

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

SENATE BILL 91

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

Stuart Ingle

AN ACT

RELATING TO PROPERTY; ENACTING THE UNIFORM POWERS OF APPOINTMENT ACT; ENACTING THE UNIFORM TRUST DECANTING ACT; REVISING THE STATUTORY RULE AGAINST PERPETUITIES AS IT AFFECTS PROPERTY INTERESTS, INCLUDING REAL PROPERTY INTERESTS, HELD IN TRUST; MAKING TECHNICAL AND CONFORMING CHANGES TO THE UNIFORM PROBATE CODE AND THE UNIFORM TRUST CODE; AMENDING PROVISIONS OF THE UNIFORM PROBATE CODE PERTAINING TO NOTICE, TIME FOR PRESENTATION OF CLAIMS, PENALTY CLAUSES AND CLOSING AN ESTATE.

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

UNIFORM POWERS OF APPOINTMENT ACT

Article 1

GENERAL PROVISIONS

SECTION 1-101. [NEW MATERIAL] SHORT TITLE.--Sections 1-101 through 1-603 of this act may be cited as the "Uniform

.202063.6

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

underscored material = new
[bracketed material] = delete

1 Powers of Appointment Act".

2 SECTION 1-102. [NEW MATERIAL] DEFINITIONS.--As used in
3 the Uniform Powers of Appointment Act:

4 A. "appointee" means a person to which a
5 powerholder makes an appointment of appointive property;

6 B. "appointive property" means the property or
7 property interest subject to a power of appointment;

8 C. "blanket-exercise clause" means a clause in an
9 instrument that exercises a power of appointment and is not a
10 specific-exercise clause. "Blanket-exercise clause" includes a
11 clause that:

12 (1) expressly uses the words "any power" in
13 exercising any power of appointment the powerholder has;

14 (2) expressly uses the words "any property" in
15 appointing any property over which the powerholder has a power
16 of appointment; or

17 (3) disposes of all property subject to
18 disposition by the powerholder;

19 D. "donor" means a person that creates a power of
20 appointment;

21 E. "exclusionary power of appointment" means a
22 power of appointment exercisable in favor of any one or more of
23 the permissible appointees to the exclusion of the other
24 permissible appointees;

25 F. "general power of appointment" means a power of

1 appointment exercisable in favor of the powerholder, the
2 powerholder's estate, a creditor of the powerholder or a
3 creditor of the powerholder's estate;

4 G. "gift-in-default clause" means a clause
5 identifying a taker in default of appointment;

6 H. "impermissible appointee" means a person that is
7 not a permissible appointee;

8 I. "instrument" means a record;

9 J. "nongeneral power of appointment" means a power
10 of appointment that is not a general power of appointment;

11 K. "permissible appointee" means a person in whose
12 favor a powerholder may exercise a power of appointment;

13 L. "person" means an individual; an estate; a
14 trust; a business or nonprofit entity; a public corporation; a
15 government or governmental subdivision, agency or
16 instrumentality; or another legal entity;

17 M. "power of appointment" means a power that
18 enables a powerholder acting in a nonfiduciary capacity to
19 designate a recipient of an ownership interest in or another
20 power of appointment over the appointive property. "Power of
21 appointment" does not include a power of attorney;

22 N. "powerholder" means a person in which a donor
23 creates a power of appointment;

24 O. "presently exercisable power of appointment"
25 means a power of appointment exercisable by the powerholder at

1 the relevant time. "Presently exercisable power of
2 appointment":

3 (1) includes a power of appointment not
4 exercisable until the occurrence of a specified event, the
5 satisfaction of an ascertainable standard or the passage of a
6 specified time only after:

7 (a) the occurrence of the specified
8 event;

9 (b) the satisfaction of the
10 ascertainable standard; or

11 (c) the passage of the specified time;
12 and

13 (2) does not include a power exercisable only
14 at the powerholder's death;

15 P. "record" means information that is inscribed on
16 a tangible medium or that is stored in an electronic or other
17 medium and is retrievable in perceivable form;

18 Q. "specific-exercise clause" means a clause in an
19 instrument that specifically refers to and exercises a
20 particular power of appointment;

21 R. "taker in default of appointment" means a person
22 that takes all or part of the appointive property to the extent
23 the powerholder does not effectively exercise the power of
24 appointment; and

25 S. "terms of the instrument" means the

underscored material = new
[bracketed material] = delete

1 manifestation of the intent of the maker of the instrument
2 regarding the instrument's provisions as expressed in the
3 instrument or as may be established by other evidence that
4 would be admissible in a legal proceeding.

5 SECTION 1-103. [NEW MATERIAL] GOVERNING LAW.--Unless the
6 terms of the instrument creating a power of appointment
7 manifest a contrary intent:

8 A. the creation, revocation or amendment of the
9 power is governed by the law of the donor's domicile at the
10 relevant time; and

11 B. the exercise, release or disclaimer of the
12 power, or the revocation or amendment of the exercise, release
13 or disclaimer of the power, is governed by the law of the
14 powerholder's domicile at the relevant time.

15 SECTION 1-104. [NEW MATERIAL] COMMON LAW AND PRINCIPLES
16 OF EQUITY.--The common law and principles of equity supplement
17 the Uniform Powers of Appointment Act, except to the extent
18 modified by that act or New Mexico law other than that act.

19 Article 2

20 CREATION, REVOCATION AND AMENDMENT OF POWER OF APPOINTMENT

21 SECTION 1-201. [NEW MATERIAL] CREATION OF POWER OF
22 APPOINTMENT.--

- 23 A. A power of appointment is created only if:
24 (1) the instrument creating the power:
25 (a) is valid under applicable law; and

underscored material = new
[bracketed material] = delete

1 (b) except as otherwise provided in
2 Subsection B of this section, transfers the appointive
3 property; and

4 (2) the terms of the instrument creating the
5 power manifest the donor's intent to create in a powerholder a
6 power of appointment over the appointive property exercisable
7 in favor of a permissible appointee.

8 B. Subparagraph (b) of Paragraph (1) of Subsection
9 A of this section does not apply to the creation of a power of
10 appointment by the exercise of a power of appointment.

11 C. A power of appointment shall not be created in a
12 deceased individual.

13 D. Subject to the provisions of Section 45-2-901
14 NMSA 1978, a power of appointment may be created in an unborn
15 or unascertained powerholder.

16 SECTION 1-202. [NEW MATERIAL] NONTRANSFERABILITY.--A
17 powerholder shall not transfer a power of appointment. If a
18 powerholder dies without exercising or releasing a power, the
19 power lapses.

20 SECTION 1-203. [NEW MATERIAL] PRESUMPTION OF UNLIMITED
21 AUTHORITY.--Subject to Section 1-205 of the Uniform Powers of
22 Appointment Act, and unless the terms of the instrument
23 creating a power of appointment manifest a contrary intent, the
24 power is:

25 A. presently exercisable;

underscored material = new
[bracketed material] = delete

- 1 B. exclusionary; and
- 2 C. except as otherwise provided in Section 1-204 of
- 3 the Uniform Powers of Appointment Act, general.

4 SECTION 1-204. [NEW MATERIAL] EXCEPTION TO PRESUMPTION OF
5 UNLIMITED AUTHORITY.--Unless the terms of the instrument
6 creating a power of appointment manifest a contrary intent, the
7 power is nongeneral if:

- 8 A. the power is exercisable only at the
- 9 powerholder's death; and
- 10 B. the permissible appointees of the power are a
- 11 defined and limited class that does not include the
- 12 powerholder's estate, the powerholder's creditors or the
- 13 creditors of the powerholder's estate.

14 SECTION 1-205. [NEW MATERIAL] RULES OF CLASSIFICATION.--

15 A. As used in this section, "adverse party" means a
16 person with a substantial beneficial interest in property that
17 would be affected adversely by a powerholder's exercise or
18 nonexercise of a power of appointment in favor of the
19 powerholder, the powerholder's estate, a creditor of the
20 powerholder or a creditor of the powerholder's estate.

21 B. If a powerholder may exercise a power of
22 appointment only with the consent or joinder of an adverse
23 party, the power is nongeneral.

24 C. If the permissible appointees of a power of
25 appointment are not defined and limited, the power is

underscored material = new
[bracketed material] = delete

1 exclusionary.

2 SECTION 1-206. [NEW MATERIAL] POWER TO REVOKE OR
3 AMEND.--A donor may revoke or amend a power of appointment only
4 to the extent that:

5 A. the instrument creating the power is revocable
6 by the donor; or

7 B. the donor reserves a power of revocation or
8 amendment in the instrument creating the power of appointment.

9 Article 3
10 EXERCISE OF POWER OF APPOINTMENT

11 SECTION 1-301. [NEW MATERIAL] REQUISITES FOR EXERCISE OF
12 POWER OF APPOINTMENT.--A power of appointment is exercised
13 only:

14 A. if the instrument exercising the power is valid
15 under applicable law; and

16 B. if the terms of the instrument exercising the
17 power:

18 (1) manifest the powerholder's intent to
19 exercise the power; and

20 (2) subject to Section 1-304 of the Uniform
21 Powers of Appointment Act, satisfy the requirements of
22 exercise, if any, imposed by the donor; and

23 C. to the extent the appointment is a permissible
24 exercise of the power.

25 SECTION 1-302. [NEW MATERIAL] INTENT TO EXERCISE--

underscored material = new
[bracketed material] = delete

1 DETERMINING INTENT FROM RESIDUARY CLAUSE.--

2 A. As used in this section:

3 (1) "residuary clause" does not include a
4 residuary clause containing a blanket-exercise clause or a
5 specific-exercise clause; and

6 (2) "will" includes a codicil and a
7 testamentary instrument that revises another will.

8 B. A residuary clause in a powerholder's will, or a
9 comparable clause in the powerholder's revocable trust,
10 manifests the powerholder's intent to exercise a power of
11 appointment only if:

12 (1) the terms of the instrument containing the
13 residuary clause do not manifest a contrary intent;

14 (2) the power is a general power exercisable
15 in favor of the powerholder's estate;

16 (3) there is no gift-in-default clause or the
17 gift-in-default clause is ineffective; and

18 (4) the powerholder did not release the power.

19 SECTION 1-303. [NEW MATERIAL] INTENT TO EXERCISE--AFTER-
20 ACQUIRED POWER.--Unless the terms of the instrument exercising
21 a power of appointment manifest a contrary intent:

22 A. except as otherwise provided in Subsection B of
23 this section, a blanket-exercise clause extends to a power
24 acquired by the powerholder after executing the instrument
25 containing the clause; and

.202063.6

underscored material = new
[bracketed material] = delete

1 B. if the powerholder is also the donor of the
2 power, the clause does not extend to the power unless there is
3 no gift-in-default clause or the gift-in-default clause is
4 ineffective.

5 SECTION 1-304. [NEW MATERIAL] SUBSTANTIAL COMPLIANCE WITH
6 DONOR-IMPOSED FORMAL REQUIREMENT.--A powerholder's substantial
7 compliance with a formal requirement of appointment imposed by
8 the donor, including a requirement that the instrument
9 exercising the power of appointment make reference or specific
10 reference to the power, is sufficient if:

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

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

16 SECTION 1-305. [NEW MATERIAL] PERMISSIBLE APPOINTMENT.--

17 A. A powerholder of a general power of appointment
18 that permits appointment to the powerholder or the
19 powerholder's estate may make any appointment, including an
20 appointment in trust or creating a new power of appointment,
21 that the powerholder could make in disposing of the
22 powerholder's own property.

23 B. A powerholder of a general power of appointment
24 that permits appointment only to the creditors of the
25 powerholder or of the powerholder's estate may appoint only to

underscored material = new
[bracketed material] = delete

1 those creditors.

2 C. Unless the terms of the instrument creating a
3 power of appointment manifest a contrary intent, the
4 powerholder of a nongeneral power may:

5 (1) make an appointment in any form, including
6 an appointment in trust, in favor of a permissible appointee;

7 (2) create a general power in a permissible
8 appointee; or

9 (3) create a nongeneral power in any person to
10 appoint to one or more of the permissible appointees of the
11 original nongeneral power.

12 SECTION 1-306. [NEW MATERIAL] APPOINTMENT TO DECEASED
13 APPOINTEE OR PERMISSIBLE APPOINTEE'S DESCENDANT.--

14 A. Subject to Sections 45-2-603 and 45-2-707 NMSA
15 1978, an appointment to a deceased appointee is ineffective.

16 B. Unless the terms of the instrument creating a
17 power of appointment manifest a contrary intent, a powerholder
18 of a nongeneral power may exercise the power in favor of, or
19 create a new power of appointment in, a descendant of a
20 deceased permissible appointee whether or not the descendant is
21 described by the donor as a permissible appointee.

