

HOUSE BILL 124

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Joanne J. Ferrary

AN ACT

RELATING TO PROTECTED PERSONS; AMENDING THE UNIFORM PROBATE
CODE TO PROVIDE PROCEDURES UPON THE DEATH OF A PROTECTED
PERSON, GUARDIAN OR CONSERVATOR.

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

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

"45-5-306. DEATH OF PROTECTED PERSON OR GUARDIAN--
INCAPACITY OF GUARDIAN.--~~[The authority and responsibility of a
guardian for an incapacitated person terminates upon the death
of the guardian or protected person, the determination of
incapacity of the guardian or upon removal or resignation as
provided in Section 45-5-307 NMSA 1978. Upon the death of the
protected person, the guardian shall submit notice to the
appointing court. Testamentary appointment under an informally~~

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1 ~~probated will terminates if the will is later denied probate in~~
2 ~~a formal proceeding. Termination does not affect the~~
3 ~~guardian's liability for prior acts nor the guardian's~~
4 ~~obligation to account for funds and assets of the guardian's~~
5 ~~protected person.]~~

6 A. Upon the death of the guardian, the authority
7 and responsibility of the guardian for a protected person
8 terminates. The guardianship of the protected person continues
9 after the death of the guardian, pending the appointment of a
10 successor guardian pursuant to Section 45-5-303 NMSA 1978 and
11 Subsection B of Section 45-5-307 NMSA 1978. Any interested
12 person may notify the court of the guardian's death, and the
13 court shall follow the procedures set out in Section 45-5-303
14 NMSA 1978 and Subsection B of Section 45-5-307 NMSA 1978 to
15 appoint a successor guardian for the protected person. If the
16 guardian has a testamentary document nominating a successor
17 guardian, the court shall consider the nominee for appointment
18 as successor guardian of the protected person.

19 B. Upon the death of the protected person, the
20 guardian shall notify the court within three days of learning
21 of the death of the protected person. The guardian shall have
22 the authority to obtain the death certificate of the protected
23 person without a court order. Upon the death of the protected
24 person, the guardian or an interested person may request that
25 the court hold a hearing for the following limited purposes:

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1 (1) to direct burial, cremation or funeral
2 arrangements for the protected person; provided that the
3 protected person does not have next of kin willing to make
4 those arrangements or a legally executed document appointing a
5 personal representative who is willing to accept those duties;
6 and

7 (2) to authorize the guardian to use the
8 protected person's estate to pay for reasonable funeral
9 services.

10 The court shall hold a hearing within seven days of the
11 request and may issue an appropriate order resulting from the
12 hearing.

13 C. If a protected person dies, the guardian shall
14 deliver to the court for safekeeping any will of the deceased
15 protected person that may have come into the guardian's
16 possession, inform the personal representative or a beneficiary
17 named in the will that the guardian has done so and retain the
18 estate for delivery to a duly appointed personal representative
19 of the decedent or other persons entitled to the estate. If,
20 after forty days from the death of the protected person, no
21 other person has been appointed personal representative and no
22 application or petition for appointment has been filed, the
23 guardian may apply to exercise the powers and duties of a
24 personal representative so that the guardian may proceed to
25 administer and distribute the decedent's estate without

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1 additional or further appointment. Upon request for an order
2 granting the powers of a personal representative to a guardian,
3 after notice to any person demanding notice under Section
4 45-3-204 NMSA 1978 and to any person nominated personal
5 representative in any will of which the applicant is aware, the
6 court may order the conferral of the power upon determining
7 that there is no objection and endorse the letters of the
8 guardian to note that the formerly protected person is deceased
9 and that the guardian has acquired all of the powers and duties
10 of a personal representative. The making and entry of an order
11 under this section shall have the effect of an order of
12 appointment of a personal representative as provided in
13 Sections 45-3-101 through 45-3-1204 NMSA 1978, except that the
14 estate in the name of the guardian, after administration, may
15 be distributed to the decedent's successors without prior
16 retransfer to the guardian as personal representative.

17 D. If both the guardian and the conservator seek
18 appointment as the personal representative, the conservator
19 shall have priority for appointment as the personal
20 representative of the decedent's estate. In the absence of a
21 conservator, the court may appoint a guardian as the personal
22 representative of the decedent's estate.

23 E. Upon the determination of the guardian's
24 incapacity, the court shall follow the procedures in Section
25 45-5-303 NMSA 1978 and Subsection B of Section 45-5-307 NMSA

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1 1978.

