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SENATE BILL 155

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

INTRODUCED BY

Peter Wirth

AN ACT

RELATING TO PROPERTY; ENACTING THE UNIFORM POWERS OF APPOINTMENT ACT; 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:

Article 1

GENERAL PROVISIONS

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

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

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

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

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

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

11 (2) expressly uses the words "any property" in
12 appointing any property over which the powerholder has a power
13 of appointment; or

14 (3) disposes of all property subject to
15 disposition by the powerholder;

16 D. "donor" means a person that creates a power of
17 appointment;

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

22 F. "general power of appointment" means a power of
23 appointment exercisable in favor of the powerholder, the
24 powerholder's estate, a creditor of the powerholder or a
25 creditor of the powerholder's estate;

1 G. "gift-in-default clause" means a clause
2 identifying a taker in default of appointment;

3 H. "impermissible appointee" means a person that is
4 not a permissible appointee;

5 I. "instrument" means a record;

6 J. "nongeneral power of appointment" means a power
7 of appointment that is not a general power of appointment;

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

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

14 M. "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 N. "powerholder" means a person in which a donor
20 creates a power of appointment;

21 O. "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 not

1 exercisable until 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 P. "record" means information that is inscribed on
13 a tangible medium or that is stored in an electronic or other
14 medium and is retrievable in perceivable form;

15 Q. "specific-exercise clause" means a clause in an
16 instrument that specifically refers to and exercises a
17 particular power of appointment;

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

22 S. "terms of the instrument" means the
23 manifestation of the intent of the maker of the instrument
24 regarding the instrument's provisions as expressed in the
25 instrument or as may be established by other evidence that

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1 would be admissible in a legal proceeding.

2 SECTION 103. [NEW MATERIAL] GOVERNING LAW.--Unless the
3 terms of the instrument creating a power of appointment
4 manifest a contrary intent:

5 A. the creation, revocation or amendment of the
6 power is governed by the law of the donor's domicile at the
7 relevant time; and

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

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

16 Article 2

17 CREATION, REVOCATION AND AMENDMENT OF POWER OF APPOINTMENT

18 SECTION 201. [NEW MATERIAL] CREATION OF POWER OF
19 APPOINTMENT.--

20 A. A power of appointment is created only if:

- 21 (1) the instrument creating the power:
22 (a) is valid under applicable law; and
23 (b) except as otherwise provided in

24 Subsection B of this section, transfers the appointive
25 property; and

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

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

8 C. A power of appointment shall not be created in a
9 deceased individual.

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

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

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

- 22 A. presently exercisable;
23 B. exclusionary; and
24 C. except as otherwise provided in Section 204 of
25 the Uniform Powers of Appointment Act, general.

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

5 A. the power is exercisable only at the
6 powerholder's death; and

7 B. the permissible appointees of the power are a
8 defined and limited class that does not include the
9 powerholder's estate, the powerholder's creditors or the
10 creditors of the powerholder's estate.

11 SECTION 205. [NEW MATERIAL] RULES OF CLASSIFICATION.--

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

18 B. If a powerholder may exercise a power of
19 appointment only with the consent or joinder of an adverse
20 party, the power is nongeneral.

21 C. If the permissible appointees of a power of
22 appointment are not defined and limited, the power is
23 exclusionary.

24 SECTION 206. [NEW MATERIAL] POWER TO REVOKE OR AMEND.--A
25 donor may revoke or amend a power of appointment only to the

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1 extent that:

2 A. the instrument creating the power is revocable
3 by the donor; or

4 B. the donor reserves a power of revocation or
5 amendment in the instrument creating the power of appointment.

6 Article 3

7 EXERCISE OF POWER OF APPOINTMENT

8 SECTION 301. [NEW MATERIAL] REQUISITES FOR EXERCISE OF
9 POWER OF APPOINTMENT.--A power of appointment is exercised
10 only:

11 A. if the instrument exercising the power is valid
12 under applicable law; and

13 B. if the terms of the instrument exercising the
14 power:

15 (1) manifest the powerholder's intent to
16 exercise the power; and

17 (2) subject to Section 304 of the Uniform
18 Powers of Appointment Act, satisfy the requirements of
19 exercise, if any, imposed by the donor; and

20 C. to the extent the appointment is a permissible
21 exercise of the power.

22 SECTION 302. [NEW MATERIAL] INTENT TO EXERCISE--
23 DETERMINING INTENT FROM RESIDUARY CLAUSE.--

24 A. As used in this section:

25 (1) "residuary clause" does not include a

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1 residuary clause containing a blanket-exercise clause or a
2 specific-exercise clause; and

3 (2) "will" includes a codicil and a
4 testamentary instrument that revises another will.

