

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILLS 830 & 1020

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO TRUSTS; AMENDING AND ENACTING SECTIONS OF THE  
UNIFORM TRUST CODE.

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

Section 1. Section 46A-1-101 NMSA 1978 (being Laws 2003,  
Chapter 122, Section 1-101) is amended to read:

"46A-1-101. SHORT TITLE.--~~[This act]~~ Chapter 46A NMSA  
1978 may be cited as the "Uniform Trust Code"."

Section 2. Section 46A-1-103 NMSA 1978 (being Laws 2003,  
Chapter 122, Section 1-103) is amended to read:

"46A-1-103. DEFINITIONS.--As used in the Uniform Trust  
Code:

A. "action", with respect to an act of a trustee,  
includes a failure to act;

B. "ascertainable standard" means a standard

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1 relating to an individual's health, education, support or  
2 maintenance within the meaning of Subparagraph (A) of Paragraph  
3 (1) of Subsection (b) of Section 2041 and Paragraph (1) of  
4 Subsection (c) of Section 2514 of the Internal Revenue Code of  
5 1986, as amended;

6 [B.] C. "beneficiary" means a person that:

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

9 (2) in a capacity other than that of trustee,  
10 holds a power of appointment over trust property;

11 [C.] D. "charitable trust" means a trust or portion  
12 of a trust created for a charitable purpose described in  
13 Subsection A of Section [~~4-405 of the Uniform Trust Code~~]  
14 46A-4-405 NMSA 1978;

15 [D.] E. "conservator" means a person appointed by  
16 the court to administer the estate of a minor or adult  
17 individual;

18 [E.] F. "environmental law" means a federal, state  
19 or local law, rule, regulation or ordinance relating to  
20 protection of the environment;

21 [F.] G. "guardian" means a person appointed by the  
22 court or a parent to make decisions regarding the support,  
23 care, education, health and welfare of a minor or adult person.

24 [~~The term~~] "Guardian" does not include a guardian ad litem;

25 [G.] H. "interests of the beneficiaries" means the

1 beneficial interests provided in the terms of the trust;

2 ~~[H.]~~ I. "jurisdiction", with respect to a  
3 geographic area, includes a state or country;

4 ~~[F.]~~ J. "person" means an individual, corporation,  
5 business trust, estate, trust, partnership, limited liability  
6 company, association, joint venture, government, governmental  
7 subdivision, agency or instrumentality, public corporation or  
8 any other legal or commercial entity;

9 ~~[J.]~~ K. "power of withdrawal" means an exercisable  
10 general power of appointment other than a power:

11 (1) exercisable by a trustee and limited by an  
12 ascertainable standard; or

13 (2) exercisable by another person only upon  
14 consent of the trustee or a person holding an adverse interest;

15 ~~[K.]~~ L. "property" means anything that may be the  
16 subject of ownership, whether real or personal, legal or  
17 equitable, or any interest therein;

18 ~~[L.]~~ M. "qualified beneficiary" means a beneficiary  
19 who, on the date the beneficiary's qualification is determined:

20 (1) is a distributee or permissible  
21 distributee of trust income or principal;

22 (2) would be a distributee or permissible  
23 distributee of trust income or principal if the interests of  
24 the distributees described in Paragraph (1) of this subsection  
25 terminated on that date without causing the trust to terminate;

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1 or

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

5 [~~M.~~] N. "revocable", as applied to a trust, means  
6 revocable by the settlor without the consent of the trustee or  
7 a person holding an adverse interest;

8 [~~N.~~] O. "settlor" means a person, including a  
9 testator, who creates or contributes property to a trust. If  
10 more than one person creates or contributes property to a  
11 trust, each person is a settlor of the portion of the trust  
12 property attributable to that person's contribution, except to  
13 the extent another person has the power to revoke or withdraw  
14 that portion;

15 [~~Ø.~~] P. "spendthrift provision" means a term of a  
16 trust that restrains both voluntary and involuntary transfer of  
17 a beneficiary's interest;

18 [~~P.~~] Q. "state" means a state of the United States,  
19 the District of Columbia, Puerto Rico, the United States Virgin  
20 Islands or any territory or insular possession subject to the  
21 jurisdiction of the United States. [~~The term~~] "State" includes  
22 an Indian tribe or band recognized by federal law or formally  
23 acknowledged by a state;

24 [~~Q.~~] R. "terms of a trust" means the manifestation  
25 of the settlor's intent regarding a trust's provisions as

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1 expressed in the trust instrument or as may be established by  
2 other evidence that would be admissible in a judicial  
3 proceeding;

4 [R-] S. "trust instrument" means an instrument  
5 executed by the settlor that contains terms of the trust,  
6 including any amendments thereto; and

7 [S-] T. "trustee" includes an original trustee, an  
8 additional trustee, a successor trustee and a co-trustee."