22 SECTION 1-307. [NEW MATERIAL] IMPERMISSIBLE
23 APPOINTMENT.--

24 A. Except as otherwise provided in Section 1-306 of
25 the Uniform Powers of Appointment Act, an exercise of a power

underscored material = new
[bracketed material] = delete

1 of appointment in favor of an impermissible appointee is
2 ineffective.

3 B. An exercise of a power of appointment in favor
4 of a permissible appointee is ineffective to the extent the
5 appointment is a fraud on the power.

6 SECTION 1-308. [NEW MATERIAL] SELECTIVE ALLOCATION
7 DOCTRINE.--If a powerholder exercises a power of appointment in
8 a disposition that also disposes of property the powerholder
9 owns, the owned property and the appointive property must be
10 allocated in the permissible manner that best carries out the
11 powerholder's intent.

12 SECTION 1-309. [NEW MATERIAL] CAPTURE DOCTRINE--
13 DISPOSITION OF INEFFECTIVELY APPOINTED PROPERTY UNDER GENERAL
14 POWER.--To the extent a powerholder of a general power of
15 appointment, other than a power to withdraw property from,
16 revoke or amend a trust, makes an ineffective appointment:

17 A. the gift-in-default clause controls the
18 disposition of the ineffectively appointed property; or

19 B. if there is no gift-in-default clause or to the
20 extent the clause is ineffective, the ineffectively appointed
21 property:

22 (1) passes to:

23 (a) the powerholder if the powerholder
24 is a permissible appointee and is living; or

25 (b) if the powerholder is an

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

1 impermissible appointee or deceased, the powerholder's estate
2 if the estate is a permissible appointee; or

3 (2) if there is no taker under Paragraph (1)
4 of this subsection, passes under a reversionary interest to the
5 donor or the donor's transferee or successor in interest.

6 SECTION 1-310. [NEW MATERIAL] DISPOSITION OF UNAPPOINTED
7 PROPERTY UNDER RELEASED OR UNEXERCISED GENERAL POWER.--To the
8 extent a powerholder releases or fails to exercise a general
9 power of appointment other than a power to withdraw property
10 from, revoke or amend a trust:

11 A. the gift-in-default clause controls the
12 disposition of the unappointed property; or

13 B. if there is no gift-in-default clause or to the
14 extent the clause is ineffective:

15 (1) except as otherwise provided in Paragraph
16 (2) of this subsection, the unappointed property passes to:

17 (a) the powerholder if the powerholder
18 is a permissible appointee and is living; or

19 (b) if the powerholder is an
20 impermissible appointee or deceased, the powerholder's estate
21 if the estate is a permissible appointee; or

22 (2) to the extent the powerholder released the
23 power, or if there is no taker under Paragraph (1) of this
24 subsection, the unappointed property passes under a
25 reversionary interest to the donor or the donor's transferee or

.202063.6

underscoring material = new
[bracketed material] = delete

1 successor in interest.

2 SECTION 1-311. [NEW MATERIAL] DISPOSITION OF UNAPPOINTED
3 PROPERTY UNDER RELEASED OR UNEXERCISED NONGENERAL POWER.--To
4 the extent a powerholder releases, ineffectively exercises or
5 fails to exercise a nongeneral power of appointment:

6 A. the gift-in-default clause controls the
7 disposition of the unappointed property; or

8 B. if there is no gift-in-default clause or to the
9 extent that the clause is ineffective, the unappointed
10 property:

11 (1) passes to the permissible appointees if:

12 (a) the permissible appointees are
13 defined and limited; and

14 (b) the terms of the instrument creating
15 the power do not manifest a contrary intent; or

16 (2) if there is no taker under Paragraph (1)
17 of this subsection, passes under a reversionary interest to the
18 donor or the donor's transferee or successor in interest.

19 SECTION 1-312. [NEW MATERIAL] DISPOSITION OF UNAPPOINTED
20 PROPERTY IF PARTIAL APPOINTMENT TO TAKER IN DEFAULT.--Unless
21 the terms of the instrument creating or exercising a power of
22 appointment manifest a contrary intent, if the powerholder
23 makes a valid partial appointment to a taker in default of
24 appointment, the taker in default of appointment may share
25 fully in unappointed property.

underscored material = new
[bracketed material] = delete

1 SECTION 1-313. [NEW MATERIAL] APPOINTMENT TO TAKER IN
2 DEFAULT.--If a powerholder makes an appointment to a taker in
3 default of appointment and the appointee would have taken the
4 property under a gift-in-default clause had the property not
5 been appointed, the power of appointment is deemed not to have
6 been exercised and the appointee takes under the clause.

7 SECTION 1-314. [NEW MATERIAL] POWERHOLDER'S AUTHORITY TO
8 REVOKE OR AMEND EXERCISE.--A powerholder may revoke or amend an
9 exercise of a power of appointment only to the extent that:

10 A. the powerholder reserves a power of revocation
11 or amendment in the instrument exercising the power of
12 appointment and, if the power is nongeneral, the terms of the
13 instrument creating the power of appointment do not prohibit
14 the reservation; or

15 B. the terms of the instrument creating the power
16 of appointment provide that the exercise is revocable or
17 amendable.

18 Article 4

19 DISCLAIMER OR RELEASE; CONTRACT TO APPOINT OR NOT TO APPOINT

20 SECTION 1-401. [NEW MATERIAL] DISCLAIMER.--As provided by
21 the Uniform Disclaimer of Property Interests Act:

22 A. a powerholder may disclaim all or part of a
23 power of appointment; and

24 B. a permissible appointee, appointee or taker in
25 default of appointment may disclaim all or part of an interest

underscored material = new
[bracketed material] = delete

1 in appointive property.

2 SECTION 1-402. [NEW MATERIAL] AUTHORITY TO RELEASE.--A
3 powerholder may release a power of appointment, in whole or in
4 part, except to the extent that the terms of the instrument
5 creating the power prevent the release.

6 SECTION 1-403. [NEW MATERIAL] METHOD OF RELEASE.--A
7 powerholder of a releasable power of appointment may release
8 the power in whole or in part:

9 A. by substantial compliance with a method provided
10 in the terms of the instrument creating the power; or

11 B. if the terms of the instrument creating the
12 power do not provide a method or the method provided in the
13 terms of the instrument is not expressly made exclusive, by a
14 record manifesting the powerholder's intent by clear and
15 convincing evidence.

16 SECTION 1-404. [NEW MATERIAL] REVOCATION OR AMENDMENT OF
17 RELEASE.--A powerholder may revoke or amend a release of a
18 power of appointment only to the extent that:

19 A. the instrument of release is revocable by the
20 powerholder; or

21 B. the powerholder reserves a power of revocation
22 or amendment in the instrument of release.

23 SECTION 1-405. [NEW MATERIAL] POWER TO CONTRACT--
24 PRESENTLY EXERCISABLE POWER OF APPOINTMENT.--A powerholder of a
25 presently exercisable power of appointment may contract:

underscored material = new
[bracketed material] = delete

1 A. not to exercise the power; or

2 B. to exercise the power if the contract when made
3 does not confer a benefit on an impermissible appointee.

4 SECTION 1-406. [NEW MATERIAL] POWER TO CONTRACT--POWER OF
5 APPOINTMENT NOT PRESENTLY EXERCISABLE.--A powerholder of a
6 power of appointment that is not presently exercisable may
7 contract to exercise or not to exercise the power only if the
8 powerholder:

9 A. is also the donor of the power; and

10 B. has reserved the power in a revocable trust.

11 SECTION 1-407. [NEW MATERIAL] REMEDY FOR BREACH OF
12 CONTRACT TO APPOINT OR NOT TO APPOINT.--The remedy for a
13 powerholder's breach of a contract to appoint or not to appoint
14 appointive property is limited to damages payable out of the
15 appointive property or, if appropriate, specific performance of
16 the contract.

17 Article 5

18 RIGHTS OF POWERHOLDER'S CREDITORS IN APPOINTIVE PROPERTY

19 SECTION 1-501. [NEW MATERIAL] CREDITOR CLAIM--GENERAL
20 POWER CREATED BY POWERHOLDER.--

21 A. As used in this section, "power of appointment
22 created by the powerholder" includes a power of appointment
23 created in a transfer by another person to the extent that the
24 powerholder contributed value to the transfer.

25 B. Appointive property subject to a general power

.202063.6

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

1 of appointment created by the powerholder is subject to a claim
2 of a creditor of the powerholder or of the powerholder's estate
3 to the extent provided in the Uniform Voidable Transactions
4 Act.

5 C. Subject to Subsection B of this section,
6 appointive property subject to a general power of appointment
7 created by the powerholder is not subject to a claim of a
8 creditor of the powerholder or the powerholder's estate to the
9 extent the powerholder irrevocably appointed the property in
10 favor of a person other than the powerholder or the
11 powerholder's estate.

12 D. Subject to Subsections B and C of this section,
13 and notwithstanding the presence of a spendthrift provision or
14 whether the claim arose before or after the creation of the
15 power of appointment, appointive property subject to a general
16 power of appointment created by the powerholder is subject to a
17 claim of a creditor of:

18 (1) the powerholder, to the same extent as if
19 the powerholder owned the appointive property, if the power is
20 presently exercisable; and

21 (2) the powerholder's estate, to the extent
22 the estate is insufficient to satisfy the claim and subject to
23 the right of a decedent to direct the source from which
24 liabilities are paid, if the power is exercisable at the
25 powerholder's death.

underscored material = new
[bracketed material] = delete

1 SECTION 1-502. [NEW MATERIAL] CREDITOR CLAIM--GENERAL
2 POWER NOT CREATED BY POWERHOLDER.--

3 A. Except as otherwise provided in Subsection B of
4 this section, appointive property subject to a general power of
5 appointment created by a person other than the powerholder is
6 subject to a claim of a creditor of:

7 (1) the powerholder, to the extent that the
8 powerholder's property is insufficient, if the power is
9 presently exercisable; and

10 (2) the powerholder's estate, to the extent
11 that the estate is insufficient, subject to the right of a
12 decedent to direct the source from which liabilities are paid.

13 B. Subject to Subsection C of Section 1-504 of the
14 Uniform Powers of Appointment Act, a power of appointment
15 created by a person other than the powerholder that is subject
16 to an ascertainable standard relating to an individual's
17 health, education, support or maintenance within the meaning of
18 26 U.S.C. Section 2041(b)(1)(A), as amended, or 26 U.S.C.
19 Section 2514(c)(1), as amended, is treated for purposes of this
20 article as a nongeneral power.

21 SECTION 1-503. [NEW MATERIAL] POWER TO WITHDRAW.--

22 A. For purposes of this article and except as
23 otherwise provided in Subsection B of this section, a power to
24 withdraw property from a trust is treated, during the time the
25 power may be exercised, as a presently exercisable general

underscored material = new
[bracketed material] = delete

1 power of appointment to the extent of the property subject to
2 the power to withdraw.

3 B. On the lapse, release or waiver of a power to
4 withdraw property from a trust, the power is treated as a
5 presently exercisable general power of appointment only to the
6 extent that the value of the property affected by the lapse,
7 release or waiver exceeds the greater of the amount specified
8 in 26 U.S.C. Section 2041(b)(2), as amended, and 26 U.S.C.
9 Section 2514(e), as amended, or the amount specified in 26
10 U.S.C. Section 2503(b), as amended.

11 SECTION 1-504. [NEW MATERIAL] CREDITOR CLAIM--NONGENERAL
12 POWER.--

13 A. Except as otherwise provided in Subsections B
14 and C of this section, appointive property subject to a
15 nongeneral power of appointment is exempt from a claim of a
16 creditor of the powerholder or the powerholder's estate.

17 B. Appointive property subject to a nongeneral
18 power of appointment is subject to a claim of a creditor of the
19 powerholder or the powerholder's estate to the extent that the
20 powerholder owned the property and, reserving the nongeneral
21 power, transferred the property in violation of the Uniform
22 Voidable Transactions Act.

23 C. If the initial gift in default of appointment is
24 to the powerholder or the powerholder's estate, a nongeneral
25 power of appointment is treated for purposes of this article as

underscoring material = new
[bracketed material] = delete

1 a general power.

2 Article 6

3 MISCELLANEOUS PROVISIONS

4 SECTION 1-601. [NEW MATERIAL] UNIFORMITY OF APPLICATION
5 AND CONSTRUCTION.--In applying and construing the Uniform
6 Powers of Appointment Act, consideration shall be given to the
7 need to promote uniformity of the act with respect to its
8 subject matter among states that enact it.