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

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

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

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

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

16 SECTION 303. [NEW MATERIAL] INTENT TO EXERCISE--AFTER-
17 ACQUIRED POWER.--Unless the terms of the instrument exercising
18 a power of appointment manifest a contrary intent:

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

23 B. if the powerholder is also the donor of the
24 power, the clause does not extend to the power unless there is
25 no gift-in-default clause or the gift-in-default clause is

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1 ineffective.

2 SECTION 304. [NEW MATERIAL] SUBSTANTIAL COMPLIANCE WITH
3 DONOR-IMPOSED FORMAL REQUIREMENT.--A powerholder's substantial
4 compliance with a formal requirement of appointment imposed by
5 the donor, including a requirement that the instrument
6 exercising the power of appointment make reference or specific
7 reference to the power, 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 of the power does not impair a material purpose of the donor in
12 imposing the requirement.

13 SECTION 305. [NEW MATERIAL] PERMISSIBLE APPOINTMENT.--

- 14 A. A powerholder of a general power of appointment
15 that permits appointment to the powerholder or the
16 powerholder's estate may make any appointment, including an
17 appointment in trust or creating a new power of appointment,
18 that the powerholder could make in disposing of the
19 powerholder's own property.
- 20 B. A powerholder of a general power of appointment
21 that permits appointment only to the creditors of the
22 powerholder or of the powerholder's estate may appoint only to
23 those creditors.
- 24 C. Unless the terms of the instrument creating a
25 power of appointment manifest a contrary intent, the

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1 powerholder of a nongeneral power may:

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

4 (2) create a general power in a permissible
5 appointee; or

6 (3) create a nongeneral power in any person to
7 appoint to one or more of the permissible appointees of the
8 original nongeneral power.

9 SECTION 306. [NEW MATERIAL] APPOINTMENT TO DECEASED
10 APPOINTEE OR PERMISSIBLE APPOINTEE'S DESCENDANT.--

11 A. Subject to Sections 45-2-603 and 45-2-707 NMSA
12 1978, an appointment to a deceased appointee is ineffective.

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

19 SECTION 307. [NEW MATERIAL] IMPERMISSIBLE APPOINTMENT.--

20 A. Except as otherwise provided in Section 306 of
21 the Uniform Powers of Appointment Act, an exercise of a power
22 of appointment in favor of an impermissible appointee is
23 ineffective.

24 B. An exercise of a power of appointment in favor
25 of a permissible appointee is ineffective to the extent the

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1 appointment is a fraud on the power.

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

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

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

15 B. if there is no gift-in-default clause or to the
16 extent the clause is ineffective, the ineffectively appointed
17 property:

- 18 (1) passes to:
 - 19 (a) the powerholder if the powerholder
 - 20 is a permissible appointee and is living; or
 - 21 (b) if the powerholder is an
 - 22 impermissible appointee or deceased, the powerholder's estate
 - 23 if the estate is a permissible appointee; or

24 (2) if there is no taker under Paragraph (1)
25 of this subsection, passes under a reversionary interest to the

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1 donor or the donor's transferee or successor in interest.

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

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

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

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

13 (a) the powerholder if the powerholder
14 is a permissible appointee and is living; or

15 (b) if the powerholder is an
16 impermissible appointee or deceased, the powerholder's estate
17 if the estate is a permissible appointee; or

18 (2) to the extent the powerholder released the
19 power, or if there is no taker under Paragraph (1) of this
20 subsection, the unappointed property passes under a
21 reversionary interest to the donor or the donor's transferee or
22 successor in interest.

23 SECTION 311. [NEW MATERIAL] DISPOSITION OF UNAPPOINTED
24 PROPERTY UNDER RELEASED OR UNEXERCISED NONGENERAL POWER.--To
25 the extent a powerholder releases, ineffectively exercises or

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1 fails to exercise a nongeneral power of appointment:

2 A. the gift-in-default clause controls the
3 disposition of the unappointed property; or

4 B. if there is no gift-in-default clause or to the
5 extent that the clause is ineffective, the unappointed
6 property:

7 (1) passes to the permissible appointees if:

8 (a) the permissible appointees are
9 defined and limited; and

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

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

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

22 SECTION 313. [NEW MATERIAL] APPOINTMENT TO TAKER IN
23 DEFAULT.--If a powerholder makes an appointment to a taker in
24 default of appointment and the appointee would have taken the
25 property under a gift-in-default clause had the property not

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1 been appointed, the power of appointment is deemed not to have
2 been exercised and the appointee takes under the clause.

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

6 A. the powerholder reserves a power of revocation
7 or amendment in the instrument exercising the power of
8 appointment and, if the power is nongeneral, the terms of the
9 instrument creating the power of appointment do not prohibit
10 the reservation; or

11 B. the terms of the instrument creating the power
12 of appointment provide that the exercise is revocable or
13 amendable.

14 Article 4

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

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

18 A. a powerholder may disclaim all or part of a
19 power of appointment; and

20 B. a permissible appointee, appointee or taker in
21 default of appointment may disclaim all or part of an interest
22 in appointive property.