9 Section 3. Section 46A-1-105 NMSA 1978 (being Laws 2003,  
10 Chapter 122, Section 1-105) is amended to read:

11 "46A-1-105. DEFAULT AND MANDATORY RULES.--

12 A. Except as otherwise provided in the terms of the  
13 trust, the Uniform Trust Code governs the duties and powers of  
14 a trustee, relations among trustees and the rights and  
15 interests of a beneficiary.

16 B. The terms of a trust prevail over any provision  
17 of the Uniform Trust Code except:

18 (1) the requirements for creating a trust;

19 (2) the duty of a trustee to act in good faith  
20 and in accordance with the terms and purposes of the trust and  
21 the interests of the beneficiaries;

22 (3) the requirement that a trust and its terms  
23 be for the benefit of its beneficiaries and that the trust have  
24 a purpose that is lawful, not contrary to public policy and  
25 possible to achieve;

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1 (4) the power of the court to modify or  
2 terminate a trust under Sections [~~4-410 through 4-416 of the~~  
3 ~~Uniform Trust Code~~] 46A-4-410 through 46A-4-416 NMSA 1978;

4 (5) the effect of a spendthrift provision and  
5 the rights of certain creditors and assignees to reach a trust  
6 as provided in Chapter 46A, Article 5 [~~of the Uniform Trust~~  
7 ~~Code~~] NMSA 1978;

8 (6) the power of the court under Section  
9 [~~7-702 of the Uniform Trust Code~~] 46A-7-702 NMSA 1978 to  
10 require, dispense with or modify or terminate a bond;

11 (7) the power of the court under Subsection B  
12 of Section [~~7-708 of the Uniform Trust Code~~] 46A-7-708 NMSA  
13 1978 to adjust a trustee's compensation specified in the terms  
14 of the trust that is unreasonably low or high;

15 (8) [~~except for a qualified beneficiary who~~  
16 ~~has not attained twenty-five years of age~~] the duty under  
17 Paragraphs (2) and (3) of Subsection B of Section [~~8-813 of the~~  
18 ~~Uniform Trust Code~~] 46A-8-813 NMSA 1978 to notify qualified  
19 beneficiaries of an irrevocable trust who have attained twenty-  
20 five years of age of the existence of the trust, of the  
21 identity of the trustee and of their right to request reports  
22 of the trustee;

23 (9) the duty under Subsection A of Section  
24 [~~8-813 of the Uniform Trust Code~~] 46A-8-813 NMSA 1978 to  
25 respond to the request of a beneficiary of an irrevocable trust

1 for a trustee's reports and other information reasonably  
2 related to the administration of a trust;

3 (10) the effect of an exculpatory term under  
4 Section [~~10-1007 of the Uniform Trust Code~~] 46A-10-1007 NMSA  
5 1978;

6 (11) the rights under Sections [~~10-1008~~  
7 ~~through 10-1012 of the Uniform Trust Code~~] 46A-10-1008 through  
8 46A-10-1012 NMSA 1978 of a person other than a trustee or  
9 beneficiary;

10 (12) periods of limitation for commencing a  
11 judicial proceeding;

12 (13) the power of the court to take such  
13 action and exercise such jurisdiction as may be necessary in  
14 the interests of justice; and

15 (14) the subject-matter jurisdiction of the  
16 court and venue for commencing a proceeding as provided in  
17 Sections [~~2-203 and 2-204 of the Uniform Trust Code~~] 46A-2-203  
18 and 46A-2-204 NMSA 1978."

19 Section 4. Section 46A-1-110 NMSA 1978 (being Laws 2003,  
20 Chapter 122, Section 1-110) is amended to read:

21 "46A-1-110. OTHERS TREATED AS QUALIFIED BENEFICIARIES.--

22 A. Whenever notice to qualified beneficiaries of a  
23 trust is required under the Uniform Trust Code, the trustee  
24 must also give notice to any other beneficiary who has sent the  
25 trustee a request for notice.

