(1) receive money payable for the support of the protected person to the protected person's parent, guardian or custodian under the terms of any statutory benefit or insurance system or any private contract, devise, trust, conservatorship or custodianship and money or property of the protected person paid or delivered pursuant to the provisions of Section 45-5-103 NMSA 1978 or any other statute;

(2) if consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the protected person, take custody of the person of the protected person and establish the protected person's place of abode within or without New Mexico;

(3) if no conservator for the estate of the protected person has been appointed, institute proceedings, including administrative proceedings, or take other appropriate action to compel the performance by any person of a duty to support the protected person or to pay sums for the welfare of the protected person;

(4) consent to medical or other professional care, treatment or advice for the protected person without liability by reason of the consent for injury to the protected person resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances;

(5) consent to the marriage or adoption of the protected person; and

(6) if reasonable under all of the circumstances, delegate to the protected person certain responsibilities for decisions affecting the protected person's well-being.

D. A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board and clothing personally provided to the protected person, but only as approved by order of the court. If a conservator, other than the guardian or one who is affiliated with the guardian, has been appointed for the estate of the protected person, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without order of the court controlling the guardian.

E. In the interest of developing self-reliance on the part of a protected person or for other good cause, the court, at the time of appointment or later, on its own motion or on appropriate petition or motion of the minor or other interested person, may limit the powers of a guardian otherwise conferred by this section and thereby create a limited guardianship. Any limitation on the statutory power of a guardian of a minor must be endorsed on the guardian's letters or, in the case of a guardian by parental appointment, must be reflected in letters that are issued at the time any limitation is

imposed. Following the same procedure, a limitation may be removed and appropriate letters issued.

History: 1953 Comp., § 32A-5-209, enacted by Laws 1975, ch. 257, § 5-209; repealed and reenacted by Laws 1995, ch. 210, § 54; 2009, ch. 159, § 29.

45-5-210. Termination of appointment of guardian; general.

A guardian's authority and responsibility terminate upon the death, resignation or removal of the guardian or upon the minor's death, adoption, emancipation, marriage or attainment of majority, but termination does not affect the guardian's liability for prior acts nor the guardian's obligation to account for money and property of the protected person. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

History: 1953 Comp., § 32A-5-210, enacted by Laws 1975, ch. 257, § 5-210; 2009, ch. 159, § 30; 2011, ch. 124, § 56.

45-5-211. Proceedings subsequent to appointment; venue.

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

B. If the court located where the protected person resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in New Mexico or another state, and, after consultation with that court, determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interests of the protected person. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

History: 1953 Comp., § 32A-5-211, enacted by Laws 1975, ch. 257, § 5-211; 2009, ch. 159, § 31.

45-5-212. Resignation, removal and other post-appointment proceedings.

A. Any person interested in the welfare of a protected person, or the protected person if fourteen or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the protected person. A guardian

may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.

B. Notice of hearing on a petition for an order after the appointment of a guardian must be given to the protected person, the guardian and any other person as ordered by the court.

C. After notice pursuant to Section 45-1-401 NMSA 1978 and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

D. If at any time in the proceeding the court finds that the interest of the protected person is or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen or more years of age.

History: 1953 Comp., § 32A-5-212, enacted by Laws 1975, ch. 257, § 5-212; 1995, ch. 210, § 55; 2009, ch. 159, § 32.

PART 3
GUARDIANS OF INCAPACITATED PERSONS

45-5-301. Appointment of guardian for incapacitated person; notice.

A. The parent of an unmarried incapacitated person may appoint by will, or other writing signed by the parent and attested by at least two witnesses, a guardian of the incapacitated person. If both parents are dead or incapacitated or the surviving parent has no parental rights or has been adjudged incapacitated, appointment becomes effective when, after having given seven days' prior written notice of intention to do so to the incapacitated person and to the person having care of the incapacitated person or to the nearest adult relative, the guardian files acceptance of appointment in the court in which the will is probated, or in the case of a non-testamentary instrument, in the court at the place where the incapacitated person resides or is present. The notice shall state that the appointment may be terminated by filing a written objection in the court, as provided in Subsection D of this section. If both parents are dead, an effective appointment by the parent who died later has priority.

B. The spouse of a married incapacitated person may appoint by will, or other writing signed by the spouse and attested by at least two witnesses, a guardian of the incapacitated person. The appointment becomes effective when, after having given seven days' prior written notice of intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is probated or, in the case of a non-testamentary nominating instrument, in the court at the place where the incapacitated person resides or is present. The notice shall state that the appointment may be

terminated by filing a written objection in the court, as provided in Subsection D of this section. An effective appointment by a spouse has priority over an appointment by a parent.

C. An appointment effected by filing the guardian's acceptance under a will probated in the state of testator's domicile is effective in New Mexico.

D. On the filing in the court in which the will was probated or, in the case of a non-testamentary nominating instrument, in the court at the place where the incapacitated person resides or is present, of written objection to the appointment by the incapacitated person for whom a parental or spousal appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the parental or spousal nominee or any other suitable person upon an adjudication of incapacity in proceedings under Sections 45-5-301.1 through 45-5-315 NMSA 1978.

History: 1953 Comp., § 32A-5-301, enacted by Laws 1975, ch. 257, § 5-301; 1995, ch. 210, § 56.

45-5-301.1. When guardianship is to be used.

Guardianship for an incapacitated person shall be used only as is necessary to promote and to protect the well being of the person, shall be designed to encourage the development of maximum self reliance and independence of the person and shall be ordered only to the extent necessitated by the person's actual functional mental and physical limitations. An incapacitated person for whom a guardian has been appointed retains all legal and civil rights except those which have been expressly limited by court order or have been specifically granted to the guardian by the court.

History: 1978 Comp., § 45-5-301.1, enacted by Laws 1989, ch. 252, § 4.

45-5-301.2. Repealed.

History: Laws 1993, ch. 301, § 24; repealed by Laws 2011, ch. 124, § 97.

45-5-302. Venue.

Venue for guardianship proceedings for an alleged incapacitated person is in the judicial district where the alleged incapacitated person resides or is present. If the alleged incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the judicial district in which that court sits.

History: 1953 Comp., § 32A-5-302, enacted by Laws 1975, ch. 257, § 5-302; 1993, ch. 301, § 2.

45-5-303. Procedure for court appointment of a guardian of an incapacitated person.

A. An interested person may petition for appointment of a guardian for an alleged incapacitated person.

B. A petition under Subsection A of this section shall state the petitioner's name, principal residence, current street address, if different, relationship to the alleged incapacitated person, interest in the appointment, the name and address of any attorney representing the petitioner and, to the extent known, the following:

(1) the alleged incapacitated person's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed that the alleged incapacitated person will reside if the petition is granted;

(2) the name and address of the alleged incapacitated person's:

(a) spouse, or, if the alleged incapacitated person has none, an adult with whom the alleged incapacitated person is in a long-term relationship of indefinite duration in which the individual has demonstrated an actual commitment to the alleged incapacitated person similar to the commitment of a spouse and in which the individual and the alleged incapacitated person consider themselves to be responsible for each other's well-being;

(b) adult children or, if none, each parent and adult sibling of the alleged incapacitated person or, if none, at least one adult nearest in kinship to the alleged incapacitated person who can be found with reasonable diligence; and

(c) adult stepchildren whom the alleged incapacitated person actively parented during the stepchildren's minor years and with whom the alleged incapacitated person had an ongoing relationship in the two-year period immediately preceding the filing of the petition;

(3) the name and current address of each of the following, if applicable:

(a) a person responsible for care of the alleged incapacitated person;

(b) any attorney currently representing the alleged incapacitated person;

(c) any representative payee appointed by the federal social security administration for the alleged incapacitated person;

(d) a guardian or conservator acting for the alleged incapacitated person in New Mexico or in another jurisdiction;

(e) a trustee or custodian of a trust or custodianship of which the alleged incapacitated person is a beneficiary;

(f) any fiduciary for the alleged incapacitated person appointed by the federal department of veterans affairs;

(g) an agent designated under a power of attorney for health care in which the alleged incapacitated person is identified as the principal;

(h) an agent designated under a power of attorney for finances in which the alleged incapacitated person is identified as the principal;

(i) a person nominated as guardian by the alleged incapacitated person;

(j) a person nominated as guardian by the alleged incapacitated person's parent or spouse in a will or other signed record;

(k) a proposed guardian and the reason the proposed guardian should be selected; and

(l) a person known to have routinely assisted the alleged incapacitated person with decision making during the six months immediately preceding the filing of the petition;

(4) the reason a guardianship is necessary, including a brief description of:

(a) the nature and extent of the alleged incapacitated person's alleged need;

(b) any least restrictive alternative for meeting the alleged incapacitated person's alleged need that has been considered or implemented;

(c) if no least restrictive alternative has been considered or implemented, the reason it has not been considered or implemented; and

(d) the reason a least restrictive alternative instead of guardianship is insufficient to meet the alleged incapacitated person's alleged need;

(5) whether the petitioner seeks a limited guardianship or full guardianship;

(6) if the petitioner seeks a full guardianship, the reason a limited guardianship or protective arrangement instead of guardianship is not appropriate;

(7) if a limited guardianship is requested, the powers to be granted to the guardian;

(8) the name and current address, if known, of any person with whom the petitioner seeks to limit the alleged incapacitated person's contact;

(9) if the alleged incapacitated person has property other than personal effects, a general statement of the alleged incapacitated person's property, with an estimate of its value, including any insurance or pension, and the source and amount of other anticipated income or receipts; and

(10) whether the alleged incapacitated person needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings.

C. Notice of a petition under this section for the appointment of a guardian and the hearing on the petition shall be given as provided in Section 45-5-309 NMSA 1978.

D. After the filing of a petition, the court shall set a date for hearing on the issues raised by the petition. Unless an alleged incapacitated person already has an attorney of the alleged incapacitated person's own choice, the court shall appoint an attorney to represent the alleged incapacitated person. The court-appointed attorney in the proceeding shall have the duties of a guardian ad litem, as set forth in Section 45-5-303.1 NMSA 1978.

E. The person alleged to be incapacitated shall be examined by a qualified health care professional appointed by the court who shall submit a report in writing to the court. The report shall:

(1) describe the nature and degree of the alleged incapacitated person's incapacity, if any, and the level of the alleged incapacitated person's intellectual, developmental and social functioning; and

(2) contain observations, with supporting data, regarding the alleged incapacitated person's ability to make health care decisions and manage the activities of daily living.

F. The court shall appoint a visitor who shall interview the person seeking appointment as guardian and the person alleged to be incapacitated. The visitor shall also visit the present place of abode of the person alleged to be incapacitated and the place where it is proposed the alleged incapacitated person will be detained or reside if the requested appointment is made. The visitor shall evaluate the needs of the person alleged to be incapacitated and shall submit a written report to the court. The report shall include a recommendation regarding the appropriateness of the appointment of the proposed guardian. The report to the court shall also include recommendations regarding:

(1) those aspects of personal care that the alleged incapacitated person can manage without supervision or assistance;

(2) those aspects of personal care that the alleged incapacitated person could manage with the supervision or assistance of support services and benefits; and

(3) those aspects of personal care that the alleged incapacitated person is unable to manage without the supervision of a guardian.

Unless otherwise ordered by the court, the appointment of the visitor terminates and the visitor is discharged from the visitor's duties upon entry of an order appointing a guardian and acceptance of the appointment by the guardian.

G. A person alleged to be incapacitated shall be present at the hearing on the issues raised by the petition and any response to the petition unless the court determines by evidence that it is not in the alleged incapacitated person's best interest to be present because of a threat to the health or safety of the alleged incapacitated person or others as determined by the court. At a hearing conducted pursuant to this section, the person alleged to be incapacitated may:

(1) present evidence and subpoena witnesses and documents;

(2) examine witnesses, including a court-appointed guardian ad litem, qualified health care professional and visitor; and

(3) otherwise participate in the hearing.

H. The court upon request or its own motion may conduct hearings at the location of the alleged incapacitated person who is unable to be present in court.

I. The rules of evidence shall apply and no hearsay evidence that is not otherwise admissible in a court shall be admitted into evidence except as otherwise provided in this article. There is a legal presumption of capacity, and the burden of proof shall be on the petitioner to prove the allegations set forth in the petition. Such proof shall be established by clear and convincing evidence.

J. The existence of a proceeding for or the existence of a guardianship for an adult is a matter of public record unless the court seals the record after:

(1) the alleged incapacitated person or individual subject to guardianship requests that the record be sealed; and

(2) either:

(a) the petition for guardianship is dismissed; or

(b) the guardianship is terminated.

K. An alleged incapacitated person or the protected person subject to a proceeding for a guardianship, whether or not a guardian is appointed, an attorney designated by the alleged incapacitated person or the protected person and a person entitled to notice are entitled to access court records of the proceeding and resulting guardianship. A person not otherwise entitled to access court records under this subsection for good cause may petition the court for access to court records of the guardianship. The court shall grant access if access is in the best interest of the alleged incapacitated person or the protected person or furthers the public interest and does not endanger the welfare or financial interests of the alleged incapacitated person or the protected person.

L. A report pursuant to Subsections E and F of this section or a written report filed pursuant to Section 45-5-303.1 or 45-5-314 NMSA 1978 is confidential and shall be sealed on filing, but is available to:

(1) the court;

(2) the alleged incapacitated person who is the subject of the report or evaluation, without limitation as to use;

(3) the petitioner, visitor, guardian ad litem and an attorney of record for purposes of the proceeding;

(4) unless the court orders otherwise, an agent appointed under a power of attorney for health care or power of attorney for finances in which the alleged incapacitated person is the principal; and

(5) any other person if it is in the public interest, as determined by the court, or for a purpose the court orders for good cause.

M. Notwithstanding the provisions of Subsection J of this section, a disclosure of information shall not include diagnostic information, treatment information or other medical or psychological information.

N. The issue of whether a guardian shall be appointed for the alleged incapacitated person shall be determined by the court at an open hearing unless, for good cause, the court determines otherwise.

O. Upon request of the petitioner or alleged incapacitated person, the court shall schedule a jury trial.

History: 1953 Comp., § 5-303, enacted by Laws 1975, ch. 257, § 5-303; repealed and reenacted by Laws 1989, ch. 252, § 5; 1993, ch. 301, § 3; 1998, ch. 32, § 3; 2009, ch. 159, § 33; 2018, ch. 10, § 4; 2019, ch. 228, § 2.

45-5-303.1. Duties of guardian ad litem.

A. The guardian ad litem shall:

(1) interview in person the alleged incapacitated person prior to the hearing;

(2) present the alleged incapacitated person's declared position to the court;

(3) identify and present all available less restrictive alternatives to guardianship;

(4) interview the qualified health care professional, the visitor and the proposed guardian;

(5) review both the medical report submitted by the qualified health care professional and the report by the visitor;

(6) obtain independent medical or psychological assessments, or both, if necessary; and

(7) file a written report with the court prior to the hearing on the petition for appointment.

B. Unless otherwise ordered by the court, the duties of the guardian ad litem terminate and the guardian ad litem is discharged from duties upon entry of the order appointing the guardian and acceptance of the appointment by the guardian.

History: 1978 Comp., § 45-5-303.1, enacted by Laws 1989, ch. 252, § 6; 1993, ch. 301, § 4; 2019, ch. 228, § 3; 2021, ch. 128, § 6.

45-5-304. Findings; order of appointment.

A. The court, at the hearing on the petition for appointment for a guardian pursuant to provisions of Chapter 45, Article 5 NMSA 1978, shall:

(1) inquire into the nature and extent of the functional limitations of the alleged incapacitated person; and

(2) ascertain the alleged incapacitated person's capacity to care for the alleged incapacitated person's own self.

B. If it is determined that the alleged incapacitated person possesses the capacity to care for the alleged incapacitated person's own self, the court shall dismiss the petition.

C. Alternatively, the court may appoint a full guardian as requested in the petition or a limited guardian and confer specific powers of guardianship after finding in the record based on clear and convincing evidence that:

(1) the person for whom a guardian is sought is totally incapacitated or is incapacitated only in specific areas as alleged in the petition;

(2) the guardianship is necessary as a means of providing continuing care, supervision and rehabilitation of the incapacitated person;

(3) there are no available alternative resources that are suitable with respect to the alleged incapacitated person's welfare, safety and rehabilitation;

(4) the guardianship is appropriate as the least restrictive form of intervention consistent with the preservation of the civil rights and liberties of the alleged incapacitated person; and

(5) the proposed guardian is both qualified and suitable, has reviewed the proposed order of appointment and is willing to serve.

D. The court may enter any other appropriate order consistent with the findings of this section.

E. A copy of the order appointing the guardian shall be furnished to the proposed guardian, the incapacitated person and the incapacitated person's counsel.

F. The order shall contain the name and address of the guardian as well as notice of the incapacitated person's right to appeal the guardianship appointment and of the right to seek alteration or termination of the guardianship at any time.

History: 1953 Comp., § 5-304, enacted by Laws 1975, ch. 257, § 5-304; repealed and reenacted by Laws 1989, ch. 252, § 7; 1993, ch. 301, § 5; 2009, ch. 159, § 34.

45-5-305. Acceptance of appointment; consent to jurisdiction.

By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian or mailed to him at his address as listed in the court records and to his address as then known to the petitioner.

History: 1953 Comp., § 32A-5-305, enacted by Laws 1975, ch. 257, § 5-305.

45-5-306. Death of protected person or guardian; incapacity of guardian.

The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or protected person, the determination of incapacity of the guardian or upon removal or resignation as provided in Section 45-5-307 NMSA 1978. Upon the death of the protected person, the guardian shall submit notice to the

appointing court. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect the guardian's liability for prior acts nor the guardian's obligation to account for funds and assets of the guardian's protected person.

History: 1953 Comp., § 32A-5-306, enacted by Laws 1975, ch. 257, § 5-306; 2009, ch. 159, § 35.

45-5-307. Death, substitution, review and termination of guardianship.

A. On the petition of the incapacitated person or any person interested in the incapacitated person's welfare and upon notice and hearing, the court may remove a guardian and appoint a successor if it is in the best interest of the incapacitated person or if the guardian fails to comply with the guardian's duties as required by Section 45-5-312 NMSA 1978.

B. Upon death, removal or resignation of a guardian, the court may appoint another guardian or make any other order that may be appropriate. If a successor guardian is appointed, the successor guardian succeeds to the title and powers of the successor guardian's predecessor.

C. The incapacitated person or any person interested in the incapacitated person's welfare may petition for an order that the incapacitated person is no longer incapacitated and for removal or resignation of the guardian. A request for this order may be made by informal letter to the court or judge. Any person who knowingly interferes with transmission of this kind of request to the court may be adjudged guilty of contempt of court.

D. Unless waived by the court upon the filing of a petition to terminate a guardianship for reasons other than the death of the incapacitated person, the court shall follow the same procedures to safeguard the rights of the incapacitated person as those that apply to a petition for appointment of a guardian as set forth in Section 45-5-303 NMSA 1978.

E. In a proceeding that increases the guardian's authority or reduces the autonomy of the protected person, the court shall follow the same procedures to safeguard the rights of the incapacitated person as those that apply to a petition for appointment of a guardian, as set forth in Section 45-5-303 NMSA 1978.

F. Following receipt of a request for review, the court shall hold a status hearing, which may be informal, to determine the appropriate order to be entered. If the court finds the incapacitated person is capable of more autonomy than at the time of the original order, the court may enter an order removing the guardian, terminating the guardianship or reducing the powers previously granted to the guardian. The court has

the option to follow all or part of the procedures that apply for the appointment of a guardian as set forth in Section 45-5-303 NMSA 1978.

G. At any time following the appointment of a guardian, but not later than ten years after the initial appointment of a guardian for a protected person and every ten years thereafter, the court shall:

(1) hold a status hearing, after notice to the guardian, the protected person and appropriate interested persons, to review the status of the protected person's capacity and the continued need for a guardian; or

(2) appoint a court investigator to assess the protected person's capacity. The court investigator shall prepare a detailed report to the court regarding the status of the protected person's capacity and the continued need for a guardian. Any report shall be made available to the guardian, the protected person and interested persons identified by the court.

H. If the court is unable to contact either the guardian or the protected person and neither appears for the status hearing held pursuant to Paragraph (1) of Subsection G of this section, the court shall appoint a guardian ad litem or court investigator to investigate and report to the court as to the status of the protected person and the guardian. Any report shall be made available to the guardian, the protected person and appropriate interested persons, if known to the court.

I. Following the status hearing or the court's report from the court investigator or guardian ad litem on the status of the protected person and the guardian as provided in Subsection H of this section, the court may enter an appropriate order; provided that, in entering an order that increases the guardian's authority or reduces the autonomy of the protected person, the court shall follow the same procedures to safeguard the rights of the incapacitated person as those that apply to a petition for appointment of a guardian, as set forth in Section 45-5-303 NMSA 1978.

History: 1953 Comp., § 32A-5-307, enacted by Laws 1975, ch. 257, § 5-307; 1989, ch. 252, § 8; 1993, ch. 301, § 6; 2009, ch. 159, § 36; 2019, ch. 228, § 4; 2021, ch. 128, § 7.

45-5-308. Letters of guardianship.

Letters of guardianship shall contain:

A. the names, addresses and telephone numbers of the guardian;

B. the name, address and telephone number of the incapacitated person; and

C. the scope of the guardianship including the specific legal limitations imposed by the court on the powers of the guardian.

History: 1978 Comp., § 45-5-308, enacted by Laws 1989, ch. 252, § 9.

45-5-309. Notices in guardianship proceedings.

A. On filing of a petition under Section 45-5-303 NMSA 1978 for appointment of a guardian for an alleged incapacitated person, the court shall set a date, time and place for hearing the petition.

B. A copy of a petition under Section 45-5-303 NMSA 1978 and notice of a hearing on the petition shall be served personally on the alleged incapacitated person. The notice shall inform the alleged incapacitated person of the alleged incapacitated person's rights at the hearing and the right to attend the hearing. The notice shall include a description of the nature, purpose and consequences of granting the petition. The court shall not grant the petition if notice substantially complying with this subsection is not served on the alleged incapacitated person.

C. In a proceeding on a petition under Section 45-5-303 NMSA 1978, the notice required under Subsection B of this section shall be given to the persons required to be listed in the petition under Section 45-5-303 NMSA 1978 and any other person interested in the alleged incapacitated person's welfare that the court determines. Failure to give notice under this subsection does not preclude the court from appointing a guardian.

D. After the appointment of a guardian, notice of a hearing on a petition for any order under Part 3 of Chapter 45, Article 5 NMSA 1978, together with a copy of the petition, shall be given to:

(1) the protected person subject to guardianship;

(2) the guardian; and

(3) any other person the court determines.

History: 1953 Comp., § 32A-5-309, enacted by Laws 1975, ch. 257, § 5-309; 1989, ch. 252, § 10; 1993, ch. 301, § 7; 2009, ch. 159, § 37; 2018, ch. 10, § 5.

45-5-310. Temporary guardians.

A. When a petition for guardianship has been filed, but adherence to the procedures set out in Section 45-5-303 NMSA 1978 would cause serious, immediate and irreparable harm to the alleged incapacitated person's health, safety or welfare, the court may appoint a temporary guardian prior to the final hearing and decision on the petition, subject to the requirements of this section.

B. Upon separate motion by the petitioner, the court shall schedule and hold a hearing on the appointment of a temporary guardian no later than ten business days

from the date the motion is filed and appoint a guardian ad litem for the alleged incapacitated person. The guardian ad litem shall file a report no later than two days prior to the hearing. The report shall include those items found in Paragraphs (1) through (3) of Subsection A of Section 45-5-303.1 NMSA 1978. Notice of the hearing shall be as set out in Section 45-5-309 NMSA 1978.

C. Upon a finding that serious, immediate and irreparable harm to the alleged incapacitated person's health, safety or welfare would result during the pendency of petition, the court shall appoint a temporary guardian and shall specify the temporary guardian's powers in order to prevent serious, immediate and irreparable harm to the alleged incapacitated person. The duration of the temporary guardianship shall not exceed thirty days. However, if after a hearing in which there is a showing of good cause, the court may extend the temporary guardianship for no more than an additional sixty days.

D. A temporary guardian may be appointed without notice to the alleged incapacitated person and to the alleged incapacitated person's attorney only if it clearly appears from specific facts shown by affidavit or sworn testimony that serious, immediate and irreparable harm will result to the alleged incapacitated person's health, safety or welfare before a ten-day hearing on the appointment of a temporary guardian can be held. If a temporary guardian is appointed without notice to the alleged incapacitated person and the alleged incapacitated person's attorney, the court shall schedule and hold a hearing no later than ten business days from the date the motion for temporary guardian is filed to determine whether the temporary guardianship should continue and, if so, to address the continued authority of the temporary guardian. The petitioner shall have the alleged incapacitated person and the alleged incapacitated person's attorney served personally within twenty-four hours of the appointment of a temporary guardian as provided in Subsection B of Section 45-5-309 NMSA 1978. The alleged incapacitated person, the alleged incapacitated person's counsel or any interested person may appear and move dissolution or modification of the court's order, and, in that event, the court shall proceed to hear and determine such motion at the initial ten-day hearing or no later than ten business days from the date the motion is made, whichever comes first.

E. A temporary guardian is entitled to the care and custody of the alleged incapacitated person, but a temporary guardian may not sell or dispose of any property belonging to the alleged incapacitated person, or make a change to the housing or other placement of the alleged incapacitated person, without specific authorization from the court. A temporary guardian may be removed by the court at any time. A temporary guardian shall file an initial written report with the court within fifteen days of appointment by completing the guardian's report, as approved by the supreme court. A temporary guardian shall file a final written report with the court by completing the guardian's report, as approved by the supreme court, within fifteen days of the termination of the temporary guardianship or as otherwise ordered by the court. In all other respects, the provisions of the Uniform Probate Code [Chapter 45 NMSA 1978] concerning guardians apply to temporary guardians.

F. Appointment of a temporary guardian shall have the temporary effect of limiting the legal rights of the alleged incapacitated person as specified in the court order. Appointment of a temporary guardian shall not be evidence of incapacity.

History: 1953 Comp., § 32A-5-310, enacted by Laws 1975, ch. 257, § 5-310; 1989, ch. 252, § 11; 1993, ch. 301, § 8; 2022, ch. 36, § 1.

45-5-311. Who may be appointed guardian; priorities; qualifications.

A. Any person deemed to be qualified by the court may be appointed guardian of an incapacitated person, except that no individual who operates or is an employee of a boarding home, residential care home, nursing home, group home or other similar facility in which the incapacitated person resides may serve as guardian for the incapacitated person, except an employee may serve in such capacity when related by affinity or consanguinity.