2 F. The guardian shall file a final report with the
3 court within forty-five days of the protected person's death.
4 Upon receipt of the final report, the court shall hold a
5 hearing to determine the deliverance of the decedent's estate
6 to a duly appointed personal representative or other persons
7 entitled to the estate. After holding a hearing, the court
8 shall issue an order terminating the guardianship and the
9 guardian's authority upon the court's satisfaction that all
10 matters are resolved. Termination does not affect the
11 guardian's liability for prior acts nor the guardian's
12 obligation to account for funds and assets of the guardian's
13 protected person."

14 SECTION 2. Section 45-5-307 NMSA 1978 (being Laws 1975,
15 Chapter 257, Section 5-307, as amended) is amended to read:

16 "45-5-307. DEATH, SUBSTITUTION, REVIEW AND TERMINATION OF
17 GUARDIANSHIP.--

18 A. On the petition of the [~~incapacitated~~] protected
19 person or any person interested in the [~~incapacitated~~]
20 protected person's welfare and upon notice and hearing, the
21 court may remove a guardian and appoint a successor if it is in
22 the best interest of the [~~incapacitated~~] protected person or if
23 the guardian fails to comply with the guardian's duties as
24 required by Section 45-5-312 NMSA 1978.

25 B. Upon death, removal or resignation of a

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1 guardian, the court may appoint another guardian or make any
2 other order that may be appropriate. If a successor guardian
3 is appointed, the successor guardian succeeds to the title and
4 powers of the successor guardian's predecessor.

5 C. The ~~[incapacitated]~~ protected person or any
6 person interested in the ~~[incapacitated]~~ protected person's
7 welfare may petition for an order that the ~~[incapacitated]~~
8 protected person is no longer incapacitated and for removal or
9 resignation of the guardian. A request for this order may be
10 made by informal letter to the court or judge. Any person who
11 knowingly interferes with transmission of this kind of request
12 to the court may be adjudged guilty of contempt of court.

13 D. Unless waived by the court upon the filing of a
14 petition to terminate a guardianship for reasons other than the
15 death of the ~~[incapacitated]~~ protected person, the court shall
16 follow the same procedures to safeguard the rights of the
17 ~~[incapacitated]~~ protected person as those that apply to a
18 petition for appointment of a guardian as set forth in Section
19 45-5-303 NMSA 1978.

20 E. In a proceeding that increases the guardian's
21 authority or reduces the autonomy of the protected person, the
22 court shall follow the same procedures to safeguard the rights
23 of the ~~[incapacitated]~~ protected person as those that apply to
24 a petition for appointment of a guardian, as set forth in
25 Section 45-5-303 NMSA 1978.

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1 F. Following receipt of a request for review, the
2 court shall hold a status hearing, which may be informal, to
3 determine the appropriate order to be entered. If the court
4 finds the [~~incapacitated~~] protected person is capable of more
5 autonomy than at the time of the original order, the court may
6 enter an order removing the guardian, terminating the
7 guardianship or reducing the powers previously granted to the
8 guardian. The court has the option to follow all or part of
9 the procedures that apply for the appointment of a guardian as
10 set forth in Section 45-5-303 NMSA 1978.

11 G. At any time following the appointment of a
12 guardian, but not later than ten years after the initial
13 appointment of a guardian for a protected person and every ten
14 years thereafter, the court shall:

15 (1) hold a status hearing, after notice to the
16 guardian, the protected person and appropriate interested
17 persons, to review the status of the protected person's
18 capacity and the continued need for a guardian; or

19 (2) appoint a court investigator to assess the
20 protected person's capacity. The court investigator shall
21 prepare a detailed report to the court regarding the status of
22 the protected person's capacity and the continued need for a
23 guardian. Any report shall be made available to the guardian,
24 the protected person and interested persons identified by the
25 court.

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1 H. If the court is unable to contact either the
2 guardian or the protected person and neither appears for the
3 status hearing held pursuant to Paragraph (1) of Subsection G
4 of this section, the court shall appoint a guardian ad litem or
5 court investigator to investigate and report to the court as to
6 the status of the protected person and the guardian. Any
7 report shall be made available to the guardian, the protected
8 person and appropriate interested persons, if known to the
9 court.

10 I. Following the status hearing or the court's
11 report from the court investigator or guardian ad litem on the
12 status of the protected person and the guardian as provided in
13 Subsection H of this section, the court may enter an
14 appropriate order; provided that, in entering an order that
15 increases the guardian's authority or reduces the autonomy of
16 the protected person, the court shall follow the same
17 procedures to safeguard the rights of the [~~incapacitated~~
18 protected person as those that apply to a petition for
19 appointment of a guardian, as set forth in Section 45-5-303
20 NMSA 1978."