23 SECTION 402. [NEW MATERIAL] AUTHORITY TO RELEASE.--A
24 powerholder may release a power of appointment, in whole or in
25 part, except to the extent that the terms of the instrument

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1 creating the power prevent the release.

2 SECTION 403. [NEW MATERIAL] METHOD OF RELEASE.--A

3 powerholder of a releasable power of appointment may release
4 the power in whole or in part:

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

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

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

15 A. the instrument of release is revocable by the
16 powerholder; or

17 B. the powerholder reserves a power of revocation
18 or amendment in the instrument of release.

19 SECTION 405. [NEW MATERIAL] POWER TO CONTRACT--PRESENTLY
20 EXERCISABLE POWER OF APPOINTMENT.--A powerholder of a presently
21 exercisable power of appointment may contract:

22 A. not to exercise the power; or

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

25 SECTION 406. [NEW MATERIAL] POWER TO CONTRACT--POWER OF

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1 APPOINTMENT NOT PRESENTLY EXERCISABLE.--A powerholder of a
2 power of appointment that is not presently exercisable may
3 contract to exercise or not to exercise the power only if the
4 powerholder:

- 5 A. is also the donor of the power; and
- 6 B. has reserved the power in a revocable trust.

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

13 Article 5

14 RIGHTS OF POWERHOLDER'S CREDITORS IN APPOINTIVE PROPERTY

15 SECTION 501. [NEW MATERIAL] CREDITOR CLAIM--GENERAL POWER
16 CREATED BY POWERHOLDER.--

17 A. As used in this section, "power of appointment
18 created by the powerholder" includes a power of appointment
19 created in a transfer by another person to the extent that the
20 powerholder contributed value to the transfer.

21 B. Appointive property subject to a general power
22 of appointment created by the powerholder is subject to a claim
23 of a creditor of the powerholder or of the powerholder's estate
24 to the extent provided in the Uniform Voidable Transactions
25 Act.

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

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

14 (1) the powerholder, to the same extent as if
15 the powerholder owned the appointive property, if the power is
16 presently exercisable; and

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

22 **SECTION 502. [NEW MATERIAL] CREDITOR CLAIM--GENERAL POWER**
23 **NOT CREATED BY POWERHOLDER.--**

24 A. Except as otherwise provided in Subsection B of
25 this section, appointive property subject to a general power of

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1 appointment created by a person other than the powerholder is
2 subject to a claim of a creditor of:

3 (1) the powerholder, to the extent that the
4 powerholder's property is insufficient, if the power is
5 presently exercisable; and

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

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

17 SECTION 503. [NEW MATERIAL] POWER TO WITHDRAW.--

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

24 B. On the lapse, release or waiver of a power to
25 withdraw property from a trust, the power is treated as a

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1 presently exercisable general power of appointment only to the
2 extent that the value of the property affected by the lapse,
3 release or waiver exceeds the greater of the amount specified
4 in 26 U.S.C. Section 2041(b)(2), as amended, and 26 U.S.C.
5 Section 2514(e), as amended, or the amount specified in 26
6 U.S.C. Section 2503(b), as amended.

7 SECTION 504. [NEW MATERIAL] CREDITOR CLAIM--NONGENERAL
8 POWER.--

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

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

19 C. If the initial gift in default of appointment is
20 to the powerholder or the powerholder's estate, a nongeneral
21 power of appointment is treated for purposes of this article as
22 a general power.

23 Article 6

24 MISCELLANEOUS PROVISIONS

25 SECTION 601. [NEW MATERIAL] UNIFORMITY OF APPLICATION AND

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1 CONSTRUCTION.--In applying and construing the Uniform Powers of
2 Appointment Act, consideration shall be given to the need to
3 promote uniformity of the act with respect to its subject
4 matter among states that enact it.

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

14 SECTION 603. [NEW MATERIAL] APPLICATION TO EXISTING
15 RELATIONSHIPS.--

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

18 (1) the Uniform Powers of Appointment Act
19 applies to a power of appointment created before, on or after
20 January 1, 2017;

21 (2) the Uniform Powers of Appointment Act
22 applies to a judicial proceeding concerning a power of
23 appointment commenced on or after January 1, 2017;

24 (3) the Uniform Powers of Appointment Act
25 applies to a judicial proceeding concerning a power of

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

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

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

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

22 **SECTION 701.** Section 45-1-108 NMSA 1978 (being Laws 1975,
23 Chapter 257, Section 1-108) is amended to read:

24 "45-1-108. ACTS BY HOLDER OF GENERAL POWER.--~~[A.]~~ For the
25 purpose of granting consent or approval with regard to the acts

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1 or accounts of a personal representative or trustee, including
2 relief from liability or penalty for failure to post bond, or
3 to perform other duties, and for purposes of consenting to
4 modification or termination of a trust or deviation from its
5 terms, the sole holder or all co-holders of a presently
6 exercisable general power of appointment, including one in the
7 form of a power of amendment or revocation, are deemed to act
8 for beneficiaries to the extent their interests, as objects,
9 takers in default or otherwise, are subject to the power.