9 SECTION 1-602. [NEW MATERIAL] RELATION TO ELECTRONIC
10 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform
11 Powers of Appointment Act modifies, limits or supersedes the
12 Electronic Signatures in Global and National Commerce Act, 15
13 U.S.C. Section 7001 et seq., but does not modify, limit or
14 supersede Section 101(c) of that act, 15 U.S.C. Section
15 7001(c), or authorize electronic delivery of any of the notices
16 described in Section 103(b) of that act, 15 U.S.C. Section
17 7003(b).

18 SECTION 1-603. [NEW MATERIAL] APPLICATION TO EXISTING
19 RELATIONSHIPS.--

20 A. Except as otherwise provided in the Uniform
21 Powers of Appointment Act, on and after January 1, 2017:

22 (1) the Uniform Powers of Appointment Act
23 applies to a power of appointment created before, on or after
24 January 1, 2017;

25 (2) the Uniform Powers of Appointment Act

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

1 applies to a judicial proceeding concerning a power of
2 appointment commenced on or after January 1, 2017;

3 (3) the Uniform Powers of Appointment Act
4 applies to a judicial proceeding concerning a power of
5 appointment commenced before January 1, 2017 unless the court
6 finds that application of a particular provision of the Uniform
7 Powers of Appointment Act would interfere substantially with
8 the effective conduct of the judicial proceeding or prejudice a
9 right of a party, in which case the particular provision of the
10 Uniform Powers of Appointment Act does not apply and the
11 superseded law applies;

12 (4) a rule of construction or presumption
13 provided in the Uniform Powers of Appointment Act applies to an
14 instrument executed before January 1, 2017 unless there is a
15 clear indication of a contrary intent in the terms of the
16 instrument; and

17 (5) except as otherwise provided in Paragraphs
18 (1) through (4) of this subsection, an action done before
19 January 1, 2017 is not affected by the Uniform Powers of
20 Appointment Act.

21 B. If a right is acquired, extinguished or barred
22 on the expiration of a prescribed period that commenced under
23 New Mexico law other than the Uniform Powers of Appointment Act
24 before January 1, 2017, the law continues to apply to the
25 right.

.202063.6

1 UNIFORM TRUST DECANTING ACT

2 Article 1

3 GENERAL PROVISIONS

4 SECTION 2-101. [NEW MATERIAL] SHORT TITLE.--Sections
5 2-101 through 2-129 of this act may be cited as the "Uniform
6 Trust Decanting Act".

7 SECTION 2-102. [NEW MATERIAL] DEFINITIONS.--As used in
8 the Uniform Trust Decanting Act:

9 A. "appointive property" means the property or
10 property interest subject to a power of appointment;

11 B. "ascertainable standard" means a standard
12 relating to an individual's health, education, support or
13 maintenance within the meaning of 26 U.S.C. Section
14 2041(b)(1)(A), as amended, or 26 U.S.C. Section 2514(c)(1), as
15 amended, and any applicable regulations;

16 C. "authorized fiduciary" means:

17 (1) a trustee or other fiduciary, other than a
18 settlor, that has discretion to distribute, or direct a trustee
19 to distribute, part or all of the principal of the first trust
20 to one or more current beneficiaries;

21 (2) a special fiduciary appointed under
22 Section 2-109 of the Uniform Trust Decanting Act; or

23 (3) a special-needs fiduciary under Section
24 2-113 of the Uniform Trust Decanting Act;

25 D. "beneficiary" means a person that:

1 (1) has a present or future, vested or
2 contingent, beneficial interest in a trust;

3 (2) holds a power of appointment over trust
4 property; or

5 (3) is an identified charitable organization
6 that will or may receive distributions under the terms of the
7 trust;

8 E. "charitable interest" means an interest in a
9 trust that:

10 (1) is held by an identified charitable
11 organization and makes the organization a qualified
12 beneficiary;

13 (2) benefits only charitable organizations
14 and, if the interest were held by an identified charitable
15 organization, would make the organization a qualified
16 beneficiary; or

17 (3) is held solely for charitable purposes
18 and, if the interest were held by an identified charitable
19 organization, would make the organization a qualified
20 beneficiary;

21 F. "charitable organization" means:

22 (1) a person, other than an individual,
23 organized and operated exclusively for charitable purposes; or

24 (2) a government or governmental subdivision,
25 agency or instrumentality, to the extent it holds funds

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

1 exclusively for a charitable purpose;

2 G. "charitable purpose" means the relief of
3 poverty, the advancement of education or religion, the
4 promotion of health, a municipal or other governmental purpose
5 or another purpose the achievement of which is beneficial to
6 the community;

7 H. "court" means the court in New Mexico having
8 jurisdiction in matters relating to trusts;

9 I. "current beneficiary" means a beneficiary that,
10 on the date the beneficiary's qualification is determined, is a
11 distributee or permissible distributee of trust income or
12 principal. "Current beneficiary":

13 (1) includes the holder of a presently
14 exercisable general power of appointment; and

15 (2) does not include a person that is a
16 beneficiary only because the person holds any other power of
17 appointment;

18 J. "decanting power" or "the decanting power" means
19 the power of an authorized fiduciary under the Uniform Trust
20 Decanting Act to distribute property of a first trust to one or
21 more second trusts or to modify the terms of the first trust;

22 K. "expanded distributive discretion" means a
23 discretionary power of distribution that is not limited to an
24 ascertainable standard or a reasonably definite standard;

25 L. "first trust" means a trust over which an

1 authorized fiduciary may exercise the decanting power;

2 M. "first-trust instrument" means the trust
3 instrument for a first trust;

4 N. "general power of appointment" means a power of
5 appointment exercisable in favor of a powerholder, the
6 powerholder's estate, a creditor of the powerholder or a
7 creditor of the powerholder's estate;

8 O. "jurisdiction", with respect to a geographic
9 area, includes a state or country;

10 P. "person" means an individual; an estate; a
11 business or nonprofit entity; a public corporation; a
12 government or governmental subdivision, agency or
13 instrumentality; or another legal entity;

14 Q. "power of appointment" means a power that
15 enables a powerholder acting in a nonfiduciary capacity to
16 designate a recipient of an ownership interest in or another
17 power of appointment over the appointive property. "Power of
18 appointment" does not include a power of attorney;

19 R. "powerholder" means a person in which a donor
20 creates a power of appointment;

21 S. "presently exercisable power of appointment"
22 means a power of appointment exercisable by the powerholder at
23 the relevant time. "Presently exercisable power of
24 appointment":

25 (1) includes a power of appointment

1 exercisable only after the occurrence of a specified event, the
2 satisfaction of an ascertainable standard or the passage of a
3 specified time only after:

4 (a) the occurrence of the specified
5 event;

6 (b) the satisfaction of the
7 ascertainable standard; or

8 (c) the passage of the specified time;
9 and

10 (2) does not include a power exercisable only
11 at the powerholder's death;

12 T. "qualified beneficiary" means a beneficiary that
13 on the date the beneficiary's qualification is determined:

14 (1) is a distributee or permissible
15 distributee of trust income or principal;

16 (2) would be a distributee or permissible
17 distributee of trust income or principal if the interests of
18 the distributees described in Paragraph (1) of this subsection
19 terminated on that date without causing the trust to terminate;
20 or

21 (3) would be a distributee or permissible
22 distributee of trust income or principal if the trust
23 terminated on that date;

24 U. "reasonably definite standard" means a clearly
25 measurable standard under which a holder of a power of

underscoring material = new
[bracketed material] = delete

1 distribution is legally accountable within the meaning of 26
2 U.S.C. Section 674(b)(5)(A), as amended, and any applicable
3 regulations;

4 V. "record" means information that is inscribed on
5 a tangible medium or that is stored in an electronic or other
6 medium and is retrievable in perceivable form;

7 W. "second trust" means:

8 (1) a first trust after modification under the
9 Uniform Trust Decanting Act; or

10 (2) a trust to which a distribution of
11 property from a first trust is or may be made under the Uniform
12 Trust Decanting Act;

13 X. "second-trust instrument" means the trust
14 instrument for a second trust;

15 Y. "settlor", except as otherwise provided in
16 Section 2-125 of the Uniform Trust Decanting Act, means a
17 person, including a testator, that creates or contributes
18 property to a trust. If more than one person creates or
19 contributes property to a trust, each person is a settlor of
20 the portion of the trust property attributable to the person's
21 contribution except to the extent that another person has power
22 to revoke or withdraw that portion;

23 Z. "sign" means, with present intent to
24 authenticate or adopt a record:

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

underscored material = new
[bracketed material] = delete

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

3 AA. "state" means a state of the United States, the
4 District of Columbia, Puerto Rico, the United States Virgin
5 Islands or any territory or insular possession subject to the
6 jurisdiction of the United States;

7 BB. "terms of the trust" means the manifestation of
8 the settlor's intent regarding a trust's provisions as
9 expressed in the trust instrument, as may be established by
10 other evidence that would be admissible in a judicial
11 proceeding or as may be established by court order or
12 nonjudicial settlement agreement; and

13 CC. "trust instrument" means a record executed by
14 the settlor to create a trust or by any person to create a
15 second trust that contains some or all of the terms of the
16 trust, including any amendments.

17 SECTION 2-103. [NEW MATERIAL] SCOPE.--

18 A. Except as otherwise provided in Subsections B
19 and C of this section, the Uniform Trust Decanting Act applies
20 to an express trust that is irrevocable or revocable by the
21 settlor only with the consent of the trustee or a person
22 holding an adverse interest.

23 B. The Uniform Trust Decanting Act does not apply
24 to a trust held solely for charitable purposes.

25 C. Subject to Section 2-115 of the Uniform Trust

underscored material = new
[bracketed material] = delete

1 Decanting Act, a trust instrument may restrict or prohibit
2 exercise of the decanting power.

3 D. The Uniform Trust Decanting Act does not limit
4 the power of a trustee, powerholder or other person to
5 distribute or appoint property in further trust or to modify a
6 trust under the trust instrument, New Mexico law other than the
7 Uniform Trust Decanting Act, common law, a court order or a
8 nonjudicial-settlement agreement.

9 E. The Uniform Trust Decanting Act does not affect
10 the ability of a settlor to provide in a trust instrument for
11 the distribution of the trust property or appointment in
12 further trust of the trust property or for modification of the
13 trust instrument.

14 SECTION 2-104. [NEW MATERIAL] FIDUCIARY DUTY.--

15 A. In exercising the decanting power, an authorized
16 fiduciary shall act in accordance with its fiduciary duties,
17 including the duty to act in accordance with the purposes of
18 the first trust.

19 B. The Uniform Trust Decanting Act does not create
20 or imply a duty to exercise the decanting power or to inform
21 beneficiaries about the applicability of the Uniform Trust
22 Decanting Act.

23 C. Except as otherwise provided in a first-trust
24 instrument, for purposes of the Uniform Trust Decanting Act,
25 Section 46A-8-801 NMSA 1978 and Subsection A of Section

.202063.6

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

1 46A-8-802 NMSA 1978, the terms of the first trust are deemed to
2 include the decanting power.

3 SECTION 2-105. [NEW MATERIAL] APPLICATION--GOVERNING
4 LAW.--

5 A. The Uniform Trust Decanting Act applies to a
6 trust that:

7 (1) has its principal place of administration
8 in New Mexico, including a trust whose principal place of
9 administration has been changed to New Mexico; or

10 (2) provides by its trust instrument that it
11 is governed by New Mexico law or is governed by New Mexico law
12 for the purpose of:

13 (a) administration, including
14 administration of a trust whose governing law for purposes of
15 administration has been changed to New Mexico law;

16 (b) construction of terms of the trust;
17 or

18 (c) determining the meaning or effect of
19 terms of the trust.

20 B. Except as otherwise provided in the Uniform
21 Trust Decanting Act, on and after January 1, 2017:

22 (1) the Uniform Trust Decanting Act applies to
23 a trust created before, on or after January 1, 2017;

24 (2) the Uniform Trust Decanting Act applies to
25 a judicial proceeding concerning a trust commenced on or after

underscored material = new
[bracketed material] = delete

1 January 1, 2017;

2 (3) the Uniform Trust Decanting Act applies to
3 a judicial proceeding concerning a trust commenced before
4 January 1, 2017 unless the court finds that application of a
5 particular provision of the Uniform Trust Decanting Act would
6 interfere substantially with the effective conduct of the
7 judicial proceeding or prejudice a right of a party, in which
8 case the particular provision of the Uniform Trust Decanting
9 Act does not apply and the superseded law applies;

10 (4) a rule of construction or presumption
11 provided in the Uniform Trust Decanting Act applies to a trust
12 instrument executed before January 1, 2017 unless there is a
13 clear indication of a contrary intent in the terms of the
14 instrument; and

15 (5) except as otherwise provided in Paragraphs
16 (1) through (4) of this subsection, an action done before
17 January 1, 2017 is not affected by the Uniform Trust Decanting
18 Act.