21 SECTION 3. A new section of the Uniform Probate Code,
22 Section 45-5-412 NMSA 1978, is enacted to read:

23 "45-5-412. [NEW MATERIAL] DEATH OF PROTECTED PERSON OR
24 CONSERVATOR--INCAPACITY OF CONSERVATOR.--

25 A. Upon the death of the conservator, the authority
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1 and responsibility of the conservator for a protected person
2 terminates. The conservatorship of the protected person
3 continues after the death of the conservator, pending the
4 appointment of a successor conservator pursuant to Section
5 45-5-407 NMSA 1978 and Subsection B of Section 45-5-415 NMSA
6 1978. Any interested person may notify the court of the
7 conservator's death, and the court shall follow the procedures
8 set out in Section 45-5-407 NMSA 1978 and Subsection B of
9 Section 45-5-415 NMSA 1978 to appoint a successor conservator
10 for the protected person. If the conservator has a
11 testamentary document nominating a successor conservator, the
12 court shall consider the nominee for appointment as successor
13 conservator of the protected person.

14 B. Upon the death of the protected person, the
15 conservator shall notify the court within three days of
16 learning of the death of the protected person. The conservator
17 shall have the authority to obtain the death certificate of the
18 protected person without a court order. Upon the death of the
19 protected person, the conservator or an interested person may
20 request that the court hold a hearing for the following limited
21 purposes:

22 (1) to direct burial, cremation or funeral
23 arrangements for the protected person; provided that the
24 protected person does not have next of kin willing to make
25 those arrangements or a legally executed document appointing a

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1 personal representative who is willing to accept those duties;
2 and

3 (2) to authorize the conservator to use the
4 protected person's estate to pay for reasonable funeral
5 services.

6 The court shall hold a hearing within seven days of the
7 request and may issue an appropriate order resulting from the
8 hearing.

9 C. If a protected person dies, the conservator
10 shall deliver to the court for safekeeping any will of the
11 deceased protected person that may have come into the
12 conservator's possession, inform the personal representative or
13 a beneficiary named in the will that the conservator has done
14 so and retain the estate for delivery to a duly appointed
15 personal representative of the decedent or other persons
16 entitled to the estate. If, after forty days from the death of
17 the protected person, no other person has been appointed
18 personal representative and no application or petition for
19 appointment has been filed, the conservator may apply to
20 exercise the powers and duties of a personal representative so
21 that the conservator may proceed to administer and distribute
22 the decedent's estate without additional or further
23 appointment. Upon request for an order granting the powers of
24 a personal representative to a conservator, after notice to any
25 person demanding notice under Section 45-3-204 NMSA 1978 and to
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1 any person nominated personal representative in any will of
2 which the applicant is aware, the court may order the conferral
3 of the power upon determining that there is no objection and
4 endorse the letters of the conservator to note that the
5 formerly protected person is deceased and that the conservator
6 has acquired all of the powers and duties of a personal
7 representative. The making and entry of an order under this
8 section shall have the effect of an order of appointment of a
9 personal representative as provided in Sections 45-3-101
10 through 45-3-1204 NMSA 1978, except that the estate in the name
11 of the conservator, after administration, may be distributed to
12 the decedent's successors without prior retransfer to the
13 conservator as personal representative.

14 D. If both the guardian and the conservator seek
15 appointment as the personal representative, the conservator
16 shall have priority for appointment as the personal
17 representative of the decedent's estate. In the absence of a
18 conservator, the court may appoint a guardian as the personal
19 representative of the decedent's estate.

20 E. Upon the determination of the conservator's
21 incapacity, the court shall follow the procedures in Section
22 45-5-407 NMSA 1978 and Subsection B of Section 45-5-415 NMSA
23 1978.

24 F. The conservator shall file a final report with
25 the court within forty-five days of the protected person's

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1 death. Upon receipt of the final report, the court shall hold
2 a hearing to determine the deliverance of the decedent's estate
3 to a duly appointed personal representative or other persons
4 entitled to the estate. After holding a hearing, the court
5 shall issue an order terminating the conservatorship and the
6 conservator's authority upon the court's satisfaction that all
7 matters are resolved. Termination does not affect the
8 conservator's liability for prior acts nor the conservator's
9 obligation to account for funds and assets of the conservator's
10 protected person."