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

15 SECTION 702. Section 45-1-401 NMSA 1978 (being Laws 1975,
16 Chapter 257, Section 1-401) is amended to read:

17 "45-1-401. NOTICE--METHOD AND TIME OF GIVING.--

18 A. If notice of a hearing on any petition is
19 required and except for specific notice requirements as
20 otherwise provided, the petitioner shall cause notice of the
21 time and place of hearing of any petition to be given to any
22 interested person ~~[having an interest in the subject of the~~
23 ~~hearing]~~ or, if the interested person is represented by an
24 attorney, to the attorney. Notice shall be given:

25 (1) by mailing a copy thereof at least

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1 fourteen days before the time set for the hearing by certified,
2 registered or ordinary first class mail addressed to the person
3 being notified at the post office address given in [~~his~~] the
4 demand for notice, if any, or at [~~his~~] the person's office or
5 place of residence, if known; [~~or~~]

6 (2) by service of a copy thereof upon the
7 person being notified in the manner provided by the rules of
8 civil procedure for service of summons and complaint in civil
9 actions; or

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

19 B. The court for good cause shown may provide for a
20 different method or time of giving notice for [~~any hearings~~] a
21 hearing.

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

24 SECTION 703. Section 45-1-403 NMSA 1978 (being Laws 1975,
25 Chapter 257, Section 1-403, as amended) is amended to read:

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

6 A.] interests to be affected shall be described in
7 pleadings that give reasonable information to owners by name or
8 class, by reference to the instrument creating the interests or
9 in another appropriate manner.

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

12 ~~(1) an order binding the sole holder or all~~
13 ~~co-holders of a power of revocation or a presently exercisable~~
14 ~~general power of appointment, including one in the form of a~~
15 ~~power of amendment, binds other persons to the extent their~~
16 ~~interests as objects, takers in default or otherwise are~~
17 ~~subject to the power;~~

18 ~~(2) to the extent there is no conflict of~~
19 ~~interest between them or among persons represented:~~

20 ~~(a) an order binding a conservator binds~~
21 ~~the person whose estate the conservator controls;~~

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

25 ~~(c) an order binding a trustee binds~~

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1 beneficiaries of the trust in proceedings to probate a will
2 establishing or adding to a trust, to review the acts or
3 accounts of a former fiduciary and in proceedings involving
4 creditors or other third parties;

5 (d) an order binding a personal
6 representative binds persons interested in the undistributed
7 assets of a decedent's estate in actions or proceedings by or
8 against the estate; and

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

13 (3) unless otherwise represented, a minor or
14 an incapacitated, unborn or unascertained person is bound by an
15 order to the extent the minor's or the incapacitated, unborn or
16 unascertained person's interest is adequately represented by
17 another party having a substantially identical interest in the
18 proceeding;

19 G. if no conservator or guardian has been
20 appointed, a parent may represent a minor child;

21 D. notice is required as follows:

22 (1) the notice prescribed by Section 45-1-401
23 NMSA 1978 shall be given to every person having an interest in
24 the subject of the hearing or to one who can bind an interested
25 person as described in Paragraph (1) or (2) of Subsection B of

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1 ~~this section. Notice may be given both to an interested person~~
2 ~~and to another who may bind that person; and~~

3 ~~(2) notice is given to unborn or unascertained~~
4 ~~persons who are not represented under Paragraph (1) or (2) of~~
5 ~~Subsection B of this section by giving notice to all known~~
6 ~~persons whose interests in the proceedings are substantially~~
7 ~~identical to those of the unborn or unascertained persons; and~~

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

18 SECTION 704. A new section of the Uniform Probate Code,
19 Section 45-1-403.1 NMSA 1978, is enacted to read:

20 "45-1-403.1. [NEW MATERIAL] REPRESENTATION--BASIC
21 EFFECT.--

22 A. Notice to a person who may represent and bind
23 another person pursuant to the provisions of Chapter 45 NMSA
24 1978 has the same effect as if notice were given directly to
25 the other person.

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1 B. The consent of a person who may represent and
2 bind another person pursuant to the provisions of Chapter 45
3 NMSA 1978 is binding on the person represented unless the
4 person represented objects to the representation before the
5 consent would otherwise have become effective.

6 C. Except as otherwise provided in Sections
7 46A-4-411 and 46A-6-602 NMSA 1978, a person who, pursuant to
8 the provisions of Chapter 45 NMSA 1978, may represent a settlor
9 who lacks capacity, may receive notice and give a binding
10 consent on the settlor's behalf.