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1           B. A charitable organization expressly designated  
2 to receive distributions under the terms of a charitable trust  
3 ~~[or a]~~ has the rights of a qualified beneficiary under the  
4 Uniform Trust Code if the charitable organization, on the date  
5 the charitable organization's qualification is being  
6 determined:

7                       (1) is a distributee or permissible  
8 distributee of trust income or principal;

9                       (2) would be a distributee or permissible  
10 distributee of trust income or principal upon the termination  
11 of the interests of other distributees or permissible  
12 distributees then receiving or eligible to receive  
13 distributions; or

14                       (3) would be a distributee or permissible  
15 distributee of trust income or principal if the trust  
16 terminated on that date.

17           C. A person appointed to enforce a trust created  
18 for the care of an animal or another noncharitable purpose as  
19 provided in Section ~~[4-408 or 4-409 of the Uniform Trust Code]~~  
20 46A-4-408 or 46A-4-409 NMSA 1978 has the rights of a qualified  
21 beneficiary under ~~[that]~~ the Uniform Trust Code.

22           ~~[E.]~~ D. The attorney general of this state has the  
23 rights of a qualified beneficiary with respect to a charitable  
24 trust having its principal place of administration in this  
25 state."



1 Section 5. A new section of the Uniform Trust Code,  
2 Section 46A-2-204 NMSA 1978, is enacted to read:

3 "46A-2-204. [NEW MATERIAL] VENUE.--

4 A. Except as provided in Subsection B of this  
5 section, venue for a judicial proceeding involving a trust is  
6 in the district court for the county in which the trust's  
7 principal place of administration is or will be located or, if  
8 the trust is created by will and the estate is not yet closed,  
9 in the district court for the county in which the decedent's  
10 estate is being administered.

11 B. If a trust has no trustee, venue for a judicial  
12 proceeding for the appointment of a trustee is in the district  
13 court for a county in which a beneficiary resides, in which any  
14 trust property is located, or if the trust is created by will,  
15 in which the decedent's estate was or is being administered."

16 Section 6. Section 46A-3-301 NMSA 1978 (being Laws 2003,  
17 Chapter 122, Section 3-301) is amended to read:

18 "46A-3-301. REPRESENTATION--BASIC EFFECT.--

19 A. Notice to a person who may represent and bind  
20 another person under [~~this~~] Chapter 46A, Article 3 NMSA 1978  
21 has the same effect as if notice were given directly to the  
22 other person.

23 B. The consent of a person who may represent and  
24 bind another person under [~~this~~] Chapter 46A, Article 3 NMSA  
25 1978 is binding on the person represented unless the person

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1 represented objects to the representation before the consent  
2 would otherwise have become effective.

3 C. Except as otherwise provided in Sections [~~4-411~~  
4 ~~and 6-602 of the Uniform Trust Code~~] 46A-4-411 and 46A-6-602  
5 NMSA 1978, a person who under [~~this~~] Chapter 46A, Article 3  
6 NMSA 1978 may represent a settlor who lacks capacity may  
7 receive notice and give a binding consent on the settlor's  
8 behalf.

9 D. A settlor may not represent or bind a  
10 beneficiary under Chapter 46A, Article 3 NMSA 1978 with respect  
11 to the termination or modification of a trust under Subsection  
12 A of Section 46A-4-411 NMSA 1978."

13 Section 7. Section 46A-4-411 NMSA 1978 (being Laws 2003,  
14 Chapter 122, Section 4-411) is amended to read:

15 "46A-4-411. MODIFICATION OR TERMINATION OF NONCHARITABLE  
16 IRREVOCABLE TRUST BY CONSENT.--

17 A. A noncharitable irrevocable trust may be  
18 modified or terminated upon consent of the settlor and all  
19 beneficiaries, even if the modification or termination is  
20 inconsistent with a material purpose of the trust. A settlor's  
21 power to consent to a trust's modification or termination may  
22 be exercised by an agent under a power of attorney only to the  
23 extent expressly authorized by the power of attorney or the  
24 terms of the trust; by the settlor's conservator with the  
25 approval of the court supervising the conservatorship if an

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1 agent is not so authorized; or by the settlor's guardian with  
2 the approval of the court supervising the guardianship if an  
3 agent is not so authorized and a conservator has not been  
4 appointed.