11 SECTION 4. Section 45-5-415 NMSA 1978 (being Laws 1975,
12 Chapter 257, Section 5-415, as amended) is amended to read:

13 "45-5-415. DEATH, SUBSTITUTION, REVIEW AND TERMINATION OF
14 CONSERVATORSHIP.--

15 A. On the petition of the [~~incapacitated~~] protected
16 person or a person interested in the [~~incapacitated~~] protected
17 person's welfare, the court may remove a conservator for good
18 cause, upon notice and hearing. A temporary conservator may be
19 appointed pursuant to Section 45-5-408 NMSA 1978 pending a
20 final hearing.

21 B. Upon death, resignation or removal of a
22 conservator, the court may appoint another conservator or make
23 any other order that may be appropriate. If a successor
24 conservator is appointed, the successor conservator succeeds to
25 the title and powers of the predecessor.

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1 C. The [~~incapacitated~~] protected person or a person
2 interested in the [~~incapacitated~~] protected person's welfare
3 may petition for an order that the [~~incapacitated~~] protected
4 person is no longer in need of a conservator and for removal or
5 resignation of the conservator. A request for this order may
6 be made by informal letter to the court or judge. Any person
7 who knowingly interferes with transmission of this kind of
8 request to the court may be adjudged guilty of contempt of
9 court.

10 D. Unless waived by the court upon the filing of a
11 petition to terminate a conservatorship for reasons other than
12 termination of minority or the death of the person under
13 conservatorship, the court shall follow the same procedures as
14 set forth in Section 45-5-407 NMSA 1978.

15 E. In a proceeding that increases the conservator's
16 authority or reduces the autonomy of the [~~incapacitated~~]
17 protected person, the court shall follow the same procedures to
18 safeguard the rights of the [~~incapacitated~~] protected person as
19 those that apply to a petition for appointment of a
20 conservator, as set forth in Section 45-5-407 NMSA 1978.

21 F. Following receipt of a request for review, the
22 court shall hold a status hearing, which may be informal, to
23 determine the appropriate order to be entered. If the court
24 finds the [~~incapacitated~~] protected person is capable of more
25 autonomy than at the time of the original order, the court may

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1 enter an order removing the conservator, terminating the
2 conservatorship or reducing the powers previously granted to
3 the conservator. The court has the option to follow all or
4 part of the procedures that apply for the appointment of a
5 conservator, as set forth in Section 45-5-407 NMSA 1978.

6 G. At any time following the appointment of a
7 conservator, but not later than ten years after the initial
8 appointment of a conservator for [~~an incapacitated~~] a protected
9 person and every ten years thereafter, the court shall:

10 (1) hold a status hearing, after notice to the
11 conservator, the [~~incapacitated~~] protected person and
12 appropriate interested persons, to review the status of the
13 [~~incapacitated~~] protected person's capacity and the continued
14 need for a conservator; or

15 (2) appoint a court investigator to assess the
16 [~~incapacitated~~] protected person's capacity. The court
17 investigator shall prepare a detailed report to the court
18 regarding the status of the [~~incapacitated~~] protected person's
19 capacity and the continued need for a conservator. Any report
20 shall be made available to the conservator, the [~~incapacitated~~]
21 protected person and interested persons identified by the
22 court.

23 H. If the court is unable to contact either the
24 conservator or the [~~incapacitated~~] protected person and neither
25 appears for the status hearing held pursuant to Paragraph (1)

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1 of Subsection G of this section, the court shall appoint a
2 guardian ad litem to investigate and report to the court as to
3 the status of the [~~incapacitated~~] protected person and the
4 conservator. Any report shall be made available to the
5 conservator, the [~~incapacitated~~] protected person and
6 appropriate interested persons, if known to the court.

7 I. Following the status hearing or the court's
8 report from the court investigator or guardian ad litem on the
9 status of the [~~incapacitated~~] protected person and the
10 conservator as provided in Subsection H of this section, the
11 court may enter an appropriate order; provided that, in
12 entering an order that increases the conservator's authority or
13 reduces the autonomy of the [~~incapacitated~~] protected person,
14 the court shall follow the same procedures to safeguard the
15 rights of the [~~incapacitated~~] protected person as those that
16 apply to a petition for appointment of a conservator, as set
17 forth in Section 45-5-407 NMSA 1978."