19 C. If a right is acquired, extinguished or barred
20 on the expiration of a prescribed period that commenced under
21 New Mexico law other than the Uniform Trust Decanting Act
22 before January 1, 2017, the law continues to apply to the
23 right.

24 SECTION 2-106. [NEW MATERIAL] REASONABLE RELIANCE.--A
25 trustee or other person that reasonably relies on the validity

.202063.6

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

1 of a distribution of part or all of the property of a trust to
2 another trust, or a modification of a trust under the Uniform
3 Trust Decanting Act, New Mexico law other than the Uniform
4 Trust Decanting Act or the law of another jurisdiction, is not
5 liable to any person for any action or failure to act as a
6 result of the reliance.

7 SECTION 2-107. [NEW MATERIAL] NOTICE--EXERCISE OF
8 DECANTING POWER.--

9 A. In this section, a notice period begins on the
10 day notice is given under Subsection C of this section and ends
11 fifty-nine days after the day notice is given.

12 B. Except as otherwise provided in the Uniform
13 Trust Decanting Act, an authorized fiduciary may exercise the
14 decanting power without the consent of any person and without
15 court approval.

16 C. Except as otherwise provided in Subsection F of
17 this section, an authorized fiduciary shall give notice in a
18 record of the intended exercise of the decanting power not
19 later than sixty days before the exercise to:

20 (1) each settlor of the first trust, if living
21 or then in existence;

22 (2) each qualified beneficiary of the first
23 trust;

24 (3) each holder of a presently exercisable
25 power of appointment over any part or all of the first trust;

1 (4) each person that currently has the right
2 to remove or replace the authorized fiduciary;

3 (5) each other fiduciary of the first trust;

4 (6) each fiduciary of the second trust; and

5 (7) the attorney general, if Subsection B of
6 Section 2-114 of the Uniform Trust Decanting Act applies.

7 D. An authorized fiduciary is not required to give
8 notice under Subsection C of this section to a person that is
9 not known to the fiduciary or is known to the fiduciary but
10 cannot be located by the fiduciary after reasonable diligence.

11 E. A notice given under Subsection C of this
12 section shall:

13 (1) specify the manner in which the authorized
14 fiduciary intends to exercise the decanting power;

15 (2) specify the proposed effective date for
16 exercise of the power;

17 (3) include a copy of the first-trust
18 instrument; and

19 (4) include a copy of all second-trust
20 instruments.

21 F. The decanting power may be exercised before
22 expiration of the notice period specified in Subsection A of
23 this section if all persons entitled to receive notice waive
24 the period in a signed record.

25 G. The receipt of notice, waiver of the notice

underscoring material = new
[bracketed material] = delete

1 period or expiration of the notice period does not affect the
2 right of a person to file an application under Section 2-109 of
3 the Uniform Trust Decanting Act asserting that:

4 (1) an attempted exercise of the decanting
5 power is ineffective because it did not comply with the Uniform
6 Trust Decanting Act or was an abuse of discretion or breach of
7 fiduciary duty; or

8 (2) Section 2-122 of the Uniform Trust
9 Decanting Act applies to the exercise of the decanting power.

10 H. An exercise of the decanting power is not
11 ineffective because of the failure to give notice to one or
12 more persons under Subsection C of this section if the
13 authorized fiduciary acted with reasonable care to comply with
14 that subsection.

15 SECTION 2-108. [NEW MATERIAL] REPRESENTATION.--

16 A. Notice to a person with authority to represent
17 and bind another person under a first-trust instrument or the
18 Uniform Trust Code has the same effect as notice given directly
19 to the person represented.

20 B. Consent of or waiver by a person with authority
21 to represent and bind another person under a first-trust
22 instrument or the Uniform Trust Code is binding on the person
23 represented unless the person represented objects to the
24 representation before the consent or waiver otherwise would
25 become effective.

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

1 C. A person with authority to represent and bind
2 another person under a first-trust instrument or the Uniform
3 Trust Code may file an application under Section 2-109 of the
4 Uniform Trust Decanting Act on behalf of the person
5 represented.

6 D. A settlor shall not represent or bind a
7 beneficiary under the Uniform Trust Decanting Act.

8 SECTION 2-109. [NEW MATERIAL] COURT INVOLVEMENT.--

9 A. On application of an authorized fiduciary, a
10 person entitled to notice under Subsection C of Section 2-107
11 of the Uniform Trust Decanting Act, a beneficiary or, with
12 respect to a charitable interest, the attorney general or
13 other person that has standing to enforce the charitable
14 interest, the court, may:

15 (1) provide instructions to the authorized
16 fiduciary regarding whether a proposed exercise of the
17 decanting power is permitted under the Uniform Trust Decanting
18 Act and consistent with the fiduciary duties of the authorized
19 fiduciary;

20 (2) appoint a special fiduciary and authorize
21 the special fiduciary to determine whether the decanting power
22 should be exercised under the Uniform Trust Decanting Act and
23 to exercise the decanting power;

24 (3) approve an exercise of the decanting
25 power;

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

1 (4) determine that a proposed or attempted
2 exercise of the decanting power is ineffective because:

3 (a) after applying Section 2-122 of the
4 Uniform Trust Decanting Act, the proposed or attempted exercise
5 does not or did not comply with the Uniform Trust Decanting
6 Act; or

7 (b) the proposed or attempted exercise
8 would be or was an abuse of the fiduciary's discretion or a
9 breach of fiduciary duty;

10 (5) determine the extent to which Section
11 2-122 of the Uniform Trust Decanting Act applies to a prior
12 exercise of the decanting power;

13 (6) provide instructions to the trustee
14 regarding the application of Section 2-122 of the Uniform Trust
15 Decanting Act to a prior exercise of the decanting power; or

16 (7) order other relief to carry out the
17 purposes of the Uniform Trust Decanting Act.

18 B. On application of an authorized fiduciary, the
19 court may approve:

20 (1) an increase in the fiduciary's
21 compensation under Section 2-116 of the Uniform Trust Decanting
22 Act; or

23 (2) a modification under Section 2-118 of the
24 Uniform Trust Decanting Act of a provision granting a person
25 the right to remove or replace the fiduciary.

.202063.6

underscored material = new
[bracketed material] = delete

1 SECTION 2-110. [NEW MATERIAL] FORMALITIES.--An exercise
2 of the decanting power shall be made in a record signed by an
3 authorized fiduciary. The signed record shall, directly or by
4 reference to the notice required by Section 2-107 of the
5 Uniform Trust Decanting Act, identify the first trust and the
6 second trust or trusts and state the property of the first
7 trust being distributed to each second trust and the property,
8 if any, that remains in the first trust.

9 SECTION 2-111. [NEW MATERIAL] DECANTING POWER UNDER
10 EXPANDED DISTRIBUTIVE DISCRETION.--

11 A. As used in this section:

12 (1) "noncontingent right" means a right that
13 is not subject to the exercise of discretion or the occurrence
14 of a specified event that is not certain to occur.

15 "Noncontingent right" does not include a right held by a
16 beneficiary if any person has discretion to distribute property
17 subject to the right to any person other than the beneficiary
18 or the beneficiary's estate;

19 (2) "presumptive remainder beneficiary" means
20 a qualified beneficiary other than a current beneficiary;

21 (3) "successor beneficiary" means a
22 beneficiary that is not a qualified beneficiary on the date the
23 beneficiary's qualification is determined. "Successor
24 beneficiary" does not include a person that is a beneficiary
25 only because the person holds a nongeneral power of

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

1 appointment; and

2 (4) "vested interest" means:

3 (a) a right to a mandatory distribution
4 that is a noncontingent right as of the date of the exercise of
5 the decanting power;

6 (b) a current and noncontingent right,
7 annually or more frequently, to a mandatory distribution of
8 income, a specified dollar amount or a percentage of value of
9 some or all of the trust property;

10 (c) a current and noncontingent right,
11 annually or more frequently, to withdraw income, a specified
12 dollar amount or a percentage of value of some or all of the
13 trust property;

14 (d) a presently exercisable general
15 power of appointment; or

16 (e) a right to receive an ascertainable
17 part of the trust property on the trust's termination that is
18 not subject to the exercise of discretion or to the occurrence
19 of a specified event that is not certain to occur.

20 B. Subject to Subsection C of this section and
21 Section 2-114 of the Uniform Trust Decanting Act, an authorized
22 fiduciary that has expanded distributive discretion over the
23 principal of a first trust for the benefit of one or more
24 current beneficiaries may exercise the decanting power over the
25 principal of the first trust.

.202063.6

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

1 C. Subject to Section 2-113 of the Uniform Trust
2 Decanting Act, in an exercise of the decanting power under this
3 section, a second trust shall not:

4 (1) include as a current beneficiary a person
5 that is not a current beneficiary of the first trust, except as
6 otherwise provided in Subsection D of this section;

7 (2) include as a presumptive remainder
8 beneficiary or successor beneficiary a person that is not a
9 current beneficiary, presumptive remainder beneficiary or
10 successor beneficiary of the first trust, except as otherwise
11 provided in Subsection D of this section; or

12 (3) reduce or eliminate a vested interest.

13 D. Subject to Paragraph (3) of Subsection C of this
14 section and Section 2-114 of the Uniform Trust Decanting Act,
15 in an exercise of the decanting power under this section, a
16 second trust may be a trust created or administered under the
17 law of any jurisdiction and may:

18 (1) retain a power of appointment granted in
19 the first trust;

20 (2) omit a power of appointment granted in the
21 first trust, other than a presently exercisable general power
22 of appointment;

23 (3) create or modify a power of appointment if
24 the powerholder is a current beneficiary of the first trust and
25 the authorized fiduciary has expanded distributive discretion

underscored material = new
[bracketed material] = delete

1 to distribute principal to the beneficiary; and

2 (4) create or modify a power of appointment if
3 the powerholder is a presumptive remainder beneficiary or
4 successor beneficiary of the first trust, but the exercise of
5 the power may take effect only after the powerholder becomes,
6 or would have become if then living, a current beneficiary.

7 E. A power of appointment described in Paragraphs
8 (1) through (4) of Subsection D of this section may be general
9 or nongeneral. The class of permissible appointees in favor of
10 which the power may be exercised may be broader than or
11 different from the beneficiaries of the first trust.

12 F. If an authorized fiduciary has expanded
13 distributive discretion over part but not all of the principal
14 of a first trust, the fiduciary may exercise the decanting
15 power under this section over that part of the principal over
16 which the authorized fiduciary has expanded distributive
17 discretion.

18 SECTION 2-112. [NEW MATERIAL] DECANTING POWER UNDER
19 LIMITED DISTRIBUTIVE DISCRETION.--

20 A. As used in this section, "limited distributive
21 discretion" means a discretionary power of distribution that is
22 limited to an ascertainable standard or a reasonably definite
23 standard.

24 B. An authorized fiduciary that has limited
25 distributive discretion over the principal of the first trust

.202063.6

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

1 for benefit of one or more current beneficiaries may exercise
2 the decanting power over the principal of the first trust.

3 C. Under this section and subject to Section 2-114
4 of the Uniform Trust Decanting Act, a second trust may be
5 created or administered under the law of any jurisdiction.
6 Under this section, the second trusts, in the aggregate, shall
7 grant each beneficiary of the first trust beneficial interests
8 that are substantially similar to the beneficial interests of
9 the beneficiary in the first trust.

10 D. A power to make a distribution under a second
11 trust for the benefit of a beneficiary who is an individual is
12 substantially similar to a power under the first trust to make
13 a distribution directly to the beneficiary. A distribution is
14 for the benefit of a beneficiary if:

15 (1) the distribution is applied for the
16 benefit of the beneficiary;

17 (2) the beneficiary is under a legal
18 disability or the trustee reasonably believes the beneficiary
19 is incapacitated and the distribution is made as permitted
20 under the Uniform Trust Code; or

21 (3) the distribution is made as permitted
22 under the terms of the first-trust instrument and the
23 second-trust instrument for the benefit of the beneficiary.

24 E. If an authorized fiduciary has limited
25 distributive discretion over part but not all of the principal

underscored material = new
[bracketed material] = delete

1 of a first trust, the fiduciary may exercise the decanting
2 power provided by this section over that part of the principal
3 over which the authorized fiduciary has limited distributive
4 discretion.