5 B. A noncharitable irrevocable trust may be  
6 terminated upon consent of all of the beneficiaries if the  
7 court concludes that continuance of the trust is not necessary  
8 to achieve any material purpose of the trust. A noncharitable  
9 irrevocable trust may be modified upon consent of all of the  
10 beneficiaries if the court concludes that modification is not  
11 inconsistent with a material purpose of the trust.

12 C. A spendthrift provision in the terms of the  
13 trust is not presumed to constitute a material purpose of the  
14 trust.

15 D. Upon termination of a trust under Subsection A  
16 or B of this section, the trustee shall distribute the trust  
17 property as agreed by the beneficiaries.

18 E. If not all of the beneficiaries consent to a  
19 proposed modification or termination of the trust under  
20 Subsection A or B of this section, the modification or  
21 termination may be approved by the court if the court is  
22 satisfied that:

23 (1) if all of the beneficiaries had consented,  
24 the trust could have been modified or terminated under this  
25 section; and

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1 (2) the interests of a beneficiary who does  
2 not consent will be adequately protected."

3 Section 8. Section 46A-5-501 NMSA 1978 (being Laws 2003,  
4 Chapter 122, Section 5-501) is amended to read:

5 "46A-5-501. RIGHTS OF BENEFICIARY'S CREDITOR OR  
6 ASSIGNEE.--To the extent a beneficiary's interest is not  
7 ~~[protected by]~~ subject to a spendthrift provision, the court  
8 may authorize a creditor or assignee of the beneficiary to  
9 reach the beneficiary's interest by attachment of present or  
10 future distributions to or for the benefit of the beneficiary  
11 or other means. The court may limit the award to such relief  
12 as is appropriate under the circumstances."

13 Section 9. Section 46A-5-503 NMSA 1978 (being Laws 2003,  
14 Chapter 122, Section 5-503) is amended to read:

15 "46A-5-503. EXCEPTIONS TO SPENDTHRIFT PROVISION.--

16 A. As used in this section, "child" includes any  
17 person for whom an order or judgment for child support has been  
18 entered in this or another state.

19 ~~[B. Even if a trust contains a spendthrift~~  
20 ~~provision, a beneficiary's child, spouse or former spouse who~~  
21 ~~has a judgment or court order against the beneficiary for~~  
22 ~~support or maintenance, or a judgment creditor who has provided~~  
23 ~~services for the protection of a beneficiary's interest in the~~  
24 ~~trust, may obtain from a court an order attaching present or~~  
25 ~~future distributions to or for the benefit of the beneficiary.~~

1           ~~C. A spendthrift provision is unenforceable against~~  
2 ~~a claim of this state or the United States to the extent a~~  
3 ~~statute of this state or federal law so provides.]~~

4           B. A spendthrift provision is unenforceable  
5 against:

6                   (1) a beneficiary's child, spouse or former  
7 spouse who has a judgment or court order against the  
8 beneficiary for support or maintenance;

9                   (2) a judgment creditor who has provided  
10 services for the protection of a beneficiary's interest in the  
11 trust; and

12                   (3) a claim of this state or the United States  
13 to the extent a statute of this state or federal law so  
14 provides.

15           C. A claimant against whom a spendthrift provision  
16 cannot be enforced may obtain from a court an order attaching  
17 present or future distributions to or for the benefit of the  
18 beneficiary. The court may limit the award to such relief as  
19 is appropriate under the circumstances."

20           Section 10. Section 46A-5-504 NMSA 1978 (being Laws 2003,  
21 Chapter 122, Section 5-504) is amended to read:

22           "46A-5-504. DISCRETIONARY TRUSTS--EFFECT OF  
23 STANDARD.--

24           A. As used in this section, "child" includes any  
25 person for whom an order or judgment for child support has been

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1 entered in this or another state.

2 B. Except as otherwise provided in Subsection C of  
3 this section, whether or not a trust contains a spendthrift  
4 provision, a creditor of a beneficiary may not compel a  
5 distribution that is subject to the trustee's discretion, even  
6 if:

7 (1) the discretion is expressed in the form of  
8 a standard of distribution; or

9 (2) the trustee has abused the discretion.