B. Persons who are not disqualified have priority for appointment as guardian in the following order:

(1) a guardian or other like fiduciary appointed by the appropriate court of any other jurisdiction;

(2) a person, as far as known or as can be reasonably ascertained, previously nominated or designated in a writing signed by the incapacitated person prior to incapacity that has not been revoked by the incapacitated person or terminated by a court. This includes writings executed under the Uniform Health-Care Decisions Act [Chapter 24, Article 7A NMSA 1978], the Mental Health Care Treatment Decisions Act [Chapter 24, Article 7B NMSA 1978], the Uniform Power of Attorney Act [45-5B-101 to 45-5B-403 NMSA 1978], the Uniform Probate Code [Chapter 45 NMSA 1978] and the Uniform Trust Code [Chapter 46A NMSA 1978];

(3) the spouse of the incapacitated person;

(4) an adult child of the incapacitated person;

(5) a parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;

(6) any relative of the incapacitated person with whom the incapacitated person has resided for more than six months prior to the filing of the petition;

(7) a person nominated by the person who is caring for the incapacitated person or paying benefits to the incapacitated person; and

(8) any other person.

C. With respect to persons having equal priority, the court shall select the person it considers best qualified to serve as guardian. The court, acting in the best interest of the incapacitated person and for good cause shown, may pass over a person having priority and appoint a person having a lower priority under this section and shall take into consideration:

(1) the preference of the incapacitated person, giving weight to preferences expressed in writing by the person while having capacity;

(2) the geographic location of the proposed guardian;

(3) the relationship of the proposed guardian to the incapacitated person;

(4) the ability of the proposed guardian to carry out the powers and duties of the guardianship; and

(5) potential financial conflicts of interest between the incapacitated person and proposed guardian.

D. A professional guardian shall not serve or be appointed as a guardian of the incapacitated person unless the professional guardian is certified and is in good standing with a national or state organization recognized by the supreme court that provides professional certification for guardians.

History: 1953 Comp., § 32A-5-311, enacted by Laws 1975, ch. 257, § 5-311; 1989, ch. 252, § 12; 1993, ch. 301, § 9; 2009, ch. 159, § 38; 2019, ch. 228, § 5.

45-5-312. General powers and duties of the limited guardian and guardian.

A. If the court enters judgment pursuant to Subsection C of Section 45-5-304 NMSA 1978, it shall appoint a limited guardian if it determines that the protected person is able to manage some but not all aspects of personal care. The court shall specify those powers that the limited guardian shall have and may further restrict each power so as to permit the protected person to care for the protected person's own self commensurate with the protected person's ability to do so. A person for whom a limited guardian has been appointed retains all legal and civil rights except those that have been specifically granted to the limited guardian by the court. The limited guardian shall exercise supervisory powers over the protected person in a manner that is the least restrictive form of intervention consistent with the order of the court.

B. A guardian is not legally obligated to provide from the guardian's own funds for the protected person and is not liable to third persons for acts of the protected person solely by reason of the guardianship. In particular and without qualifying the foregoing, a guardian or the guardian's replacement has the following powers and duties, except as modified by order of the court:

(1) to the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the protected person, a guardian is entitled to custody of the protected person and may establish the protected person's place of abode within or without New Mexico;

(2) if entitled to custody of the protected person, a guardian shall make provision for the care, comfort and maintenance of the protected person and, whenever appropriate, arrange for training and education. The guardian shall take reasonable care of the protected person's clothing, furniture, vehicles and other personal effects and commence conservatorship proceedings if other property of the protected person is in need of protection;

(3) if no agent is entitled to make health care decisions for the protected person under the provisions of the Uniform Health-Care Decisions Act [Chapter 24, Article 7A NMSA 1978], then the guardian shall make health care decisions for the protected person in accordance with the provisions of that act. In exercising health care powers, a guardian may consent or withhold consent that may be necessary to enable the protected person to receive or refuse medical or other professional care, counsel, treatment or service. That decision shall be made in accordance with the values of the protected person, if known, or the best interests of the protected person if the values are not known;

(4) if no conservator for the estate of the protected person has been appointed, if the court has determined that a conservatorship is not appropriate and if a guardian appointed by the court has been granted authority to make financial decisions on behalf of the protected person in the order of appointment and in the letters of guardianship pursuant to Subsection C of Section 45-5-308 NMSA 1978, the guardian has the following powers and duties, including the power:

(a) to institute proceedings to compel any person under a duty to support the protected person or to pay sums for the welfare of the protected person to perform that duty;

(b) to receive money and tangible property deliverable to the protected person and apply the money and property for support, care and education of the protected person, but the guardian shall not use funds from the protected person's estate for room and board that the guardian or the guardian's spouse, parent or child has furnished the protected person, unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the protected person, if notice is possible;

(c) to serve as advocate and decision maker for the protected person in any disputes with persons or organizations, including financial institutions, regarding the protected person's finances;

(d) to obtain information regarding the protected person's assets and income from persons or organizations handling the protected person's finances;

(e) to file an initial inventory of all property belonging to the protected person within ninety days after appointment; and

(f) to exercise care to conserve any excess for the protected person's needs and include in the guardian's ninety-day and annual reports a description of decisions made regarding the protected person's finances and property; and

(5) the guardian shall exercise the guardian's supervisory powers over the protected person in a manner that is least restrictive of the protected person's personal freedom and consistent with the need for supervision. Professional guardians shall follow the following standards in the national guardianship association standards of practice:

(a) informed consent;

(b) standards for decision making;

(c) least restrictive alternatives;

(d) self-determination of the person; and

(e) the guardian's duties regarding diversity and personal preferences of the person.

C. A guardian of a protected person for whom a conservator also has been appointed shall control the care and custody of the protected person and is entitled to receive reasonable sums for services and for room and board furnished to the protected person. The guardian may request the conservator to expend the protected person's estate by payment to third persons or institutions for the protected person's care and maintenance.

D. Unless authorized by the court by specific order, a guardian for an adult shall not revoke or amend a power of attorney for health care or power of attorney for finances signed by the adult. If a power of attorney for health care is in effect, unless there is a court order to the contrary, a health care decision of an agent takes precedence over that of the guardian, and the guardian shall cooperate with the agent to the extent feasible. If a power of attorney for finances is in effect, unless there is a court order to the contrary, a decision by the agent that the agent is authorized to make under the power of attorney for finances takes precedence over that of the guardian, and the guardian shall cooperate with the agent to the extent feasible.

E. A guardian for an adult shall not initiate the commitment of the adult to a mental health treatment facility except in accordance with the state's procedure for involuntary civil commitment.

F. A guardian for a protected person shall not restrict the ability of the protected person to communicate, visit or interact with others, including receiving visitors and making or receiving telephone calls, personal mail or electronic communications, including through social media or participating in social activities, unless:

(1) authorized by the court by specific order;

(2) a less restrictive alternative is in effect that limits contact between the protected person and a person; or

(3) the guardian has good cause to believe restriction is necessary because interaction with a specified person poses a risk of significant physical, psychological or financial harm to the protected person and the restriction is:

(a) for a period of not more than seven business days if the person has a family or preexisting social relationship with the protected person; or

(b) for a period of not more than sixty days if the person does not have a family or preexisting social relationship with the protected person.

G. A guardian for a protected person shall seek and support the least restrictive option, consistent with the court's guardianship order of appointment, including developing adequate supports and requesting guardianship termination if less restrictive alternatives to guardianship are appropriate.

History: 1953 Comp., § 32A-5-312, enacted by Laws 1975, ch. 257, § 5-312; 1984, ch. 99, § 8; 1989, ch. 252, § 13; 1993, ch. 301, § 10; 1997, ch. 168, § 12; 2009, ch. 159, § 39; 2018, ch. 10, § 6; 2019, ch. 228, § 6; 2021, ch. 128, § 8.

45-5-313. Proceedings subsequent to appointment; venue.

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

B. Subject to the transfer provisions of the Uniform Adult Guardianship and Protective Proceedings Jurisdication [Jurisdiction] Act, if the court located where the protected person resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the

other court, whichever may be in the best interests of the protected person. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

History: 1953 Comp., § 32A-5-313, enacted by Laws 1975, ch. 257, § 5-313; 2009, ch. 159, § 40; 2011, ch. 124, § 57.

45-5-314. Annual report; audits.

A. The guardian of an incapacitated person shall file an initial report with the appointing court within ninety days of the guardian's appointment. Thereafter, the guardian shall file an annual report within thirty days of the anniversary date of the guardian's appointment. A copy of the report shall also be submitted to the district judge who appointed the guardian or the judge's successor, to the incapacitated person and to the incapacitated person's conservator, if any. The guardianship annual report review division at the administrative office of the courts shall review all reports upon their filing. The results of the review shall be delivered to the district judge presiding over the guardianship case. The report shall include information concerning the progress and condition of the incapacitated person, including the incapacitated person's health, medical and dental care, residence, education, employment and habitation; a report on the manner in which the guardian carried out the guardian's powers and fulfilled the guardian's duties; and the guardian's opinion regarding the continued need for guardianship. If the guardian has been provided power pursuant to Paragraph (4) of Subsection B of Section 45-5-312 NMSA 1978, the report shall contain information on financial decisions made by the guardian. Only reports that substantially comply with forms approved by the supreme court shall be accepted by the court as fulfilling the requirements of this section.

B. Any guardian may rely on a qualified health care professional's current written report to provide descriptions of the physical and mental conditions required in the report provided for in Subsection A of this section.

C. The guardian may be fined twenty-five dollars ($25.00) per day for an overdue interim or annual report. The fine shall be paid to the current school fund.

D. The court shall not waive the requirement of an annual report under any circumstance but may grant an extension of time not to exceed sixty days. The court may require the filing of more than one report annually.

E. A guardian of a protected person shall fully comply with the requirements of any audit of an account, inventory, report or property of a protected person.

History: 1978 Comp., § 45-5-314, enacted by Laws 1989, ch. 252, § 14; 1993, ch. 301, § 11; 2009, ch. 159, § 41; 2018, ch. 10, § 7; 2019, ch. 228, § 7; 2021, ch. 128, § 9.

45-5-315. Consent to guardianship not permitted.

An alleged incapacitated person shall not be permitted by the court to consent to the appointment of a guardian. All the procedural safeguards contained in Chapter 45, Article 5 NMSA 1978 pursuant to the appointment of a guardian for an incapacitated person shall apply in every guardianship proceeding.

History: 1978 Comp., § 45-5-317, enacted by Laws 1989, ch. 252, § 15.

PART 4
PROTECTION OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS

45-5-401. Conservatorship proceedings.

Upon petition and after notice and hearing in accordance with the provisions of the [Uniform] Probate Code, the court may appoint a conservator as follows:

A. appointment of a conservator may be made in relation to the estate and financial affairs of a minor if the court determines that:

(1) a minor owns property that requires management or protection that cannot otherwise be provided;

(2) a minor has or may have financial affairs that may be jeopardized or prevented by his minority; or

(3) funds are needed for a minor's support and education and that protection is necessary or desirable to obtain or provide funds; and

B. appointment of a conservator may be made in relation to the estate and financial affairs of a person for reasons other than minority if the court finds that the person has property that may be wasted or dissipated unless proper management is provided; that funds are needed for the support, care and welfare of the person or those entitled to be supported by him; that protection is necessary or desirable to obtain or provide funds; and that:

(1) the person is incapacitated; or

(2) the person is unable to manage his estate and financial affairs effectively for reasons such as confinement, detention by a foreign power or disappearance.

History: 1953 Comp., § 32A-5-401, enacted by Laws 1975, ch. 257, § 5-401; 1987, ch. 12, § 2; 1989, ch. 252, § 16; 1993, ch. 301, § 12.

45-5-402. Protective proceedings; jurisdiction of affairs of protected persons.

After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has:

A. exclusive jurisdiction to determine the need for a conservator or other protective order;

B. exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of New Mexico shall be managed, expended or distributed to or for the use of the protected person or any of his dependents; and

C. jurisdiction to determine the validity of claims against the person or estate of the protected person and his title to any property or claim.

History: 1953 Comp., § 32A-5-402, enacted by Laws 1975, ch. 257, § 5-402.

45-5-402.1. Permissible court orders.

A. The court shall exercise the authority conferred in Chapter 45, Article 5 NMSA 1978 to encourage the development of maximum self-reliance and independence of a protected person and make protective orders only to the extent necessitated by the protected person's mental and adaptive limitations and other conditions warranting the procedure.

B. The court has the following powers that may be exercised directly or through a conservator in respect to the estate and financial affairs of a protected person:

(1) while a petition for appointment of a conservator or other protective order is pending and after notice and a preliminary hearing, the court may preserve and apply the property of the person to be protected as may be required for the support of the person or his dependents;

(2) after notice and hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and financial affairs of the minor which are or may be necessary for the best interest of the minor and members of the minor's immediate family;

(3) after notice and hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court, for the benefit of the person and members of the person's immediate family, has all the powers over the estate and financial affairs which the

person could exercise if present and not under disability, except the power to make a will. These powers include, but are not limited to, the power to:

(a) make gifts;

(b) convey or release contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy;

(c) exercise or release powers held by the protected person as trustee, personal representative, custodian for minors, conservator or donee of a power of appointment;

(d) enter into contracts;

(e) create revocable or irrevocable trusts of property of the estate which may extend beyond the disability or life of the person;

(f) exercise rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value;

(g) exercise options of the person to purchase securities or other property;

(h) exercise any right to an elective share in the estate of the person's deceased spouse; and

(i) renounce or disclaim any interest by testate or intestate succession or by inter vivos transfer.

C. The court may exercise or direct the exercise of the following powers only if satisfied, after notice and hearing, that it is in the best interest of the protected person, and that the person either is incapable of consenting or has consented to the proposed exercise of power:

(1) to exercise or release powers of appointment of which the protected person is donee;

(2) to renounce or disclaim interests;

(3) to make gifts in trust or otherwise exceeding twenty percent of any year's income of the estate; and

(4) to change beneficiaries under insurance and annuity policies.

D. A determination that a basis for appointment of a conservator or other protective order exists has no effect on the capacity of the protected person.

History: Laws 1993, ch. 301, § 25.

45-5-403. Venue.

Venue for conservatorship proceedings is:

A. in the judicial district where the person to be protected resides or is present; or

B. if the person to be protected does not reside in New Mexico, in any judicial district in New Mexico where he has property. If the person to be protected is admitted to an institution pursuant to the order of a court of competent jurisdiction, venue is also in the judicial district in which that court sits.

History: 1953 Comp., § 32A-5-403, enacted by Laws 1975, ch. 257, § 5-403; 1993, ch. 301, § 13.

45-5-404. Original petition for appointment of conservator.

A. The following may petition for the appointment of a conservator:

(1) a person interested in the estate, financial affairs or welfare of an individual, including a person that would be adversely affected by lack of effective management of property or financial affairs of an individual; or

(2) the guardian for an individual.

B. A petition under Subsection A of this section shall state the petitioner's name, principal residence, current street address, if different, relationship to the alleged incapacitated person, interest in the appointment, the name and address of any attorney representing the petitioner and, to the extent known, the following:

(1) the alleged incapacitated person's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed that the alleged incapacitated person will reside if the petition is granted;

(2) the name and address of the alleged incapacitated person's:

(a) spouse, or, if the alleged incapacitated person has none, an adult with whom the alleged incapacitated person is in a long-term relationship of indefinite duration in which the individual has demonstrated an actual commitment to the alleged incapacitated person similar to the commitment of a spouse and in which the individual and the alleged incapacitated person consider themselves to be responsible for each other's well-being;

(b) adult children or, if none, each parent and adult sibling of the alleged incapacitated person or, if none, at least one adult nearest in kinship to the alleged incapacitated person who can be found with reasonable diligence; and

(c) adult stepchildren whom the alleged incapacitated person actively parented during the stepchildren's minor years and with whom the alleged incapacitated person had an ongoing relationship during the two years immediately preceding the filing of the petition;

(3) the name and current address of each of the following, if applicable:

(a) a person responsible for the care or custody of the alleged incapacitated person;

(b) any attorney currently representing the alleged incapacitated person;

(c) the representative payee appointed by the federal social security administration for the alleged incapacitated person;

(d) a guardian or conservator acting for the alleged incapacitated person in New Mexico or another jurisdiction;

(e) a trustee or custodian of a trust or custodianship of which the alleged incapacitated person is a beneficiary;

(f) the fiduciary appointed for the alleged incapacitated person by the federal department of veterans affairs;

(g) an agent designated under a power of attorney for health care in which the alleged incapacitated person is identified as the principal;

(h) an agent designated under a power of attorney for finances in which the alleged incapacitated person is identified as the principal;

(i) a person known to have routinely assisted the alleged incapacitated person with decision making in the six-month period immediately before the filing of the petition; and

(j) any proposed conservator, including a person nominated by the alleged incapacitated person;

(4) a general statement of the alleged incapacitated person's property with an estimate of its value, including any insurance or pension and the source and amount of other anticipated income or receipts;

(5) the reason conservatorship is necessary, including a brief description of:

(a) the nature and extent of the alleged incapacitated person's alleged need;

(b) if the petition alleges the alleged incapacitated person is missing, detained or unable to return to the United States, the relevant circumstances, including the time and nature of the disappearance or detention and any search or inquiry concerning the alleged incapacitated person's whereabouts;

(c) any less restrictive alternative for meeting the alleged incapacitated person's alleged need that has been considered or implemented;

(d) if no less restrictive alternatives have been considered or implemented, the reason it has not been considered or implemented; and

(e) the reason a less restrictive alternative is insufficient to meet the alleged incapacitated person's need;

(6) whether the petitioner seeks a limited conservatorship or a full conservatorship;

(7) if the petitioner seeks a full conservatorship, the reason a limited conservatorship instead of conservatorship is not appropriate;

(8) if the petition includes the name of a proposed conservator, the reason the proposed conservator should be appointed;

(9) if the petition is for a limited conservatorship, a description of the property to be placed under the conservator's control and any requested limitation on the authority of the conservator;

(10) whether the alleged incapacitated person needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings; and

(11) the name and address of an attorney representing the petitioner, if any.

History: 1953 Comp., § 32A-5-404, enacted by Laws 1975, ch. 257, § 5-404; 1989, ch. 252, § 17; 2018, ch. 10, § 8.

45-5-404.1. Duties of guardian ad litem.

A. The guardian ad litem shall:

(1) interview the person to be protected in person prior to the hearing;

(2) present the position of the person to be protected to the court;

(3) interview the qualified health care professional, the visitor, the proposed conservator and any other person who may have relevant information concerning the person to be protected;

(4) review both the medical report submitted by the qualified health care professional and the report by the visitor;

(5) obtain independent medical or psychological assessments, or both, if necessary; and

(6) file a written report with the court prior to the hearing on the petition for appointment.

B. Unless otherwise ordered by the court, the duties of the guardian ad litem terminate and the guardian ad litem is discharged from the guardian ad litem's duties upon entry of the order appointing the conservator and acceptance of the appointment by the conservator.

History: 1978 Comp., § 45-5-404.1, enacted by Laws 1989, ch. 252, § 18; 1993, ch. 301, § 14; 2019, ch. 228, § 8.

45-5-405. Notice in conservatorship proceedings.

A. On filing of a petition under Section 45-5-404 NMSA 1978 for appointment of a conservator, the court shall set a date, time and place for a hearing on the petition.

B. A copy of a petition under Section 45-5-404 NMSA 1978 and notice of a hearing on the petition shall be served personally on the alleged incapacitated person. If the alleged incapacitated person's whereabouts are unknown or personal service cannot be made, service on the alleged incapacitated person shall be made as provided in Section 45-1-401 NMSA 1978. The notice shall inform the alleged incapacitated person of the alleged incapacitated person's rights at the hearing and the right to attend the hearing. The notice also shall include a description of the nature, purpose and consequences of granting the petition. The court shall not grant a petition for appointment of a conservator if notice substantially complying with this subsection is not served on the alleged incapacitated person.

C. In a proceeding on a petition under Subsection B of this section, the notice required shall be given to the persons required to be listed in the petition under Section 45-5-404 NMSA 1978 and any other person interested in the alleged incapacitated person's welfare the court determines. Failure to give notice under this subsection does not preclude the court from appointing a conservator.

D. After the appointment of a conservator, notice of a hearing on a petition for an order under Part 4 of Chapter 45, Article 5 NMSA 1978, together with a copy of the petition, shall be given to:

(1) the protected person subject to conservatorship if the protected person is not missing, detained or unable to return to the United States;

(2) the conservator; and

(3) any other person the court determines.

History: 1953 Comp., § 32A-5-405, enacted by Laws 1975, ch. 257, § 5-405; 1989, ch. 252, § 19; 1993, ch. 301, § 15; 2018, ch. 10, § 9.

45-5-405.1. Protective arrangements and single transactions authorized.

A. If after notice in accordance with Section 45-5-405 NMSA 1978 to all interested persons, as defined in Section 45-1-201 NMSA 1978, and after hearing, it is established that a basis exists as described in Section 45-5-401 NMSA 1978 for affecting the estate and financial affairs of a person, the court, without appointing a conservator, may issue an order pursuant to Subsection B of this section for a protective arrangement instead of conservatorship for the person. Unless the person already has an attorney of the person's own choice, the court shall appoint an attorney to represent the person at the hearing. The court-appointed attorney shall have the duties of a guardian ad litem, as set forth in Section 45-5-404.1 NMSA 1978.

B. The court, instead of appointing a conservator, may:

(1) authorize a person or direct a person to execute a transaction necessary to protect the financial interest or property of the protected person, including:

(a) an action to establish eligibility for benefits;

(b) payment, delivery, deposit or retention of funds or property;

(c) sale, mortgage, lease or other transfer of property, including water rights and oil, gas and other mineral interests;

(d) purchase of an annuity;

(e) entry into a contractual relationship, including a contract to provide for personal care, supportive services, education, training or employment;

(f) addition to or establishment of a trust;

(g) ratification or invalidation of a contract, trust or other transaction, including a transaction related to the property or business affairs of the protected person; or

(h) settlement of a claim; or

(2) restrict access to the protected person's property by a specified person whose access to the property places the protected person at serious risk of financial harm.

C. After the notice and hearing pursuant to Subsection A of this section, the court may issue an order to restrict access to the protected person or the protected person's property by a specified person that the court finds by clear and convincing evidence:

(1) through fraud, coercion, duress or the use of deception and control caused or attempted to cause an action that would have resulted in financial harm to the protected person or the protected person's property; and

(2) poses a serious risk of substantial financial harm to the protected person or the protected person's property.

D. Before issuing an order pursuant to Subsection B or C of this section, the court shall consider the factors described in Section 45-5-417 NMSA 1978 that a conservator shall consider when making a decision on behalf of an individual subject to conservatorship.

E. Before issuing an order pursuant to Subsection B or C of this section for a protected person who is a minor, the court also shall consider the best interest of the minor, the preference of the parents of the minor and the preference of the minor, if the minor is twelve years of age or older.

F. Before issuing an order pursuant to Subsection B or C of this section for a protected person who is an adult, the court shall also consider the adult's prior or current directions, preferences, opinions, values and actions, to the extent actually known or reasonably ascertainable.

History: Laws 1993, ch. 301, § 26; 2018, ch. 10, § 10.

45-5-406. Guardianship and protective proceedings; request for notice; interested person.

A. Any interested person who desires to be notified before any order is made in a guardianship proceeding, including any proceeding subsequent to the appointment of a guardian, or in a protective proceeding may file a request for notice with the clerk of the court in which the proceeding is pending. The clerk shall mail a copy of the request to the petitioner and to the guardian or conservator if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and the address of that person or an attorney to whom notice is to be given. The request is effective only as to matters occurring after the filing.

B. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in a protective proceeding.

C. In addition to the notices required by Section 45-5-207 or 45-5-309 NMSA 1978, notice of a petition for guardianship and of any subsequent proceedings or requests for orders shall be given to each interested person who has filed a request for notice pursuant to the provisions of Subsection A of this section. Except as otherwise required by law, notice shall be given in accordance with Section 45-1-401 NMSA 1978.

History: 1953 Comp., § 32A-5-406, enacted by Laws 1975, ch. 257, § 5-406; 1993, ch. 301, § 16; 1995, ch. 210, § 57.

45-5-407. Procedure for court appointment of a conservator.

A. Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If at any time in the proceeding the court finds the minor is or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if the minor is fourteen years of age or older. An attorney appointed by the court to represent a minor shall represent and protect the interests of the minor.

B. Upon receipt of a petition for appointment of a conservator for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected is already represented by an attorney of the person's own choice, the court shall appoint an attorney to represent the person to be protected in the proceeding. The court-appointed attorney shall have the duties of a guardian ad litem as set forth in Section 45-5-404.1 NMSA 1978.

C. If the petition is for the appointment of a conservator for an incapacitated person, the person to be protected shall be examined by a qualified health care professional appointed by the court who shall submit a report in writing to the court. The report shall:

(1) describe the nature and degree of the person's incapacity, if any, and the level of the intellectual, developmental and social functioning of the person to be protected; and

(2) contain observations, with supporting data, regarding the ability of the person to be protected to manage the person's estate or financial affairs.

D. The court shall also appoint a visitor who shall interview the person seeking appointment as conservator and the person to be protected. The visitor shall also visit the present place of residence of the person to be protected. The visitor shall evaluate the needs of the person to be protected and shall submit a written report to the court. The report shall include a recommendation regarding the appropriateness of the appointment of the proposed conservator. The report shall also include recommendations regarding:

(1) those aspects of the person's financial affairs that the person to be protected can manage without supervision or assistance;

(2) those aspects of the person's financial affairs that the person to be protected could manage with the supervision or assistance of support services and benefits; and

(3) those aspects of the person's financial affairs that the person to be protected is unable to manage even with the supervision or assistance of support services and benefits.

Unless otherwise ordered by the court, the appointment of the visitor terminates and the visitor is discharged from duties upon entry of an order appointing a conservator and acceptance of the appointment by the conservator.

E. The person to be protected shall be present at the hearing on the issues raised by the petition and any response to the petition, unless the court determines it is not in the best interest of the person for whom a conservator is sought to be present because of a threat to the health or safety of the person for whom a conservator is sought or others as determined by the court. The court upon request or its own motion may conduct hearings at the location of the person to be protected if the person is unable to be present in court. At a hearing conducted pursuant to this section, the person to be protected may:

(1) present evidence and subpoena witnesses and documents;

(2) examine witnesses, including a court-appointed guardian ad litem, qualified health care professional and visitor; and

(3) otherwise participate in the hearing.

