

1 SENATE BILL 322

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Antonio Maestas

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10 AN ACT

11 RELATING TO DOMESTIC AFFAIRS; REQUIRING PROCEEDINGS FOR THE
12 DISSOLUTION OF MARRIAGE, SEPARATION, ANNULMENT OF MARRIAGE AND
13 PATERNITY TO ABATE UPON THE DEATH OF A PARTY; AMENDING THE
14 UNIFORM PROBATE CODE.

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

17 SECTION 1. Section 37-2-4 NMSA 1978 (being Laws 1884,
18 Chapter 5, Section 2, as amended) is amended to read:

19 "37-2-4. WHAT ACTIONS ABATE.--~~[SEC. 199.]~~ No action
20 pending in any court shall abate by the death of either or both
21 the parties [~~thereto~~] to it, except:

22 A. an action for libel, slander, malicious
23 prosecution, assault or assault and battery, for a nuisance or
24 against a [~~justice of the peace~~] magistrate for misconduct in
25 office, which shall abate by the death of the defendant; or

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1 B. a petition for dissolution of marriage,
2 separation, annulment, division of property or debts, spousal
3 support, child support or determination of paternity, which
4 shall abate upon the death of either party."

5 SECTION 2. Section 40-4-20 NMSA 1978 (being Laws 1901,
6 Chapter 62, Section 31, as amended) is amended to read:

7 "40-4-20. FAILURE TO DIVIDE OR DISTRIBUTE PROPERTY ON THE
8 ENTRY OF A DECREE OF DISSOLUTION OF MARRIAGE OR SEPARATION--
9 ~~[DISTRIBUTION OF SPOUSAL OR CHILD SUPPORT AND DETERMINATION OF~~
10 ~~PATERNITY WHEN DEATH OCCURS DURING PROCEEDINGS FOR DISSOLUTION~~
11 ~~OF MARRIAGE, SEPARATION, ANNULMENT OF MARRIAGE OR PATERNITY]~~
12 ABATEMENT OF PROCEEDINGS FOR DISSOLUTION OF MARRIAGE,
13 SEPARATION, ANNULMENT OF MARRIAGE OR PATERNITY UPON DEATH OF A
14 PARTY.--

15 A. The failure to divide or distribute property on
16 the entry of a decree of dissolution of marriage or of
17 separation shall not affect the property rights of either the
18 husband or wife, and either may subsequently institute and
19 prosecute a suit for division and distribution or with
20 reference to any other matter pertaining thereto that could
21 have been litigated in the original proceeding for dissolution
22 of marriage or separation.

23 B. Upon the filing and service of a petition for
24 dissolution of marriage, separation, annulment, division of
25 property or debts, spousal support, child support or

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1 determination of paternity pursuant to the provisions of
2 Chapter 40, Article 4 or [++] 11A NMSA 1978, if a party to the
3 action dies during the pendency of the action, but prior to the
4 entry of a decree granting dissolution of marriage, separation,
5 annulment or determination of paternity, the proceedings for
6 the determination, division and distribution of marital
7 property rights and debts, distribution of spousal or child
8 support or determination of paternity shall [not] abate. [The
9 court shall conclude the proceedings as if both parties had
10 survived. The court may allow the spouse or any children of
11 the marriage support as if the decedent had survived, pursuant
12 to the provisions of Chapter 40, Article 4 or 11 NMSA 1978. In
13 determining the support, the court shall, in addition to the
14 factors listed in Chapter 40, Article 4 NMSA 1978, consider the
15 amount and nature of the property passing from the decedent to
16 the person for whom the support would be paid, whether by will
17 or otherwise.]"

18 SECTION 3. Section 45-2-804 NMSA 1978 (being Laws 1993,
19 Chapter 174, Section 63, as amended) is amended to read:

20 "45-2-804. REVOCATION OF PROBATE AND NONPROBATE TRANSFERS
21 BY DIVORCE--NO REVOCATION BY OTHER CHANGES OF CIRCUMSTANCES.--

22 A. As used in this section:

23 (1) "disposition or appointment of property"
24 includes a transfer of an item of property or other benefit to
25 a beneficiary designated in a revocable trust or other

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1 governing instrument;

2 (2) "divorce or annulment" means a divorce,
3 annulment or dissolution or declaration of invalidity of a
4 marriage that would exclude the spouse as a surviving spouse
5 within the meaning of Section 45-2-802 NMSA 1978 or the
6 commencement of a valid proceeding concluded [~~either~~] before
7 [~~or after~~] an individual's death by an order purporting to
8 terminate all marital property rights, including a property
9 division judgment entered pursuant to the provisions of Section
10 40-4-20 NMSA 1978. A decree of separation that does not
11 terminate the status of spouse is not a divorce for purposes of
12 this section;

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

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

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

25 (6) "revocable", with respect to a

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1 disposition, appointment, provision or nomination, means one
2 under which the divorced individual, at the time of the divorce
3 or annulment, was alone empowered by law or under the governing
4 instrument to cancel the designation in favor of the former
5 spouse or former spouse's relative whether or not the divorced
6 individual was then empowered to designate the divorced
7 individual's own self in place of the former spouse or in place
8 of the former spouse's relative and whether or not the divorced
9 individual then had the capacity to exercise the power.

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

15 (1) revokes any revocable:

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

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

25 (c) nomination in a governing

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1 instrument, nominating a divorced individual's former spouse or
2 a relative of the divorced individual's former spouse to serve
3 in any fiduciary or representative capacity, including a
4 personal representative, executor, trustee, conservator, agent
5 or guardian; and

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

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

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

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1 annulment.

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

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

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

19 Written notice of the divorce, annulment or remarriage
20 pursuant to the provisions of this section shall be mailed to
21 the payor's or other third party's main office or home by
22 registered or certified mail, return receipt requested, or
23 served upon the payor or other third party in the same manner
24 as a summons in a civil action. Upon receipt of the written
25 notice of the divorce, annulment or remarriage, a payor or

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

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

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

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