10 C. To the extent a trustee has not complied with a  
11 standard of distribution or has abused a discretion:

12 (1) a distribution may be ordered by the court  
13 to satisfy a judgment or court order against the beneficiary  
14 for support or maintenance of the beneficiary's child, spouse  
15 or former spouse; and

16 (2) the court shall direct the trustee to pay  
17 to the child, spouse or former spouse such amount as is  
18 equitable under the circumstances but not more than the amount  
19 the trustee would have been required to distribute to or for  
20 the benefit of the beneficiary had the trustee complied with  
21 the standard or not abused the discretion.

22 D. This section does not limit the right of a  
23 beneficiary to maintain a judicial proceeding against a trustee  
24 for an abuse of discretion or failure to comply with a standard  
25 for distribution.

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1           E. A creditor may not reach the interest of a  
2 beneficiary who is also a trustee or co-trustee, or otherwise  
3 compel a distribution, if the trustee's discretion to make  
4 distributions for the trustee's own benefit is limited by an  
5 ascertainable standard."

6           Section 11. Section 46A-5-506 NMSA 1978 (being Laws 2003,  
7 Chapter 122, Section 5-506) is amended to read:

8           "46A-5-506. OVERDUE DISTRIBUTION.--

9           A. Whether or not a trust contains a spendthrift  
10 provision, a creditor or assignee of a beneficiary may reach a  
11 mandatory distribution of income or principal, including a  
12 distribution upon termination of the trust, if the trustee has  
13 not made the distribution to the beneficiary within a  
14 reasonable time after the designated distribution date.

15           B. As used in this section, "mandatory  
16 distribution" means a distribution of income or principal that  
17 the trustee is required to make to a beneficiary under the  
18 terms of the trust, including a distribution upon termination  
19 of the trust. "Mandatory distribution" excludes a distribution  
20 subject to the exercise of the trustee's discretion regardless  
21 of whether the terms of the trust:

22                   (1) include a support or other standard to  
23 guide the trustee in making distribution decisions; or

24                   (2) provide that the trustee "may" or "shall"  
25 make discretionary distributions, including distributions

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1 pursuant to a support or other standard."

2 Section 12. Section 46A-6-602 NMSA 1978 (being Laws 2003,  
3 Chapter 122, Section 6-602) is amended to read:

4 "46A-6-602. REVOCATION OR AMENDMENT OF REVOCABLE TRUST.--

5 A. Unless the terms of a trust expressly provide  
6 that the trust is irrevocable, the settlor may revoke or amend  
7 the trust. This subsection does not apply to a trust created  
8 under an instrument executed before the effective date of the  
9 Uniform Trust Code.

10 B. If a revocable trust is created or funded by  
11 more than one settlor:

12 (1) to the extent the trust consists of  
13 community property, the trust may be revoked by either spouse  
14 acting alone but may be amended only by joint action of both  
15 spouses; [~~and~~]

16 (2) to the extent the trust consists of  
17 property other than community property, each settlor may revoke  
18 or amend the trust with regard to the portion of the trust  
19 property attributable to that settlor's contribution; and

20 (3) upon the revocation or amendment of the  
21 trust by fewer than all of the settlors, the trustee shall  
22 promptly notify the other settlors of the revocation or  
23 amendment.

24 C. The settlor may revoke or amend a revocable  
25 trust:

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1 (1) by substantial compliance with a method  
2 provided in the terms of the trust; or

3 (2) if the terms of the trust do not provide a  
4 method or the method provided in the terms is not expressly  
5 made exclusive, by:

6 (a) a later will or codicil that  
7 expressly refers to the trust or specifically devises property  
8 that would otherwise have passed according to the terms of the  
9 trust; or

10 (b) any other method manifesting clear  
11 and convincing evidence of the settlor's intent.

12 D. Upon revocation of a revocable trust, the  
13 trustee shall deliver the trust property as the settlor  
14 directs.

15 E. A settlor's powers with respect to revocation,  
16 amendment or distribution of trust property may be exercised by  
17 an agent under a power of attorney only to the extent expressly  
18 authorized by the terms of the trust or the power.

19 F. A conservator of the settlor or, if no  
20 conservator has been appointed, a guardian of the settlor may  
21 exercise a settlor's powers with respect to revocation,  
22 amendment or distribution of trust property only with the  
23 approval of the court supervising the conservatorship or  
24 guardianship.