F. The person to be protected shall not be permitted by the court to consent to the appointment of a conservator.

G. The court, at the hearing on the petition for appointment of conservator, shall:

(1) inquire into the nature and extent of the functional limitations of the person to be protected; and

(2) ascertain the person's capacity to manage the person's financial affairs.

H. If it is determined that the person to be protected possesses the capacity to manage the person's estate or financial affairs, or both, the court shall dismiss the petition.

I. Alternatively, the court may appoint a full conservator, as requested in the petition, or a limited conservator and confer specific powers of conservatorship after finding in the record based on clear and convincing evidence that:

(1) the person to be protected is totally incapacitated or is incapacitated only in specific areas as alleged in the petition;

(2) the conservatorship is necessary as a means of effectively managing the estate or financial affairs, or both, of the person to be protected;

(3) there are not available alternative resources that enable the effective management of the estate and financial affairs of the person to be protected;

(4) the conservatorship is appropriate as the least restrictive form of intervention consistent with the preservation of the property of the person to be protected; and

(5) the proposed conservator is both qualified and suitable and is willing to serve.

J. After hearing, upon finding that a basis for the appointment of a conservator has been established, the court shall make an appointment of a conservator. The court shall appoint a limited conservator if it determines that the incapacitated person is able to manage some but not all aspects of the incapacitated person's estate and financial affairs. The court shall specify those powers that the limited conservator shall have and may further restrict each power so as to permit the incapacitated person to care for the incapacitated person's estate and financial affairs commensurate with the incapacitated person's ability to do so.

K. A person for whom a conservator has been appointed retains all legal and civil rights except those that have been specifically granted to the conservator by the court. The conservator shall exercise supervisory powers over the estate and financial affairs of the incapacitated person in a manner that is the least restrictive form of intervention consistent with the order of the court.

L. The rules of evidence shall apply and no hearsay evidence that is not otherwise admissible in a court shall be admitted into evidence except as otherwise provided in the Uniform Probate Code.

M. The existence of a proceeding for or the existence of conservatorship is a matter of public record unless the court seals the record after:

(1) the alleged incapacitated person, the protected person subject to conservatorship or the parent or a guardian of a minor subject to conservatorship requests that the record be sealed; and

(2) either:

(a) the petition for conservatorship is dismissed; or

(b) the conservatorship is terminated.

N. An alleged incapacitated person or protected person subject to a proceeding for a conservatorship, whether or not a conservator is appointed, an attorney designated by the alleged incapacitated person or protected person and a person entitled to notice may access court records of the proceeding and resulting conservatorship. A person not otherwise entitled to access to court records under this section for good cause may petition the court for access to court records of the conservatorship. The court shall grant access if access is in the best interest of the alleged incapacitated person or protected person subject to conservatorship or furthers the public interest and does not endanger the welfare or financial interests of the alleged incapacitated person or individual.

O. A report pursuant to Subsections C and D of this section or a written report filed pursuant to Section 45-5-404.1 or 45-5-409 NMSA 1978 is confidential and shall be sealed on filing, but is available to:

(1) the court;

(2) the alleged incapacitated person or protected person who is the subject of the report, without limitation as to use;

(3) the petitioner, guardian ad litem, visitor and an attorney of record, for purposes of the proceeding;

(4) unless the court directs otherwise, an agent appointed under a power of attorney for finances in which the alleged incapacitated person is identified as the principal; and

(5) any other person if it is in the public interest, as determined by the court, or for a purpose the court orders for good cause.

P. Notwithstanding the provisions of Subsection M of this section, any disclosure of information shall not include any diagnostic information, treatment information or other medical or psychological information.

Q. The issue of whether a conservator shall be appointed for the alleged incapacitated person shall be determined by the court at an open hearing unless, for good cause, the court determines otherwise.

R. Upon request of the petitioner or person to be protected, the court shall schedule a jury trial.

S. Upon entry of an order appointing a conservator, a copy of the order shall be furnished to the person for whom the conservator was appointed and that person's counsel. The order shall contain the name and address of the conservator as well as notice to the person for whom the conservator was appointed of that person's right to appeal the appointment and of that person's right to seek alteration or termination of the conservatorship at any time.

History: 1953 Comp., § 32A-5-407, enacted by Laws 1975, ch. 257, § 5-407; 1989, ch. 252, § 20; 1993, ch. 301, § 17; 1998, ch. 32, § 4; 2018, ch. 10, § 11; 2019, ch. 228, § 9.

45-5-408. Temporary conservators.

A. When a petition for conservatorship has been filed, but adherence to the procedures set out in Section 45-5-407 NMSA 1978 would cause serious, immediate and irreparable harm to the alleged incapacitated person's or minor's estate or financial interests, or both, the court may appoint a temporary conservator prior to the final hearing and decision on the petition, subject to the requirements of this section.

B. Upon separate motion by the petitioner, the court shall schedule and hold a hearing on the appointment of a temporary conservator no later than ten business days from the date the motion is filed and appoint a guardian ad litem for the alleged incapacitated person. The guardian ad litem shall file a report no later than two days prior to the hearing. The report shall identify and present all available less restrictive alternatives to conservatorship and include those items found in Paragraphs (1) and (2) of Subsection A of Section 45-5-404.1 NMSA 1978. Notice of the hearing shall be provided as set out in Section 45-5-405 NMSA 1978.

C. Upon a finding that serious, immediate and irreparable harm to the alleged incapacitated person's estate and financial interests would result during the pendency of petition, the court shall appoint a temporary conservator and shall specify the temporary conservator's powers in order to prevent serious, immediate and irreparable harm to the alleged incapacitated person's property. The duration of the temporary conservatorship shall not exceed thirty days. However, if after a hearing in which there is a showing of good cause, the court may extend the temporary conservatorship for no more than an additional sixty days.

D. A temporary conservator may be appointed without notice to the alleged incapacitated person and to the alleged incapacitated person's attorney only if it clearly appears from specific facts shown by affidavit or sworn testimony that serious, immediate and irreparable harm will result to the alleged incapacitated person's estate or financial interests before a ten-day hearing on the appointment of a temporary conservator can be held. If a temporary conservator is appointed without notice to the alleged incapacitated person and the alleged incapacitated person's attorney, the court shall schedule and hold a hearing no later than ten business days from the date the motion for temporary conservator is filed to determine whether the temporary conservatorship should continue and, if so, to address the continued authority of the

temporary conservator. The petitioner shall have the alleged incapacitated person and the alleged incapacitated person's attorney served personally within twenty-four hours of the appointment of a temporary conservator as provided in Subsection B of Section 45-5-405 NMSA 1978. The alleged incapacitated person, the alleged incapacitated person's counsel or any interested person may appear and move dissolution or modification of the court's order, and, in that event, the court shall proceed to hear and determine such motion at the initial ten-day hearing or no later than ten business days from the date the motion is made, whichever comes first.

E. A temporary conservator is entitled to the care and custody of the alleged incapacitated person's estate and financial interests, but a temporary conservator may not sell or dispose of any property belonging to the alleged incapacitated person, or make a change to the housing or other placement of the alleged incapacitated person, without specific authorization from the court. A temporary conservator may be removed by the court at any time. A temporary conservator shall file an initial written report with the court within fifteen days of appointment by completing the conservator's inventory, as approved by the supreme court. A temporary conservator shall file a final written report with the court by completing the conservator's report, as approved by the supreme court, within fifteen days of the termination of the temporary conservatorship or as otherwise ordered by the court. In all other respects, the provisions of the Uniform Probate Code [Chapter 45 NMSA 1978] concerning conservators apply to temporary conservators.

F. Appointment of a temporary conservator shall have the temporary effect of limiting the legal rights of the alleged incapacitated person as specified in the court order. Appointment of a temporary conservator shall not be evidence of incapacity.

History: 1978 Comp., § 45-5-408, enacted by Laws 1989, ch. 252, § 21; 1993, ch. 301, § 18; 2022, ch. 36, § 2.

45-5-409. Annual report and account; audits.

A. Every conservator shall file an annual report and account with the appointing court within thirty days of the anniversary date of the conservator's appointment, upon the conservator's resignation or removal or upon termination of the conservatorship. A copy of the annual report and account shall also be submitted to the district judge who appointed the conservator or the conservator's successor, to the incapacitated person and to the incapacitated person's guardian, if any. The report shall include information concerning the progress and condition of the person under conservatorship, a report on the manner in which the conservator carried out the conservator's powers and fulfilled the conservator's duties and the conservator's opinion regarding the continued need for conservatorship. Only reports that substantially comply with forms approved by the supreme court shall be accepted by the court as fulfilling the requirements of this section.

B. Any conservator may rely on a qualified health care professional's current written report to provide descriptions of the physical and mental conditions required in the report provided for in Subsection A of this section.

C. The court shall not waive the requirement of an annual report and account under any circumstance, but may grant an extension of time. The court may require the filing of more than one report and account annually.

D. The conservator may be fined twenty-five dollars ($25.00) per day for an overdue interim or annual report and account. The fine shall be paid to the current school fund.

E. In connection with an account, the court may require a conservator to submit to a physical check of the property in the conservator's control, to be made in any manner the court may order.

F. In any case in which property consists in whole or in part of benefits paid by the United States department of veterans affairs to the conservator or the conservator's predecessor for the benefit of the protected person, the department office that has jurisdiction over the area is entitled to a copy of any report and account filed under Chapter 45, Article 5 NMSA 1978.

G. A conservator shall fully comply with the requirements of any audit of an account, inventory, report or property of a protected person.

H. The court shall forward all reports submitted under Section 45-5-409 NMSA 1978 to the office of the state auditor for review within five business days of receipt of the report. The office of the state auditor shall review the report filed by the conservator and decide whether a full audit is necessary. The office of the state auditor shall submit, within fifteen business days of receiving a report from the court, either a letter of review declining to conduct a full audit or a letter of acceptance to conduct an audit. If the office of the state auditor decides to conduct an audit of the contents in the report, an audit report shall be filed with the court within ninety calendar days of filing an acceptance for an audit. The state auditor shall have the authority to subpoena any documents, records or statements from any individual, company, entity or financial institution necessary to conduct an audit of the contents of a conservator's report. The office of the state auditor shall be available to testify at any court hearing concerning the results of the audit report.

History: 1953 Comp., enacted by Laws 1975, ch. 257, § 5-409; repealed and reenacted by Laws 1989, ch. 252, § 22; 1993, ch. 301, § 19; 2018, ch. 10, § 12; 2019, ch. 228, § 10; 2021, ch. 128, § 10.

45-5-409.1. Repealed.

History: 1978 Comp., § 45-5-409.1, enacted by Laws 2018, ch. 10, § 13; repealed by Laws 2019, ch. 228, § 15.

45-5-410. Who may be appointed conservator; priorities.

A. The court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the incapacitated person. The following are entitled to consideration for appointment in the order listed:

(1) a conservator, guardian of property or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the incapacitated person resides;

(2) a person, as far as known or as can be reasonably ascertained, previously nominated or designated in a writing signed by the incapacitated person prior to incapacity that has not been revoked by the incapacitated person or terminated by a court. This includes writings executed under the Uniform Health-Care Decisions Act, the Mental Health Care Treatment Decisions Act, the Uniform Power of Attorney Act, the Uniform Probate Code and the Uniform Trust Code;

(3) the spouse of the incapacitated person;

(4) an adult child of the incapacitated person;

(5) a parent of the incapacitated person or a person nominated by the will of a deceased parent;

(6) any relative of the incapacitated person with whom the incapacitated person has resided for more than six months prior to the filing of the petition;

(7) a person nominated by the person who is caring for the incapacitated person or paying benefits to the incapacitated person; and

(8) any other person.

B. A person under the priorities of Paragraph (1), (2), (3), (4), (5) or (6) of Subsection A of this section may nominate in writing a person to serve in the person's stead. With respect to persons having equal priority, the court shall select the one who is best qualified of those willing to serve.

C. The court, for good cause, may pass over a person having priority and appoint a person having lesser priority under this section and shall take into consideration:

(1) the preference of the incapacitated person;

(2) the geographic location of the proposed conservator;

(3) the relationship of the proposed conservator to the incapacitated person;

(4) the ability of the proposed conservator to carry out the powers and duties of the conservatorship; and

(5) potential financial conflicts of interest between the incapacitated person and the proposed conservator.

D. A professional conservator shall not serve or be appointed as a conservator of the protected person unless the professional conservator is certified and is in good standing with a national or state organization recognized by the supreme court that provides professional certification for conservators.

History: 1953 Comp., § 32A-5-410, enacted by Laws 1975, ch. 257, § 5-410; 1989, ch. 252, § 23; 1993, ch. 301, § 20; 2019, ch. 228, § 11.

45-5-411. Bond and terms; requirements of bonds.

A. Except as otherwise provided in Subsection C of this section, the court shall require a conservator to furnish a bond with a surety the court specifies, or require an alternative asset-protection arrangement, conditioned on faithful discharge of all duties of the conservator. The court may waive the requirement only if the court finds that a bond or other asset-protection arrangement is not necessary to protect the interests of the individual subject to conservatorship. Except as otherwise provided in Subsection C of this section, the court shall not waive the requirement if the conservator is in the business of serving as a conservator and is being paid for the conservator's service.

B. Unless the court directs otherwise, the bond required under this section shall be in the amount of the aggregate capital value of the conservatorship estate, plus one year's estimated income, less the value of property deposited under an arrangement requiring a court order for its removal and real property the conservator lacks power to sell or convey without specific court authorization. The court, in place of surety on a bond, may accept collateral for the performance of the bond, including a pledge of securities or a mortgage of real property.

C. A financial institution that possesses and is exercising general trust powers in New Mexico is not required to give a bond under this section. As used in this subsection, "financial institution" means a state- or federally chartered, federally insured depository bank or trust company.

D. The following rules apply to the bond required under this section:

(1) except as otherwise provided by the bond, the surety and the conservator are jointly and severally liable;

(2) by executing a bond provided by a conservator, the surety submits to the personal jurisdiction of the court that issued letters of conservatorship in a proceeding

relating to the duties of the conservator in which the surety is named as a party. Notice of the proceeding shall be given to the surety;

(3) on petition of a successor conservator or person affected by a breach of the obligation of the bond, a proceeding may be brought against the surety for breach of the obligation of the bond; and

(4) a proceeding against the bond may be brought until liability under the bond is exhausted.

E. If a bond under this section is not renewed by the conservator, the surety or sureties immediately shall give notice to the court and the protected person subject to conservatorship.

History: 1953 Comp., § 32A-5-411, enacted by Laws 1975, ch. 257, § 5-411; 2018, ch. 10, § 14.

45-5-412. Reserved.

45-5-413. Acceptance of appointment; consent to jurisdiction.

A. By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person.

B. Notice of any proceeding shall be delivered to the conservator, or mailed to him by registered or certified mail at his address as listed in the petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

History: 1953 Comp., § 32A-5-413, enacted by Laws 1975, ch. 257, § 5-413.

45-5-414. Compensation and expenses.

If not otherwise compensated for services rendered, any visitor, attorney, physician, conservator or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate.

History: 1953 Comp., § 32A-5-414, enacted by Laws 1975, ch. 257, § 5-414.

45-5-415. Death, substitution, review and termination of conservatorship.

A. On the petition of the incapacitated person or a person interested in the incapacitated person's welfare, the court may remove a conservator for good cause,

upon notice and hearing. A temporary conservator may be appointed pursuant to Section 45-5-408 NMSA 1978 pending a final hearing.

B. Upon death, resignation or removal of a conservator, the court may appoint another conservator or make any other order that may be appropriate. If a successor conservator is appointed, the successor conservator succeeds to the title and powers of the predecessor.

C. The incapacitated person or a person interested in the incapacitated person's welfare may petition for an order that the incapacitated person is no longer in need of a conservator and for removal or resignation of the conservator. A request for this order may be made by informal letter to the court or judge. Any person who knowingly interferes with transmission of this kind of request to the court may be adjudged guilty of contempt of court.

D. Unless waived by the court upon the filing of a petition to terminate a conservatorship for reasons other than termination of minority or the death of the person under conservatorship, the court shall follow the same procedures as set forth in Section 45-5-407 NMSA 1978.

E. In a proceeding that increases the conservator's authority or reduces the autonomy of the incapacitated person, the court shall follow the same procedures to safeguard the rights of the incapacitated person as those that apply to a petition for appointment of a conservator, as set forth in Section 45-5-407 NMSA 1978.

F. Following receipt of a request for review, the court shall hold a status hearing, which may be informal, to determine the appropriate order to be entered. If the court finds the incapacitated person is capable of more autonomy than at the time of the original order, the court may enter an order removing the conservator, terminating the conservatorship or reducing the powers previously granted to the conservator. The court has the option to follow all or part of the procedures that apply for the appointment of a conservator, as set forth in Section 45-5-407 NMSA 1978.

G. At any time following the appointment of a conservator, but not later than ten years after the initial appointment of a conservator for an incapacitated person and every ten years thereafter, the court shall:

(1) hold a status hearing, after notice to the conservator, the incapacitated person and appropriate interested persons, to review the status of the incapacitated person's capacity and the continued need for a conservator; or

(2) appoint a court investigator to assess the incapacitated person's capacity. The court investigator shall prepare a detailed report to the court regarding the status of the incapacitated person's capacity and the continued need for a conservator. Any report shall be made available to the conservator, the incapacitated person and interested persons identified by the court.

H. If the court is unable to contact either the conservator or the incapacitated person and neither appears for the status hearing held pursuant to Paragraph (1) of Subsection G of this section, the court shall appoint a guardian ad litem to investigate and report to the court as to the status of the incapacitated person and the conservator. Any report shall be made available to the conservator, the incapacitated person and appropriate interested persons, if known to the court.

I. Following the status hearing or the court's report from the court investigator or guardian ad litem on the status of the incapacitated person and the conservator as provided in Subsection H of this section, the court may enter an appropriate order; provided that, in entering an order that increases the conservator's authority or reduces the autonomy of the incapacitated person, the court shall follow the same procedures to safeguard the rights of the incapacitated person as those that apply to a petition for appointment of a conservator, as set forth in Section 45-5-407 NMSA 1978.

History: 1953 Comp., § 32A-5-415, enacted by Laws 1975, ch. 257, § 5-415; 1989, ch. 252, § 24; 1993, ch. 301, § 21; 2019, ch. 228, § 12.

45-5-416. Petitions for orders subsequent to appointment.

A. Any person interested in the welfare of a person for whom a conservator has been appointed may file a petition in the appointing court for an order:

(1) requiring bond or security or additional bond or security, or reducing bond;

(2) requiring an accounting for the administration of the estate;

(3) directing distribution;

(4) removing the conservator and appointing a temporary or successor conservator; or

(5) granting other appropriate relief.

B. A conservator may petition the appointing court for instructions concerning his fiduciary responsibility.

C. Upon notice and hearing, the court may give appropriate instructions or make any appropriate order.

History: 1953 Comp., § 32A-5-416, enacted by Laws 1975, ch. 257, § 5-416.

45-5-417. General duty of conservator.

In the exercise of a conservator's powers, a conservator shall act as a fiduciary and shall observe the standards of care applicable to trustees as described by Sections 46A-8-801 through 46A-8-807 NMSA 1978.

History: 1953 Comp., § 32A-5-417, enacted by Laws 1975, ch. 257, § 5-417; 2011, ch. 124, § 58.

45-5-418. Inventory and records.

A. Within ninety days after his appointment, every conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with his oath or affirmation that it is complete and accurate so far as he is informed.

B. The conservator shall provide a copy of the inventory to the protected person if he can be located, has attained the age of fourteen years, and has sufficient mental capacity to understand these matters, and to any parent or guardians with whom the protected person resides.

C. The conservator shall keep suitable records of his administration and exhibit the same on request of any interested person.

History: 1953 Comp., § 32A-5-418, enacted by Laws 1975, ch. 257, § 5-418.

45-5-419. Repealed.

45-5-420. Conservators; title by appointment.

A. The appointment of a conservator vests in him title as trustee to all property of the protected person, presently held or thereafter acquired, including title to any property previously held for the protected person by custodians or attorneys-in-fact.

B. The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will or trust instrument, imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator.

History: 1953 Comp., § 32A-5-420, enacted by Laws 1975, ch. 257, § 5-420.

45-5-421. Recording of conservator's letters.

Subject to the requirements of laws governing the filing or recordation of documents of title to land or other property, letters of conservatorship, and orders terminating

conservatorships, may be filed or recorded to give record notice of title as between the conservator and the protected person.

History: 1953 Comp., § 32A-5-421, enacted by Laws 1975, ch. 257, § 5-421.

45-5-421.1. Letters of conservatorship.

Letters of conservatorship shall contain:

A. the names, addresses and telephone numbers of the conservator;

B. the name, address and telephone number of the person for whom a conservator has been appointed; and

C. the scope of the conservatorship including the specific legal limitations imposed by the court on the powers of the conservator.

History: 1978 Comp., § 45-5-421.1, enacted by Laws 1989, ch. 252, § 26.

45-5-422. Sale, encumbrance or transaction involving conflict of interest; voidable; exceptions.

Any sale or encumbrance to a conservator, his spouse, agent or attorney, or to any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest is voidable unless the transaction is approved by the court after notice to interested persons and others as directed by the court.

History: 1953 Comp., § 32A-5-422, enacted by Laws 1975, ch. 257, § 5-422.

45-5-423. Persons dealing with conservators; protection.

A person who in good faith either assists a conservator or deals with him for value in any transaction other than those requiring a court order as provided in Section 5-408, is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in Section 5-426 [45-5-426 NMSA 1978] are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. The protection here expressed is in addition to that provided by comparable provisions of laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

History: 1953 Comp., § 32A-5-423, enacted by Laws 1975, ch. 257, § 5-423.

45-5-424. Powers of conservator in administration.

A. A conservator has all of the powers conferred herein and any additional powers conferred by law on trustees in New Mexico. In addition, a conservator for an unmarried minor, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in Section 5-209 [45-5-209 NMSA 1978] until the minor attains majority or marries. However, the parental rights so conferred on a conservator do not prevent appointment of a guardian.

B. A conservator has power, without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee.

C. A conservator, acting reasonably in efforts to accomplish the purpose for which he was appointed, may act without court authorization or confirmation, to:

(1) collect, hold and retain assets of the estate including land in another state, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested;

(2) receive additions to the estate;

(3) continue or participate in the operation of any business or other enterprise;

(4) acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest;

(5) invest and reinvest estate assets in accordance with Subsection B of this section;

(6) deposit estate funds in a bank including a bank operated by the conservator;

(7) acquire or dispose of an estate asset including land in another state for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of or abandon an estate asset;

(8) make ordinary or extraordinary repairs or alterations in buildings or other structures; to demolish any improvements; and to raze existing, or erect new, party walls or buildings;

(9) subdivide, develop or dedicate land to public use; to make or obtain the vacation of plats and adjust boundaries; to adjust differences in valuation on exchange or to partition by giving or receiving considerations; and to dedicate easements to public use without consideration;

(10) enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship;

(11) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(12) grant an option involving disposition of an estate asset; and to take an option for the acquisition of any asset;

(13) vote a security, in person or by general or limited proxy;

(14) pay calls, assessments and any other sums chargeable or accruing against or on account of securities;

(15) sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise;

(16) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the security so held;

(17) insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons;

(18) borrow money to be repaid from estate assets or otherwise; to advance money for the protection of the estate or the protected person, and for all expenses, losses and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets and the conservator has a lien on the estate as against the protected person for advances so made;

(19) pay or contest any claim; to settle a claim by or against the estate or the protected person by compromise, arbitration or otherwise; and to release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;

(20) pay taxes, assessments, compensation of the conservator and other expenses incurred in the collection, care, administration and protection of the estate;

(21) allocate items of income or expense to either estate income or principal, including creation or [of] reserves out of income for depreciation, obsolescence or amortization, or for depletion in mineral or timber properties;

(22) pay any sum distributable to a protected person or his dependent, without liability to the conservator, by paying the sum to the distributee or by paying the sum for

the use of the distributee either to his guardian or, if none, to a relative or other person with custody of his person;

(23) employ persons, including attorneys, auditors, investment advisors or agents, even though they are associated with the conservator to advise or assist him in the performance of his administrative duties; to act upon their recommendation without independent investigation; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary;

(24) prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties; and

(25) execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.

History: 1953 Comp., § 32A-5-424, enacted by Laws 1975, ch. 257, § 5-424.

45-5-425. Distributive duties and powers of conservator.

A. A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the protected person and his dependents in accordance with the following principles:

(1) the conservator is to consider recommendations relating to the appropriate standard of support, care, education or benefit for the protected person made by a parent, guardian or custodian, if any. He may not be surcharged for sums paid to persons or organizations actually furnishing support, education or care to the protected person pursuant to such recommendations of a parent or guardian of the protected person unless he knows that the parent, guardian or custodian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless such recommendations are clearly not in the best interests of the protected person;

(2) the conservator is to expend or distribute sums reasonably necessary for the support, education, care or benefit of the protected person with due regard to:

(a) the size of the estate, the probable duration of the conservatorship and the likelihood that the protected person, at some future time, may be fully able to manage his affairs and the estate which has been conserved for him;

(b) the accustomed standard of living of the protected person and members of his household; and

(c) other funds or sources used for the support of the protected person;

(3) the conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves, and who are in need of support;

(4) funds expended under this subsection may be paid by the conservator to any person, including the protected person, to reimburse for expenditures which the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that such services will be performed and where advance payments are customary or reasonably necessary under the circumstances.

B. If the estate is ample to provide for the purposes implicit in the distributions authorized by Subsection A of this section, a conservator for the protected person other than a minor has power to make gifts to charity and other persons as the protected person might have been expected to make, in amounts which do not exceed in total for any year twenty percent of the income from the estate.

C. When a minor who has not been adjudged disabled under Subsection B of Section 5-401 [45-5-401 NMSA 1978] attains his majority, his conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

D. When the conservator is satisfied that a protected person's disability (other than minority) has ceased, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

E. If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into his possession, inform the personal representative or a beneficiary named therein that he has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If, after forty days from the death of the protected person, no other person has been appointed personal representative and no application or petition for appointment has been filed, the conservator may apply to exercise the powers and duties of a personal representative so that he may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon request for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under Section 3-204 [45-3-204 NMSA 1978] and to any person nominated personal representative in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection, and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section shall have the effect of an order of appointment of a personal representative as provided in Sections 3-101

through 3-1204 [45-3-101 to 45-3-1204 NMSA 1978] except that the estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

History: 1953 Comp., § 32A-5-425, enacted by Laws 1975, ch. 257, § 5-425.

45-5-426. Consent to conservatorship; applicable laws.

All the procedures contained in Chapter 45, Article 5 NMSA 1978 pursuant to the appointment of a conservator for a person under conservatorship shall apply. The person for whom a conservatorship is sought shall not be allowed to consent to the appointment of a conservator by the court.