5 SECTION 2-113. [NEW MATERIAL] TRUST FOR BENEFICIARY WITH
6 DISABILITY.--

7 A. As used in this section:

8 (1) "beneficiary with a disability" means a
9 beneficiary of a first trust who the special-needs fiduciary
10 believes may qualify for governmental benefits based on
11 disability, whether or not the beneficiary currently receives
12 those benefits or is an individual who has been adjudicated
13 incapacitated;

14 (2) "governmental benefits" means financial
15 aid or services from a state, federal or other type of public
16 agency;

17 (3) "special-needs fiduciary" means, with
18 respect to a trust that has a beneficiary with a disability:

19 (a) a trustee or other fiduciary, other
20 than a settlor, that has discretion to distribute part or all
21 of the principal of a first trust to one or more current
22 beneficiaries;

23 (b) if no trustee or fiduciary has
24 discretion under Subparagraph (a) of this paragraph, a trustee
25 or other fiduciary, other than a settlor, that has discretion

.202063.6

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

1 to distribute part or all of the income of the first trust to
2 one or more current beneficiaries; or

3 (c) if no trustee or fiduciary has
4 discretion under Subparagraphs (a) and (b) of this paragraph, a
5 trustee or other fiduciary, other than a settlor, that is
6 required to distribute part or all of the income or principal
7 of the first trust to one or more current beneficiaries; and

8 (4) "special-needs trust" means a trust that
9 the trustee believes would not be considered a resource for
10 purposes of determining whether a beneficiary with a disability
11 is eligible for governmental benefits.

12 B. A special-needs fiduciary may exercise the
13 decanting power provided by Section 2-111 of the Uniform Trust
14 Decanting Act over the principal of a first trust as if the
15 fiduciary had authority to distribute principal to a
16 beneficiary with a disability subject to expanded distributive
17 discretion if:

18 (1) a second trust is a special-needs trust
19 that benefits the beneficiary with a disability; and

20 (2) the special-needs fiduciary determines
21 that exercise of the decanting power will further the purposes
22 of the first trust.

23 C. In an exercise of the decanting power provided
24 by this section, the following rules apply:

25 (1) notwithstanding Paragraph (2) of

underscored material = new
[bracketed material] = delete

1 Subsection C of Section 2-111 of the Uniform Trust Decanting
2 Act, the interest in the second trust of a beneficiary with a
3 disability may:

4 (a) be a pooled trust as defined by
5 medicaid law for the benefit of the beneficiary with a
6 disability under 42 U.S.C. Section 1396p(d)(4)(C), as amended;
7 or

8 (b) contain payback provisions complying
9 with reimbursement requirements of medicaid law under 42 U.S.C.
10 Section 1396p(d)(4)(A), as amended;

11 (2) Paragraph (3) of Subsection C of Section
12 2-111 of the Uniform Trust Decanting Act does not apply to the
13 interests of the beneficiary with a disability; and

14 (3) except as affected by any change to the
15 interests of the beneficiary with a disability, the second
16 trust, or if there are two or more second trusts, the second
17 trusts in the aggregate, shall grant each other beneficiary of
18 the first trust beneficial interests in the second trusts that
19 are substantially similar to the beneficiary's beneficial
20 interests in the first trust.

21 SECTION 2-114. [NEW MATERIAL] PROTECTION OF CHARITABLE
22 INTEREST.--

23 A. As used in this section:

24 (1) "determinable charitable interest" means a
25 charitable interest that is a right to a mandatory distribution

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

1 currently, periodically, on the occurrence of a specified event
2 or after the passage of a specified time and that is
3 unconditional or will be held solely for charitable purposes;
4 and

5 (2) "unconditional" means not subject to the
6 occurrence of a specified event that is not certain to occur,
7 other than a requirement in a trust instrument that a
8 charitable organization be in existence or qualify under a
9 particular provision of the United States Internal Revenue Code
10 of 1986, as amended, on the date of the distribution if the
11 charitable organization meets the requirement on the date of
12 determination.

13 B. If a first trust contains a determinable
14 charitable interest, the attorney general has the rights of a
15 qualified beneficiary and may represent and bind the charitable
16 interest.

17 C. If a first trust contains a charitable interest,
18 the second trust or trusts shall not:

19 (1) diminish the charitable interest;

20 (2) diminish the interest of an identified
21 charitable organization that holds the charitable interest;

22 (3) alter any charitable purpose stated in the
23 first-trust instrument; or

24 (4) alter any condition or restriction related
25 to the charitable interest.

.202063.6

underscored material = new
[bracketed material] = delete

1 D. If there are two or more second trusts, the
2 second trusts shall be treated as one trust for purposes of
3 determining whether the exercise of the decanting power
4 diminishes the charitable interest or diminishes the interest
5 of an identified charitable organization for purposes of
6 Subsection C of this section.

7 E. If a first trust contains a determinable
8 charitable interest, the second trust or trusts that include a
9 charitable interest pursuant to Subsection C of this section
10 shall be administered under New Mexico law unless:

11 (1) the attorney general, after receiving
12 notice under Section 2-107 of the Uniform Trust Decanting Act,
13 fails to object in a signed record delivered to the authorized
14 fiduciary within the notice period;

15 (2) the attorney general consents in a signed
16 record to the second trust or trusts being administered under
17 the law of another jurisdiction; or

18 (3) the court approves the exercise of the
19 decanting power.

20 F. The Uniform Trust Decanting Act does not limit
21 the powers and duties of the attorney general under New Mexico
22 law other than that act.

23 SECTION 2-115. [NEW MATERIAL] TRUST LIMITATION ON
24 DECANTING.--

25 A. An authorized fiduciary shall not exercise the

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

1 decanting power to the extent that the first-trust instrument
2 expressly prohibits exercise of:

3 (1) the decanting power; or

4 (2) a power granted by state law to the
5 fiduciary to distribute part or all of the principal of the
6 trust to another trust.

7 B. Exercise of the decanting power is subject to
8 any restriction in the first-trust instrument that expressly
9 applies to exercise of:

10 (1) the decanting power; or

11 (2) a power granted by state law to a
12 fiduciary to distribute part or all of the principal of the
13 trust to another trust or to modify the trust.

14 C. A general prohibition of the amendment or
15 revocation of a first trust, a spendthrift clause or a clause
16 restraining the voluntary or involuntary transfer of a
17 beneficiary's interest does not preclude exercise of the
18 decanting power.

19 D. Subject to Subsections A and B of this section,
20 an authorized fiduciary may exercise the decanting power
21 provided by the Uniform Trust Decanting Act even if the
22 first-trust instrument permits the authorized fiduciary or
23 another person to modify the first-trust instrument or to
24 distribute part or all of the principal of the first trust to
25 another trust.

.202063.6

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

1 E. If a first-trust instrument contains an express
2 prohibition described in Subsection A of this section or an
3 express restriction described in Subsection B of this section,
4 the provision shall be included in the second-trust instrument.

5 SECTION 2-116. [NEW MATERIAL] CHANGE IN COMPENSATION.--

6 A. If a first-trust instrument specifies an
7 authorized fiduciary's compensation, the fiduciary shall not
8 exercise the decanting power to increase the fiduciary's
9 compensation above the specified compensation unless:

10 (1) all qualified beneficiaries of the second
11 trust consent to the increase in a signed record; or

12 (2) the increase is approved by the court.

13 B. If a first-trust instrument does not specify an
14 authorized fiduciary's compensation, the fiduciary shall not
15 exercise the decanting power to increase the fiduciary's
16 compensation above the compensation permitted by the Uniform
17 Trust Code unless:

18 (1) all qualified beneficiaries of the second
19 trust consent to the increase in a signed record; or

20 (2) the increase is approved by the court.

21 C. A change in an authorized fiduciary's
22 compensation that is incidental to other changes made by the
23 exercise of the decanting power is not an increase in the
24 fiduciary's compensation for purposes of Subsections A and B of
25 this section.

underscored material = new
[bracketed material] = delete

1 SECTION 2-117. [NEW MATERIAL] RELIEF FROM LIABILITY AND
2 INDEMNIFICATION.--

3 A. Except as otherwise provided in this section, a
4 second-trust instrument shall not relieve an authorized
5 fiduciary from liability for breach of trust to a greater
6 extent than the first-trust instrument.

7 B. A second-trust instrument may provide for
8 indemnification of an authorized fiduciary of the first trust
9 or another person acting in a fiduciary capacity under the
10 first trust for any liability or claim that would have been
11 payable from the first trust if the decanting power had not
12 been exercised.

13 C. A second-trust instrument shall not reduce
14 fiduciary liability in the aggregate.

15 D. Subject to Subsection C of this section, a
16 second-trust instrument may divide and reallocate fiduciary
17 powers among fiduciaries, including one or more trustees,
18 distribution advisors, investment advisors, trust protectors or
19 other persons, and relieve a fiduciary from liability for an
20 act or failure to act of another fiduciary as permitted by New
21 Mexico law other than the Uniform Trust Decanting Act.

22 SECTION 2-118. [NEW MATERIAL] REMOVAL OR REPLACEMENT OF
23 AUTHORIZED FIDUCIARY.--An authorized fiduciary shall not
24 exercise the decanting power to modify a provision in a
25 first-trust instrument granting another person power to remove

underscored material = new
[bracketed material] = delete

1 or replace the fiduciary unless:

2 A. the person holding the power consents to the
3 modification in a signed record and the modification applies
4 only to the person;

5 B. the person holding the power and the qualified
6 beneficiaries of the second trust consent to the modification
7 in a signed record and the modification grants a substantially
8 similar power to another person; or

9 C. the court approves the modification and the
10 modification grants a substantially similar power to another
11 person.

12 SECTION 2-119. [NEW MATERIAL] TAX-RELATED LIMITATIONS.--

13 A. As used in this section:

14 (1) "grantor trust" means a trust as to which
15 a settlor of a first trust is considered the owner under 26
16 U.S.C. Sections 671 through 677, as amended, or 26 U.S.C.
17 Section 679, as amended;

18 (2) "Internal Revenue Code" means the United
19 States Internal Revenue Code of 1986, as amended;

20 (3) "nongrantor trust" means a trust that is
21 not a grantor trust; and

22 (4) "qualified benefits property" means
23 property subject to the minimum distribution requirements of 26
24 U.S.C. Section 401(a)(9), as amended, and any applicable
25 regulations or subject to any similar requirements that refer

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

1 to 26 U.S.C. Section 401(a)(9) or the regulations.

2 B. An exercise of the decanting power is subject to
3 the following limitations:

4 (1) if a first trust contains property that
5 qualified, or would have qualified but for provisions of the
6 Uniform Trust Decanting Act other than those in this section,
7 for a marital deduction for purposes of the gift or estate tax
8 under the Internal Revenue Code or a state gift, estate or
9 inheritance tax, the second-trust instrument shall not include
10 or omit any term that, if included in or omitted from the trust
11 instrument for the trust to which the property was transferred,
12 would have prevented the transfer from qualifying for the
13 deduction, or would have reduced the amount of the deduction,
14 under the same provisions of the Internal Revenue Code or state
15 law under which the transfer qualified;

16 (2) if the first trust contains property that
17 qualified, or would have qualified but for provisions of the
18 Uniform Trust Decanting Act other than those in this section,
19 for a charitable deduction for purposes of the income, gift or
20 estate tax under the Internal Revenue Code or a state income,
21 gift, estate or inheritance tax, the second-trust instrument
22 shall not include or omit any term that, if included in or
23 omitted from the trust instrument for the trust to which the
24 property was transferred, would have prevented the transfer
25 from qualifying for the deduction, or would have reduced the

underscoring material = new
[bracketed material] = delete

1 amount of the deduction, under the same provisions of the
2 Internal Revenue Code or state law under which the transfer
3 qualified;

4 (3) if the first trust contains property that
5 qualified, or would have qualified but for provisions of the
6 Uniform Trust Decanting Act other than those in this section,
7 for the exclusion from the gift tax described in 26 U.S.C.
8 Section 2503(b), as amended, the second-trust instrument shall
9 not include or omit a term that, if included in or omitted from
10 the trust instrument for the trust to which the property was
11 transferred, would have prevented the transfer from qualifying
12 under 26 U.S.C. Section 2503(b), as amended. If the first
13 trust contains property that qualified, or would have qualified
14 but for provisions of the Uniform Trust Decanting Act other
15 than those in this section, for the exclusion from the gift tax
16 described in 26 U.S.C. Section 2503(b), as amended, by
17 application of 26 U.S.C. Section 2503(c), as amended, the
18 second-trust instrument shall not include or omit a term that,
19 if included or omitted from the trust instrument for the trust
20 to which the property was transferred, would have prevented the
21 transfer from qualifying under 26 U.S.C. Section 2503(c), as
22 amended;

23 (4) if the property of the first trust
24 includes shares of stock in an S corporation, as defined in 26
25 U.S.C. Section 1361, as amended, and the first trust is, or,