25 G. A trustee who does not know that a trust has

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1 been revoked or amended is not liable to the settlor or  
2 settlor's successors in interest for distributions made and  
3 other actions taken on the assumption that the trust had not  
4 been amended or revoked."

5 Section 13. Section 46A-6-603 NMSA 1978 (being Laws 2003,  
6 Chapter 122, Section 6-603) is amended to read:

7 "46A-6-603. SETTLOR'S POWERS--POWERS OF WITHDRAWAL.--

8 A. While a trust is revocable and the settlor has  
9 capacity to revoke the trust, rights of the beneficiaries are  
10 subject to the control of, and the duties of the trustee are  
11 owed exclusively to, the settlor.

12 ~~[B. If a revocable trust has more than one settlor,~~  
13 ~~the duties of the trustee are owed to all of the settlors~~  
14 ~~having capacity to revoke the trust.~~

15 ~~G.]~~ B. During the period the power may be  
16 exercised, the holder of a power of withdrawal has the rights  
17 of a settlor of a revocable trust under this section to the  
18 extent of the property subject to the power."

19 Section 14. Section 46A-8-802 NMSA 1978 (being Laws 2003,  
20 Chapter 122, Section 8-802) is amended to read:

21 "46A-8-802. DUTY OF LOYALTY.--

22 A. A trustee shall administer the trust solely in  
23 the interests of the beneficiaries.

24 B. Subject to the rights of persons dealing with or  
25 assisting the trustee as provided in Section ~~[10-1011 of the~~

1 ~~Uniform Trust Code]~~ 46A-10-1011 NMSA 1978, a sale, encumbrance  
2 or other transaction involving the investment or management of  
3 trust property entered into by the trustee for the trustee's  
4 own personal account or ~~[which]~~ that is otherwise affected by a  
5 conflict between the trustee's fiduciary and personal interests  
6 is voidable by a beneficiary affected by the transaction  
7 unless:

8 (1) the transaction was authorized by the  
9 terms of the trust;

10 (2) the transaction was approved by the court;

11 (3) the beneficiary consented to the trustee's  
12 conduct, ratified the transaction or released the trustee in  
13 compliance with Section ~~[10-1008 of the Uniform Trust Code]~~  
14 46A-10-1008 NMSA 1978; or

15 (4) the transaction involved a contract  
16 entered into or claim acquired by the trustee before the person  
17 became or contemplated becoming trustee.

18 C. A sale, encumbrance or other transaction  
19 involving the investment or management of trust property is  
20 presumed to be affected by a conflict between personal and  
21 fiduciary interests if it is entered into by the trustee with:

22 (1) the trustee's spouse;

23 (2) the trustee's descendants, siblings,  
24 parents or the spouse of any of them;

25 (3) an agent or attorney of the trustee; or

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1                   (4) a corporation or other person or  
2 enterprise in which the trustee, or a person that owns a  
3 significant interest in the trustee, has an interest that might  
4 affect the trustee's best judgment.

5                   D. A transaction between a trustee and a  
6 beneficiary that does not concern trust property but that  
7 occurs during the existence of the trust or while the trustee  
8 retains significant influence over the beneficiary and from  
9 which the trustee obtains an advantage is voidable by the  
10 beneficiary unless the trustee establishes that the transaction  
11 was fair to the beneficiary.

12                   E. A transaction not concerning trust property in  
13 which the trustee engages in the trustee's individual capacity  
14 involves a conflict between personal and fiduciary interests if  
15 the transaction concerns an opportunity properly belonging to  
16 the trust.

17                   F. An investment by a trustee in securities of an  
18 investment company or investment trust to which the trustee, or  
19 its affiliate, provides services in a capacity other than as  
20 trustee is not presumed to be affected by a conflict between  
21 personal and fiduciary interests if the investment otherwise  
22 complies with the Uniform Prudent Investor Act. In addition to  
23 its compensation for acting as trustee, the trustee may be  
24 compensated by the investment company or investment trust for  
25 providing those services out of fees charged to the trust. If

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1 the trustee received compensation from the investment company  
2 or investment trust for providing investment advisory or  
3 investment management services, the trustee at least annually  
4 [~~notifies~~] shall notify the persons entitled under Section  
5 [~~8-813 of the Uniform Trust Code~~] 46A-8-813 NMSA 1978 to  
6 receive a copy of the trustee's annual report of the rate and  
7 method by which [~~the~~] that compensation was determined.