History: 1978 Comp., § 45-5-426, enacted by Laws 1989, ch. 252, § 27.

45-5-427. Preservation of estate plan.

In investing the estate, and in selecting assets of the estate for distribution under Subsection A of Section 5-425 [45-5-425 NMSA 1978], and in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the conservator or the court, and in exercising any other powers vested in them, the conservator or the court should take into account any known estate plan of the protected person, including his will; any revocable trust of which he is settlor; and any contract, transfer or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated. The conservator may examine the will of the protected person.

History: 1953 Comp., § 32A-5-427, enacted by Laws 1975, ch. 257, § 5-427.

45-5-428. Claims against protected person; enforcement.

A. A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods:

(1) the claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant and the amount claimed; or

(2) the claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court and deliver or mail a copy of the statement to the conservator.

A claim is deemed presented upon receipt of the written statement of claim by the conservator, or the filing of the claim with district court, whichever occurs first. A

presented claim is allowed, if it is not disallowed by written statement mailed by the conservator to the claimant within sixty days after its presentation. The presentation of a claim tolls any statute of limitation relating to the claim until thirty days after its disallowance.

B. A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitation, and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.

C. If it appears that the estate in conservatorship is likely to be exhausted before all claims and expenses of administration are paid, such claims and expenses shall be paid in the following order of priority:

(1) expenses of administration, including fees for the conservator and his attorney;

(2) tax claims with preference under federal law;

(3) claims for the support, education or care of the protected person or his dependents, on a pro rata basis;

(4) tax claims with preference under state law; and

(5) all other claims on a pro rata basis.

History: 1953 Comp., § 32A-5-428, enacted by Laws 1975, ch. 257, § 5-428; 1976 (S.S.), ch. 37, § 15.

45-5-429. Individual liability of conservator.

A. Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in the conservator's fiduciary capacity in the course of administration of the estate unless the conservator fails to reveal the conservator's representative capacity and identify the estate in the contract.

B. The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if the conservator is personally at fault.

C. Claims based on contracts entered into by a conservator in the conservator's fiduciary capacity on obligations arising from ownership or control of the estate or on torts committed in the course of administration of the estate may be asserted against

the estate by proceeding against the conservator in the conservator's fiduciary capacity, whether or not the conservator is individually liable for those claims.

D. Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge or indemnification or other appropriate proceeding or action.

E. No person shall request, procure or receive a release or waiver of liability, however denominated, of a conservator, an agent, an affiliate or a designee of a conservator or any other third party acting on behalf of a conservator.

F. A release or waiver of liability that is requested, procured or received contrary to the provisions of this section is void.

History: 1953 Comp., § 32A-5-429, enacted by Laws 1975, ch. 257, § 5-429; 2019, ch. 228, § 13.

45-5-430. Termination of proceeding.

The protected person, his personal representative, the conservator or any other person interested in the welfare of a person for whom a conservator has been appointed may petition the court to terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon finding after notice and hearing that the minority or disability of the protected person has ceased, may terminate the conservatorship. Upon termination, title to assets of the estate passes to the former protected person or to his successors, subject to provision in the order for expenses of administration or to conveyances from the conservator to the former protected person or his successors, to evidence the transfer.

History: 1953 Comp., § 32A-5-430, enacted by Laws 1975, ch. 257, § 5-430.

45-5-431. Payment of debt and delivery of property to foreign conservator without local proceedings.

A. Any person indebted to a protected person, or having possession of property or of an instrument evidencing a debt, stock or chose in action belonging to a protected person, may pay or deliver to a conservator, guardian of the estate or other like fiduciary appointed by a court of the state of residence of the protected person, upon being presented with proof of his appointment and an affidavit made by him stating that:

(1) no protective proceeding relating to the protected person is pending in New Mexico; and

(2) the foreign conservator is entitled to payment or to receive delivery.

B. If the person to whom the affidavit is presented pursuant to Subsection A of this section is not aware of any protective proceeding pending in New Mexico, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.

History: 1953 Comp., § 32A-5-431, enacted by Laws 1975, ch. 257, § 5-431.

45-5-432. Repealed.

History: 1953 Comp., § 32A-5-432, enacted by Laws 1975, ch. 257, § 5-432; 1978 Comp., § 45-5-432, repealed by Laws 2011, ch. 124, § 97.

45-5-433. Repealed.

45-5-434. Registration of guardianship orders.

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

History: 1978 Comp., § 45-5-434, enacted by Laws 2011, ch. 124, § 59.

45-5-435. Registration of protective orders.

If a conservator has been appointed in another state and a petition for a protective order is not pending in New Mexico, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in New Mexico by filing as a foreign judgment in a district court in New Mexico, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

History: 1978 Comp., § 45-5-434, enacted by Laws 2011, ch. 124, § 60.

45-5-436. Effect of registration.

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

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

History: 1978 Comp., § 45-5-436, enacted by Laws 2011, ch. 124, § 61.

PART 5
POWERS OF ATTORNEY

45-5-501. Repealed.

History: 1978 Comp., § 45-5-501, enacted by Laws 1995, ch. 210, § 58; 2007, ch. 135, § 404.

45-5-502. Repealed.

History: 1978 Comp., § 45-5-502, enacted by Laws 1995, ch. 210, § 59; repealed by Laws 2007, ch. 135, § 404.

45-5-503. Repealed.

History: 1978 Comp., § 45-5-503, enacted by Laws 1995, ch. 210, § 60; repealed by Laws 2007, ch. 135, § 404.

45-5-504. Repealed.

History: 1978 Comp., § 45-5-504, enacted by Laws 1995, ch. 210, § 61; repealed by Laws 2007, ch. 135, § 404.

45-5-505. Repealed.

History: 1978 Comp., § 45-5-505, enacted by Laws 1995, ch. 210, § 62; repealed by Laws 2007, ch. 135, § 404.

PART 6
UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT

45-5-601. Repealed.

History: 1978 Comp., § 45-5-601, enacted by Laws 1995, ch. 210, § 63; repealed by Laws 2007, ch. 135, § 404.

45-5-602. Repealed.

History: 1978 Comp., § 45-5-602, enacted by Laws 1995, ch. 210, § 64; repealed by Laws 2007, ch. 135, § 404.

45-5-603. Repealed.

History: 1978 Comp., § 45-5-603, enacted by Laws 1995, ch. 210, § 65; repealed by Laws 2007, ch. 135, § 404.

45-5-604. Repealed.

History: 1978 Comp., § 45-5-604, enacted by Laws 1995, ch. 210, § 66; repealed by Laws 2007, ch. 135, § 404.

45-5-605. Repealed.

History: 1978 Comp., § 45-5-605, enacted by Laws 1995, ch. 210, § 67; repealed by Laws 2007, ch. 135, § 404.

45-5-606. Repealed.

History: 1978 Comp., § 45-5-606, enacted by Laws 1995, ch. 210, § 68; repealed by Laws 2007, ch. 135, § 404.

45-5-607. Repealed.

History: 1978 Comp., § 45-5-607, enacted by Laws 1995, ch. 210, § 69; repealed by Laws 2007, ch. 135, § 404.

45-5-608. Repealed.

History: 1978 Comp., § 45-5-608, enacted by Laws 1995, ch. 210, § 70; repealed by Laws 2007, ch. 135, § 404.

45-5-609. Repealed.

History: 1978 Comp., § 45-5-609, enacted by Laws 1995, ch. 210, § 71; repealed by Laws 2007, ch. 135, § 404.

45-5-610. Repealed.

History: 1978 Comp., § 45-5-610, enacted by Laws 1995, ch. 210, § 72; repealed by Laws 2007, ch. 135, § 404.

45-5-611. Repealed.

History: 1978 Comp., § 45-5-611, enacted by Laws 1995, ch. 210, § 73; repealed by Laws 2007, ch. 135, § 404.

45-5-612. Repealed.

History: 1978 Comp., § 45-5-612, enacted by Laws 1995, ch. 210, § 74; repealed by Laws 2007, ch. 135, § 404.

45-5-613. Repealed.

History: 1978 Comp., § 45-5-613, enacted by Laws 1995, ch. 210, § 75; repealed by Laws 2007, ch. 135, § 404.

45-5-614. Repealed.

History: 1978 Comp., § 45-5-614, enacted by Laws 1995, ch. 210, § 76; repealed by Laws 2007, ch. 135, § 404.

45-5-615. Repealed.

History: 1978 Comp., § 45-5-615, enacted by Laws 1995, ch. 210, § 77; repealed by Laws 2007, ch. 135, § 404.

45-5-616. Repealed.

History: 1978 Comp., § 45-5-616, enacted by Laws 1995, ch. 210, § 78; repealed by Laws 2007, ch. 135, § 404.

45-5-617. Repealed.

History: 1978 Comp., § 45-5-617, enacted by Laws 1995, ch. 210, § 79; repealed by Laws 2007, ch. 135, § 404.

ARTICLE 5A
Uniform Adult Guardianship and Protective Proceedings Jurisdiction

PART 1
GENERAL PROVISIONS

45-5A-101. Short title.

Chapter 45, Article 5A NMSA 1978 may be cited as the "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act".

History: 1978 Comp., § 45-5A-101, enacted by Laws 2011, ch. 124, § 62.

45-5A-102. Definitions.

As used in the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act:

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

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

C. "court" means the district court;

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

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

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

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

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

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

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

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

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

History: 1978 Comp., § 45-5A-102, enacted by Laws 2011, ch. 124, § 63.

45-5A-103. International application of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

A New Mexico court may treat a foreign country as if it were a state for the purpose of applying Parts 1, 2, 3 and 5 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

History: 1978 Comp., § 45-5A-103, enacted by Laws 2011, ch. 124, § 64.

45-5A-104. Communication between courts.

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

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

History: 1978 Comp., § 45-5A-104, enacted by Laws 2011, ch. 124, § 65.

45-5A-105. Cooperation between courts.

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

(1) hold an evidentiary hearing;

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

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

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

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

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

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

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

History: 1978 Comp., § 45-5A-105, enacted by Laws 2011, ch. 124, § 66.

45-5A-106. Taking testimony in another state.

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

B. In a guardianship or protective proceeding, a New Mexico court may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A New Mexico court shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

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

History: 1978 Comp., § 45-5A-106, enacted by Laws 2011, ch. 124, § 67.

PART 2
JURISDICTION

45-5A-201. Definitions; significant-connection factors.

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

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

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

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

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

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

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

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

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

History: 1978 Comp., § 45-5A-201, enacted by Laws 2011, ch. 124, § 68.

45-5A-202. Exclusive basis.

Part 2 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act provides the exclusive jurisdictional basis for a New Mexico court to appoint a guardian or issue a protective order for an adult.

History: 1978 Comp., § 45-5A-202, enacted by Laws 2011, ch. 124, § 69.

45-5A-203. Jurisdiction.

A New Mexico court has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

A. New Mexico is the respondent's home state;

B. on the date the petition is filed, New Mexico is a significant-connection state and:

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

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

(a) a petition for an appointment or order is not filed in the respondent's home state;

(b) an objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(c) the court in New Mexico concludes that it is an appropriate forum pursuant to the factors set forth in Section 45-5A-206 NMSA 1978;

C. New Mexico does not have jurisdiction pursuant either to Subsection A or B of this section, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because New Mexico is the more appropriate forum and jurisdiction in New Mexico is consistent with the constitutions of New Mexico and the United States; or

D. the requirements for special jurisdiction pursuant to Section 45-5A-204 NMSA 1978 are met.

History: 1978 Comp., § 45-5A-203, enacted by Laws 2011, ch. 124, § 70.

45-5A-204. Special jurisdiction.

A. A New Mexico court lacking jurisdiction pursuant to Section 45-5A-203 NMSA 1978 has special jurisdiction to do any of the following:

(1) appoint a guardian in an emergency for a term not exceeding ninety days for a respondent who is physically present in New Mexico;

(2) issue a protective order with respect to real or tangible personal property located in New Mexico; and

(3) appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued pursuant to procedures similar to Section 45-5A-301 NMSA 1978.

B. If a petition for the appointment of a guardian in an emergency is brought in New Mexico and New Mexico was not the respondent's home state on the date the petition

was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

History: 1978 Comp., § 45-5A-204, enacted by Laws 2011, ch. 124, § 71.

45-5A-205. Exclusive and continuing jurisdiction.

Except as otherwise provided in Section 45-5A-204 NMSA 1978, a court that has appointed a guardian or issued a protective order consistent with the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

History: 1978 Comp., § 45-5A-205, enacted by Laws 2011, ch. 124, § 72.

45-5A-206. Appropriate forum.

A. A New Mexico court having jurisdiction pursuant to Section 45-5A-203 NMSA 1978 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

B. If a New Mexico court declines to exercise its jurisdiction pursuant to Subsection A of this section, it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

C. In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

(1) any expressed preference of the respondent;

(2) whether abuse, neglect or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect or exploitation;

(3) the length of time the respondent was physically present in or was a legal resident of New Mexico or another state;

(4) the distance of the respondent from the court in each state;

(5) the financial circumstances of the respondent's estate;

(6) the nature and location of the evidence;

(7) the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

(8) the familiarity of the court of each state with the facts and issues in the proceeding; and

(9) if an appointment of a guardian or conservator were to be made, the court's ability to monitor the conduct of the guardian or conservator.

History: 1978 Comp., § 45-5A-206, enacted by Laws 2011, ch. 124, § 73.

45-5A-207. Jurisdiction declined by reason of conduct.

A. If at any time a New Mexico court determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

(1) decline to exercise jurisdiction;

(2) exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to:

(a) ensure the health, safety and welfare of the respondent or the protection of the respondent's property; or

(b) prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

(3) continue to exercise jurisdiction after considering:

(a) the extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(b) whether it is a more appropriate forum than the court of any other state pursuant to the factors set forth in Subsection C of Section 45-5A-206 NMSA 1978; and

(c) whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of Section 45-5A-203 NMSA 1978.

B. If a New Mexico court determines that it acquired jurisdiction to appoint a guardian or to issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney fees, investigative fees, court costs, communication expenses, witness fees and expenses and travel expenses. The court

shall not assess fees, costs or expenses of any kind against New Mexico or a governmental subdivision, agency or instrumentality of New Mexico unless authorized by law other than the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

History: 1978 Comp., § 45-5A-207, enacted by Laws 2011, ch. 124, § 74.

45-5A-208. Notice of proceeding.

If a petition for the appointment of a guardian or issuance of a protective order is brought in New Mexico and New Mexico was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of New Mexico, notice of the petition shall be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice shall be given in the same manner as notice is required to be given in New Mexico.

History: 1978 Comp., § 45-5A-208, enacted by Laws 2011, ch. 124, § 75.

45-5A-209. Proceedings in more than one state.

Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in New Mexico pursuant to Paragraph (1) or (2) of Subsection A of Section 45-5A-204 NMSA 1978, if a petition for the appointment of a guardian or issuance of a protective order is filed in New Mexico and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

A. if the New Mexico court has jurisdiction pursuant to Section 45-5A-203 NMSA 1978, it may proceed with the case unless a court in another state acquires jurisdiction pursuant to provisions similar to Section 45-5A-203 NMSA 1978 before the appointment of the guardian or issuance of the protective order; and

B. if the New Mexico court does not have jurisdiction pursuant to Section 45-5A-203 NMSA 1978, whether at the time the petition is filed or at any time before the appointment of the guardian or issuance of the protective order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the New Mexico court shall dismiss the petition unless the court in the other state determines that the New Mexico court is a more appropriate forum.

History: 1978 Comp., § 45-5A-209, enacted by Laws 2011, ch. 124, § 76.

PART 3
TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

45-5A-301. Transfer of guardianship or conservatorship to another state.

A. A guardian or conservator appointed in New Mexico may petition the court to transfer the guardianship or conservatorship to another state.

B. Notice of a petition pursuant to Subsection A of this section shall be given to the persons that would be entitled to notice of a petition in New Mexico for the appointment of a guardian or conservator.

C. On the court's own motion, or on request of the guardian or conservator, the incapacitated or protected person or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to Subsection A of this section.

D. The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(1) the incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(2) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and

(3) plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

E. The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(1) the protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors set forth in Subsection B of Section 45-5A-201 NMSA 1978;

(2) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(3) adequate arrangements will be made for management of the protected person's property.

F. The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(1) a provisional order accepting the proceeding from the court to which the proceeding is to be transferred that is issued pursuant to provisions similar to those set forth in Section 45-5A-302 NMSA 1978; and

(2) the documents required to terminate a guardianship or conservatorship in New Mexico.

History: 1978 Comp., § 45-5A-301, enacted by Laws 2011, ch. 124, § 77.

45-5A-302. Accepting guardianship or conservatorship transferred from another state.

A. To confirm transfer of a guardianship or conservatorship transferred to New Mexico pursuant to provisions similar to Section 45-5A-301 NMSA 1978, the guardian or conservator shall petition the New Mexico court to accept the guardianship or conservatorship. The petition shall include a certified copy of the other state's provisional order of transfer.

B. Notice of a petition pursuant to Subsection A of this section shall be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and New Mexico. The notice shall be given in the same manner as notice is required to be given in New Mexico.

C. On the court's own motion, or on request of the guardian or conservator, the incapacitated or protected person or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to Subsection A of this section.

D. The court shall issue an order provisionally granting a petition filed pursuant to Subsection A of this section unless:

(1) an objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(2) the guardian or conservator is ineligible for appointment in New Mexico.

E. The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in New Mexico upon its receipt from the court from which the proceeding is being transferred of a final order issued pursuant to provisions similar to Section 45-5A-301 NMSA 1978 transferring the proceeding to New Mexico.

F. Not later than ninety days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the laws of New Mexico.

G. In granting a petition pursuant to this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

H. The denial by a New Mexico court of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in New Mexico pursuant to Sections 45-5-301 and 45-5-401 NMSA 1978 if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

History: 1978 Comp., § 45-5A-302, enacted by Laws 2011, ch. 124, § 78.

PART 4
REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

45-5A-401. Registration of guardianship orders.

If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in New Mexico, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in New Mexico by filing as a foreign judgment in a court, in any appropriate county of New Mexico, certified copies of the order and letters of office.

History: 1978 Comp., § 45-5A-401, enacted by Laws 2011, ch. 124, § 79.

45-5A-402. Registration of protective orders.

If a conservator has been appointed in another state and a petition for a protective order is not pending in New Mexico, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective

order in New Mexico by filing as a foreign judgment in a New Mexico court, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

History: 1978 Comp., § 45-5A-402, enacted by Laws 2011, ch. 124, § 80.

45-5A-403. Effect of registration.

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

B. A New Mexico court may grant any relief available pursuant to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act and other law of New Mexico to enforce a registered order.

History: 1978 Comp., § 45-5A-403, enacted by Laws 2011, ch. 124, § 81.

PART 5
MISCELLANEOUS PROVISIONS

45-5A-501. Relation to Electronic Signatures In Global and National Commerce Act.

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

History: 1978 Comp., § 45-5A-501, enacted by Laws 2011, ch. 124, § 82.

45-5A-502. Transitional provision.

A. Parts 1, 3 and 4 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act and Section 45-5A-501 NMSA 1978 apply to proceedings begun before January 1, 2012, regardless of whether a guardianship or protective order has been issued.

B. The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act applies to guardianship and protective proceedings begun on or after January 1, 2012.

History: 1978 Comp., § 45-5A-502, enacted by Laws 2011, ch. 124, § 83.

ARTICLE 5B
Uniform Power of Attorney

PART 1

45-5B-101. Short title.

This act [45-5B-101 to 45-5B-403 NMSA 1978] may be cited as the "Uniform Power of Attorney Act".

History: Laws 2007, ch. 135, § 101; 1978 Comp., § 46B-1-101 recompiled as § 45-5B-101 by Laws 2011, ch. 124, § 102.

45-5B-102. Definitions.

As used in the Uniform Power of Attorney Act:

A. "agent" means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact or otherwise. The term includes an original agent, co-agent, successor agent and a person to which an agent's authority is delegated;

B. "durable", with respect to a power of attorney, means not terminated by the principal's incapacity;

C. "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;

D. "good faith" means honesty in fact;

E. "incapacity" means inability of an individual to manage the individual's estate or financial affairs, or both, because:

(1) of gross mismanagement, as evidenced by recent behavior, of the individual's income and resources or the individual's medical inability to manage the individual's income and resources that has led, or is likely in the near future to lead, to financial vulnerability; or

(2) the individual is:

(a) missing;

(b) detained, including incarcerated in a penal system; or

(c) outside the United States and unable to return;

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

G. "power of attorney" means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term "power of attorney" is used;

H. "presently exercisable general power of appointment", with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors or the creditors of the principal's estate. The term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard or the passage of the specified period. The term does not include a power exercisable in a fiduciary capacity or only by will;

I. "principal" means an individual who grants authority to an agent in a power of attorney;

J. "property" means anything that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right therein;

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

L. "sign" means with present intent to authenticate or adopt a record:

(1) to execute or adopt a tangible symbol; or

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

M. "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States; and

N. "stocks and bonds" means stocks, bonds, mutual funds and all other types of securities and financial instruments, whether held directly, indirectly or in any other

manner. The term does not include commodity futures contracts and call or put options on stocks or stock indexes.

History: Laws 2007, ch. 135, § 102; 1978 Comp., § 46B-1-102 recompiled as § 45-5B-102 by Laws 2011, ch. 124, § 102.

45-5B-103. Applicability.

The Uniform Power of Attorney Act applies to all powers of attorney except:

A. a power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction;

B. a power to make health care decisions;

C. a proxy or other delegation to exercise voting rights or management rights with respect to an entity; and

D. a power created on a form prescribed by a government or governmental subdivision, agency or instrumentality for a governmental purpose.

History: Laws 2007, ch. 135, § 103; 1978 Comp., § 46B-1-103 recompiled as § 45-5B-103 by Laws 2011, ch. 124, § 102.

45-5B-104. Power of attorney is durable.

A power of attorney created under the Uniform Power of Attorney Act is durable unless it expressly provides that it is terminated by the incapacity of the principal.

History: Laws 2007, ch. 135, § 104; 1978 Comp., § 46B-1-104 recompiled as § 45-5B-104 by Laws 2011, ch. 124, § 102.

45-5B-105. Execution of power of attorney.

A power of attorney must be signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments.

History: Laws 2007, ch. 135, § 105; 1978 Comp., § 46B-1-105 recompiled as § 45-5B-105 by Laws 2011, ch. 124, § 102.

45-5B-106. Validity of power of attorney.

A. A power of attorney executed in this state on or after July 1, 2007 is valid if its execution complies with Section 105 [45-5B-105 NMSA 1978] of the Uniform Power of Attorney Act.

B. A power of attorney executed in this state before July 1, 2007 is valid if its execution complied with the law of this state as it existed at the time of execution.

C. A power of attorney executed other than in this state is valid in this state if, when the power of attorney was executed, the execution complied with:

(1) the law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to Section 107 [45-5B-107 NMSA 1978] of the Uniform Power of Attorney Act; or

(2) the requirements for a military power of attorney pursuant to 10 U.S.C. Section 1044b, as amended.

D. Except as otherwise provided by statute other than the Uniform Power of Attorney Act, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

History: Laws 2007, ch. 135, § 106; 1978 Comp., § 46B-1-106 recompiled as § 45-5B-106 by Laws 2011, ch. 124, § 102.

45-5B-107. Meaning and effect of power of attorney.

The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

History: Laws 2007, ch. 135, § 107; 1978 Comp., § 46B-1-107 recompiled as § 45-5B-107 by Laws 2011, ch. 124, § 102.

45-5B-108. Nomination of conservator or guardian; relation of agent to court-appointed fiduciary.

A. In a power of attorney, a principal may nominate a conservator of the principal's estate or guardian of the principal's person for consideration by the court if protective proceedings for the principal's estate or person are begun after the principal executes the power of attorney. Except for good cause shown or disqualification, the court shall make its appointment in accordance with the principal's most recent nomination.

B. If, after a principal executes a power of attorney, a court appoints a conservator of the principal's estate or other fiduciary charged with the management of some or all of the principal's property, the agent is accountable to the fiduciary as well as to the principal. The power of attorney is not terminated and the agent's authority continues

unless limited, suspended or terminated by the court after notice to, and an opportunity to be heard by, the agent and the principal.

History: Laws 2007, ch. 135, § 108; 1978 Comp., § 46B-1-108 recompiled as § 45-5B-108 by Laws 2011, ch. 124, § 102.

45-5B-109. When power of attorney effective.

A. A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.

B. If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.

C. If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by:

(1) a physician or licensed psychologist that the principal is incapacitated within the meaning of Paragraph (1) of Subsection E of Section 102 [45-5B-102 NMSA 1978] of the Uniform Power of Attorney Act; or

(2) an attorney at law, a judge or an appropriate governmental official that the principal is incapacitated within the meaning of Paragraph (2) of Subsection E of Section 102 of the Uniform Power of Attorney Act.

D. A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal's personal representative pursuant to the federal Health Insurance Portability and Accountability Act, Sections 1171 through 1179 of the Social Security Act, 42 U.S.C. Section 1320d, as amended, and applicable regulations to obtain access to the principal's health care information and communicate with the principal's health care provider.

History: Laws 2007, ch. 135, § 109; 1978 Comp., § 46B-1-109 recompiled as § 45-5B-109 by Laws 2011, ch. 124, § 102.

45-5B-110. Termination of power of attorney or agent's authority.

A. A power of attorney terminates when:

(1) the principal dies;

(2) the principal becomes incapacitated, if the power of attorney is not durable;

(3) the principal revokes the power of attorney;

(4) the power of attorney provides that it terminates;

(5) the purpose of the power of attorney is accomplished; or

(6) the principal revokes the agent's authority or the agent dies, becomes incapacitated or resigns and the power of attorney does not provide for another agent to act under the power of attorney.

B. An agent's authority terminates when:

(1) the principal revokes the authority;

(2) the agent dies, becomes incapacitated or resigns;

(3) an action is filed for the dissolution or annulment of the agent's marriage to the principal or their legal separation, unless the power of attorney otherwise provides; or

(4) the power of attorney terminates.

C. Unless the power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under Subsection B of this section, notwithstanding a lapse of time since the execution of the power of attorney.

D. Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

E. Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

F. The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked.

History: Laws 2007, ch. 135, § 110; 1978 Comp., § 46B-1-110 recompiled as § 45-5B-110 by Laws 2011, ch. 124, § 102.

45-5B-111. Co-agents and successor agents.

A. A principal may designate two or more persons to act as co-agents. Unless the power of attorney otherwise provides, each co-agent may exercise its authority independently.