.202063.6

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

1 but for provisions of the Uniform Trust Decanting Act other
2 than those in this section, would be, a permitted shareholder
3 under any provision of 26 U.S.C. Section 1361, as amended, an
4 authorized fiduciary may exercise the power with respect to
5 part or all of the S-corporation stock only if any second trust
6 receiving the stock is a permitted shareholder under 26 U.S.C.
7 Section 1361(c)(2), as amended. If the property of the first
8 trust includes shares of stock in an S corporation and the
9 first trust is, or, but for provisions of the Uniform Trust
10 Decanting Act other than those in this section, would be, a
11 qualified subchapter-S trust within the meaning of 26 U.S.C.
12 Section 1361(d), as amended, the second-trust instrument shall
13 not include or omit a term that prevents the second trust from
14 qualifying as a qualified subchapter-S trust;

15 (5) if the first trust contains property that
16 qualified, or, but for provisions of the Uniform Trust
17 Decanting Act other than those in this section, would have
18 qualified, for a zero inclusion ratio for purposes of the
19 generation-skipping transfer tax under 26 U.S.C. Section
20 2642(c), as amended, the second-trust instrument shall not
21 include or omit a term that, if included in or omitted from the
22 first-trust instrument, would have prevented the transfer to
23 the first trust from qualifying for a zero inclusion ratio
24 under 26 U.S.C. Section 2642(c), as amended;

25 (6) if the first trust is directly or

.202063.6

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

1 indirectly the beneficiary of qualified benefits property, the
2 second-trust instrument shall not include or omit any term
3 that, if included in or omitted from the first-trust
4 instrument, would have increased the minimum distributions
5 required with respect to the qualified benefits property under
6 26 U.S.C. Section 401(a)(9), as amended, and any applicable
7 regulations or any similar requirements that refer to 26 U.S.C.
8 Section 401(a)(9), as amended, or the regulations. If an
9 attempted exercise of the decanting power violates this
10 paragraph, the trustee is deemed to have held the qualified
11 benefits property and any reinvested distributions of the
12 property as a separate share from the date of the exercise of
13 the power, and Section 2-122 of the Uniform Trust Decanting Act
14 applies to the separate share;

15 (7) if the first trust qualifies as a grantor
16 trust because of the application of 26 U.S.C. Section
17 672(f)(2)(A), as amended, the second trust shall not include or
18 omit a term that, if included in or omitted from the first-
19 trust instrument, would have prevented the first trust from
20 qualifying under 26 U.S.C. Section 672(f)(2)(A), as amended;

21 (8) as used in this paragraph, "tax benefit"
22 means a federal or state tax deduction, exemption, exclusion or
23 other benefit not otherwise listed in this section, except for
24 a benefit arising from being a grantor trust. Subject to
25 Paragraph (9) of this subsection, a second-trust instrument

.202063.6

1 shall not include or omit a term that, if included in or
2 omitted from the first-trust instrument, would have prevented
3 qualification for a tax benefit if:

4 (a) the first-trust instrument expressly
5 indicates an intent to qualify for the benefit or the first-
6 trust instrument clearly is designed to enable the first trust
7 to qualify for the benefit; and

8 (b) the transfer of property held by the
9 first trust or the first trust qualified, or, but for
10 provisions of the Uniform Trust Decanting Act other than those
11 in this section, would have qualified, for the tax benefit;

12 (9) subject to Paragraph (4) of this
13 subsection:

14 (a) except as otherwise provided in
15 Paragraph (7) of this subsection, the second trust may be a
16 nongrantor trust, even if the first trust is a grantor trust;
17 and

18 (b) except as otherwise provided in
19 Paragraph (10) of this subsection, the second trust may be a
20 grantor trust, even if the first trust is a nongrantor trust;
21 and

22 (10) an authorized fiduciary shall not
23 exercise the decanting power if a settlor objects in a signed
24 record delivered to the fiduciary within the notice period and:

25 (a) the first trust and a second trust

underscored material = new
[bracketed material] = delete

1 are both grantor trusts, in whole or in part, the first trust
2 grants the settlor or another person the power to cause the
3 second trust to cease to be a grantor trust and the second
4 trust does not grant an equivalent power to the settlor or
5 other person; or

6 (b) the first trust is a nongrantor
7 trust and a second trust is a grantor trust, in whole or in
8 part, with respect to the settlor, unless: 1) the settlor has
9 the power at all times to cause the second trust to cease to be
10 a grantor trust; or 2) the first-trust instrument contains a
11 provision granting the settlor or another person a power that
12 would cause the first trust to cease to be a grantor trust and
13 the second-trust instrument contains the same provision.

14 SECTION 2-120. [NEW MATERIAL] DURATION OF SECOND TRUST.--

15 A. Subject to Subsection B of this section, a
16 second trust may have a duration that is the same as or
17 different from the duration of the first trust.

18 B. To the extent that property of a second trust is
19 attributable to property of the first trust, the property of
20 the second trust is subject to any maximum perpetuity,
21 accumulation or suspension-of-the-power-of-alienation rules
22 that apply to property of the first trust.

23 SECTION 2-121. [NEW MATERIAL] NEED TO DISTRIBUTE NOT
24 REQUIRED.--An authorized fiduciary may exercise the decanting
25 power regardless of whether under the first trust's

.202063.6

underscored material = new
[bracketed material] = delete

1 discretionary distribution standard the fiduciary would have
2 made, or could have been compelled to make, a discretionary
3 distribution of principal at the time of the exercise.

4 SECTION 2-122. [NEW MATERIAL] SAVING PROVISION.--

5 A. If exercise of the decanting power would be
6 effective under the Uniform Trust Decanting Act except that the
7 second-trust instrument in part does not comply with the
8 Uniform Trust Decanting Act, the exercise of the power is
9 effective and the following rules apply with respect to the
10 principal of the second trust attributable to the exercise of
11 the power:

12 (1) a provision in the second-trust instrument
13 that is not permitted under the Uniform Trust Decanting Act is
14 void to the extent necessary to comply with the Uniform Trust
15 Decanting Act; and

16 (2) a provision required by the Uniform Trust
17 Decanting Act to be in the second-trust instrument that is not
18 contained in the instrument is deemed to be included in the
19 instrument to the extent necessary to comply with the Uniform
20 Trust Decanting Act.

21 B. If a trustee or other fiduciary of a second
22 trust determines that Subsection A of this section applies to a
23 prior exercise of the decanting power, the fiduciary shall take
24 corrective action consistent with the fiduciary's duties.

25 SECTION 2-123. [NEW MATERIAL] TRUST FOR CARE OF ANIMAL.--

underscored material = new
[bracketed material] = delete

1 A. As used in this section:

2 (1) "animal trust" means a trust or an
3 interest in a trust created to provide for the care of one or
4 more animals; and

5 (2) "protector" means a person appointed in an
6 animal trust to enforce the trust on behalf of the animal or,
7 if no such person is appointed in the trust, a person appointed
8 by the court for that purpose.

9 B. The decanting power may be exercised over an
10 animal trust that has a protector to the extent that the trust
11 could be decanted under the Uniform Trust Decanting Act as if
12 each animal that benefits from the trust were an individual if
13 the protector consents in a signed record to the exercise of
14 the power.

15 C. A protector for an animal has the rights under
16 the Uniform Trust Decanting Act of a qualified beneficiary.

17 D. Notwithstanding any other provision of the
18 Uniform Trust Decanting Act, if a first trust is an animal
19 trust, in an exercise of the decanting power, the second trust
20 shall provide that trust property may be applied only to its
21 intended purpose for the period the first trust benefited the
22 animal.

23 SECTION 2-124. [NEW MATERIAL] TERMS OF SECOND TRUST.--A
24 reference in the Uniform Trust Code to a trust instrument or
25 terms of the trust includes a second-trust instrument and the

.202063.6

underscored material = new
[bracketed material] = delete

1 terms of the second trust.

2 SECTION 2-125. [NEW MATERIAL] SETTLOR.--

3 A. For purposes of New Mexico law other than the
4 Uniform Trust Decanting Act and subject to Subsection B of this
5 section, a settlor of a first trust is deemed to be the settlor
6 of the second trust with respect to the portion of the
7 principal of the first trust subject to the exercise of the
8 decanting power.

9 B. In determining settlor intent with respect to a
10 second trust, the intent of a settlor of the first trust, a
11 settlor of the second trust and the authorized fiduciary may be
12 considered.

13 SECTION 2-126. [NEW MATERIAL] LATER-DISCOVERED
14 PROPERTY.--

15 A. Except as otherwise provided in Subsection C of
16 this section, if exercise of the decanting power was intended
17 to distribute all the principal of the first trust to one or
18 more second trusts, later-discovered property belonging to the
19 first trust and property paid to or acquired by the first trust
20 after the exercise of the power is part of the trust estate of
21 the second trust or trusts.

22 B. Except as otherwise provided in Subsection C of
23 this section, if exercise of the decanting power was intended
24 to distribute less than all the principal of the first trust to
25 one or more second trusts, later-discovered property belonging

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

1 to the first trust or property paid to or acquired by the first
2 trust after exercise of the power remains part of the trust
3 estate of the first trust.

4 C. An authorized fiduciary may provide in an
5 exercise of the decanting power, or by the terms of a second
6 trust, for disposition of later-discovered property belonging
7 to the first trust or property paid to or acquired by the first
8 trust after exercise of the power.

9 SECTION 2-127. [NEW MATERIAL] OBLIGATIONS.--A debt,
10 liability or other obligation enforceable against property of a
11 first trust is enforceable to the same extent against the
12 property when held by the second trust after exercise of the
13 decanting power.

14 SECTION 2-128. [NEW MATERIAL] UNIFORMITY OF APPLICATION
15 AND CONSTRUCTION.--In applying and construing the Uniform Trust
16 Decanting Act, consideration shall be given to the need to
17 promote uniformity of the law with respect to its subject
18 matter among states that enact it.

19 SECTION 2-129. [NEW MATERIAL] RELATION TO ELECTRONIC
20 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform
21 Trust Decanting Act modifies, limits or supersedes the
22 Electronic Signatures in Global and National Commerce Act, 15
23 U.S.C. Section 7001 et seq., but does not modify, limit or
24 supersede Section 101(c) of that act, 15 U.S.C. Section
25 7001(c), or authorize electronic delivery of any of the notices

underscored material = new
[bracketed material] = delete

1 described in Section 103(b) of that act, 15 U.S.C. Section
2 7003(b).

3 SECTION 3-101. Section 45-1-108 NMSA 1978 (being Laws
4 1975, Chapter 257, Section 1-108) is amended to read:

5 "45-1-108. ACTS BY HOLDER OF GENERAL POWER.--~~[A.]~~ For the
6 purpose of granting consent or approval with regard to the acts
7 or accounts of a personal representative or trustee, including
8 relief from liability or penalty for failure to post bond, or
9 to perform other duties, and for purposes of consenting to
10 modification or termination of a trust or deviation from its
11 terms, the sole holder or all co-holders of a presently
12 exercisable general power of appointment, including one in the
13 form of a power of amendment or revocation, are deemed to act
14 for beneficiaries to the extent their interests, as objects,
15 takers in default or otherwise, are subject to the power.

16 [~~B. As used in Subsection A of this section, the~~
17 ~~term "general power" is one which enables the power holder to~~
18 ~~draw absolute ownership to himself. Moreover, the common law~~
19 ~~concept of general powers is intended rather than special~~
20 ~~concepts developed for tax purposes.]"~~

21 SECTION 3-102. Section 45-1-401 NMSA 1978 (being Laws
22 1975, Chapter 257, Section 1-401) is amended to read:

23 "45-1-401. NOTICE--METHOD AND TIME OF GIVING.--

24 A. If notice of a hearing on any petition is
25 required and except for specific notice requirements as

.202063.6

underscored material = new
[bracketed material] = delete

1 otherwise provided, the petitioner shall cause notice of the
2 time and place of hearing of any petition to be given to any
3 interested person [~~having an interest in the subject of the~~
4 ~~hearing~~] or, if the interested person is represented by an
5 attorney, to the attorney. Notice shall be given:

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

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

16 (3) if the address or identity of any person
17 is not known and cannot be ascertained with reasonable
18 diligence, by publishing a copy thereof [~~at least~~] once a week
19 for [~~two~~] three consecutive weeks in a newspaper [~~published and~~
20 ~~having~~] of general circulation in the county in which the
21 hearing is to be held, [~~or, if there be no newspaper published~~
22 ~~in such county, then in a newspaper of general circulation in~~
23 ~~such county~~] the last publication of which is to be at least
24 ten days before the time set for the hearing.

25 B. The court for good cause shown may provide for a

underscored material = new
[bracketed material] = delete

1 different method or time of giving notice for ~~[any hearings]~~ a
2 hearing.