18 SECTION 5. Section 45-5-425 NMSA 1978 (being Laws 1975,
19 Chapter 257, Section 5-425) is amended to read:

20 "45-5-425. DISTRIBUTIVE DUTIES AND POWERS OF
21 CONSERVATOR.--

22 A. A conservator may expend or distribute income or
23 principal of the estate without court authorization or
24 confirmation for the protected person and [~~his~~] the protected
25 person's dependents in accordance with the following

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1 principles:

2 (1) the conservator is to consider
3 recommendations relating to the appropriate standard of
4 support, care, education or benefit for the protected person
5 made by a parent, guardian or custodian, if any. [~~He~~] The
6 conservator may not be surcharged for sums paid to persons or
7 organizations actually furnishing support, education or care to
8 the protected person pursuant to such recommendations of a
9 parent or guardian of the protected person unless [~~he~~] the
10 conservator knows that the parent, guardian or custodian is
11 deriving personal financial benefit therefrom, including relief
12 from [~~any~~] personal duty of support, or unless such
13 recommendations are clearly not in the best interests of the
14 protected person;

15 (2) the conservator is to expend or distribute
16 sums reasonably necessary for the support, education, care or
17 benefit of the protected person with due regard to:

18 (a) the size of the estate, the probable
19 duration of the conservatorship and the likelihood that the
20 protected person at some future time may be fully able to
21 manage [~~his~~] the protected person's affairs and the estate
22 [~~which~~] that has been conserved for [~~him~~] the protected person;

23 (b) the accustomed standard of living of
24 the protected person and members of [~~his~~] the protected
25 person's household; and

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1 (c) other funds or sources used for the
2 support of the protected person;

3 (3) the conservator may expend funds of the
4 estate for the support of persons legally dependent on the
5 protected person and others who are members of the protected
6 person's household who are unable to support themselves and who
7 are in need of support; and

8 (4) funds expended under this subsection may
9 be paid by the conservator to any person, including the
10 protected person, to reimburse for expenditures ~~[which]~~ that
11 the conservator might have made or in advance for services to
12 be rendered to the protected person when it is reasonable to
13 expect that such services will be performed and where advance
14 payments are customary or reasonably necessary under the
15 circumstances.

16 B. If the estate is ample to provide for the
17 purposes implicit in the distributions authorized by Subsection
18 A of this section, a conservator for the protected person other
19 than a minor has power to make gifts to charity and other
20 persons as the protected person might have been expected to
21 make in amounts ~~[which]~~ that do not exceed in total for any
22 year twenty percent of the income from the estate.

23 C. When a minor who has not been adjudged disabled
24 under Subsection B of Section ~~[5-401]~~ 45-5-401 NMSA 1978
25 attains ~~[his]~~ majority, ~~[his]~~ the former minor's conservator,

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1 after meeting all prior claims and expenses of administration,
2 shall pay over and distribute all funds and properties to the
3 former protected person as soon as possible.

4 D. When the conservator is satisfied that a
5 protected person's disability, other than minority, has ceased,
6 the conservator, after meeting all prior claims and expenses of
7 administration, shall pay over and distribute all funds and
8 properties to the former protected person as soon as possible.

9 ~~[E. If a protected person dies, the conservator~~
10 ~~shall deliver to the court for safekeeping any will of the~~
11 ~~deceased protected person which may have come into his~~
12 ~~possession, inform the personal representative or a beneficiary~~
13 ~~named therein that he has done so and retain the estate for~~
14 ~~delivery to a duly appointed personal representative of the~~
15 ~~decedent or other persons entitled thereto. If, after forty~~
16 ~~days from the death of the protected person, no other person~~
17 ~~has been appointed personal representative and no application~~
18 ~~or petition for appointment has been filed, the conservator may~~
19 ~~apply to exercise the powers and duties of a personal~~
20 ~~representative so that he may proceed to administer and~~
21 ~~distribute the decedent's estate without additional or further~~
22 ~~appointment. Upon request for an order granting the powers of~~
23 ~~a personal representative to a conservator, after notice to any~~
24 ~~person demanding notice under Section 3-204 and to any person~~
25 ~~nominated personal representative in any will of which the~~

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1 ~~applicant is aware, the court may order the conferral of the~~
2 ~~power upon determining that there is no objection and endorse~~
3 ~~the letters of the conservator to note that the formerly~~
4 ~~protected person is deceased and that the conservator has~~
5 ~~acquired all of the powers and duties of a personal~~
6 ~~representative. The making and entry of an order under this~~
7 ~~section shall have the effect of an order of appointment of a~~
8 ~~personal representative as provided in Sections 3-101 through~~
9 ~~3-1204, except that the estate in the name of the conservator,~~
10 ~~after administration, may be distributed to the decedent's~~
11 ~~successors without prior retransfer to the conservator as~~
12 ~~personal representative.]"~~

13 SECTION 6. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2025.