B. A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve or declines to serve. A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office or function. Unless the power of attorney otherwise provides, a successor agent:

(1) has the same authority as that granted to the original agent; and

(2) may not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve or have declined to serve.

C. Except as otherwise provided in the power of attorney and Subsection D of this section, an agent that does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

D. An agent that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's best interest. An agent that fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken such action.

History: Laws 2007, ch. 135, § 111; 1978 Comp., § 46B-1-111 recompiled as § 45-5B-111 by Laws 2011, ch. 124, § 102.

45-5B-112. Reimbursement and compensation of agent.

Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal and to compensation that is reasonable under the circumstances.

History: Laws 2007, ch. 135, § 112; 1978 Comp., § 46B-1-112 recompiled as § 45-5B-112 by Laws 2011, ch. 124, § 102.

45-5B-113. Agent's acceptance.

Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.

History: Laws 2007, ch. 135, § 113; 1978 Comp., § 46B-1-113 recompiled as § 45-5B-113 by Laws 2011, ch. 124, § 102.

45-5B-114. Agent's duties.

A. Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:

(1) act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest;

(2) act in good faith; and

(3) act only within the scope of authority granted in the power of attorney.

B. Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall:

(1) act loyally for the principal's benefit;

(2) act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;

(3) act with the care, competence and diligence ordinarily exercised by agents in similar circumstances;

(4) keep a record of all receipts, disbursements and transactions made on behalf of the principal;

(5) cooperate with a person that has authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and otherwise act in the principal's best interest; and

(6) attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:

(a) the value and nature of the principal's property;

(b) the principal's foreseeable obligations and need for maintenance;

(c) minimization of taxes, including income, estate, inheritance, generation-skipping transfer and gift taxes; and

(d) eligibility for a benefit, a program or assistance under a statute or regulation.

C An agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

D. An agent that acts with care, competence and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

E. If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence and diligence under the circumstances.

F. Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.

G. An agent that exercises authority to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal is not liable for an act, error of judgment or default of that person if the agent exercises care, competence and diligence in selecting and monitoring the person.

H. Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, and unless a shorter period of time is required by a law other than the Uniform Power of Attorney Act, within thirty days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional thirty days.

History: Laws 2007, ch. 135, § 114; 1978 Comp., § 46B-1-114 recompiled as § 45-5B-114 by Laws 2011, ch. 124, § 102.

45-5B-115. Exoneration of agent.

A provision in a power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent the provision:

A. relieves the agent of liability for breach of duty committed dishonestly, with an improper motive or with reckless indifference to the purposes of the power of attorney or the best interest of the principal; or

B. was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

History: Laws 2007, ch. 135, § 115; 1978 Comp., § 46B-1-115 recompiled as § 45-5B-115 by Laws 2011, ch. 124, § 102.

45-5B-116. Judicial relief.

A. The following persons may petition a court to construe a power of attorney or review the agent's conduct and grant appropriate relief:

(1) the principal or the agent;

(2) a guardian, conservator or other fiduciary acting for the principal;

(3) a person authorized to make health care decisions for the principal;

(4) the principal's spouse, parent or descendant;

(5) an individual who would qualify as a presumptive heir of the principal;

(6) a person named as a beneficiary to receive any property, benefit or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate;

(7) a governmental agency having regulatory authority to protect the welfare of the principal;

(8) the principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare; and

(9) a person asked to accept the power of attorney.

B. Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

History: Laws 2007, ch. 135, § 116; 1978 Comp., § 46B-1-116 recompiled as § 45-5B-116 by Laws 2011, ch. 124, § 102.

45-5B-117. Agent's liability.

An agent that violates the Uniform Power of Attorney Act is liable to the principal or the principal's successors in interest for the amount required to:

A. restore the value of the principal's property to what it would have been had the violation not occurred; and

B. reimburse the principal or the principal's successors in interest for the attorney fees and costs paid on the agent's behalf.

History: Laws 2007, ch. 135, § 117; 1978 Comp., § 46B-1-117 recompiled as § 45-5B-117 by Laws 2011, ch. 124, § 102.

45-5B-118. Agent's resignation; notice.

Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal and, if the principal is incapacitated:

(1) to the conservator or guardian, if one has been appointed for the principal, and a co-agent or successor agent; or

(2) if there is no person described in Paragraph (1) of this subsection, to:

(a) the principal's caregiver;

(b) another person reasonably believed by the agent to have sufficient interest in the principal's welfare; or

(c) a governmental agency having authority to protect the welfare of the principal.

History: Laws 2007, ch. 135, § 118; 1978 Comp., § 46B-1-118 recompiled as § 45-5B-118 by Laws 2011, ch. 124, § 102.

45-5B-119. Acceptance of and reliance upon acknowledged power of attorney.

A. For purposes of this section and Section 120 [45-5B-120 NMSA 1978] of the Uniform Power of Attorney Act, "acknowledged" means purportedly verified before a notary public or other individual authorized to take acknowledgments.

B. A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the signature is not genuine may rely upon the presumption under Section 105 [45-5B-105 NMSA 1978] of the Uniform Power of Attorney Act that the signature is genuine.

C. A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the power of attorney is void, invalid or terminated that the purported agent's authority is void, invalid or terminated or that the agent is exceeding or improperly exercising the agent's authority may rely upon the power of attorney as if the power of attorney were genuine, valid and still in effect, the agent's authority were genuine, valid and still in effect and the agent had not exceeded and had properly exercised the authority.

D. A person that is asked to accept an acknowledged power of attorney may request, and rely upon, without further investigation:

(1) an agent's certification under penalty of perjury of any factual matter concerning the principal, agent or power of attorney;

(2) an English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English; and

(3) an opinion of counsel as to any matter of law concerning the power of attorney if the person making the request provides in a writing or other record the reason for the request.

E. An English translation or an opinion of counsel requested under this section must be provided at the principal's expense unless the request is made more than seven business days after the power of attorney is presented for acceptance.

F. For purposes of this section and Section 120 [45-5B-120 NMSA 1978] of the Uniform Power of Attorney Act, a person that conducts activities through employees is without actual knowledge of a fact relating to a power of attorney, a principal or an agent if the employee conducting the transaction involving the power of attorney is without actual knowledge of the fact.

History: Laws 2007, ch. 135, § 119; 1978 Comp., § 46B-1-119 recompiled as § 45-5B-119 by Laws 2011, ch. 124, § 102.

45-5B-120. Liability for refusal to accept acknowledged power of attorney.

A. As used in this section, "statutory form power of attorney" means a power of attorney substantially in the form provided in Section 301 [45-5B-301 NMSA 1978] of the Uniform Power of Attorney Act or that meets the requirements for a military power of attorney pursuant to 10 U.S.C. Section 1046, as amended.

B. Except as otherwise provided in Subsection C of this section:

(1) a person shall either accept an acknowledged statutory form power of attorney or request a certification, a translation or an opinion of counsel under

Subsection B of Section 119 [45-5B-119 NMSA 1978] of the Uniform Power of Attorney Act no later than seven business days after presentation of the power of attorney for acceptance;

(2) if a person requests a certification, a translation or an opinion of counsel under Subsection D of Section 119 of the Uniform Power of Attorney Act, the person shall accept the statutory form power of attorney no later than five business days after receipt of the certification, the translation or an opinion of counsel; and

(3) a person shall not require an additional or different form of power of attorney for authority granted in the statutory form power of attorney presented.

C. A person is not required to accept an acknowledged statutory form power of attorney if:

(1) the person is not otherwise required to engage in a transaction with the principal in the same circumstances;

(2) engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law;

(3) the person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power;

(4) a request for a certification, a translation or an opinion of counsel under Subsection D of Section 119 of the Uniform Power of Attorney Act is refused;

(5) the person in good faith believes that the power of attorney is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation or an opinion of counsel under Subsection D of Section 119 of the Uniform Power of Attorney Act has been requested or provided; or

(6) the person makes, or has actual knowledge that another person has made, a report to the adult protective services division of the aging and long-term services department stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation or abandonment by the agent or a person acting for or with the agent.

D. A person that refuses in violation of this section to accept an acknowledged statutory form power of attorney is subject to:

(1) a court order mandating acceptance of the power of attorney; and

(2) liability for reasonable attorney fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.

History: Laws 2007, ch. 135, § 120; 1978 Comp., § 46B-1-120 recompiled as § 45-5B-120 by Laws 2011, ch. 124, § 102.

45-5B-121. Principles of law and equity.

Unless displaced by a provision of the Uniform Power of Attorney Act, the principles of law and equity supplement that act.

History: Laws 2007, ch. 135, § 121; 1978 Comp., § 46B-1-121 recompiled as § 45-5B-121 by Laws 2011, ch. 124, § 102.

45-5B-122. Laws applicable to financial institutions and entities.

The Uniform Power of Attorney Act does not supersede any other law applicable to financial institutions or other entities, and the other law controls if inconsistent with that act.

History: Laws 2007, ch. 135, § 122; 1978 Comp., § 46B-1-122 recompiled as § 45-5B-122 by Laws 2011, ch. 124, § 102.

45-5B-123. Remedies under other law.

The remedies under the Uniform Power of Attorney Act are not exclusive and do not abrogate any right or remedy under the law of this state other than that act.

History: Laws 2007, ch. 135, § 123; 1978 Comp., § 46B-1-123 recompiled as § 45-5B-123 by Laws 2011, ch. 124, § 102.

PART 2

45-5B-201. Authority that requires specific grant; grant of general authority.

A. An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

(1) create, amend, revoke or terminate an inter vivos trust;

(2) make a gift;

(3) create or change rights of survivorship;

(4) create or change a beneficiary designation;

(5) delegate authority granted under the power of attorney;

(6) waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;

(7) exercise fiduciary powers that the principal has authority to delegate; or

(8) disclaim property, including a power of appointment.

B. Notwithstanding a grant of authority to do an act described in Subsection A of this section, unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse or descendant of the principal shall not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer or otherwise.

C. Subject to Subsections A, B, D and E of this section, if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in Sections 204 through 216 [45-5B-204 to 45-5B-216 NMSA 1978] of the Uniform Power of Attorney Act.

D. Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to the provisions of Section 217 [45-5B-217 NMSA 1978] of the Uniform Power of Attorney Act.

E. Subject to Subsections A, B and D of this section, if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

F. Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the authority is exercised or the power of attorney is executed in this state.

G. An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

History: Laws 2007, ch. 135, § 201; 1978 Comp., § 46B-1-201 recompiled as § 45-5B-201 by Laws 2011, ch. 124, § 102.

45-5B-202. Incorporation of authority.

A. An agent has authority described in this article if the power of attorney refers to general authority with respect to the descriptive term for the subjects stated in Sections

204 through 217 [45-5B-204 through 45-5B-217 NMSA 1978] of the Uniform Power of Attorney Act or cites the section in which the authority is described.

B. A reference in a power of attorney to general authority with respect to the descriptive term for a subject in Sections 204 through 217 of the Uniform Power of Attorney Act or a citation to a section of Sections 204 through 217 of that act incorporates the entire section as if it were set out in full in the power of attorney.

C. A principal may modify authority incorporated by reference.

History: Laws 2007, ch. 135, § 202; 1978 Comp., § 46B-1-202 recompiled as § 45-5B-202 by Laws 2011, ch. 124, § 102.

45-5B-203. Construction of authority generally.

Except as otherwise provided in the power of attorney, by executing a power of attorney that incorporates by reference a subject described in Sections 204 through 217 [45-5B-204 to 45-5B-217 NMSA 1978] of the Uniform Power of Attorney Act or that grants to an agent authority to do all acts that a principal could do pursuant to Subsection C of Section 201 [45-5B-201 NMSA 1978] of that act, a principal authorizes the agent, with respect to that subject, to:

A. demand, receive and obtain by litigation or otherwise, money or another thing of value to which the principal is, may become or claims to be entitled, and conserve, invest, disburse or use anything so received or obtained for the purposes intended;

B. contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate, release or modify the contract or another contract made by or on behalf of the principal;

C. execute, acknowledge, seal, deliver, file or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating at any time a schedule listing some or all of the principal's property and attaching it to the power of attorney;

D. initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;

E. seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized in the power of attorney;

F. engage, compensate and discharge an attorney, accountant, discretionary investment manager, expert witness or other advisor;

G. prepare, execute and file a record, report or other document to safeguard or promote the principal's interest under a statute or regulation;

H. communicate with any representative or employee of a government or governmental subdivision, agency or instrumentality on behalf of the principal;

I. access communications intended for and communicate on behalf of the principal, whether by mail, electronic transmission, telephone or other means; and

J. do any lawful act with respect to the subject and all property related to the subject.

History: Laws 2007, ch. 135, § 203; 1978 Comp., § 46B-1-203 recompiled as § 45-5B-203 by Laws 2011, ch. 124, § 102.

45-5B-204. Real property.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to real property authorizes the agent to:

A. demand, buy, lease, receive, accept as a gift or as security for an extension of credit or otherwise acquire or reject an interest in real property or a right incident to real property;

B. sell, exchange, convey with or without covenants, representations or warranties, quitclaim, release, surrender, retain title for security, encumber, partition, consent to partitioning, subject to an easement or covenant, subdivide, apply for zoning or other governmental permits, plat or consent to platting, develop, grant an option concerning, lease, sublease, contribute to an entity in exchange for an interest in that entity or otherwise grant or dispose of an interest in real property or a right incident to real property;

C. pledge or mortgage an interest in real property or a right incident to real property as security to borrow money or pay, renew or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

D. release, assign, satisfy or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien or other claim to real property that exists or is asserted;

E. manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including:

(1) insuring against liability or casualty or other loss;

(2) obtaining or regaining possession of or protecting the interest or right by litigation or otherwise;

(3) paying, assessing, compromising or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments; and

(4) purchasing supplies, hiring assistance or labor and making repairs or alterations to the real property;

F. use, develop, alter, replace, remove, erect or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;

G. participate in a reorganization with respect to real property or an entity that owns an interest in real property or a right incident to real property and receive, hold and act with respect to stocks and bonds or other property received in a plan of reorganization, including:

(1) selling or otherwise disposing of them;

(2) exercising or selling an option, right of conversion or similar right with respect to them; and

(3) exercising any voting rights in person or by proxy;

H. change the form of title of an interest in real property or a right incident to real property; and

I. dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

History: Laws 2007, ch. 135, § 204.; 1978 Comp., § 46B-1-204 recompiled as § 45-5B-204 by Laws 2011, ch. 124, § 102.

45-5B-205. Tangible personal property.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to tangible personal property authorizes the agent to:

A. demand, buy, receive, accept as a gift or as security for an extension of credit or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property;

B. sell, exchange, convey with or without covenants, representations or warranties, quitclaim, release, surrender, create a security interest in, grant options concerning,

lease, sublease or otherwise dispose of tangible personal property or an interest in tangible personal property;

C. grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

D. release, assign, satisfy or enforce by litigation or otherwise a security interest, lien or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property;

E. manage or conserve tangible personal property or an interest in tangible personal property on behalf of the principal, including:

(1) insuring against liability or casualty or other loss;

(2) obtaining or regaining possession of or protecting the property or interest, by litigation or otherwise;

(3) paying, assessing, compromising or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;

(4) moving the property from place to place;

(5) storing the property for hire or on a gratuitous bailment; and

(6) using and making repairs, alterations or improvements to the property; and

F. change the form of title of an interest in tangible personal property.

History: Laws 2007, ch. 135, § 205; 1978 Comp., § 46B-1-205 recompiled as § 45-5B-205 by Laws 2011, ch. 124, § 102.

45-5B-206. Stocks and bonds.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to stocks and bonds authorizes the agent to:

A. buy, sell and exchange stocks and bonds;

B. establish, continue, modify or terminate an account with respect to stocks and bonds;

C. pledge stocks and bonds as security to borrow, pay, renew or extend the time of payment of a debt of the principal;

D. receive certificates and other evidences of ownership with respect to stocks and bonds; and

E. exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

History: Laws 2007, ch. 135, § 206; 1978 Comp., § 46B-1-206 recompiled as § 45-5B-206 by Laws 2011, ch. 124, § 102.

45-5B-207. Commodities and options.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to commodities and options authorizes the agent to:

A. buy, sell, exchange, assign, settle and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange; and

B. establish, continue, modify and terminate option accounts.

History: Laws 2007, ch. 135, § 207; 1978 Comp., § 46B-1-207 recompiled as § 45-5B-207 by Laws 2011, ch. 124, § 102.

45-5B-208. Banks and other financial institutions.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to banks and other financial institutions authorizes the agent to:

A. continue, modify and terminate an account or other banking arrangement made by or on behalf of the principal;

B. establish, modify and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm or other financial institution selected by the agent;

C. contract for services available from a financial institution, including renting a safe deposit box or space in a vault;

D. withdraw, by check, order, electronic funds transfer or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;

E. receive statements of account, vouchers, notices and similar documents from a financial institution and act with respect to them;

F. enter a safe deposit box or vault and withdraw or add to the contents;

G. borrow money and pledge as security personal property of the principal necessary to borrow money or to pay, renew or extend the time of payment of a debt of the principal or of a debt guaranteed by the principal;

H. make, assign, draw, endorse, discount, guarantee and negotiate promissory notes, checks, drafts and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order, transfer money, receive the cash or other proceeds of those transactions and accept a draft drawn by a person upon the principal and pay it when due;

I. receive for the principal and act upon a sight draft, warehouse receipt or other document of title, whether tangible or electronic, or other negotiable or nonnegotiable instrument;

J. apply for, receive and use letters of credit, credit and debit cards, electronic transaction authorizations and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and

K. consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

History: Laws 2007, ch. 135, § 208; 1978 Comp., § 46B-1-208 recompiled as § 45-5B-208 by Laws 2011, ch. 124, § 102.

45-5B-209. Operation of entity or business.

Subject to the terms of a document or an agreement governing an entity or an entity ownership interest, and unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to operation of an entity or business authorizes the agent to:

A. operate, buy, sell, enlarge, reduce or terminate an ownership interest;

B. perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege or option that the principal has, may have or claims to have;

C. enforce the terms of an ownership agreement;

D. initiate, participate in and submit to alternative dispute resolution; settle; and oppose, propose or accept a compromise with respect to litigation to which the principal is a party because of an ownership interest;

E. exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege or option the principal has or claims to have as the holder of stocks and bonds;

F. initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds;

G. with respect to an entity or business owned solely by the principal:

(1) continue, modify, renegotiate, extend and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the power of attorney;

(2) determine:

(a) the location of its operation;

(b) the nature and extent of its business;

(c) the methods of manufacturing, selling, merchandising, financing, accounting and advertising employed in its operation;

(d) the amount and types of insurance carried; and

(e) the mode of engaging, compensating and dealing with its employees and accountants, attorneys or other advisors;

(3) change the name or form of organization under which the entity or business is operated and enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business; and

(4) demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business;

H. put additional capital into an entity or business in which the principal has an interest;

I. join in a plan of reorganization, consolidation, conversion, domestication or merger of the entity or business;

J. sell or liquidate all or part of an entity or business;

K. establish the value of an entity or business under a buy-out agreement to which the principal is a party;

L. prepare, sign, file and deliver reports, compilations of information, returns or other papers with respect to an entity or business and make related payments; and

M. pay, compromise or contest taxes, assessments, fines or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

History: Laws 2007, ch. 135, § 209; 1978 Comp., § 46B-1-209 recompiled as § 45-5B-209 by Laws 2011, ch. 124, § 102.

45-5B-210. Insurance and annuities.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to insurance and annuities authorizes the agent to:

A. continue, pay the premium or make a contribution on, modify, exchange, rescind, release or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

B. procure new, different and additional contracts of insurance and annuities for the principal and the principal's spouse, children and other dependents and select the amount, type of insurance or annuity and mode of payment;

C. pay the premium or make a contribution on, modify, exchange, rescind, release or terminate a contract of insurance or annuity procured by the agent;

D. apply for and receive a loan secured by a contract of insurance or annuity;

E. surrender and receive the cash surrender value on a contract of insurance or annuity;

F. exercise an election;

G. exercise investment powers available under a contract of insurance or annuity;

H. change the manner of paying premiums on a contract of insurance or annuity;

I. change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this section;

J. apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;

K. collect, sell, assign, hypothecate, borrow against or pledge the interest of the principal in a contract of insurance or annuity;

L. select the form and timing of the payment of proceeds from a contract of insurance or annuity; and

M. pay, from proceeds or otherwise, compromise or contest and apply for refunds in connection with a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

History: Laws 2007, ch. 135, § 210; 1978 Comp., § 46B-1-210 recompiled as § 45-5B-210 by Laws 2011, ch. 124, § 102.

45-5B-211. Estates, trusts and other beneficial interests.

A. As used in this section, "estates, trusts and other beneficial interests" means a trust, probate estate, guardianship, conservatorship, escrow or custodianship or a fund from which the principal is, may become, or claims to be entitled to a share or payment.

B. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to estates, trusts and other beneficial interests authorizes the agent to:

(1) accept, receive, receipt for, sell, assign, pledge or exchange a share in or payment from the fund;

(2) demand or obtain money or another thing of value to which the principal is, may become or claims to be entitled by reason of the fund, by litigation or otherwise;

(3) exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal;

(4) initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to ascertain the meaning, validity or effect of a deed, will, declaration of trust or other instrument or transaction affecting the interest of the principal;

(5) initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to remove, substitute or surcharge a fiduciary;

(6) conserve, invest, disburse or use anything received for an authorized purpose; and

(7) transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities and other property to the trustee of a revocable trust created by the principal as settlor.

History: Laws 2007, ch. 135, § 211; 1978 Comp., § 46B-1-211 recompiled as § 45-5B-211 by Laws 2011, ch. 124, § 102.

45-5B-212. Claims and litigation.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to claims and litigation authorizes the agent to:

A. assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment or defense, including an action to recover property or other thing of value, recover damages sustained by the principal, eliminate or modify tax liability or seek an injunction, specific performance or other relief;

B. bring an action to determine adverse claims or intervene or otherwise participate in litigation;

C. seek an attachment, garnishment, order of arrest or other preliminary, provisional or intermediate relief and use an available procedure to effect or satisfy a judgment, order or decree;

D. make or accept a tender, offer of judgment or admission of facts, submit a controversy on an agreed statement of facts, consent to examination and bind the principal in litigation;

E. submit to alternative dispute resolution, settle and propose or accept a compromise;

F. waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon which process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs and receive, execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement or other instrument in connection with the prosecution, settlement or defense of a claim or litigation;

G. act for the principal with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization, receivership or application for the appointment of a receiver or trustee that affects an interest of the principal in property or other thing of value;

H. pay a judgment, award or order against the principal or a settlement made in connection with a claim or litigation; and

I. receive money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

History: Laws 2007, ch. 135, § 212; 1978 Comp., § 46B-1-212 recompiled as § 45-5B-212 by Laws 2011, ch. 124, § 102.

45-5B-213. Personal and family maintenance.

A. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to personal and family maintenance authorizes the agent to:

(1) perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse and the following individuals, whether living when the power of attorney is executed or later born:

(a) the principal's children;

(b) other individuals legally entitled to be supported by the principal; and

(c) the individuals whom the principal has customarily supported or indicated the intent to support;

(2) make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party;

(3) provide living quarters for the individuals described in Paragraph (1) of this subsection by:

(a) purchase, lease or other contract; or

(b) paying the operating costs, including interest, amortization payments, repairs, improvements and taxes, for premises owned by the principal or occupied by those individuals;

(4) provide normal domestic help, usual vacations and travel expenses and funds for shelter, clothing, food, appropriate education, including post-secondary and vocational education, and other current living costs for the individuals described in Paragraph (1) of this subsection;

(5) pay expenses for necessary health care and custodial care on behalf of the individuals described in Paragraph (1) of this subsection;

(6) act as the principal's personal representative pursuant to the federal Health Insurance Portability and Accountability Act, Sections 1171 through 1179 of the Social Security Act, 42 U.S.C. Section 1320d, as amended, and applicable regulations, in making decisions related to the past, present or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this state to consent to health care on behalf of the principal;

(7) continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring and replacing them, for the individuals described in Paragraph (1) of this subsection;

(8) maintain credit and debit accounts for the convenience of the individuals described in Paragraph (1) of this subsection and open new accounts; and

(9) continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order or other organization or continue contributions to those organizations.

B. Authority with respect to personal and family maintenance is neither dependent upon, nor limited by, authority that an agent may or may not have with respect to gifts under the Uniform Power of Attorney Act.

History: Laws 2007, ch. 135, § 213; 1978 Comp., § 46B-1-213 recompiled as § 45-5B-213 by Laws 2011, ch. 124, § 102.

45-5B-214. Benefits from governmental programs or civil or military service.

A. As used in this section, "benefits from governmental programs or civil or military service" means any benefit, program or assistance provided under a statute or regulation, including social security, medicare and medicaid.

B. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to benefits from governmental programs or civil or military service authorizes the agent to:

(1) execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in Paragraph (1) of Subsection A of Section 213 [45-5B-213 NMSA 1978] of the Uniform Power of Attorney Act, and for shipment of their household effects;

(2) take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock or other place of storage or safekeeping,

either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate or other instrument for that purpose;

(3) enroll in, apply for, select, reject, change, amend or discontinue, on the principal's behalf, a benefit or program;

(4) prepare, file and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled under a statute or regulation;

(5) initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute or regulation; and

(6) receive the financial proceeds of a claim described in Paragraph (4) of this subsection and conserve, invest, disburse or use for a lawful purpose anything so received.

History: Laws 2007, ch. 135, § 214; 1978 Comp., § 46B-1-214 recompiled as § 45-5B-214 by Laws 2011, ch. 124, § 102.

45-5B-215. Retirement plans.

A. As used in this section, "retirement plan" means a plan or account created by an employer, the principal or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary or owner, including a plan or account under the following sections of the Internal Revenue Code:

(1) an individual retirement account under Section 408 of the Internal Revenue Code of 1986, as amended;

(2) a Roth individual retirement account under Section 408A of the Internal Revenue Code of 1986, as amended;

(3) a deemed individual retirement account under Section 408(q) of the Internal Revenue Code of 1986, as amended;

(4) an annuity or mutual fund custodial account under Section 403(b) of the Internal Revenue Code of 1986, as amended;

(5) a pension, profit-sharing, stock bonus or other retirement plan qualified under Section 401(a) of the Internal Revenue Code of 1986, as amended;

(6) a plan under Section 457(b) of the Internal Revenue Code of 1986, as amended; and

(7) a nonqualified deferred compensation plan under Section 409A of the Internal Revenue Code of 1986, as amended.

B. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to retirement plans authorizes the agent to:

(1) select the form and timing of payments under a retirement plan and withdraw benefits from a plan;

(2) make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another;

(3) establish a retirement plan in the principal's name;

(4) make contributions to a retirement plan;

(5) exercise investment powers available under a retirement plan; and

(6) borrow from, sell assets to or purchase assets from a retirement plan.

History: Laws 2007, ch. 135, § 215; 1978 Comp., § 46B-1-215 recompiled as § 45-5B-215 by Laws 2011, ch. 124, § 102.

45-5B-216. Taxes.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to taxes authorizes the agent to:

A. prepare, sign and file federal, state, local and foreign income, gift, payroll, property, Federal Insurance Contributions Act and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under Section 2032A of the Internal Revenue Code of 1986, as amended, closing agreements and any power of attorney required by the internal revenue service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following twenty-five tax years;

B. pay taxes due, collect refunds, post bonds, receive confidential information and contest deficiencies determined by the internal revenue service or other taxing authority;

C. exercise any election available to the principal under federal, state, local or foreign tax law; and

D. act for the principal in all tax matters for all periods before the internal revenue service or other taxing authority.

History: Laws 2007, ch. 135, § 216; 1978 Comp., § 46B-1-216 recompiled as § 45-5B-216 by Laws 2011, ch. 124, § 102.

45-5B-217. Gifts.

A. As used in this section, a gift "for the benefit of" a person includes a gift to a trust, an account under the Uniform Transfers to Minors Act [46-7-11 to 46-7-34 NMSA 1978] and a tuition savings account or prepaid tuition plan as defined under Section 529 of the Internal Revenue Code of 1986, as amended.

B. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to gifts authorizes the agent only to:

(1) make outright to or for the benefit of a person a gift of any of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under Section 2503(b) of the Internal Revenue Code of 1986, as amended, without regard to whether the federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to consent to a split gift pursuant to Section 2513 of the Internal Revenue Code of 1986, as amended, in an amount per donee not to exceed twice the annual federal gift tax exclusion limit; and

(2) consent, pursuant to Section 2513 of the Internal Revenue Code of 1986, as amended, to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

C. An agent may make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including:

(1) the value and nature of the principal's property;

(2) the principal's foreseeable obligations and need for maintenance;

(3) minimization of taxes, including income, estate, inheritance, generation-skipping transfer and gift taxes;

(4) eligibility for a benefit, a program or assistance under a statute or regulation; and

(5) the principal's personal history of making or joining in making gifts.

History: Laws 2007, ch. 135, § 217; 1978 Comp., § 46B-1-217 recompiled as § 45-5B-217 by Laws 2011, ch. 124, § 102.

PART 3

45-5B-301. Statutory form power of attorney.

A document substantially in the following form may be used to create a statutory form power of attorney that has the meaning and effect prescribed by the Uniform Power of Attorney Act:

"NEW MEXICO

STATUTORY FORM POWER OF ATTORNEY

IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Uniform Power of Attorney Act.

This power of attorney does not authorize the agent to make health care decisions for you.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

Your agent is entitled to reasonable compensation unless you state otherwise in the Special Instructions.

This form provides for designation of one agent. If you wish to name more than one agent, you may name a co-agent in the Special Instructions. Co-agents are not required to act together unless you include that requirement in the Special Instructions.

If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions.

If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.

DESIGNATION OF AGENT

I, _____,

(Your Name)

name the following person as my agent:

Name of Agent: _____

Agent's Address: _____

Agent's Telephone Number: _____

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

If my agent is unable or unwilling to act for me, I name as my successor agent:

Name of Successor Agent: _____

Successor Agent's Address: _____

Successor Agent's Telephone Number: _____

If my successor agent is unable or unwilling to act for me, I name as my second successor agent:

Name of Second Successor Agent: _____

Second Successor Agent's Address: _____

Second Successor Agent's Telephone Number: _____

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the Uniform Power of Attorney Act:

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects, you may initial "All Preceding Subjects" instead of initialing each subject.)

(___) Real Property

(___) Tangible Personal Property

(___) Stocks and Bonds

(___) Commodities and Options

(___) Banks and Other Financial Institutions

(___) Operation of Entity or Business

(___) Insurance and Annuities

(___) Estates, Trusts and Other Beneficial Interests

(___) Claims and Litigation

(___) Personal and Family Maintenance

(___) Benefits from Governmental Programs or Civil or Military Service

(___) Retirement Plans

(___) Taxes

(___) All Preceding Subjects

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)

(___) Create, amend, revoke or terminate an inter vivos trust

(___) Make a gift, subject to the limitations of Section 217 of the Uniform Power of Attorney Act and any special instructions in this power of attorney

(___) Create or change rights of survivorship

(___) Create or change a beneficiary designation

(___) Authorize another person to exercise the authority granted under this power of attorney

(___) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan

(___) Exercise fiduciary powers that the principal has authority to delegate

(___) Disclaim or refuse an interest in property, including a power of appointment

LIMITATION ON AGENT'S AUTHORITY

An agent that is not my ancestor, spouse or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

_____
_____
_____
_____
_____

EFFECTIVE DATE

This power of attorney is effective immediately unless I have stated otherwise in the Special Instructions.

NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)

If it becomes necessary for a court to appoint a conservator or guardian of my estate or guardian of my person, I nominate the following person(s) for appointment:

Name of Nominee for conservator of my estate:
_____

Nominee's Address: _____

Nominee's Telephone Number: _____

Name of Nominee for guardian of my person: _____

Nominee's Address: _____

Nominee's Telephone Number: _____

RELIANCE ON THIS POWER OF ATTORNEY

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it has terminated or is invalid.

SIGNATURE AND ACKNOWLEDGMENT

Your Signature: _____

Date: _____

Your Name Printed: _____

Your Address: _____

Your Telephone Number: _____

State of _____

(County) of _____

This instrument was acknowledged before me on _____, _____ (Date) by_____ (Name of Principal).

(Seal, if any)

Signature of notarial officer: _____

My commission expires: _____

IMPORTANT INFORMATION FOR AGENT

Agent's Duties

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. You must:

1. do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;

2. act in good faith;

3. do nothing beyond the authority granted in this power of attorney; and

4. disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner:

_____ by _____ as Agent

(Principal's Name) (Your Signature)

Unless the Special Instructions in this power of attorney state otherwise, you must also:

1. act loyally for the principal's benefit;

2. avoid conflicts that would impair your ability to act in the principal's best interest;

3. act with care, competence and diligence;

4. keep a record of all receipts, disbursements and transactions made on behalf of the principal;

5. cooperate with any person that has authority to make health care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest; and

6. attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:

1. death of the principal;

2. the principal's revocation of the power of attorney or your authority;

3. the occurrence of a termination event stated in the power of attorney;

4. the purpose of the power of attorney is fully accomplished; or

5. if you are married to the principal, a legal action is filed with a court to end your marriage, or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.

Liability of Agent

The meaning of the authority granted to you is defined in the Uniform Power of Attorney Act. If you violate the Uniform Power of Attorney Act or act outside the authority granted, you may be liable for any damages caused by your violation.

If there is anything about this document or your duties that you do not understand, you should seek legal advice."

History: Laws 2007, ch. 135, § 301; 1978 Comp., § 46B-1-301 recompiled as § 45-5B-301 by Laws 2011, ch. 124, § 102.

45-5B-302. Agent's certification.

The following optional form may be used by an agent to certify facts concerning a power of attorney:

"AGENT'S CERTIFICATION AS TO THE VALIDITY OF

POWER OF ATTORNEY AND AGENT'S AUTHORITY

State of _____

(County) of _____

I, _____ (Name of Agent), certify under penalty of perjury that _____ (Name of Principal) granted me authority as an agent or successor agent in a power of attorney dated _____. I further certify that to my knowledge:

(1) the Principal is alive and has not revoked the Power of Attorney or my authority to act under the Power of Attorney and the Power of Attorney and my authority to act under the Power of Attorney have not terminated;

(2) if the Power of Attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;

(3) if I was named as a successor agent, the prior agent is no longer able or willing to serve; and

(4) _____

_____

_____

_____

_____
_____
_____
_____
_____
_____

(Insert other relevant statements)

SIGNATURE AND ACKNOWLEDGMENT

Agent's Signature: _____ _____ (Date)

Agent's Name Printed: _____

Agent's Address: _____

_____

Agent's Telephone Number: _____

This instrument was acknowledged before me on _____ (Date)

by _____ (Name of Agent).

Signature of notarial officer: _____

(Seal, if any)

My commission expires: _____.".

History: Laws 2007, ch. 135, § 302; 1978 Comp., § 46B-1-302 recompiled as § 45-5B-302 by Laws 2011, ch. 124, § 102.

PART 4

45-5B-401. Uniformity of application and construction.

In applying and construing the Uniform Power of Attorney Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

History: Laws 2007, ch. 135, § 401; 1978 Comp., § 46B-1-401 recompiled as § 45-5B-401 by Laws 2011, ch. 124, § 102.

45-5B-402. Relation to Electronic Signatures in Global and National Commerce Act.

The Uniform Power of Attorney Act modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

History: Laws 2007, ch. 135, § 402; 1978 Comp., § 46B-1-402 recompiled as § 45-5B-402 by Laws 2011, ch. 124, § 102.

45-5B-403. Effect on existing powers of attorney.

Except as otherwise provided in the Uniform Power of Attorney Act, on July 1, 2007:

A. the Uniform Power of Attorney Act applies to a power of attorney created before, on or after July 1, 2007;

B. the Uniform Power of Attorney Act applies to a judicial proceeding concerning a power of attorney commenced on or after July 1, 2007;

C. the Uniform Power of Attorney Act applies to a judicial proceeding concerning a power of attorney commenced before July 1, 2007 unless the court finds that application of a provision of that act would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies; and

D. an act done before July 1, 2007 is not affected by the Uniform Power of Attorney Act.

History: Laws 2007, ch. 135, § 403; 1978 Comp., § 46B-1-403 recompiled as § 45-5B-403 by Laws 2011, ch. 124, § 102.

ARTICLE 6
Nonprobate Transfers

PART 1
PROVISIONS RELATING TO EFFECT OF DEATH

45-6-101. Nonprobate transfers on death.

A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement or other written instrument of a similar nature is nontestamentary. This section includes a written provision that:

A. money or other benefits due to, controlled by or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later;

B. money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

C. any property controlled by or owned by the decedent before death that is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later.

History: 1978 Comp., § 45-6-101, enacted by Laws 1992, ch. 66, § 17; 2005, ch. 143, § 2.

45-6-101.1. Recompiled.

45-6-102. Liability of nonprobate transferees for creditor claims and statutory allowances.

A. In this section, "nonprobate transfer" means a valid transfer effective at death, other than a transfer of a survivorship interest in a joint tenancy of real estate, by a transferor whose last domicile was in this state to the extent that the transferor immediately before death had power, acting alone, to prevent the transfer by revocation or withdrawal and instead to use the property for the benefit of the transferor or apply it to discharge claims against the transferor's probate estate.

B. Except as otherwise provided by statute, a transferee of a nonprobate transfer is subject to liability to any probate estate of the decedent for allowed claims against the decedent's probate estate and statutory allowances to the decedent's spouse and children to the extent the estate is insufficient to satisfy those claims and allowances. The liability of a nonprobate transferee may not exceed the value of nonprobate transfers received or controlled by that transferee.

C. Nonprobate transferees are liable for the insufficiency described in Subsection B of this section in the following order of priority:

(1) a transferee designated in the decedent's will or any other governing instrument, as provided in the instrument;

(2) the trustee of a trust serving as the principal nonprobate instrument in the decedent's estate plan as shown by its designation as devisee of the decedent's residuary estate or by other facts or circumstances, to the extent of the value of the nonprobate transfer received or controlled; and

(3) other nonprobate transferees, in proportion to the values received.

D. Unless otherwise provided by the trust instrument, interests of beneficiaries in all trusts incurring liabilities under this section abate as necessary to satisfy the liability, as if all of the trust instruments were a single will and the interests were devises under it.

E. A provision made in one instrument may direct the apportionment of the liability among the nonprobate transferees taking under that or any other governing instrument. If a provision in one instrument conflicts with a provision in another, the later one prevails.

F. Upon due notice to a nonprobate transferee, the liability imposed by this section is enforceable in proceedings in this state, whether or not the transferee is located in this state.

G. A proceeding under this section may not be commenced unless the personal representative of the decedent's estate has received a written demand for the proceeding from the surviving spouse or a child, to the extent that statutory allowances are affected, or a creditor. If the personal representative declines or fails to commence a proceeding after demand, a person making demand may commence the proceeding in the name of the decedent's estate, at the expense of the person making the demand and not of the estate. A personal representative who declines in good faith to commence a requested proceeding incurs no personal liability for declining.

H. A proceeding under this section must be commenced within one year after the decedent's death, but a proceeding on behalf of a creditor whose claim was allowed after proceedings challenging disallowance of the claim may be commenced within sixty days after final allowance of the claim.

I. Unless a written notice asserting that a decedent's probate estate is nonexistent or insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative, the following rules apply:

(1) payment or delivery of assets by a financial institution, registrar or other obligor to a nonprobate transferee in accordance with the terms of the governing instrument controlling the transfer releases the obligor from all claims for amounts paid or assets delivered; and

(2) a trustee receiving or controlling a nonprobate transfer is released from liability under this section with respect to any assets distributed to the trust's beneficiaries. Each beneficiary to the extent of the distribution received becomes liable for the amount of the trustee's liability attributable to assets received by the beneficiary.

History: Laws 2005, ch. 143, § 3.

45-6-103. Repealed.

History: 1953 Comp., § 32A-6-103, enacted by Laws 1975, ch. 257, § 6-103.

45-6-104. Repealed.

History: 1953 Comp., § 32A-6-104, enacted by Laws 1975, ch. 257, § 6-104.

45-6-105. Repealed.

History: 1953 Comp., § 32A-6-105, enacted by Laws 1975, ch. 257, § 6-105.

45-6-106. Repealed.

History: 1953 Comp., § 32A-6-106, enacted by Laws 1975, ch. 257, § 6-106.

45-6-107. Repealed.

History: 1953 Comp., § 32A-6-107, enacted by Laws 1975, ch. 257, § 6-107.

45-6-108. Repealed.

History: 1953 Comp., § 32A-6-108, enacted by Laws 1975, ch. 257, § 6-108.

45-6-109. Repealed.

History: 1953 Comp., § 32A-6-109, enacted by Laws 1975, ch. 257, § 6-109.

45-6-110. Repealed.

History: 1953 Comp., § 32A-6-110, enacted by Laws 1975, ch. 257, § 6-110.

45-6-111. Repealed.

History: 1953 Comp., § 32A-6-111, enacted by Laws 1975, ch. 257, § 6-111.

45-6-112. Repealed.

History: 1953 Comp., § 32A-6-112, enacted by Laws 1975, ch. 257, § 6-112.

45-6-113. Repealed.

History: 1953 Comp., § 32A-6-113, enacted by Laws 1975, ch. 257, § 6-113.

PART 2
MULTIPLE-PERSON ACCOUNTS

SUBPART 1. Definitions And General Provisions

45-6-201. Definitions.

As used in Sections 45-6-201 through 45-6-227 NMSA 1978:

A. "account" means a contract of deposit between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit and share account;

B. "agent" means a person authorized to make account transactions for a party;

C. "beneficiary" means a person named as one to whom sums on deposit in an account are payable on request after death of all parties or for whom a party is named as trustee;

D. "financial institution" means an organization authorized to do business under state or federal laws relating to financial institutions, and includes a bank, trust company, savings bank, building and loan association, savings and loan company or association and credit union;

E. "multiple-party account" means an account payable on request to one or more of two or more parties, whether or not a right of survivorship is mentioned;

F. "party" means a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent;

G. "payment" of sums on deposit includes withdrawal, payment to a party or third person pursuant to check or other request and a pledge of sums on deposit by a party, or a set-off, reduction or other disposition of all or part of an account pursuant to a pledge;

H. "POD designation" means the designation of:

(1) a beneficiary in an account payable on request to one party during the party's lifetime and on the party's death to one or more beneficiaries, or to one or more parties during their lifetimes and on death of all of them to one or more beneficiaries; or

(2) a beneficiary in an account in the name of one or more parties as trustee for one or more beneficiaries if the relationship is established by the terms of the account and there is no subject of the trust other than the sums on deposit in the account, whether or not payment to the beneficiary is mentioned;

I. "receive", as it relates to notice to a financial institution, means receipt in the office or branch office of the financial institution in which the account is established, but if the terms of the account require notice at a particular place, in the place required;

J. "request" means a request for payment complying with all terms of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but, for purposes of Sections 45-6-201 through 45-6-227 NMSA 1978, if terms of the account condition payment on advance notice, a request for payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for payment;

K. "sums on deposit" means the balance payable on an account, including interest and dividends earned, whether or not included in the current balance, and any deposit life insurance proceeds added to the account by reason of death of a party; and

L. "terms of the account" includes the deposit agreement and other terms and conditions, including the form, of the contract of deposit.

History: 1978 Comp., § 45-6-201, enacted by Laws 1992, ch. 66, § 18.

45-6-202. Limitation on scope.

Sections 45-6-201 through 45-6-227 NMSA 1978 do not apply to:

A. an account established for a partnership, joint venture or other organization for a business purpose;

B. an account controlled by one or more persons as an agent or trustee for a corporation, unincorporated association, or charitable or civic organization; or

C. a fiduciary or trust account in which the relationship is established other than by the terms of the account.

History: 1978 Comp., § 45-6-202, enacted by Laws 1992, ch. 66, § 19.

45-6-203. Types of account; existing accounts.

A. An account may be for a single party or multiple parties. A multiple-party account may be with or without a right of survivorship between the parties. Subject to Subsection C of Section 45-6-212 NMSA 1978, either a single-party account or a multiple-party account may have a POD designation, an agency designation or both.

B. An account established before, on or after the effective date of Sections 45-6-201 through 45-6-227 NMSA 1978, whether in the form prescribed in Section 45-6-204 NMSA 1978 or in any other form, is either a single-party account or a multiple-party account, with or without right of survivorship, and with or without a POD designation or an agency designation, within the meaning of, and governed by Sections 45-6-201 through 45-6-227 NMSA 1978.

History: 1978 Comp., § 45-6-203, enacted by Laws 1992, ch. 66, § 20.

45-6-204. Forms.

A. A contract of deposit that contains provisions in substantially the following form establishes the type of account provided, and the account is governed by the provisions of Sections 45-6-201 through 45-6-227 NMSA 1978 applicable to an account of that type:

UNIFORM SINGLE- OR MULTIPLE-PARTY ACCOUNT FORM PARTIES
(Name One or More Parties):

_____
_____

OWNERSHIP (Select One And Initial):

SINGLE-PARTY ACCOUNT

____ MULTIPLE-PARTY ACCOUNT

____ Parties own account in proportion to net contributions unless there is

____ clear and

convincing evidence of a different intent.

RIGHTS AT DEATH (Select One And Initial):

____ SINGLE-PARTY ACCOUNT

At death of party, ownership passes as part of party's estate.

____ SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH)

DESIGNATION
(Name One or More Beneficiaries):

_____
_____

At death of party ownership passes to POD beneficiaries and is not part of

party's estate.

MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP

____ At death of party, ownership passes to surviving parties.

MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP
AND POD (PAY ON DEATH) DESIGNATION
(Name One or More Beneficiaries):

_____
____ _____

At death of last surviving party, ownership passes to POD beneficiaries and is
not part of last surviving party's estate.

MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP
At death of party, deceased party's ownership passes as part of
____ deceased party's
estate.

AGENCY (POWER OF ATTORNEY) DESIGNATION (Optional)

Agents may make account transactions for parties but have no ownership or
rights at death unless named as POD beneficiaries.
(To Add Agency Designation To Account, Name One or More Agents):

_____
_____

(Select One and Initial):

____ AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY
OF PARTIES
____ AGENCY DESIGNATION TERMINATES ON DISABILITY OR
INCAPACITY OF PARTIES.

B. A contract of deposit that does not contain provisions in substantially the form provided in Subsection A of this section is governed by the provisions of Sections 45-6-201 through 45-6-227 NMSA 1978 applicable to the type of account that most nearly conforms to the depositor's intent.

History: 1978 Comp., § 45-6-204, enacted by Laws 1992, ch. 66, § 21.

45-6-205. Designation of agent.

A. By a writing signed by all parties, the parties may designate as agent of all parties on an account a person other than a party.

B. Unless the terms of an agency designation provide that the authority of the agent terminates on disability or incapacity of a party, the agent's authority survives disability and incapacity. The agent may act for a disabled or incapacitated party until the authority of the agent is terminated.

C. Death of the sole party or last surviving party terminates the authority of an agent.

History: 1978 Comp., § 45-6-205, enacted by Laws 1992, ch. 66, § 22; 2011, ch. 124, § 84.

45-6-206. Applicability.

The provisions of Sections 45-6-211 through 45-6-216 NMSA 1978 concerning beneficial ownership as between parties or as between parties and beneficiaries apply only to controversies between those persons and their creditors and other successors, and do not apply to the right of those persons to payment as determined by the terms of the account. Sections 45-6-221 through 45-6-227 NMSA 1978 govern the liability and set-off rights of financial institutions that make payments pursuant to those sections.

History: 1978 Comp., § 45-6-206, enacted by Laws 1992, ch. 66, § 23.

SUBPART 2. Ownership As Between PartiesAnd Others

45-6-211. Ownership during lifetime.

A. As used in this section, "net contribution" of a party means the sum of all deposits to an account made by or for the party, less all payments from the account made to or for the party which have not been paid to or applied to the use of another party and a proportionate share of any charges deducted from the account, plus a proportionate share of any interest or dividends earned, whether or not included in the current balance. The term includes deposit life insurance proceeds added to the account by reason of death of the party whose net contribution is in question.

B. During the lifetime of all parties, an account belongs to the parties in proportion to the net contribution of each to the sums on deposit, unless there is clear and convincing evidence of a different intent. As between parties married to each other, in the absence of proof otherwise, the net contribution of each is presumed to be an equal amount.

C. A beneficiary in an account having a POD designation has no right to sums on deposit during the lifetime of any party.

D. An agent in an account with an agency designation has no beneficial right to sums on deposit.

History: 1978 Comp., § 45-6-211, enacted by Laws 1992, ch. 66, § 24.

45-6-212. Rights at death.

A. Except as otherwise provided in this part, on death of a party sums on deposit in a multiple-party account belong to the surviving party or parties. If two or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under Section 45-6-211 NMSA 1978 belongs to the surviving spouse. If two or more parties survive and none is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under Section 45-6-211 NMSA 1978 belongs to the surviving parties in equal shares, and augments the proportion to which each survivor, immediately before the decedent's death, was beneficially entitled under Section 45-6-211 NMSA 1978, and the right of survivorship continues between the surviving parties.

B. In an account with a POD designation:

(1) on death of one of two or more parties, the rights in sums on deposit are governed by Subsection A of this section; and

(2) on death of the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries; if two or more beneficiaries survive, sums on deposit belong to them in equal and undivided shares, and there is no right of survivorship in the event of death of a beneficiary thereafter; if no beneficiary survives, sums on deposit belong to the estate of the last surviving party.

C. Sums on deposit in a single-party account without a POD designation, or in a multiple-party account that, by the terms of the account, is without right of survivorship, are not affected by death of a party, but the amount to which the decedent, immediately before death, was beneficially entitled under Section 45-6-211 NMSA 1978 is transferred as part of the decedent's estate. A POD designation in a multiple-party account without right of survivorship is ineffective. For purposes of this section, designation of an account as a tenancy in common establishes that the account is without right of survivorship.

D. The ownership right of surviving party or beneficiary, or of the decedent's estate, in sums on deposit is subject to requests for payment made by a party before the party's death, whether paid by the financial institution before or after death, or unpaid. The surviving party or beneficiary, or the decedent's estate, is liable to the payee of an unpaid request for payment. The liability is limited to a proportionate share of the amount transferred under this section, to the extent necessary to discharge the request for payment.

History: 1978 Comp., § 45-6-212, enacted by Laws 1992, ch. 66, § 25.

45-6-213. Alteration of rights.

A. Rights at death under Section 45-6-212 NMSA 1978 are determined by the terms of the account at the death of a party. The terms of the account may be altered by

written notice given by a party to the financial institution to change the terms of the account or stop or vary payment under the terms of the account. The notice must be signed by a party and received by the financial institution during the party's lifetime.

B. A right of survivorship arising from the express terms of the account, Section 45-6-212 NMSA 1978 or a POD designation, may not be altered by will.

History: 1978 Comp., § 45-6-213, enacted by Laws 1992, ch. 66, § 26; 1995, ch. 210, § 80.

45-6-214. Accounts and transfers nontestamentary.

Except as a consequence of, and to the extent directed by, Section 45-6-215 NMSA 1978, a transfer resulting from the application of Section 45-6-212 NMSA 1978 is effective by reason of the terms of the account involved and Sections 45-6-201 through 45-6-227 NMSA 1978 and is not testamentary or subject to Chapter 45, Articles 1 through 4 NMSA 1978.

History: 1978 Comp., § 45-6-214, enacted by Laws 1992, ch. 66, § 27.

45-6-215. Repealed.

History: 1978 Comp., § 45-6-215, enacted by Laws 1992, ch. 66, § 28; repealed by Laws 2005, ch. 143, § 18.

45-6-216. Community property.

A. A deposit of community property in an account does not alter the community character of the property or community rights in the property, if any, but a right of survivorship between parties married to each other arising from the express terms of the account or Section 45-6-212 NMSA 1978 may not be altered by will or other governing instrument.

B. This section does not affect or limit the right of a financial institution to make payments pursuant to Sections 45-6-211 through 45-6-227 NMSA 1978 and the deposit agreement.

History: 1978 Comp., § 45-6-216, enacted by Laws 1992, ch. 66, § 29; 1993, ch. 174, § 83; 2011, ch. 124, § 85.

SUBPART 3. Protection Of Financial Institutions

45-6-221. Authority of financial institution.

A financial institution may enter into a contract of deposit for a multiple-party account to the same extent it may enter into a contract of deposit for a single-party account, and may provide for a POD designation and an agency designation in either a single-party account or a multiple-party account. A financial institution need not inquire as to the source of a deposit to an account or as to the proposed application of a payment from an account.

History: 1978 Comp., § 45-6-221, enacted by Laws 1992, ch. 66, § 30.

45-6-222. Payment on multiple-party account.