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

5 SECTION 3-103. Section 45-1-403 NMSA 1978 (being Laws
6 1975, Chapter 257, Section 1-403, as amended) is amended to
7 read:

8 "45-1-403. PLEADINGS ~~[WHEN PARTIES BOUND BY OTHERS--~~
9 ~~NOTICE]~~.--In formal proceedings involving trusts, or estates of
10 decedents, minors, protected persons or incapacitated persons,
11 and in judicially supervised settlements, ~~[the following rules~~
12 ~~apply:~~

13 ~~A.]~~ interests to be affected shall be described in
14 pleadings that give reasonable information to owners by name or
15 class, by reference to the instrument creating the interests or
16 in another appropriate manner.

17 ~~[B. a person is bound by an order binding another~~
18 ~~in the following cases:~~

19 ~~(1) an order binding the sole holder or all~~
20 ~~co-holders of a power of revocation or a presently exercisable~~
21 ~~general power of appointment, including one in the form of a~~
22 ~~power of amendment, binds other persons to the extent their~~
23 ~~interests as objects, takers in default or otherwise are~~
24 ~~subject to the power;~~

25 ~~(2) to the extent there is no conflict of~~

1 ~~interest between them or among persons represented:~~

2 ~~(a) an order binding a conservator binds~~
3 ~~the person whose estate the conservator controls;~~

4 ~~(b) an order binding a guardian binds~~
5 ~~the protected person if no conservator of the protected~~
6 ~~person's estate has been appointed;~~

7 ~~(c) an order binding a trustee binds~~
8 ~~beneficiaries of the trust in proceedings to probate a will~~
9 ~~establishing or adding to a trust, to review the acts or~~
10 ~~accounts of a former fiduciary and in proceedings involving~~
11 ~~creditors or other third parties;~~

12 ~~(d) an order binding a personal~~
13 ~~representative binds persons interested in the undistributed~~
14 ~~assets of a decedent's estate in actions or proceedings by or~~
15 ~~against the estate; and~~

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

20 ~~(3) unless otherwise represented, a minor or~~
21 ~~an incapacitated, unborn or unascertained person is bound by an~~
22 ~~order to the extent the minor's or the incapacitated, unborn or~~
23 ~~unascertained person's interest is adequately represented by~~
24 ~~another party having a substantially identical interest in the~~
25 ~~proceeding;~~

underscored material = new
[bracketed material] = delete

1 ~~C. if no conservator or guardian has been~~
2 ~~appointed, a parent may represent a minor child;~~

3 ~~D. notice is required as follows:~~

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

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

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

25 SECTION 3-104. A new section of the Uniform Probate Code,

.202063.6

underscored material = new
[bracketed material] = delete

1 Section 45-1-403.1 NMSA 1978, is enacted to read:

2 "45-1-403.1. [NEW MATERIAL] REPRESENTATION--BASIC
3 EFFECT.--

4 A. Notice to a person who may represent and bind
5 another person pursuant to the provisions of Chapter 45 NMSA
6 1978 has the same effect as if notice were given directly to
7 the other person.

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

13 C. Except as otherwise provided in Sections
14 46A-4-411 and 46A-6-602 NMSA 1978, a person who, pursuant to
15 the provisions of Chapter 45 NMSA 1978, may represent a settlor
16 who lacks capacity, may receive notice and give a binding
17 consent on the settlor's behalf.

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

22 SECTION 3-105. A new section of the Uniform Probate Code,
23 Section 45-1-403.2 NMSA 1978, is enacted to read:

24 "45-1-403.2. [NEW MATERIAL] REPRESENTATION BY HOLDER OF
25 GENERAL TESTAMENTARY POWER OF APPOINTMENT.--To the extent there

.202063.6

underscoring material = new
[bracketed material] = delete

1 is no conflict of interest between the holder of a general
2 testamentary power of appointment and the persons represented
3 with respect to the particular question or dispute, the holder
4 may represent and bind persons whose interests, as permissible
5 appointees, takers in default or otherwise, are subject to the
6 power."

7 SECTION 3-106. A new section of the Uniform Probate Code,
8 Section 45-1-403.3 NMSA 1978, is enacted to read:

9 "45-1-403.3. [NEW MATERIAL] REPRESENTATION BY FIDUCIARIES
10 AND PARENTS.--To the extent there is no conflict of interest
11 between the representative and the person represented or among
12 those being represented with respect to a particular question
13 or dispute:

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

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

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

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

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

.202063.6

underscored material = new
[bracketed material] = delete

1 estate; and

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

5 SECTION 3-107. A new section of the Uniform Probate Code,
6 Section 45-1-403.4 NMSA 1978, is enacted to read:

7 "45-1-403.4. [NEW MATERIAL] REPRESENTATION BY PERSON
8 HAVING SUBSTANTIALLY IDENTICAL INTEREST.--Unless otherwise
9 represented, a minor, incapacitated or unborn person, or a
10 person whose identity or location is unknown and not reasonably
11 ascertainable, may be represented by and bound by another
12 having a substantially identical interest with respect to the
13 particular question or dispute, but only to the extent that
14 there is no conflict of interest between the representative and
15 the person represented."

16 SECTION 3-108. A new section of the Uniform Probate Code,
17 Section 45-1-403.5 NMSA 1978, is enacted to read:

18 "45-1-403.5. [NEW MATERIAL] APPOINTMENT OF
19 REPRESENTATIVE.--

20 A. If the court determines that an interest is not
21 represented under Chapter 45 NMSA 1978, or that the otherwise
22 available representation might be inadequate, the court may
23 appoint a representative to receive notice, give consent and
24 otherwise represent, bind and act on behalf of a minor,
25 incapacitated or unborn person, or a person whose identity or

.202063.6

underscored material = new
[bracketed material] = delete

1 location is unknown. A representative may be appointed to
2 represent several persons or interests.

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

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

10 SECTION 3-109. Section 45-2-506 NMSA 1978 (being Laws
11 1993, Chapter 174, Section 29) is amended to read:

12 "45-2-506. CHOICE OF LAW AS TO EXECUTION.--A written will
13 is valid if executed in compliance with Section 45-2-502 NMSA
14 1978 or if its execution complies with the law at the time of
15 execution of the place where the will is executed or of the law
16 of the place where at the time of execution or at the time of
17 death the testator is domiciled, has a place of abode or is a
18 national."

19 SECTION 3-110. Section 45-2-517 NMSA 1978 (being Laws
20 1995, Chapter 210, Section 13) is amended to read:

21 "45-2-517. PENALTY CLAUSE FOR CONTEST.--A provision in a
22 governing instrument purporting to penalize an interested
23 person for contesting [a] the governing instrument or
24 instituting other proceedings relating to [~~a governing~~
25 ~~instrument or an~~] the estate is unenforceable if probable cause

.202063.6

underscored material = new
[bracketed material] = delete

1 exists for instituting proceedings."

2 SECTION 3-111. Section 45-2-608 NMSA 1978 (being Laws
3 1993, Chapter 174, Section 47) is amended to read:

4 "45-2-608. EXERCISE OF POWER OF APPOINTMENT.--In the
5 absence of a requirement that a power of appointment be
6 exercised by a reference or by an express or specific reference
7 to the power, a general residuary clause in a will or a will
8 making general disposition of all of the testator's property
9 expresses an intention to exercise a power of appointment held
10 by the testator only if:

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

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

17 SECTION 3-112. Section 45-2-704 NMSA 1978 (being Laws
18 1993, Chapter 174, Section 52) is amended to read:

19 "45-2-704. POWER OF APPOINTMENT--~~[MEANING OF]~~ COMPLIANCE
20 WITH SPECIFIC REFERENCE REQUIREMENT.--~~[If a governing~~
21 ~~instrument creating a power of appointment expressly requires~~
22 ~~that the power be exercised by a reference, an express~~
23 ~~reference or a specific reference to the power or its source,~~
24 ~~it is presumed that the donor's intention, in requiring that~~
25 ~~the donee exercise the power by making reference to the~~

underscored material = new
[bracketed material] = delete

1 ~~particular power or to the creating instrument, was to prevent~~
2 ~~an inadvertent exercise of the power.] A powerholder's~~
3 ~~substantial compliance with a formal requirement of appointment~~
4 ~~imposed in a governing instrument by the donor, including a~~
5 ~~requirement that the instrument exercising the power of~~
6 ~~appointment make reference or specific reference to the power,~~
7 ~~is sufficient if:~~

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

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

13 SECTION 3-113. Section 45-2-904 NMSA 1978 (being Laws
14 1992, Chapter 66, Section 4, as amended) is amended to read:

15 "45-2-904. EXCLUSIONS.--

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

17 [~~A.~~] (1) a nonvested property interest or a
18 power of appointment arising out of a nondonative transfer,
19 except a nonvested property interest or a power of appointment
20 arising out of:

21 [~~(1)~~] (a) a premarital or postmarital
22 agreement;

23 [~~(2)~~] (b) a separation or divorce
24 settlement;

25 [~~(3)~~] (c) a spouse's election;

.202063.6

underscored material = new
[bracketed material] = delete

1 [~~(4)~~] (d) a similar arrangement arising
2 out of a prospective, existing or previous marital relationship
3 between the parties;

4 [~~(5)~~] (e) a contract to make or not to
5 revoke a will or trust;

6 [~~(6)~~] (f) a contract to exercise or not
7 to exercise a power of appointment;

8 [~~(7)~~] (g) a transfer in satisfaction of
9 a duty of support; or

10 [~~(8)~~] (h) a reciprocal transfer;

11 [~~B-~~] (2) a fiduciary's power relating to the
12 administration or management of assets, including the power of
13 a fiduciary to sell, lease or mortgage property and the power
14 of a fiduciary to determine principal and income;

15 [~~G-~~] (3) a power to appoint a fiduciary;

16 [~~D-~~] (4) a discretionary power of a trustee to
17 distribute principal before termination of a trust to a
18 beneficiary having an indefeasibly vested interest in the
19 income and principal;

20 [~~E-~~] (5) a nonvested property interest held by
21 a charity, government or governmental agency or subdivision if
22 the nonvested property interest is preceded by an interest held
23 by another charity, government or governmental agency or
24 subdivision;

25 [~~F-~~] (6) a nonvested property interest in or a

underscored material = new
[bracketed material] = delete

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

12 [~~G.~~] (7) a property interest, power of
13 appointment or arrangement that was not subject to the
14 common-law rule against perpetuities or that is excluded by
15 another statute of New Mexico; or

16 [~~H.~~] (8) a property interest [~~or arrangement~~
17 ~~subject to a time limit under the provisions of Section~~
18 ~~45-2-907 NMSA 1978]~~ held in trust.

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

25 (1) provides for the distribution of the

underscored material = new
[bracketed material] = delete

1 interest upon termination of the trust, the property shall be
2 distributed as though termination occurred at that time;

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

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

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

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

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

25 (1) a trust holds an interest in a

underscored material = new
[bracketed material] = delete

1 corporation, a limited liability company, a partnership, a
2 statutory trust, a business trust or another business entity;

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

5 (3) the entity terminates; and

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

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

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

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

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

19 (1) intangible personal property; or

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

24 **SECTION 3-114.** Section 45-3-712 NMSA 1978 (being Laws
25 1975, Chapter 257, Section 3-712) is amended to read:

.202063.6

underscored material = new
[bracketed material] = delete

1 "45-3-712. IMPROPER EXERCISE OF POWER--BREACH OF
2 FIDUCIARY DUTY.--If the exercise of power concerning the estate
3 is improper, the personal representative is liable to
4 interested persons for damage or loss resulting from breach of
5 [his] the personal representative's fiduciary duty to the same
6 extent as a trustee of an express trust. The rights of
7 purchasers and others dealing with a personal representative
8 shall be determined as provided in Sections [~~3-713 and 3-714~~]
9 45-3-713 and 45-3-714 NMSA 1978."

10 SECTION 3-115. Section 45-3-801 NMSA 1978 (being Laws
11 1975, Chapter 257, Section 3-801, as amended) is repealed and a
12 new Section 45-3-801 NMSA 1978 is enacted to read:

13 "45-3-801. [NEW MATERIAL] NOTICE TO CREDITORS.--
14 A. A personal representative upon appointment may
15 publish a notice to creditors once a week for three successive
16 weeks in a newspaper of general circulation in the county in
17 which the probate proceeding is pending, announcing the
18 personal representative's appointment and address and notifying
19 creditors of the estate to present their claims within four
20 months after the date of the first publication of the notice or
21 be forever barred.

22 B. A personal representative may give written
23 notice by mail or other delivery to a creditor, announcing the
24 personal representative's appointment and address and notifying
25 the creditor to present the creditor's claim within four months

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

1 after the published notice, if given as provided in Subsection
2 A of this section, or within sixty days after the mailing or
3 other delivery of the notice, whichever is later, or be forever
4 barred.