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

15 **SECTION 705.** A new section of the Uniform Probate Code,
16 Section 45-1-403.2 NMSA 1978, is enacted to read:

17 "45-1-403.2. [NEW MATERIAL] REPRESENTATION BY HOLDER OF
18 GENERAL TESTAMENTARY POWER OF APPOINTMENT.--To the extent there
19 is no conflict of interest between the holder of a general
20 testamentary power of appointment and the persons represented
21 with respect to the particular question or dispute, the holder
22 may represent and bind persons whose interests, as permissible
23 appointees, takers in default or otherwise, are subject to the
24 power."

25 **SECTION 706.** A new section of the Uniform Probate Code,
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1 Section 45-1-403.3 NMSA 1978, is enacted to read:

2 "45-1-403.3. [NEW MATERIAL] REPRESENTATION BY FIDUCIARIES
3 AND PARENTS.--To the extent there is no conflict of interest
4 between the representative and the person represented or among
5 those being represented with respect to a particular question
6 or dispute:

7 A. a conservator may represent and bind the estate
8 that the conservator controls;

9 B. a guardian may represent and bind the protected
10 person if a conservator of the protected person's estate has
11 not been appointed;

12 C. an agent having authority to act with respect
13 to the particular question or dispute may represent and bind
14 the principal;

15 D. a trustee may represent and bind the
16 beneficiaries of the trust;

17 E. a personal representative of a decedent's
18 estate may represent and bind persons interested in the
19 estate; and

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

23 SECTION 707. A new section of the Uniform Probate Code,
24 Section 45-1-403.4 NMSA 1978, is enacted to read:

25 "45-1-403.4. [NEW MATERIAL] REPRESENTATION BY PERSON

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1 HAVING SUBSTANTIALLY IDENTICAL INTEREST.--Unless otherwise
2 represented, a minor, incapacitated or unborn person, or a
3 person whose identity or location is unknown and not reasonably
4 ascertainable, may be represented by and bound by another
5 having a substantially identical interest with respect to the
6 particular question or dispute, but only to the extent that
7 there is no conflict of interest between the representative and
8 the person represented."

9 SECTION 708. A new section of the Uniform Probate Code,
10 Section 45-1-403.5 NMSA 1978, is enacted to read:

11 "45-1-403.5. [NEW MATERIAL] APPOINTMENT OF
12 REPRESENTATIVE.--

13 A. If the court determines that an interest is not
14 represented under Chapter 45 NMSA 1978, or that the otherwise
15 available representation might be inadequate, the court may
16 appoint a representative to receive notice, give consent and
17 otherwise represent, bind and act on behalf of a minor,
18 incapacitated or unborn person, or a person whose identity or
19 location is unknown. A representative may be appointed to
20 represent several persons or interests.

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

25 C. In making decisions, a representative may

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1 consider the general benefit accruing to the living members of
2 the person's family."

3 SECTION 709. Section 45-2-506 NMSA 1978 (being Laws 1993,
4 Chapter 174, Section 29) is amended to read:

5 "45-2-506. CHOICE OF LAW AS TO EXECUTION.--A written will
6 is valid if executed in compliance with Section 45-2-502 NMSA
7 1978 or if its execution complies with the law at the time of
8 execution of the place where the will is executed or of the law
9 of the place where at the time of execution or at the time of
10 death the testator is domiciled, has a place of abode or is a
11 national."

12 SECTION 710. Section 45-2-517 NMSA 1978 (being Laws 1995,
13 Chapter 210, Section 13) is amended to read:

14 "45-2-517. PENALTY CLAUSE FOR CONTEST.--A provision in a
15 governing instrument purporting to penalize an interested
16 person for contesting [~~a~~] the governing instrument or
17 instituting other proceedings relating to [~~a governing~~
18 ~~instrument or an~~] the estate is unenforceable if probable cause
19 exists for instituting proceedings."

20 SECTION 711. Section 45-2-608 NMSA 1978 (being Laws 1993,
21 Chapter 174, Section 47) is amended to read:

22 "45-2-608. EXERCISE OF POWER OF APPOINTMENT.--In the
23 absence of a requirement that a power of appointment be
24 exercised by a reference or by an express or specific reference
25 to the power, a general residuary clause in a will or a will

underscored material = new
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1 making general disposition of all of the testator's property
2 expresses an intention to exercise a power of appointment held
3 by the testator only if:

4 A. the power is a general power exercisable in
5 favor of the powerholder's estate and the creating instrument
6 does not contain [a] an effective gift if the power is not
7 exercised; or

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

10 SECTION 712. Section 45-2-704 NMSA 1978 (being Laws 1993,
11 Chapter 174, Section 52) is amended to read:

12 "45-2-704. POWER OF APPOINTMENT--~~[MEANING OF]~~ COMPLIANCE
13 WITH SPECIFIC REFERENCE REQUIREMENT.--~~[If a governing~~
14 ~~instrument creating a power of appointment expressly requires~~
15 ~~that the power be exercised by a reference, an express~~
16 ~~reference or a specific reference to the power or its source,~~
17 ~~it is presumed that the donor's intention, in requiring that~~
18 ~~the donee exercise the power by making reference to the~~
19 ~~particular power or to the creating instrument, was to prevent~~
20 ~~an inadvertent exercise of the power.] A powerholder's~~
21 substantial compliance with a formal requirement of appointment
22 imposed in a governing instrument by the donor, including a
23 requirement that the instrument exercising the power of
24 appointment make reference or specific reference to the power,
25 is sufficient if:

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1 A. the powerholder knows of and intends to exercise
2 the power; and

3 B. the powerholder's manner of attempted exercise
4 does not impair a material purpose of the donor in imposing the
5 requirement."