A financial institution, on request, may pay sums on deposit in a multiple-party account to:

A. one or more of the parties, whether or not another party is disabled, incapacitated or deceased when payment is requested and whether or not the party making the request survives another party; or

B. the personal representative, if any, or, if there is none, the heirs or devisees of a deceased party if proof of death is presented to the financial institution showing that the deceased party was the survivor of all other persons named on the account either as a party or beneficiary, unless the account is without right of survivorship under Section 45-6-212 NMSA 1978.

History: 1978 Comp., § 45-6-222, enacted by Laws 1992, ch. 66, § 31.

45-6-223. Payment on POD designation.

A financial institution, on request, may pay sums on deposit in an account with a POD designation to:

A. one or more of the parties, whether or not another party is disabled, incapacitated or deceased when the payment is requested and whether or not a party survives another party;

B. the beneficiary or beneficiaries, if proof of death is presented to the financial institution showing that the beneficiary or beneficiaries survived all persons named as parties; or

C. the personal representative, if any, or, if there is none, the heirs or devisees of a deceased party, if proof of death is presented to the financial institution showing that the deceased party was the survivor of all other persons named on the account either as a party or beneficiary.

History: 1978 Comp., § 45-6-223, enacted by Laws 1992, ch. 66, § 32.

45-6-224. Payment to designated agent.

A financial institution, on request of an agent under an agency designation for an account, may pay to the agent sums on deposit in the account, whether or not a party is disabled, incapacitated or deceased when the request is made or received, and whether or not the authority of the agent terminates on the disability or incapacity of a party.

History: 1978 Comp., § 45-6-224, enacted by Laws 1992, ch. 66, § 33.

45-6-225. Payment to minor.

If a financial institution is required or permitted to make payment pursuant to Sections 45-6-201 through 45-6-227 NMSA 1978 to a minor designated as a beneficiary, payment may be made pursuant to the Uniform Transfers to Minors Act [46-7-11 to 46-7-34 NMSA 1978].

History: 1978 Comp., § 45-6-225, enacted by Laws 1992, ch. 66, § 34.

45-6-226. Discharge.

A. Payment made pursuant to Sections 45-6-201 through 45-6-227 NMSA 1978 in accordance with the terms of the account discharges the financial institution from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties, beneficiaries or their successors. Payment may be made whether or not a party, beneficiary or agent is disabled, incapacitated or deceased when payment is requested, received or made.

B. Protection under this section does not extend to payments made after a financial institution has received written notice from a party, or from the personal representative, surviving spouse or heir or devisee of a deceased party, to the effect that payments in accordance with the terms of the account, including one having an agency designation, should not be permitted, and the financial institution has had a reasonable opportunity to act on it when the payment is made. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in a request for payment if the financial institution is to be protected under this section. Unless a financial institution has been served with process in an action or proceeding, no other notice or other information shown to have been available to the financial institution affects its right to protection under this section.

C. A financial institution that receives written notice pursuant to this section or otherwise has reason to believe that a dispute exists as to the rights of the parties may refuse, without liability, to make payments in accordance with the terms of the account.

D. Protection of a financial institution under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of sums on deposit in accounts or payments made from accounts.

History: 1978 Comp., § 45-6-226, enacted by Laws 1992, ch. 66, § 35; 1995, ch. 210, § 81.

45-6-227. Set-off.

Without qualifying any other statutory right to set-off or lien and subject to any contractual provision, if a party is indebted to a financial institution, the financial institution has a right to set-off against the account. The amount of the account subject to set-off is the proportion to which the party is, or immediately before death was, beneficially entitled under Section 45-6-211 NMSA 1978 or, in the absence of proof of that proportion, an equal share with all parties.

History: 1978 Comp., § 45-6-227, enacted by Laws 1992, ch. 66, § 36.

PART 3
TOD SECURITY REGISTRATION

45-6-301. Definitions.

As used in Sections 45-6-301 through 45-6-311 NMSA 1978:

A. "beneficiary form" means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner;

B. "register", including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities;

C. "registering entity" means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities;

D. "security" means a share, participation or other interest in property, in a business or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security and a security account; and

E. "security account" means:

(1) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings or dividends earned or declared on a security in an account, a reinvestment account or a brokerage account, whether or not credited to the account before the owner's death;

(2) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death; or

(3) a natural person's investment, management or custody account with a trust company or bank with trust powers, including securities in the account, a cash balance in the account and cash, cash equivalents, interest, earnings or dividends earned or declared on a security in the account, whether or not credited to the account before the owner's death. Nothing in this paragraph affects interests in real property.

History: 1978 Comp., § 45-6-301, enacted by Laws 1992, ch. 66, § 37; 2008, ch. 8, § 1.

45-6-302. Registration in beneficiary form; sole or joint tenancy ownership.

Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties or as owners of community property held in survivorship form, and not as tenants in common.

History: 1978 Comp., § 45-6-302, enacted by Laws 1992, ch. 66, § 38.

45-6-303. Registration in beneficiary form; applicable law.

A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

History: 1978 Comp., § 45-6-303, enacted by Laws 1992, ch. 66, § 39.

45-6-304. Origination of registration in beneficiary form.

A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

History: 1978 Comp., § 45-6-304, enacted by Laws 1992, ch. 66, § 40.

45-6-305. Form of registration in beneficiary form.

Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD", or by the words "pay on death" or the abbreviation "POD", after the name of the registered owner and before the name of a beneficiary.

History: 1978 Comp., § 45-6-305, enacted by Laws 1992, ch. 66, § 41.

45-6-306. Effect of registration in beneficiary form.

The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners without the consent of the beneficiary.

History: 1978 Comp., § 45-6-306, enacted by Laws 1992, ch. 66, § 42.

45-6-307. Ownership of [on] death of owner.

On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

History: 1978 Comp., § 45-6-307, enacted by Laws 1992, ch. 66, § 43.

45-6-308. Protection of registering entity.

A. A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by Sections 45-6-301 through 45-6-311 NMSA 1978.

B. By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in Sections 45-6-301 through 45-6-311 NMSA 1978.

C. A registering entity is discharged from all claims to a security by the estate, creditors, heirs or devisees of a deceased owner if it registers a transfer of the security in accordance with Section 45-6-307 NMSA 1978 and does so in good faith reliance on:

(1) the registration;

(2) Sections 45-6-301 through 45-6-311 NMSA 1978; and

(3) information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representative or by the surviving beneficiary's representatives, or other information available to the registering entity.

D. The protections of Sections 45-6-301 through 45-6-311 NMSA 1978 do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under Sections 45-6-301 through 45-6-311 NMSA 1978.

E. The protection provided by Sections 45-6-301 through 45-6-311 NMSA 1978 to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

History: 1978 Comp., § 45-6-308, enacted by Laws 1992, ch. 66, § 44.

45-6-309. Nontestamentary transfer on death.

A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and Sections 45-6-301 through 45-6-311 NMSA 1978 and is not testamentary.

History: 1978 Comp., § 45-6-309, enacted by Laws 1992, ch. 66, § 45; 2005, ch. 143, § 4.

45-6-310. Terms, conditions and forms for registration.

A. A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests for:

(1) registrations in beneficiary form; and

(2) implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary.

B. The terms and conditions established under Subsection A of this section may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for "lineal descendants per stirpes". This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

C. The following are illustrations of registrations in beneficiary form which a registering entity may authorize:

(1) sole owner-sole beneficiary: John S. Brown TOD (or POD) John S. Brown Jr.;

(2) multiple owners-sole beneficiary: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr.; and

(3) multiple owners-primary and secondary (substituted) beneficiaries: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr. SUB BENE Peter Q. Brown or John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr. LDPS.

History: 1978 Comp., § 45-6-310, enacted by Laws 1992, ch. 66, § 46.

45-6-311. Applicability.

Sections 45-6-301 through 45-6-311 NMSA 1978 apply to registrations of securities in beneficiary form made before or after July 1, 1992, by decedents dying on or after July 1, 1992.

History: 1978 Comp., § 45-6-311, enacted by Laws 1992, ch. 66, § 47.

PART 4
UNIFORM REAL PROPERTY TRANSFER ON DEATH

45-6-401. Short title.

Sections 45-6-401 through 45-6-417 NMSA 1978 may be cited as the "Uniform Real Property Transfer on Death Act".

History: Laws 2001, ch. 236, § 1; repealed and reenacted by Laws 2013, ch. 38, § 1.

45-6-402. Definitions.

As used in the Uniform Real Property Transfer on Death Act:

A. "beneficiary" means a person that receives property under a transfer on death deed;

B. "designated beneficiary" means a person designated to receive property in a transfer on death deed;

C. "essential elements" means the names of the grantor and the grantee, a clause transferring title, a description of the property transferred, the grantor's signature and acknowledgment by the grantor in the presence of a notary public or in the presence of another individual authorized by law to take acknowledgments;

D. "joint owner" means an individual who owns property concurrently with one or more other individuals with a right of survivorship. "Joint owner" includes a joint tenant but does not include a tenant in common;

E. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity;

F. "property" means an interest in real property located in New Mexico that is transferable on the death of the owner;

G. "transfer on death deed" means a deed authorized under the Uniform Real Property Transfer on Death Act; and

H. "transferor" means an individual who makes a transfer on death deed.

History: 1978 Comp., § 45-6-402, enacted by Laws 2013, ch. 38, § 2.

45-6-403. Applicability.

The Uniform Real Property Transfer on Death Act applies to a transfer on death deed made before, on or after January 1, 2014 by a transferor dying on or after January 1, 2014.

History: 1978 Comp., § 45-6-403, enacted by Laws 2013, ch. 38, § 3.

45-6-404. Nonexclusivity.

The Uniform Real Property Transfer on Death Act does not affect any method of transferring property otherwise permitted under the laws of New Mexico.

History: 1978 Comp., § 45-6-404, enacted by Laws 2013, ch. 38, § 4.

45-6-405. Transfer on death deed authorized.

An individual may transfer property to one or more beneficiaries effective at the transferor's death by a transfer on death deed.

History: 1978 Comp., § 45-6-405, enacted by Laws 2013, ch. 38, § 5.

45-6-406. Transfer on death deed revocable.

A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

History: 1978 Comp., § 45-6-406, enacted by Laws 2013, ch. 38, § 6.

45-6-407. Transfer on death deed nontestamentary.

A transfer on death deed is nontestamentary.

History: 1978 Comp., § 45-6-407, enacted by Laws 2013, ch. 38, § 7.

45-6-408. Capacity of transferor.

The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

History: 1978 Comp., § 45-6-408, enacted by Laws 2013, ch. 38, § 8.

45-6-409. Requirements.

A transfer on death deed shall:

A. contain the essential elements and formalities of a properly recordable inter vivos deed;

B. state that the transfer to the designated beneficiary is to occur at the transferor's death; and

C. be recorded before the transferor's death in the public records in the office of the county clerk for the county where the property is located.

History: 1978 Comp., § 45-6-409, enacted by Laws 2013, ch. 38, § 9.

45-6-410. Notice, delivery, acceptance or consideration not required.

A transfer on death deed does not require:

A. notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or

B. consideration.

History: 1978 Comp., § 45-6-410, enacted by Laws 2013, ch. 38, § 10.

45-6-411. Revocation by instrument authorized; revocation by act not permitted.

A. Subject to Subsection B of this section, an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:

(1) is acknowledged by the transferor after the acknowledgment of the deed being revoked;

(2) is recorded before the transferor's death in the public records in the office of the county clerk for the county in which the deed is recorded; and

(3) is:

(a) a transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;

(b) an instrument of revocation that expressly revokes the deed or part of the deed; or

(c) an inter vivos deed that expressly revokes the transfer on death deed or part of the deed.

B. If a transfer on death deed is made by more than one transferor:

(1) revocation by a transferor does not affect the deed as to the interest of another transferor; and

(2) a deed of joint owners is revoked only if it is revoked by all of the living joint owners.

C. After a transfer on death deed is recorded, it may not be revoked by a revocatory act on the deed.

D. This section does not limit the effect of an inter vivos transfer of the property.

History: 1978 Comp., § 45-6-411, enacted by Laws 2013, ch. 38, § 11.

45-6-412. Effect of transfer on death deed during transferor's life.

During a transferor's life, a transfer on death deed does not:

A. affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;

B. affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the deed;

C. affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;

D. affect the transferor's or designated beneficiary's eligibility for any form of public assistance;

E. create a legal or equitable interest in favor of the designated beneficiary; or

F. subject the property to claims or process of a creditor of the designated beneficiary.

History: 1978 Comp., § 45-6-412, enacted by Laws 2013, ch. 38, § 12.

45-6-413. Effect of transfer on death deed at transferor's death.

A. Except as otherwise provided in the transfer on death deed or in Subsection B, C or D of this section or in Section 45-2-603, 45-2-702, 45-2-706, 45-2-707, 45-2-802, 45-2-803 or 45-2-804 NMSA 1978, on the death of the transferor, the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death:

(1) provided that the designated beneficiary survives the transferor, the interest in the property is transferred to the designated beneficiary in accordance with the deed;

(2) the interest of a designated beneficiary that fails to survive the transferor lapses;

(3) subject to Paragraph (4) of this subsection, concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship; and

(4) if the transferor has identified two or more designated beneficiaries to receive concurrent interests in the property, the share of one that lapses or fails for any reason is transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held concurrently.

B. Subject to Chapter 14, Article 9 NMSA 1978, a beneficiary takes the property subject to all recorded conveyances, encumbrances, assignments, contracts, mortgages, liens and other recorded interests to which the property is subject at the transferor's death. For purposes of this subsection and Chapter 14, Article 9 NMSA 1978, the recording of the transfer on death deed is deemed to have occurred at the transferor's death.

C. If a transferor is a joint owner and is:

(1) survived by one or more other joint owners, the property that is the subject of a transfer on death deed belongs to the surviving joint owner or owners with right of survivorship; or

(2) the last surviving joint owner, the transfer on death deed is effective.

D. A transfer on death deed transfers property without covenant or warranty of title even if the deed contains a contrary provision.

History: 1978 Comp., § 45-6-413, enacted by Laws 2013, ch. 38, § 13.

45-6-414. Disclaimer.

A beneficiary may disclaim all or part of the beneficiary's interest as provided by the Uniform Disclaimer of Property Interests Act [Chapter 45, Article 2, Part 11 NMSA 1978].

History: 1978 Comp., § 45-6-414, enacted by Laws 2013, ch. 38, § 14.

45-6-415. Liability for creditor claims and statutory allowances.

A beneficiary of a transfer on death deed is liable for an allowed claim against the transferor's probate estate and statutory allowances to a surviving spouse and children to the extent provided in Section 45-6-102 NMSA 1978.

History: 1978 Comp., § 45-6-415, enacted by Laws 2013, ch. 38, § 15.

45-6-416. Optional form of transfer on death deed.

The following form may be used to create a transfer on death deed. The provisions of the Uniform Real Property Transfer on Death Act govern the effect of this or any other instrument used to create a transfer on death deed:

(front of form)

"REVOCABLE TRANSFER ON DEATH DEED

NOTICE TO OWNER

You should carefully read all information on the other side of this form. You may want to consult a lawyer before using this form.

This form must be recorded before your death or it will not be effective.

IDENTIFYING INFORMATION

Owner or Owners Making This Deed:

_____ _____

Printed name Mailing address

_____ _____

Printed name Mailing address

Legal description of the property:

_____

___

_____

___

PRIMARY BENEFICIARY

I designate the following beneficiary if the beneficiary survives me.

_____ _____

Printed name Mailing address, if available

ALTERNATE BENEFICIARY - Optional

If my primary beneficiary does not survive me, I designate the following alternate beneficiary if that beneficiary survives me.

_____ _____

Printed name Mailing address, if available

TRANSFER ON DEATH

At my death, I transfer my interest in the described property to the beneficiaries as designated above.

Before my death, I have the right to revoke this deed.

SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

_____ _____

Signature Date

_____ _____

Signature Date

ACKNOWLEDGMENT

(insert acknowledgment for deed here)"

(back of form)

"COMMON QUESTIONS ABOUT THE USE OF THIS FORM

What does the Transfer on Death (TOD) deed do? When you die, this deed transfers the described property, subject to any liens or mortgages (or other encumbrances) on the property at your death. Probate is not required. The TOD deed has no effect until you die. You can revoke it at any time. You are also free to transfer the property to someone else during your lifetime. If you do not own any interest in the property when you die, this deed will have no effect.

How do I make a TOD deed? Complete this form. Have it acknowledged before a notary public or other individual authorized by law to take acknowledgments. Record the form in each county where any part of the property is located. The form has no effect unless it is acknowledged and recorded before your death.

Is the "legal description" of the property necessary? Yes.

How do I find the "legal description" of the property? This information may be on the deed you received when you became an owner of the property. This information may also be available in the office of the county clerk for the county where the property is located. If you are not absolutely sure, consult a lawyer.

Can I change my mind before I record the TOD deed? Yes. If you have not yet recorded the deed and want to change your mind, simply tear up or otherwise destroy the deed.

How do I "record" the TOD deed? Take the completed and acknowledged form to the office of the county clerk of the county where the property is located. Follow the instructions given by the county clerk to make the form part of the official property records. If the property is in more than one county, you should record the deed in each county.

Can I later revoke the TOD deed if I change my mind? Yes. You can revoke the TOD deed. No one, including the beneficiaries, can prevent you from revoking the deed.

How do I revoke the TOD deed after it is recorded? There are three ways to revoke a recorded TOD deed: (1) Complete and acknowledge a revocation form, and record it in each county where the property is located. (2) Complete and acknowledge a new

TOD deed that disposes of the same property, and record it in each county where the property is located. (3) Transfer the property to someone else during your lifetime by a recorded deed that expressly revokes the TOD deed. You may not revoke the TOD deed by will.

I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek help from a trusted family member, friend or lawyer.

Do I need to tell the beneficiaries about the TOD deed? No, but it is recommended. Secrecy can cause later complications and might make it easier for others to commit fraud.

I have other questions about this form. What should I do? This form is designed to fit some but not all situations. If you have other questions, you are encouraged to consult a lawyer."

History: 1978 Comp., § 45-6-416, enacted by Laws 2013, ch. 38, § 16.

45-6-417. Optional form of revocation.

The following form may be used to create an instrument of revocation under the Uniform Real Property Transfer on Death Act. The provisions of the Uniform Real Property Transfer on Death Act govern the effect of this or any other instrument used to revoke a transfer on death deed.

(front of form)

"REVOCATION OF TRANSFER ON DEATH DEED

NOTICE TO OWNER

This revocation must be recorded before you die or it will not be effective. This revocation is effective only as to the interests in the property of owners who sign this revocation.

IDENTIFYING INFORMATION

Owner or Owners of Property Making This Revocation:

_____	_____
Printed name	Mailing address
_____	_____
Printed name	Mailing address

Legal description of the property:

_____
___

REVOCATION

I revoke all my previous transfers of this property by transfer on death deed.

SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

_____	_____
Signature	Date
_____	_____
Signature	Date

ACKNOWLEDGMENT

(insert acknowledgment here)"

(back of form)

"COMMON QUESTIONS ABOUT THE USE OF THIS FORM

How do I use this form to revoke a Transfer on Death (TOD) deed? Complete this form. Have it acknowledged before a notary public or other individual authorized to take acknowledgments. Record the form in the public records in the office of the county clerk of each county where the property is located. The form must be acknowledged and recorded before your death or it has no effect.

How do I find the "legal description" of the property? This information may be on the TOD deed. It may also be available in the office of the county clerk for the county where the property is located. If you are not absolutely sure, consult a lawyer.

How do I "record" the form? Take the completed and acknowledged form to the office of the county clerk of the county where the property is located. Follow the instructions given by the county clerk to make the form part of the official property records. If the property is located in more than one county, you should record the form in each of those counties.

I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek help from a trusted family member, friend or lawyer.

I have other questions about this form. What should I do? This form is designed to fit some but not all situations. If you have other questions, consult a lawyer."

History: 1978 Comp., § 45-6-417, enacted by Laws 2013, ch. 38, § 17.

ARTICLE 7
Trust Administration

PART 1
Principal Place Of Administration

45-7-101 to 45-7-104. Repealed.

History: 1953 Comp., § 32A-7-101, enacted by Laws 1975, ch. 257, § 7-101.

45-7-105. Registration; qualification of foreign trustee.

A. A foreign corporate trustee is required to qualify as a foreign corporation doing business in New Mexico if it maintains the principal place of administration of any trust within the state. A foreign corporate cotrustee is not required to qualify in New Mexico solely because its cotrustee maintains the principal place of administration in New Mexico. Unless otherwise doing business in New Mexico, local qualification by a foreign trustee, corporate or individual, is not required in order for the trustee to receive distribution from a local estate or to hold, invest in, manage or acquire property located in this state, or maintain litigation.

B. Nothing in this section affects a determination of what other acts require qualification as doing business in New Mexico.

History: 1953 Comp., § 32A-7-105, enacted by Laws 1975, ch. 257, § 7-105.

PART 2
Jurisdiction Of Court Concerning Trusts

45-7-201 to 45-7-206. Repealed.

History: 1953 Comp., § 32A-7-201, enacted by Laws 1975, ch. 257, § 7-201.

PART 3
Duties And Liabilities Of Trustees

45-7-301 to 45-7-307. Repealed.

History: 1953 Comp., § 32A-7-301, enacted by Laws 1975, ch. 257, § 7-301.

PART 4
Powers Of Trustees

45-7-401. Repealed.

History: 1953 Comp., § 32A-7-401, enacted by Laws 1975, ch. 257, § 7-401; 1987, ch. 66, § 1.

PART 5
Custodial Trusts

45-7-501. Short title.

Sections 45-7-501 through 45-7-522 NMSA 1978 may be cited as the "Uniform Custodial Trust Act".

History: 1978 Comp., § 45-7-501, enacted by Laws 1992, ch. 66, § 48.

45-7-502. Definitions.

As used in the Uniform Custodial Trust Act [45-7-501 to 45-7-522 NMSA 1978]:

A. "adult" means an individual who is at least eighteen years of age;

B. "beneficiary" means an individual for whom property has been transferred to or held under a declaration of trust by a custodial trustee for the individual's use and benefit under the Uniform Custodial Trust Act;

C. "conservator" means a person appointed or qualified by a court to manage the estate of an individual or a person legally authorized to perform substantially the same functions;

D. "court" means the district court of this state;

E. "custodial trust property" means an interest in property transferred to or held under a declaration of trust by a custodial trustee under the Uniform Custodial Trust Act and the income from and proceeds of that interest;

F. "custodial trustee" means a person designated as trustee of a custodial trust under the Uniform Custodial Trust Act or a substitute or successor to the person designated;

G. "guardian" means a person appointed or qualified by a court as a guardian of an individual, including a limited guardian, but not a person who is only a guardian ad litem;

H. "incapacitated" means lacking the ability to manage property and business affairs effectively by reason of mental illness, mental deficiency, physical illness or disability,

chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, disappearance, minority or other disabling cause;

I. "legal representative" means a personal representative or conservator;

J. "member of the beneficiary's family" means a beneficiary's spouse, descendant, stepchild, parent, stepparent, grandparent, brother, sister, uncle or aunt, whether of the whole or half blood or by adoption;

K. "person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, association or any other legal or commercial entity;

L. "personal representative" means an executor, administrator or special administrator of a decedent's estate, a person legally authorized to perform substantially the same functions or a successor to any of them;

M. "state" means a state, territory or possession of the United States, the district of Columbia or the commonwealth of Puerto Rico;

N. "transferor" means a person who creates a custodial trust by transfer or declaration; and

O. "trust company" means a financial institution, corporation or other legal entity authorized to exercise general trust powers.

History: 1978 Comp., § 45-7-502, enacted by Laws 1992, ch. 66, § 49.

45-7-503. Custodial trust; general.

A. A person may create a custodial trust of property by a written transfer of the property to another person, evidenced by registration or by other instrument of transfer, executed in any lawful manner, naming as beneficiary an individual who may be the transferor, in which the transferee is designated, in substance, as custodial trustee under the Uniform Custodial Trust Act [45-7-501 to 45-7-522 NMSA 1978].

B. A person may create a custodial trust of property by a written declaration, evidenced by registration of the property or by other instrument of declaration executed in any lawful manner, describing the property and naming as beneficiary an individual other than the declarant, in which the declarant as titleholder is designated, in substance, as custodial trustee under the Uniform Custodial Trust Act. A registration or other declaration of trust for the sole benefit of the declarant is not a custodial trust under that act.

C. Title to custodial trust property is in the custodial trustee and the beneficial interest is in the beneficiary.

D. Except as provided in Subsection E of this section, a transferor may not terminate a custodial trust.

E. The beneficiary, if not incapacitated, or the conservator of an incapacitated beneficiary, may terminate a custodial trust by delivering to the custodial trustee a writing signed by the beneficiary or conservator declaring the termination. If not previously terminated, the custodial trust terminates on the death of the beneficiary.

F. Any person may augment existing custodial trust property by the addition of other property pursuant to the Uniform Custodial Trust Act.

G. The transferor may designate, or authorize the designation of, a successor custodial trustee in the trust instrument.

H. The Uniform Custodial Trust Act does not displace or restrict other means of creating trusts. A trust whose terms do not conform to that act may be enforceable according to its terms under other law.

History: 1978 Comp., § 45-7-503, enacted by Laws 1992, ch. 66, § 50.

45-7-504. Custodial trustee for future payment or transfer.

A. A person having the right to designate the recipient of property payable or transferable upon a future event may create a custodial trust upon the occurrence of the future event by designating in writing the recipient, followed in substance by: "as custodial trustee for _____ (name of beneficiary) under the Uniform Custodial Trust Act".

B. Persons may be designated as substitute or successor custodial trustees to whom the property must be paid or transferred in the order named if the first designated custodial trustee is unable or unwilling to serve.

C. A designation under this section may be made in a will, a trust, a deed, a multiple-party account, an insurance policy, an instrument exercising a power of appointment or a writing designating a beneficiary of contractual rights. Otherwise, to be effective, the designation must be registered with or delivered to the fiduciary, payor, issuer or obligor of the future right.

History: 1978 Comp., § 45-7-504, enacted by Laws 1992, ch. 66, § 51.

45-7-505. Form and effect of receipt and acceptance by custodial trustee; jurisdiction.

A. Obligations of a custodial trustee, including the obligation to follow directions of the beneficiary, arise under the Uniform Custodial Trust Act [45-7-501 to 45-7-522

NMSA 1978] upon the custodial trustee's acceptance, express or implied, of the custodial trust property.

B. The custodial trustee's acceptance may be evidenced by writing stating in substance:

"CUSTODIAL TRUSTEE'S RECEIPT AND ACCEPTANCE

I, _____ (name of custodial trustee) acknowledge receipt of the custodial trust property described below or in the attached instrument and accept the custodial trust as custodial trustee for _____ (name of beneficiary) under the Uniform Custodial Trust Act. I undertake to administer and distribute the custodial trust property pursuant to the Uniform Custodial Trust Act. My obligations as custodial trustee are subject to the directions of the beneficiary unless the beneficiary is designated as, is or becomes incapacitated. The custodial trust property consists of _____.