8 G. In voting shares of stock or in exercising  
9 powers of control over similar interests in other forms of  
10 enterprise, the trustee shall act in the best interests of the  
11 beneficiaries. If the trust is the sole owner of a corporation  
12 or other form of enterprise, the trustee shall elect or appoint  
13 directors or other managers who will manage the corporation or  
14 enterprise in the best interests of the beneficiaries.

15 H. This section does not preclude the following  
16 transactions, if fair to the beneficiaries:

17 (1) an agreement between a trustee and a  
18 beneficiary relating to the appointment or compensation of the  
19 trustee;

20 (2) payment of reasonable compensation to the  
21 trustee;

22 (3) a transaction between a trust and another  
23 trust, decedent's estate or conservatorship of which the  
24 trustee is a fiduciary or in which a beneficiary has an  
25 interest;

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1 (4) a deposit of trust money in a regulated  
2 financial-service institution operated by the trustee; or

3 (5) an advance by the trustee of money for the  
4 protection of the trust.

5 I. The court may appoint a special fiduciary to  
6 make a decision with respect to any proposed transaction that  
7 might violate this section if entered into by the trustee."

8 Section 15. Section 46A-8-814 NMSA 1978 (being Laws 2003,  
9 Chapter 122, Section 8-814) is amended to read:

10 "46A-8-814. DISCRETIONARY POWERS--TAX SAVINGS.--

11 A. Notwithstanding the breadth of discretion  
12 granted to a trustee in the terms of the trust, including the  
13 use of such terms as "absolute", "sole" or "uncontrolled", the  
14 trustee shall exercise a discretionary power in good faith and  
15 in accordance with the terms and purposes of the trust and the  
16 interests of the beneficiaries.

17 B. Subject to Subsection D of this section, and  
18 unless the terms of the trust expressly indicate that a rule in  
19 this subsection does not apply:

20 (1) a person other than a settlor who is a  
21 beneficiary and trustee of a trust that confers on the trustee  
22 a power to make discretionary distributions to or for the  
23 trustee's personal benefit may exercise the power only in  
24 accordance with an ascertainable standard [~~relating to the~~  
25 ~~trustee's individual health, education, support or maintenance~~

.157700.2

1 ~~within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of~~  
2 ~~the Internal Revenue Code of 1986, as amended]; and~~

3 (2) a trustee may not exercise a power to make  
4 discretionary distributions to satisfy a legal obligation of  
5 support that the trustee personally owes another person.

6 C. A power whose exercise is limited or prohibited  
7 by Subsection B of this section may be exercised by a majority  
8 of the remaining trustees whose exercise of the power is not so  
9 limited or prohibited. If the power of all trustees is so  
10 limited or prohibited, the court may appoint a special  
11 fiduciary with authority to exercise the power.

12 D. Subsection B of this section does not apply to:

13 (1) a power held by the settlor's spouse who  
14 is the trustee of a trust for which a marital deduction, as  
15 defined in Section 2056(b)(5) or ~~[2523(b)(5)]~~ 2523(e) of the  
16 Internal Revenue Code of 1986, as amended, was previously  
17 allowed;

18 (2) any trust during any period that the trust  
19 may be revoked or amended by its settlor; or

20 (3) a trust if contributions to the trust  
21 qualify for the annual exclusion under Section 2503(c) of the  
22 Internal Revenue Code of 1986, as amended."

23 Section 16. Section 46A-8-815 NMSA 1978 (being Laws 2003,  
24 Chapter 122, Section 8-815) is amended to read:

25 "46A-8-815. GENERAL POWERS OF TRUSTEE.--

.157700.2

1           A. A trustee, without authorization by the court,  
2 may exercise:

3                   (1) powers conferred by the terms of the  
4 trust; [~~or~~] and

5                   (2) except as limited by the terms of the  
6 trust:

7                           (a) all powers over the trust property  
8 that an unmarried competent owner has over individually owned  
9 property;

10                           (b) any other powers appropriate to  
11 achieve the proper investment, management and distribution of  
12 the trust property; and

13                           (c) any other powers conferred by the  
14 Uniform Trust Code.

15           B. The exercise of a power is subject to the  
16 fiduciary duties prescribed by [~~this~~] Chapter 46A, Article 8  
17 NMSA 1978."