6 SECTION 713. Section 45-2-904 NMSA 1978 (being Laws 1992,
7 Chapter 66, Section 4, as amended) is amended to read:

8 "45-2-904. EXCLUSIONS.--Section 45-2-901 NMSA 1978 does
9 not apply to:

10 A. a nonvested property interest or a power of
11 appointment arising out of a nondonative transfer, except a
12 nonvested property interest or a power of appointment arising
13 out of:

- 14 (1) a premarital or postmarital agreement;
15 (2) a separation or divorce settlement;
16 (3) a spouse's election;
17 (4) a similar arrangement arising out of a
18 prospective, existing or previous marital relationship between
19 the parties;
20 (5) a contract to make or not to revoke a will
21 or trust;
22 (6) a contract to exercise or not to exercise
23 a power of appointment;
24 (7) a transfer in satisfaction of a duty of
25 support; or

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(8) a reciprocal transfer;

B. a fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease or mortgage property and the power of a fiduciary to determine principal and income;

C. a power to appoint a fiduciary;

D. a discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

E. a nonvested property interest held by a charity, government or governmental agency or subdivision if the nonvested property interest is preceded by an interest held by another charity, government or governmental agency or subdivision;

F. a nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral or other current or deferred benefit plan for one or more employees, independent contractors or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by

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1 an election of a participant or a beneficiary or spouse; or

2 G. a property interest, power of appointment or
3 arrangement that was not subject to the common-law rule against
4 perpetuities or that is excluded by another statute of New
5 Mexico [~~or~~

6 ~~H. a property interest or arrangement subject to a~~
7 ~~time limit under the provisions of Section 45-2-907 NMSA~~
8 ~~1978]."~~

9 SECTION 714. Section 45-3-712 NMSA 1978 (being Laws 1975,
10 Chapter 257, Section 3-712) is amended to read:

11 "45-3-712. IMPROPER EXERCISE OF POWER--BREACH OF
12 FIDUCIARY DUTY.--If the exercise of power concerning the estate
13 is improper, the personal representative is liable to
14 interested persons for damage or loss resulting from breach of
15 [~~his~~] the personal representative's fiduciary duty to the same
16 extent as a trustee of an express trust. The rights of
17 purchasers and others dealing with a personal representative
18 shall be determined as provided in Sections [~~3-713 and 3-714~~]
19 45-3-713 and 45-3-714 NMSA 1978."

20 SECTION 715. Section 45-3-801 NMSA 1978 (being Laws 1975,
21 Chapter 257, Section 3-801, as amended) is repealed and a new
22 Section 45-3-801 NMSA 1978 is enacted to read:

23 "45-3-801. [NEW MATERIAL] NOTICE TO CREDITORS.--

24 A. A personal representative upon appointment may
25 publish a notice to creditors once a week for three successive

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1 weeks in a newspaper of general circulation in the county in
2 which the probate proceeding is pending, announcing the
3 personal representative's appointment and address and notifying
4 creditors of the estate to present their claims within four
5 months after the date of the first publication of the notice or
6 be forever barred.

7 B. A personal representative may give written
8 notice by mail or other delivery to a creditor, announcing the
9 personal representative's appointment and address and notifying
10 the creditor to present the creditor's claim within four months
11 after the published notice, if given as provided in Subsection
12 A of this section, or within sixty days after the mailing or
13 other delivery of the notice, whichever is later, or be forever
14 barred.

15 C. The personal representative is not liable to
16 anyone for giving or failing to give notice pursuant to this
17 section."

18 SECTION 716. Section 45-3-803 NMSA 1978 (being Laws 1975,
19 Chapter 257, Section 3-803, as amended) is amended to read:

20 "45-3-803. LIMITATIONS ON PRESENTATION OF CLAIMS.--

21 A. All claims against a decedent's estate that
22 arose before the death of the decedent, including claims of the
23 state and any political subdivision of the state, whether due
24 or to become due, absolute or contingent, liquidated or
25 unliquidated or founded on contract, tort or other legal basis,

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1 if not barred earlier by another statute of limitations or
2 nonclaim statute, are barred against the estate, the personal
3 representative and the heirs, devisees and nonprobate
4 transferees of the decedent unless presented within the earlier
5 of the following:

- 6 (1) one year after the decedent's death; or
7 (2) the time provided by Subsection ~~[A]~~ B of
8 Section 45-3-801 NMSA 1978 for creditors who are given actual
9 notice and the time provided in Subsection ~~[B]~~ A of Section
10 45-3-801 NMSA 1978 for all creditors barred by publication.