5 C. The personal representative is not liable to
6 anyone for giving or failing to give notice pursuant to this
7 section."

8 SECTION 3-116. Section 45-3-803 NMSA 1978 (being Laws
9 1975, Chapter 257, Section 3-803, as amended) is amended to
10 read:

11 "45-3-803. LIMITATIONS ON PRESENTATION OF CLAIMS.--

12 A. All claims against a decedent's estate that
13 arose before the death of the decedent, including claims of the
14 state and any political subdivision of the state, whether due
15 or to become due, absolute or contingent, liquidated or
16 unliquidated or founded on contract, tort or other legal basis,
17 if not barred earlier by another statute of limitations or
18 nonclaim statute, are barred against the estate, the personal
19 representative and the heirs, devisees and nonprobate
20 transferees of the decedent unless presented within the earlier
21 of the following:

- 22 (1) one year after the decedent's death; or
23 (2) the time provided by Subsection [A] B of
24 Section 45-3-801 NMSA 1978 for creditors who are given actual
25 notice and the time provided in Subsection [B] A of Section

.202063.6

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

1 45-3-801 NMSA 1978 for all creditors barred by publication.

2 B. A claim described in Subsection A of this
3 section that is barred by the nonclaim statute of the
4 decedent's domicile before the giving of notice to creditors in
5 this state is barred in this state.

6 C. All claims against a decedent's estate that
7 arise at or after the death of the decedent, including claims
8 of the state and any political subdivision of the state,
9 whether due or to become due, absolute or contingent,
10 liquidated or unliquidated or founded on contract, tort or
11 other legal basis, are barred against the estate, the personal
12 representative and the heirs and devisees of the decedent
13 unless presented as follows:

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

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

20 D. Nothing in this section affects or prevents:

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

23 (2) to the limits of the insurance protection
24 only, a proceeding to establish liability of the decedent or
25 the personal representative for which the decedent or personal

.202063.6

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

1 representative is protected by liability insurance; or
2 (3) collection of compensation for services
3 rendered and reimbursement for expenses advanced by the
4 personal representative or by the attorney or accountant for
5 the personal representative of the estate."

6 SECTION 3-117. Section 45-3-902 NMSA 1978 (being Laws
7 1975, Chapter 257, Section 3-902, as amended) is amended to
8 read:

9 "45-3-902. DISTRIBUTION--ORDER IN WHICH ASSETS
10 APPROPRIATED--ABATEMENT.--

11 A. Except as provided in Subsection C of this
12 section, shares of distributees abate, without any preference
13 or priority as between real and personal property, in the
14 following order:

- 15 (1) property not disposed of by the will;
16 (2) residuary devise;
17 (3) general devise; and
18 (4) specific devise.

19 B. For purposes of abatement, a general devise
20 charged on any specific property or fund is a specific devise
21 to the extent of the value of the property on which it is
22 charged and, upon the failure or insufficiency of the property
23 on which it is charged, a general devise to the extent of the
24 failure or insufficiency. Abatement within each classification
25 is in proportion to the amounts of property each of the

.202063.6

underscored material = new
[bracketed material] = delete

1 beneficiaries would have received if full distribution of the
2 property had been made in accordance with the terms of the
3 will.

4 C. If the will expresses an order of abatement or
5 if the testamentary plan or the express or implied purpose of
6 the devise would be defeated by the order of abatement stated
7 in Subsection A of this section, the shares of the distributees
8 abate as may be found necessary to give effect to the intention
9 of the testator.

10 D. If an estate of a decedent consists partly of
11 separate property and partly of community property, the debts
12 and expenses of administration shall be apportioned and charged
13 against the different kinds of property in accordance with the
14 provisions of Subsection B of Section [~~45-2-805~~] 45-2-807 NMSA
15 1978.

16 E. If the subject of a preferred devise is sold or
17 used incident to administration, abatement shall be achieved by
18 appropriate adjustments in or contribution from other interests
19 in the remaining assets."

20 SECTION 3-118. Section 45-3-905 NMSA 1978 (being Laws
21 1975, Chapter 257, Section 3-905) is repealed and a new Section
22 45-3-905 NMSA 1978 is enacted to read:

23 "45-3-905. [NEW MATERIAL] PENALTY CLAUSE FOR CONTEST.--A
24 provision in a will purporting to penalize any interested
25 person for contesting the will or instituting other proceedings

.202063.6

underscoring material = new
[bracketed material] = delete

1 relating to the estate is unenforceable if probable cause
2 exists for instituting proceedings."

3 SECTION 3-119. Section 45-3-912 NMSA 1978 (being Laws
4 1975, Chapter 257, Section 3-912) is amended to read:

5 "45-3-912. PRIVATE AGREEMENTS AMONG SUCCESSORS TO
6 DECEDENT BINDING ON PERSONAL REPRESENTATIVE.--Subject to the
7 rights of creditors and taxing authorities, ~~[competent]~~
8 successors or their representatives may agree among themselves
9 to alter the interests, shares or amounts to which they are
10 entitled under the will of the decedent or under the laws of
11 intestacy in any way that they provide in a written contract
12 executed by all who are affected by its provisions. The
13 personal representative shall abide by the terms of the
14 agreement subject to ~~[his]~~ the personal representative's
15 obligation to administer the estate for the benefit of
16 creditors, to pay all taxes and costs of administration and to
17 carry out the responsibilities of ~~[his]~~ the personal
18 representative's office for the benefit of any successors of
19 the decedent who are not parties. Personal representatives of
20 decedents' estates are not required to see to the performance
21 of trusts if the trustee thereof is another person who is
22 willing to accept the trust. Accordingly, trustees of a
23 testamentary trust are successors for the purposes of this
24 section. Nothing in this section relieves trustees of any
25 duties owed to beneficiaries of trusts."

.202063.6

underscored material = new
[bracketed material] = delete

1 SECTION 3-120. Section 45-3-1003 NMSA 1978 (being Laws
2 1975, Chapter 257, Section 3-1003, as amended) is amended to
3 read:

4 "45-3-1003. CLOSING ESTATES--BY SWORN STATEMENT OF
5 PERSONAL REPRESENTATIVE.--

6 A. Unless prohibited by order of the district court
7 and except for estates being administered in supervised
8 administration proceedings, a personal representative may close
9 an estate by filing with the court, no earlier than [~~three~~] six
10 months after the date of original appointment of a general
11 personal representative for the estate, a verified statement
12 stating that the personal representative or a previous personal
13 representative has:

14 (1) determined that the time limited for
15 presentation of creditors' claims has expired;

16 (2) fully administered the estate of the
17 decedent by making payment, settlement or other disposition of
18 all claims that were presented, expenses of administration and
19 estate, inheritance and other death taxes, except as specified
20 in the statement, and that the assets of the estate have been
21 distributed to the persons entitled. If any claims remain
22 undischarged, the statement shall state whether the personal
23 representative has distributed the estate subject to possible
24 liability with the agreement of the distributees or it shall
25 state in detail other arrangements that have been made to

.202063.6

1 accommodate outstanding liabilities; and

2 (3) sent a copy of the statement to all
3 distributees of the estate and to all creditors or other
4 claimants of whom the personal representative is aware whose
5 claims are neither paid nor barred and has furnished a full
6 account in writing of the personal representative's
7 administration to the distributees whose interests are affected
8 thereby, including guardians ad litem appointed pursuant to
9 Section 45-1-403 NMSA 1978, conservators and guardians.

10 B. If no proceedings involving the personal
11 representative are pending in the district court one year after
12 the closing statement is filed, the appointment of the personal
13 representative terminates."

14 SECTION 3-121. Section 45-3-1101 NMSA 1978 (being Laws
15 1975, Chapter 257, Section 3-1101, as amended) is amended to
16 read:

17 "45-3-1101. EFFECT OF APPROVAL OF AGREEMENTS INVOLVING
18 TRUSTS, INALIENABLE INTERESTS OR INTERESTS OF THIRD
19 PERSONS.--

20 A. A compromise of any controversy is binding on
21 all the parties thereto as to any lawful matter involving the
22 estate. Matters that may be resolved by the compromise
23 include:

24 (1) admission to probate of any instrument
25 offered for formal probate as the will of a decedent;

.202063.6

underscored material = new
[bracketed material] = delete

1 (2) the construction, validity or effect of
2 any governing instrument;

3 (3) the rights or interests in the estate of
4 the decedent;

5 (4) the rights or interests of any successor;
6 [~~or~~] and

7 (5) the administration of the estate, if
8 approved in a formal proceeding in the district court for that
9 purpose.

10 B. [~~An approved~~] A court-approved compromise is
11 binding even though it may affect a trust or an inalienable
12 interest. A compromise does not impair the rights of creditors
13 or of taxing authorities [~~who~~] that are not parties to it."

14 SECTION 3-122. Section 45-3-1102 NMSA 1978 (being Laws
15 1975, Chapter 257, Section 3-1102, as amended) is amended to
16 read:

17 "45-3-1102. PROCEDURE FOR SECURING COURT APPROVAL OF
18 COMPROMISE.--The procedure for securing court approval of a
19 compromise is as follows:

20 A. the terms of the compromise shall be set forth
21 in an agreement in writing [~~which~~] that shall be executed by
22 all [~~competent~~] persons [~~and parents acting for any minor~~
23 ~~child~~] or their representatives having beneficial interests or
24 having claims [~~which~~] that will or may be affected by the
25 compromise;

.202063.6

underscored material = new
[bracketed material] = delete

1 B. any interested person, or the person's
2 representative, including the personal representative, if any,
3 or a trustee, may then submit the agreement to the district
4 court for its approval and for execution by the personal
5 representative, the trustee of every affected testamentary
6 trust and other fiduciaries and representatives; and

7 C. after notice to all interested persons or their
8 representatives, including the personal representative of any
9 estate and all affected trustees of trusts, the district court,
10 if it finds that an actual contest or controversy exists and
11 that the effect of the agreement upon the interests of persons
12 represented by fiduciaries or other representatives is just and
13 reasonable, shall make an order approving the agreement and
14 directing all fiduciaries under its supervision to execute the
15 agreement. Minor children represented only by their parents
16 may be bound only if their parents join with other [~~competent~~]
17 persons or their representatives in execution of the
18 compromise. Upon the making of the order and the execution of
19 the agreement, all further disposition of the estate shall then
20 be made in accordance with the terms of the agreement."

21 **SECTION 3-123.** Section 46A-1-113 NMSA 1978 (being Laws
22 2011, Chapter 124, Section 95) is amended to read:

23 "46A-1-113. INSURABLE INTEREST OF TRUSTEE.--

24 A. In this section, "settlor" means a person
25 [~~including a person for which a fiduciary or agent is acting]~~

.202063.6

underscored material = new
[bracketed material] = delete

1 that executes a trust instrument. "Settlor" includes a person
2 for which a fiduciary or agent is acting.

3 B. A trustee of a trust has an insurable interest
4 in the life of an individual insured under a life insurance
5 policy that is owned by [~~the trust or~~] the trustee of the trust
6 acting in a fiduciary capacity or that designates the trust
7 itself as the owner if, on the date the policy is issued:

8 (1) the insured is:

9 (a) a settlor of the trust; or

10 (b) an individual in whom a settlor of
11 the trust has, or would have had if living at the time the
12 policy was issued, an insurable interest; and

13 (2) the life insurance proceeds are primarily
14 for the benefit of one or more trust beneficiaries that have:

15 (a) an insurable interest in the life of
16 the insured; or

17 (b) a substantial interest engendered by
18 love and affection in the continuation of the life of the
19 insured and, if not already included under Subparagraph (a) of
20 this paragraph, who are: 1) related within the third degree or
21 closer, as measured by the civil law system of determining
22 degrees of relation, either by blood or law, to the insured; or
23 2) stepchildren of the insured."

24 SECTION 3-124. REPEAL.--Sections 45-2-608 and 45-2-704
25 NMSA 1978 (being Laws 1993, Chapter 174, Sections 47 and 52)

.202063.6

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

1 are repealed.

2 SECTION 3-125. REPEAL.--Section 45-2-907 NMSA 1978 (being
3 Laws 1995, Chapter 210, Section 30) is repealed.

4 SECTION 3-126. TEMPORARY PROVISION--INSTRUCTION TO
5 COMPILER.--The compiler shall compile Sections 1-101 through
6 1-603 of this act in Chapter 46 NMSA 1978.

7 SECTION 3-127. EFFECTIVE DATE.--

8 A. The effective date of the provisions of Sections
9 3-101 through 3-123 and 3-125 of this act is July 1, 2016.

10 B. The effective date of the provisions of Sections
11 1-101 through 1-603, 2-101 through 2-129 and 3-124 of this act
12 is January 1, 2017.