(Dated:)_____

_____
_____ ".

(Signature of Custodial Trustee)

C. Upon accepting custodial trust property, a person designated as custodial trustee under the Uniform Custodial Trust Act is subject to personal jurisdiction of the court with respect to any matter relating to the custodial trust.

History: 1978 Comp., § 45-7-505, enacted by Laws 1992, ch. 66, § 52.

45-7-506. Transfer to custodial trustee by fiduciary or obligor; facility of payment.

A. Unless otherwise directed by an instrument designating a custodial trustee pursuant to Section 45-7-504 NMSA 1978, a person, including a fiduciary other than a custodial trustee, who holds property of or owes a debt to an incapacitated individual not having a conservator may make a transfer to an adult member of the beneficiary's family or to a trust company as custodial trustee for the use and benefit of the incapacitated individual. If the value of the property or the debt exceeds twenty thousand dollars ($20,000), the transfer is not effective unless authorized by the court.

B. A written acknowledgment of delivery, signed by a custodial trustee, is a sufficient receipt and discharge for property transferred to the custodial trustee pursuant to this section.

History: 1978 Comp., § 45-7-506, enacted by Laws 1992, ch. 66, § 53.

45-7-507. Multiple beneficiaries; separate custodial trusts; survivorship.

A. Beneficial interests in a custodial trust created for multiple beneficiaries are deemed to be separate custodial trusts of equal undivided interests for each beneficiary. Except in a transfer or declaration for use and benefit of spouses, for whom a right of survivorship is presumed, a right of survivorship does not exist unless the instrument creating the custodial trust specifically provides for a right of survivorship.

B. Custodial trust property held under the Uniform Custodial Trust Act by the same custodial trustee for the use and benefit of the same beneficiary may be administered as a single custodial trust.

C. A custodial trustee of custodial trust property held for more than one beneficiary shall separately account to each beneficiary pursuant to Sections 45-7-508 and 45-7-516 NMSA 1978 for the administration of the custodial trust.

History: 1978 Comp., § 45-7-507, enacted by Laws 1992, ch. 66, § 54; 2019, ch. 221, § 5.

45-7-508. General duties of custodial trustee.

A. If appropriate, a custodial trustee shall register or record the instrument vesting title to custodial trust property.

B. If the beneficiary is not incapacitated, a custodial trustee shall follow the directions of the beneficiary in the management, control, investment or retention of the custodial trust property. In the absence of effective contrary direction by the beneficiary while not incapacitated, the custodial trustee shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other law restricting investments by fiduciaries. However, a custodial trustee, in the custodial trustee's discretion, may retain any custodial trust property received from the transferor. If a custodial trustee has a special skill or expertise or is named custodial trustee on the basis of representation of a special skill or expertise, the custodial trustee shall use that skill or expertise.

C. Subject to Subsection B of this section, a custodial trustee shall take control of and collect, hold, manage, invest and reinvest custodial trust property.

D. A custodial trustee at all times shall keep custodial trust property of which the custodial trustee has control separate from all other property in a manner sufficient to identify it clearly as custodial trust property of the beneficiary. Custodial trust property, the title to which is subject to recordation, is so identified if an appropriate instrument so identifying the property is recorded, and custodial trust property subject to registration is so identified if it is registered, or held in an account in the name of the custodial trustee,

designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Uniform Custodial Trust Act".

E. A custodial trustee shall keep records of all transactions with respect to custodial trust property, including information necessary for the preparation of tax returns, and shall make the records and information available at reasonable times to the beneficiary or legal representative of the beneficiary.

F. The exercise of a durable power of attorney for an incapacitated beneficiary is not effective to terminate or direct the administration or distribution of a custodial trust.

History: 1978 Comp., § 45-7-508, enacted by Laws 1992, ch. 66, § 55.

45-7-509. General powers of custodial trustee.

A. A custodial trustee, acting in a fiduciary capacity, has all the rights and powers over custodial trust property that an unmarried adult owner has over individually owned property, but a custodial trustee may exercise those rights and powers in a fudiciary [fiduciary] capacity only.

B. This section does not relieve a custodial trustee from liability for a violation of Section 45-7-508 NMSA 1978.

History: 1978 Comp., § 45-7-509, enacted by Laws 1992, ch. 66, § 56.

45-7-510. Use of custodial trust property.

A. A custodial trustee shall pay to the beneficiary or expend for the beneficiary's use and benefit so much or all of the custodial trust property as the beneficiary while not incapacitated may direct from time to time.

B. If the beneficiary is incapacitated, the custodial trustee shall expend so much or all of the custodial trust property as the custodial trustee considers advisable for the use and benefit of the beneficiary and individuals who were supported by the beneficiary when the beneficiary became incapacitated, or who are legally entitled to support by the beneficiary. Expenditures may be made in the manner, when, and to the extent that the custodial trustee determines suitable and proper, without court order and without regard to other support, income or property of the beneficiary.

C. A custodial trustee may establish checking, savings or other similar accounts of reasonable amounts under which either the custodial trustee or the beneficiary may withdraw funds from, or draw checks against, the accounts. Funds withdrawn from, or checks written against, the account by the beneficiary are distributions of custodial trust property by the custodial trustee to the beneficiary.

History: 1978 Comp., § 45-7-510, enacted by Laws 1992, ch. 66, § 57.

45-7-511. Determination of incapacity; effect.

A. The custodial trustee shall administer the custodial trust as for an incapacitated beneficiary if:

(1) the custodial trust was created under Section 45-7-506 NMSA 1978;

(2) the transferor has so directed in the instrument creating the custodial trust; or

(3) the custodial trustee has determined that the beneficiary is incapacitated.

B. A custodial trustee may determine that the beneficiary is incapacitated in reliance upon:

(1) previous direction or authority given by the beneficiary while not incapacitated, including direction or authority pursuant to a durable power of attorney;

(2) the certificate of the beneficiary's physician; or

(3) other persuasive evidence.

C. If a custodial trustee for an incapacitated beneficiary reasonably concludes that the beneficiary's incapacity has ceased, or that circumstances concerning the beneficiary's ability to manage property and business affairs have changed since the creation of a custodial trust directing administration as for an incapacitated beneficiary, the custodial trustee may administer the trust as for a beneficiary who is not incapacitated.

D. On petition of the beneficiary, the custodial trustee or other person interested in the custodial trust property or the welfare of the beneficiary, the court shall determine whether the beneficiary is incapacitated.

E. Absent determination of incapacity of the beneficiary under Subsection B or D of this section, a custodial trustee who has reason to believe that the beneficiary is incapacitated shall administer the custodial trust in accordance with the provisions of the Uniform Custodial Trust Act [45-7-501 to 45-7-522 NMSA 1978] applicable to an incapacitated beneficiary.

F. Incapacity of a beneficiary does not terminate:

(1) the custodial trust;

(2) any designation of a successor custodial trustee;

(3) rights or powers of the custodial trustee; or

(4) any immunities of third persons acting on instructions of the custodial trustee.

History: 1978 Comp., § 45-7-511, enacted by Laws 1992, ch. 66, § 58.

45-7-512. Exemption of third person from liability.

A third person in good faith and without a court order may act on instructions of, or otherwise deal with, a person purporting to make a transfer as, or purporting to act in the capacity of, a custodial trustee. In the absence of knowledge to the contrary, the third person is not responsible for determining:

A. the validity of the purported custodial trustee's designation;

B. the propriety of, or the authority under the Uniform Custodial Trust Act [45-7-501 to 45-7-522 NMSA 1978] for, any action of the purported custodial trustee;

C. the validity or propriety of an instrument executed or instruction given pursuant to the Uniform Custodial Trust Act either by the person purporting to make a transfer or declaration or by the purported custodial trustee; or

D. the propriety of the application of property vested in the purported custodial trustee.

History: 1978 Comp., § 45-7-512, enacted by Laws 1992, ch. 66, § 59.

45-7-513. Liability to third person.

A. A claim based on a contract entered into by a custodial trustee acting in a fiduciary capacity, an obligation arising from the ownership or control of custodial trust property or a tort committed in the course of administering the custodial trust, may be asserted by a third person against the custodial trust property by proceeding against the custodial trustee in a fiduciary capacity, whether or not the custodial trustee or the beneficiary is personally liable.

B. A custodial trustee is not personally liable to a third person:

(1) on a contract properly entered into in a fiduciary capacity unless the custodial trustee fails to reveal that capacity or to identify the custodial trust in the contract; or

(2) for an obligation arising from control of custodial trust property or for a tort committed in the course of the administration of the custodial trust unless the custodial trustee is personally at fault.

C. A beneficiary is not personally liable to a third person for an obligation arising from beneficial ownership of custodial trust property or for a tort committed in the course of administration of the custodial trust unless the beneficiary is personally in possession of the custodial trust property giving rise to the liability or is personally at fault.

D. Subsections B and C of this section do not preclude actions or proceedings to establish liability of the custodial trustee or beneficiary to the extent the person sued is protected as the insured by liability insurance.

History: 1978 Comp., § 45-7-513, enacted by Laws 1992, ch. 66, § 60.

45-7-514. Declination, resignation, incapacity, death or removal of custodial trustee; designation of successor custodial trustee.

A. Before accepting the custodial trust property, a person designated as custodial trustee may decline to serve by notifying the person who made the designation, the transferor or the transferor's legal representative. If an event giving rise to a transfer has not occurred, the substitute custodial trustee designated under Section 45-7-504 NMSA 1978 becomes the custodial trustee, or, if a substitute custodial trustee has not been designated, the person who made the designation may designate a substitute custodial trustee pursuant to Section 45-7-504 NMSA 1978. In other cases, the transferor or the transferor's legal representative may designate a substitute custodial trustee.

B. A custodial trustee who has accepted the custodial trust property may resign by:

(1) delivering written notice to a successor custodial trustee, if any, the beneficiary and, if the beneficiary is incapacitated, to the beneficiary's conservator, if any; and

(2) transferring or registering, or recording an appropriate instrument relating to, the custodial trust property, in the name of, and delivering the records to, the successor custodial trustee identified under Subsection C of this section.

C. If a custodial trustee or successor custodial trustee is ineligible, resigns, dies or becomes incapacitated, the successor designated under Subsection G of Section 45-7-503 NMSA 1978 or Section 45-7-504 NMSA 1978 becomes custodial trustee. If there is no effective provision for a successor, the beneficiary, if not incapacitated, may designate a successor custodial trustee. If the beneficiary is incapacitated, or fails to act within ninety days after the ineligibility, resignation, death or incapacity of the custodial trustee, the beneficiary's conservator becomes successor custodial trustee. If the beneficiary does not have a conservator or the conservator fails to act, the resigning custodial trustee may designate a successor custodial trustee.

D. If a successor custodial trustee is not designated pursuant to Subsection C of this section, the transferor, the legal representative of the transferor or of the custodial trustee, an adult member of the beneficiary's family, the guardian of the beneficiary, a

person interested in the custodial trust property or a person interested in the welfare of the beneficiary, may petition the court to designate a successor custodial trustee.

E. A custodial trustee who declines to serve or resigns, or the legal representative of a deceased or incapacitated custodial trustee, as soon as practicable, shall put the custodial trust property and records in the possession and control of the successor custodial trustee. The successor custodial trustee may enforce the obligation to deliver custodial trust property and records and becomes responsible for each item as received.

F. A beneficiary, the beneficiary's conservator, an adult member of the beneficiary's family, a guardian of the person of the beneficiary, a person interested in the custodial trust property or a person interested in the welfare of the beneficiary may petition the court to remove the custodial trustee for cause and designate a successor custodial trustee, to require the custodial trustee to furnish a bond or other security for the faithful performance of fiduciary duties, or for other appropriate relief.

History: 1978 Comp., § 45-7-514, enacted by Laws 1992, ch. 66, § 61.

45-7-515. Expenses, compensation and bond of custodial trustee.

Except as otherwise provided in the instrument creating the custodial trust, in an agreement with the beneficiary or by court order, a custodial trustee:

A. is entitled to reimbursement from custodial trust property for reasonable expenses incurred in the performance of fiduciary services;

B. has a noncumulative election, to be made no later than six months after the end of each calendar year, to charge a reasonable compensation for fiduciary services performed during that year; and

C. need not furnish a bond or other security for the faithful performance of fiduciary duties.

History: 1978 Comp., § 45-7-515, enacted by Laws 1992, ch. 66, § 62.

45-7-516. Reporting and accounting by custodial trustee; determination of liability of custodial trustee.

A. Upon the acceptance of custodial trust property, the custodial trustee shall provide a written statement describing the custodial trust property and shall thereafter provide a written statement of the administration of the custodial trust property:

(1) once each year;

(2) upon request at reasonable times by the beneficiary or the beneficiary's legal representative;

(3) upon resignation or removal of the custodial trustee; and

(4) upon termination of the custodial trust.

The statements must be provided to the beneficiary or to the beneficiary's legal representative, if any. Upon termination of the beneficiary's interest, the custodial trustee shall furnish a current statement to the person to whom the custodial trust property is to be delivered.

B. A beneficiary, the beneficiary's legal representative, an adult member of the beneficiary's family, a person interested in the custodial trust property or a person interested in the welfare of the beneficiary may petition the court for an accounting by the custodial trustee or the custodial trustee's legal representative.

C. A successor custodial trustee may petition the court for an accounting by a predecessor custodial trustee.

D. In an action or proceeding under the Uniform Custodial Trust Act [45-7-501 to 45-7-522 NMSA 1978] or in any other proceeding, the court may require or permit the custodial trustee or the custodial trustee's legal representative to account. The custodial trustee or the custodial trustee's legal representative may petition the court for approval of final accounts.

E. If a custodial trustee is removed, the court shall require an accounting and order delivery of the custodial trust property and records to the successor custodial trustee and the execution of all instruments required for transfer of the custodial trust property.

F. On petition of the custodial trustee or any person who could petition for an accounting, the court, after notice to interested persons, may issue instructions to the custodial trustee or review the propriety of the acts of a custodial trustee or the reasonableness of compensation determined by the custodial trustee for the services of the custodial trustee or others.

History: 1978 Comp., § 45-7-516, enacted by Laws 1992, ch. 66, § 63.

45-7-517. Limitations of action against custodial trustee.

A. Except as provided in Subsection C of this section, unless previously barred by adjudication, consent or limitation, a claim for relief against a custodial trustee for accounting or breach of duty is barred as to a beneficiary, a person to whom custodial trust property is to be paid or delivered or the legal representative of an incapacitated or deceased beneficiary or payee:

(1) who has received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within two years after receipt of the final account or statement; or

(2) who has not received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within three years after the termination of the custodial trust.

B. Except as provided in Subsection C of this section, a claim for relief to recover from a custodial trustee for fraud, misrepresentation or concealment related to the final settlement of the custodial trust or concealment of the existence of the custodial trust, is barred unless an action or proceeding to assert the claim is commenced within five years after the termination of the custodial trust.

C. A claim for relief is not barred by this section if the claimant:

(1) is a minor, until the earlier of two years after the claimant becomes an adult or dies;

(2) is an incapacitated adult, until the earliest of two years after:

(a) the appointment of a conservator;

(b) the removal of the incapacity; or

(c) the death of the claimant; or

(3) was an adult, now deceased, who was not incapacitated, until two years after the claimant's death.

History: 1978 Comp., § 45-7-517, enacted by Laws 1992, ch. 66, § 64.

45-7-518. Distribution on termination.

A. Upon termination of a custodial trust, the custodial trustee shall transfer the unexpended custodial trust property:

(1) to the beneficiary, if not incapacitated or deceased;

(2) to the conservator or other recipient designated by the court for an incapacitated beneficiary; or

(3) upon the beneficiary's death, in the following order:

(a) as last directed in a writing signed by the deceased beneficiary while not incapacitated and received by the custodial trustee during the life of the deceased beneficiary;

(b) to the survivor of multiple beneficiaries if survivorship is provided for pursuant to Section 45-7-507 NMSA 1978;

(c) as designated in the instrument creating the custodial trust; or

(d) to the estate of the deceased beneficiary.

B. If, when the custodial trust would otherwise terminate, the distributee is incapacitated, the custodial trust continues for the use and benefit of the distributee as beneficiary until the incapacity is removed or the custodial trust is otherwise terminated.

C. Death of a beneficiary does not terminate the power of the custodial trustee to discharge obligations of the custodial trustee or beneficiary incurred before the termination of the custodial trust.

History: 1978 Comp., § 45-7-518, enacted by Laws 1992, ch. 66, § 65.

45-7-519. Methods and forms for creating custodial trusts.

A. If a transaction, including a declaration with respect to or a transfer of specific property, otherwise satisfies applicable law, the criteria of Section 45-7-503 NMSA 1978 are satisfied by:

(1) the execution and either delivery to the custodial trustee or recording of an instrument in substantially the following form:

"TRANSFER UNDER THE UNIFORM CUSTODIAL TRUST ACT

I, _____ (name of transferor or name and representative capacity if a fiduciary), transfer to _____ (name of trustee other than transferor), as custodial trustee for

_____ (name of beneficiary) as beneficiary and _____ as distributee on termination of the trust in absence of direction by the beneficiary under the Uniform Custodial Trust Act, the following: (Insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated:_____

_____

"; or

(Signature)

(2) the execution and the recording or giving notice of its execution to the beneficiary of an instrument in substantially the following form:

"DECLARATION OF TRUST UNDER THE UNIFORM

CUSTODIAL TRUST ACT

I, _____ (name of owner of property), declare that henceforth I hold as custodial trustee for _____ (name of beneficiary other than transferor) as beneficiary and _____ as distributee on termination of the trust in absence of direction by the beneficiary under the Uniform Custodial Trust Act, the following: (Insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Date: _____

_____ ".

(Signature)

B. Customary methods of transferring or evidencing ownership of property may be used to create a custodial trust, including any of the following:

(1) registration of a security in the name of a trust company, an adult other than the transferor or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Uniform Custodial Trust Act";

(2) delivery of a certificated security, or a document necessary for the transfer of an uncertificated security, together with any necessary endorsement, to an adult other than the transferor or to a trust company as custodial trustee, accompanied by an instrument in substantially the form prescribed in Paragraph (1) of Subsection A of this section;

(3) payment of money or transfer of a security held in the name of a broker or a financial institution or its nominee to a broker or financial institution for credit to an account in the name of a trust company, an adult other than the transferor or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Uniform Custodial Trust Act";

(4) registration of ownership of a life or endowment insurance policy or annuity contract with the issuer in the name of a trust company, an adult other than the

transferor or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Uniform Custodial Trust Act";

(5) delivery of a written assignment to an adult other than the transferor or to a trust company whose name in the assignment is designated in substance by the words: "as custodial trustee for _____ (name of beneficiary) under the Uniform Custodial Trust Act";

(6) irrevocable exercise of a power of appointment, pursuant to its terms, in favor of a trust company, an adult other than the donee of the power of the donee who holds the power if the beneficiary is other than the donee, whose name in the appointment is designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Uniform Custodial Trust Act";

(7) delivery of a written notification or assignment of a right to future payment under a contract to an obligor that transfers the right under the contract to a trust company, an adult other than the transferor or the transferor if the beneficiary is other than the transferor, whose name in the notification or assignment is designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Uniform Custodial Trust Act";

(8) execution, delivery and recordation of a conveyance of an interest in real property in the name of a trust company, an adult other than the transferor or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Uniform Custodial Trust Act";

(9) issuance of a certificate of title by an agency of a state or of the United States that evidences title to tangible personal property:

(a) issued in the name of a trust company, an adult other than the transferor or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Uniform Custodial Trust Act"; or

(b) delivered to a trust company or an adult other than the transferor or endorsed by the transferor to that person, designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Uniform Custodial Trust Act"; or

(10) execution and delivery of an instrument of gift to a trust company or an adult other than the transferor, designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Uniform Custodial Trust Act".

History: 1978 Comp., § 45-7-519, enacted by Laws 1992, ch. 66, § 66.

45-7-520. Applicable law.

A. The Uniform Custodial Trust Act [45-7-501 to 45-7-522 NMSA 1978] applies to a transfer or declaration creating a custodial trust that refers to that act if, at the time of the transfer or declaration, the transferor, beneficiary or custodial trustee is a resident of or has its principal place of business in this state or custodial trust property is located in this state. The custodial trust remains subject to that act despite a later change in residence or principal place of business of the transferor, beneficiary or custodial trustee, or removal of the custodial trust property from this state.

B. A transfer made pursuant to an act of another state substantially similar to the Uniform Custodial Trust Act is governed by the law of that state and may be enforced in this state.

History: 1978 Comp., § 45-7-520, enacted by Laws 1992, ch. 66, § 67.

45-7-521. Uniformity of application and construction.

The Uniform Custodial Trust Act [45-7-501 to 45-7-522 NMSA 1978] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of that act among states enacting it.

History: 1978 Comp., § 45-7-521, enacted by Laws 1992, ch. 66, § 68.

45-7-522. Severability.

If any provision of the Uniform Custodial Trust Act [45-7-501 to 45-7-522 NMSA 1978] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

History: 1978 Comp., § 45-7-522, enacted by Laws 1992, ch. 66, § 69.

PART 6
Uniform Prudent Investor Act

45-7-601. Short title.

Sections 45-7-601 through 45-7-612 NMSA 1978 may be cited as the "Uniform Prudent Investor Act".

History: 1978 Comp., § 45-7-601, enacted by Laws 1995, ch. 210, § 82.

45-7-602. Prudent investor rule.

A. Except as otherwise provided in Subsection B of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in the Uniform Prudent Investor Act [45-7-601 to 45-7-612 NMSA 1978].

B. The prudent investor rule, a default rule, may be expanded, restricted, eliminated or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

History: 1978 Comp., § 45-7-602, enacted by Laws 1995, ch. 210, § 83.

45-7-603. Standard of care; portfolio strategy; risk and return objectives.

A. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

B. A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

C. Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(1) general economic conditions;

(2) the possible effect of inflation or deflation;

(3) the expected tax consequences of investment decisions or strategies;

(4) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interest in closely held enterprises, tangible and intangible personal property and real property;

(5) the expected total return from income and the appreciation of capital;

(6) other resources of the beneficiaries;

(7) needs for liquidity, regularity of income and preservation or appreciation of capital; and

(8) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

D. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

E. A trustee may invest in any kind of property or type of investment consistent with the standards of the Uniform Prudent Investor Act [45-7-601 to 45-7-612 NMSA 1978].

F. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

History: 1978 Comp., § 45-7-603, enacted by Laws 1995, ch. 210, § 84.

45-7-604. Diversification.

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

History: 1978 Comp., § 45-7-604, enacted by Laws 1995, ch. 210, § 85.

45-7-605. Duties at inception of trusteeship.

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements and other circumstances of the trust, and with the requirements of the Uniform Prudent Investor Act [45-7-601 to 45-7-612 NMSA 1978].

History: 1978 Comp., § 45-7-605, enacted by Laws 1995, ch. 210, § 86.

45-7-606. Loyalty.

A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

History: 1978 Comp., § 45-7-606, enacted by Laws 1995, ch. 210, § 87.

45-7-607. Impartiality.

If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

History: 1978 Comp., § 45-7-607, enacted by Laws 1995, ch. 210, § 88.

45-7-608. Investment costs.

In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust and the skills of the trustee.

History: 1978 Comp., § 45-7-608, enacted by Laws 1995, ch. 210, § 89.

45-7-609. Reviewing compliance.

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

History: 1978 Comp., § 45-7-609, enacted by Laws 1995, ch. 210, § 90.

45-7-610. Delegation of investment and management functions.

A. A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:

(1) selecting an agent;

(2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

B. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

C. A trustee who complies with the requirements of Subsection A of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

D. By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

History: 1978 Comp., § 45-7-610, enacted by Laws 1995, ch. 210, § 91.

45-7-611. Language invoking standard.

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under the Uniform Prudent Investor Act [45-7-601 to 45-7-612 NMSA 1978]: "investments permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule" and "prudent investor rule".

History: 1978 Comp., § 45-7-611, enacted by Laws 1995, ch. 210, § 92.

45-7-612. Application to existing trusts.

The Uniform Prudent Investor Act [45-7-601 to 45-7-612 NMSA 1978] applies to trusts existing on and created after its effective date. As applied to trusts existing on its effective date, the Uniform Prudent Investor Act governs only decisions or actions occurring after that date.

History: 1978 Comp., § 45-7-612, enacted by Laws 1995, ch. 210, § 93.

ARTICLE 8
Simultaneous Death Act (Repealed, Recompiled.)

45-8-1 to 45-8-8. Repealed.

45-8-9. Recompiled.

ARTICLE 9A
Uniform Estate Tax Apportionment Act (Repealed, Recompiled.)

45-9A-1. Recompiled.

History: Laws 2005, ch. 143, § 5; recompiled by Laws 2011, ch. 124, § 99.

45-9A-2. Recompiled.

History: Laws 2005, ch. 143, § 6; recompiled by Laws 2011, ch. 124, § 99.

45-9A-3. Recompiled.

History: Laws 2005, ch. 143, § 7; recompiled by Laws 2011, ch. 124, § 99.

45-9A-4. Recompiled.

History: Laws 2005, ch. 143, § 8; recompiled by Laws 2011, ch. 124, § 99.

45-9A-5. Recompiled.

History: Laws 2005, ch. 143, § 9; recompiled by Laws 2011, ch. 124, § 99.

45-9A-6. Recompiled.

History: Laws 2005, ch. 143, § 10; recompiled by Laws 2011, ch. 124, § 99.

45-9A-7. Recompiled.

History: Laws 2005, ch. 143, § 11, recompiled by Laws 2011, ch. 124, § 99.

45-9A-8. Recompiled.

History: Laws 2005, ch. 143, § 12; recompiled by Laws 2011, ch. 124, § 99.

45-9A-9. Recompiled.

History: Laws 2005, ch. 143, § 13; recompiled by Laws 2011, ch. 124, § 99.

45-9A-10. Recompiled.

History: Laws 2005, ch. 143, § 14; recompiled by Laws 2011, ch. 124, § 99.

45-9A-11. Recompiled.

History: Laws 2005, ch. 143, § 15; recompiled by Laws 2011, ch. 124, § 99.

45-9A-12. Repealed.

History: Laws 2005, ch. 143, § 16; repealed by Laws 2011, ch. 124, § 97.

45-9A-13. Repealed.

History: Laws 2005, ch. 143, § 17; repealed by Laws 2005, ch. 124, § 97.