11 B. A claim described in Subsection A of this
12 section that is barred by the nonclaim statute of the
13 decedent's domicile before the giving of notice to creditors in
14 this state is barred in this state.

15 C. All claims against a decedent's estate that
16 arise at or after the death of the decedent, including claims
17 of the state and any political subdivision of the state,
18 whether due or to become due, absolute or contingent,
19 liquidated or unliquidated or founded on contract, tort or
20 other legal basis, are barred against the estate, the personal
21 representative and the heirs and devisees of the decedent
22 unless presented as follows:

- 23 (1) a claim based on a contract with the
24 personal representative within four months after performance by
25 the personal representative is due; or

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

4 D. Nothing in this section affects or prevents:

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

7 (2) to the limits of the insurance protection
8 only, a proceeding to establish liability of the decedent or
9 the personal representative for which the decedent or personal
10 representative is protected by liability insurance; or

11 (3) collection of compensation for services
12 rendered and reimbursement for expenses advanced by the
13 personal representative or by the attorney or accountant for
14 the personal representative of the estate."

15 SECTION 717. Section 45-3-902 NMSA 1978 (being Laws 1975,
16 Chapter 257, Section 3-902, as amended) is amended to read:

17 "45-3-902. DISTRIBUTION--ORDER IN WHICH ASSETS
18 APPROPRIATED--ABATEMENT.--

19 A. Except as provided in Subsection C of this
20 section, shares of distributees abate, without any preference
21 or priority as between real and personal property, in the
22 following order:

- 23 (1) property not disposed of by the will;
- 24 (2) residuary devises;
- 25 (3) general devises; and

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(4) specific devise.

B. For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged and, upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

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

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

E. If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by

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1 appropriate adjustments in or contribution from other interests
2 in the remaining assets."

3 SECTION 718. Section 45-3-905 NMSA 1978 (being Laws 1975,
4 Chapter 257, Section 3-905) is repealed and a new Section
5 45-3-905 NMSA 1978 is enacted to read:

6 "45-3-905. [NEW MATERIAL] PENALTY CLAUSE FOR CONTEST.--A
7 provision in a will purporting to penalize any interested
8 person for contesting the will or instituting other proceedings
9 relating to the estate is unenforceable if probable cause
10 exists for instituting proceedings."

11 SECTION 719. Section 45-3-912 NMSA 1978 (being Laws 1975,
12 Chapter 257, Section 3-912) is amended to read:

13 "45-3-912. PRIVATE AGREEMENTS AMONG SUCCESSORS TO
14 DECEDENT BINDING ON PERSONAL REPRESENTATIVE.--Subject to the
15 rights of creditors and taxing authorities, [~~competent~~]
16 successors or their representatives may agree among themselves
17 to alter the interests, shares or amounts to which they are
18 entitled under the will of the decedent or under the laws of
19 intestacy in any way that they provide in a written contract
20 executed by all who are affected by its provisions. The
21 personal representative shall abide by the terms of the
22 agreement subject to [~~his~~] the personal representative's
23 obligation to administer the estate for the benefit of
24 creditors, to pay all taxes and costs of administration and to
25 carry out the responsibilities of [~~his~~] the personal

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1 representative's office for the benefit of any successors of
2 the decedent who are not parties. Personal representatives of
3 decedents' estates are not required to see to the performance
4 of trusts if the trustee thereof is another person who is
5 willing to accept the trust. Accordingly, trustees of a
6 testamentary trust are successors for the purposes of this
7 section. Nothing in this section relieves trustees of any
8 duties owed to beneficiaries of trusts."

9 SECTION 720. Section 45-3-1003 NMSA 1978 (being Laws
10 1975, Chapter 257, Section 3-1003, as amended) is amended to
11 read:

12 "45-3-1003. CLOSING ESTATES--BY SWORN STATEMENT OF
13 PERSONAL REPRESENTATIVE.--

14 A. Unless prohibited by order of the district court
15 and except for estates being administered in supervised
16 administration proceedings, a personal representative may close
17 an estate by filing with the court, no earlier than [~~three~~] six
18 months after the date of original appointment of a general
19 personal representative for the estate, a verified statement
20 stating that the personal representative or a previous personal
21 representative has:

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

24 (2) fully administered the estate of the
25 decedent by making payment, settlement or other disposition of

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1 all claims that were presented, expenses of administration and
2 estate, inheritance and other death taxes, except as specified
3 in the statement, and that the assets of the estate have been
4 distributed to the persons entitled. If any claims remain
5 undischarged, the statement shall state whether the personal
6 representative has distributed the estate subject to possible
7 liability with the agreement of the distributees or it shall
8 state in detail other arrangements that have been made to
9 accommodate outstanding liabilities; and

10 (3) sent a copy of the statement to all
11 distributees of the estate and to all creditors or other
12 claimants of whom the personal representative is aware whose
13 claims are neither paid nor barred and has furnished a full
14 account in writing of the personal representative's
15 administration to the distributees whose interests are affected
16 thereby, including guardians ad litem appointed pursuant to
17 Section 45-1-403 NMSA 1978, conservators and guardians.

