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SENATE BILL 112

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

INTRODUCED BY

Gerald Ortiz y Pino

AN ACT

RELATING TO PROBATE; AMENDING AND ENACTING SECTIONS OF THE
UNIFORM PROBATE CODE TO PROVIDE FOR THE CONTINUANCE OF CERTAIN
GUARDIANSHIP AND CONSERVATORSHIP POWERS AFTER THE DEATH OF A
PROTECTED PERSON.

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

SECTION 1. Section 45-5-306 NMSA 1978 (being Laws 1975,
Chapter 257, Section 5-306, as amended) is amended to read:

"45-5-306. DEATH OF PROTECTED PERSON [~~OR GUARDIAN~~
~~INCAPACITY OF GUARDIAN]~~.--

A. Except as provided in Subsection B of this
section, 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

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1 45-5-307 NMSA 1978. Upon the death of the protected person,
2 the guardian shall submit notice to the appointing court and to
3 any relatives of the protected person known to the guardian.

4 Testamentary appointment under an informally probated will
5 terminates if the will is later denied probate in a formal
6 proceeding. Termination does not affect the guardian's
7 liability for prior acts nor the guardian's obligation to
8 account for funds and assets of the guardian's protected
9 person.

10 B. In cases where no conservator has been
11 appointed, the following powers of a guardian shall remain for
12 up to one year after the death of the protected person, or
13 until the appointment of a personal representative, and shall
14 be exercised in accordance with the preferences of the
15 protected person if known to the guardian:

16 (1) the power to arrange and pay for a funeral
17 for or to consent to the cremation of the deceased protected
18 person;

19 (2) the power to request and receive medical,
20 financial or other records of the protected person;

21 (3) the power to request an autopsy of the
22 deceased protected person and to obtain its results;

23 (4) the power to make and file an accounting
24 of the protected person's financial affairs; and

25 (5) any power incidental to the closing of and

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1 the accounting for the guardianship, which actions shall be
2 fully reported to the appointing court.

3 C. The provisions of Subsection B of this section
4 shall not apply when a protected person has in place at the
5 time of death a will or trust that is valid pursuant to the
6 provisions of the Uniform Probate Code.

7 D. As used in this section, "relative" means an
8 individual related to a protected person as a spouse, domestic
9 partner, parent, stepparent, brother, sister, stepbrother,
10 stepsister, half-brother, half-sister, uncle, aunt, niece,
11 nephew, first cousin or any person denoted by the prefix
12 "grand" or "great" by reason of affinity or consanguinity."

13 SECTION 2. A new section of the Uniform Probate Code is
14 enacted to read:

15 "[NEW MATERIAL] CONSERVATORSHIPS--DEATH OF PROTECTED
16 PERSON.--

17 A. The following powers of a conservator shall
18 remain for up to one year after the death of the protected
19 person, or until the appointment of a personal representative,
20 and shall be exercised in accordance with the preferences of
21 the protected person if known to the conservator:

22 (1) the power to arrange and pay for a funeral
23 for or to consent to the cremation of the deceased protected
24 person;

25 (2) the power to request and receive medical,

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1 financial or other records of the protected person;

2 (3) the power to request an autopsy of the
3 deceased protected person and to obtain its results;

4 (4) the power to make and file an accounting
5 of the protected person's financial affairs; and

6 (5) any power incidental to the closing of and
7 the accounting for the conservatorship, which actions shall be
8 fully reported to the appointing court.

9 B. The provisions of Subsection A of this section
10 shall not apply when a protected person has in place at the
11 time of death a will or trust that is valid pursuant to the
12 provisions of the Uniform Probate Code.

13 C. As used in this section, "relative" means an
14 individual related to a protected person as a spouse, domestic
15 partner, parent, stepparent, brother, sister, stepbrother,
16 stepsister, half-brother, half-sister, uncle, aunt, niece,
17 nephew, first cousin or any person denoted by the prefix
18 "grand" or "great" by reason of affinity or consanguinity."