

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 112

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

AN ACT

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

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

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

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

A. Except as provided in Subsection B of this
section, the authority and responsibility of a guardian for an
incapacitated person terminates upon the death of the guardian
or protected person, the determination of incapacity of the
guardian or upon removal or resignation as provided in Section

.192461.3

underscored material = new
[bracketed material] = delete

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

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

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

17 (1) the power to arrange and pay for a funeral
18 for the deceased protected person;

19 (2) the power to arrange, pay for or consent
20 to the cremation for the deceased protected person;

21 (3) the power to request and receive medical,
22 financial or other records of the protected person;

23 (4) the power to request an autopsy of the
24 deceased protected person and to obtain its results;

25 (5) the power to make and file an accounting

1 of the protected person's financial affairs; and

2 (6) any power incidental to the closing of and
 3 the accounting for the guardianship, which actions shall be
 4 fully reported to the appointing court.

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

9 D. As used in this section:

10 (1) "adult child" means a natural or adopted
 11 child who is eighteen years of age or older; and

12 (2) "relative" means an individual related to
 13 a protected person as a spouse, domestic partner, parent, adult
 14 child, stepparent, brother, sister, stepbrother, stepsister,
 15 half-brother, half-sister, uncle, aunt, niece, nephew, first
 16 cousin or any person denoted by the prefix "grand" or "great"
 17 by reason of affinity or consanguinity."

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

20 "[NEW MATERIAL] CONSERVATORSHIPS--DEATH OF PROTECTED
 21 PERSON.--

22 A. The following powers of a conservator shall
 23 remain for up to six months after the death of the protected
 24 person, or until the appointment of a personal representative,
 25 and shall be exercised, after notice to and consultation with

.192461.3

1 any relatives known to the conservator, in accordance with the
2 preferences of the protected person if known to the
3 conservator:

4 (1) the power to arrange and pay for a funeral
5 for or to consent to the cremation of the deceased protected
6 person;

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

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

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

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

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

20 C. As used in this section:

21 (1) "adult child" means a natural or adopted
22 child who is eighteen years of age or older; and

23 (2) "relative" means an individual related to
24 a protected person as a spouse, domestic partner, parent, adult
25 child, stepparent, brother, sister, stepbrother, stepsister,

1 half-brother, half-sister, uncle, aunt, niece, nephew, first
2 cousin or any person denoted by the prefix "grand" or "great"
3 by reason of affinity or consanguinity."

4 - 5 -

underscored material = new
[bracketed material] = delete

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