18 B. If no proceedings involving the personal
19 representative are pending in the district court one year after
20 the closing statement is filed, the appointment of the personal
21 representative terminates."

22 SECTION 721. Section 45-3-1101 NMSA 1978 (being Laws
23 1975, Chapter 257, Section 3-1101, as amended) is amended to
24 read:

25 "45-3-1101. EFFECT OF APPROVAL OF AGREEMENTS INVOLVING

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1 TRUSTS, INALIENABLE INTERESTS OR INTERESTS OF THIRD
2 PERSONS.--

3 A. A compromise of any controversy is binding on
4 all the parties thereto as to any lawful matter involving the
5 estate. Matters that may be resolved by the compromise
6 include:

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

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

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

13 (4) the rights or interests of any successor;
14 [~~or~~] and

15 (5) the administration of the estate, if
16 approved in a formal proceeding in the district court for that
17 purpose.

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

22 SECTION 722. Section 45-3-1102 NMSA 1978 (being Laws
23 1975, Chapter 257, Section 3-1102, as amended) is amended to
24 read:

25 "45-3-1102. PROCEDURE FOR SECURING COURT APPROVAL OF
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1 COMPROMISE.--The procedure for securing court approval of a
2 compromise is as follows:

3 A. the terms of the compromise shall be set forth
4 in an agreement in writing [~~which~~] that shall be executed by
5 all [~~competent~~] persons [~~and parents acting for any minor~~
6 ~~child~~] or their representatives having beneficial interests or
7 having claims [~~which~~] that will or may be affected by the
8 compromise;

9 B. any interested person, or the person's
10 representative, including the personal representative, if any,
11 or a trustee, may then submit the agreement to the district
12 court for its approval and for execution by the personal
13 representative, the trustee of every affected testamentary
14 trust and other fiduciaries and representatives; and

15 C. after notice to all interested persons or their
16 representatives, including the personal representative of any
17 estate and all affected trustees of trusts, the district court,
18 if it finds that an actual contest or controversy exists and
19 that the effect of the agreement upon the interests of persons
20 represented by fiduciaries or other representatives is just and
21 reasonable, shall make an order approving the agreement and
22 directing all fiduciaries under its supervision to execute the
23 agreement. Minor children represented only by their parents
24 may be bound only if their parents join with other [~~competent~~]
25 persons or their representatives in execution of the

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underscored material = new
[bracketed material] = delete

1 compromise. Upon the making of the order and the execution of
2 the agreement, all further disposition of the estate shall then
3 be made in accordance with the terms of the agreement."

4 SECTION 723. Section 46A-1-113 NMSA 1978 (being Laws
5 2011, Chapter 124, Section 95) is amended to read:

6 "46A-1-113. INSURABLE INTEREST OF TRUSTEE.--

7 A. In this section, "settlor" means a person
8 [~~including a person for which a fiduciary or agent is acting~~]
9 that executes a trust instrument. "Settlor" includes a person
10 for which a fiduciary or agent is acting.

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

16 (1) the insured is:

17 (a) a settlor of the trust; or

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

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

23 (a) an insurable interest in the life of
24 the insured; or

25 (b) a substantial interest engendered by

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underscoring material = new
[bracketed material] = delete

1 love and affection in the continuation of the life of the
2 insured and, if not already included under Subparagraph (a) of
3 this paragraph, who are: 1) related within the third degree or
4 closer, as measured by the civil law system of determining
5 degrees of relation, either by blood or law, to the insured; or
6 2) stepchildren of the insured."

7 SECTION 724. REPEAL.--Sections 45-2-608 and 45-2-704
8 NMSA 1978 (being Laws 1993, Chapter 174, Sections 47 and 52)
9 are repealed.

10 SECTION 725. REPEAL.--Section 45-2-907 NMSA 1978 (being
11 Laws 1995, Chapter 210, Section 30) is repealed.

12 SECTION 726. TEMPORARY PROVISION--INSTRUCTION TO
13 COMPILER.--The compiler shall compile Sections 101 through 603
14 of this act in Chapter 46 NMSA 1978.

15 SECTION 727. EFFECTIVE DATE.--

16 A. The effective date of the provisions of Sections
17 701 through 723 and 725 of this act is July 1, 2016.

18 B. The effective date of the provisions of Sections
19 101 through 603 and 724 of this act is January 1, 2017.