

1 SENATE BILL 503

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Peter Wirth

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10 AN ACT

11 RELATING TO PROPERTY; AMENDING AND ENACTING SECTIONS OF THE
12 UNIFORM PROBATE CODE; MAKING A TECHNICAL CHANGE TO THE UNIFORM
13 POWERS OF APPOINTMENT ACT.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. A new section of the Uniform Probate Code,
17 Section 45-2-608 NMSA 1978, is enacted to read:

18 "45-2-608. [NEW MATERIAL] EXERCISE OF POWER OF
19 APPOINTMENT.--In the absence of a requirement that a power of
20 appointment be exercised by a reference or by an express or
21 specific reference to the power, a general residuary clause in
22 a will or a will making general disposition of all of the
23 testator's property expresses an intention to exercise a power
24 of appointment held by the testator only if:

25 A. the power is a general power exercisable in

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1 favor of the powerholder's estate and the creating instrument
2 does not contain an effective gift if the power is not
3 exercised; or

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

6 SECTION 2. A new section of the Uniform Probate Code,
7 Section 45-2-704 NMSA 1978, is enacted to read:

8 "45-2-704. [NEW MATERIAL] POWER OF APPOINTMENT--

9 COMPLIANCE WITH SPECIFIC REFERENCE REQUIREMENT.--A

10 powerholder's substantial compliance with a formal requirement
11 of appointment imposed in a governing instrument by the donor,
12 including a requirement that the instrument exercising the
13 power of appointment make reference or specific reference to
14 the power, is sufficient if:

15 A. the powerholder knows of and intends to exercise
16 the power; and

17 B. the powerholder's manner of attempted exercise
18 does not impair a material purpose of the donor in imposing the
19 requirement."

20 SECTION 3. Section 45-2-802 NMSA 1978 (being Laws 1993,
21 Chapter 174, Section 61, as amended) is amended to read:

22 "45-2-802. EFFECT OF DIVORCE, ANNULMENT AND DECREE OF
23 SEPARATION.--

24 A. An individual who is divorced from the decedent
25 or whose marriage to the decedent has been annulled is not a

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1 surviving spouse unless, by virtue of a subsequent marriage,
2 [he] the individual is married to the decedent at the time of
3 death. A decree of separation that does not terminate the
4 status of [~~husband and wife~~] spouse is not a divorce for
5 purposes of this section.

6 B. For purposes of Chapter 45, Article 2, Parts 1
7 through 4 and Section 45-3-203 NMSA 1978, a surviving spouse
8 does not include:

9 (1) an individual who obtains or consents to a
10 final decree or judgment of divorce from the decedent or an
11 annulment of their marriage, which decree or judgment is not
12 recognized as valid in this state, unless subsequently they
13 participate in a marriage ceremony purporting to marry each to
14 the other or live together as [~~husband and wife~~] spouses;

15 (2) an individual who, following an invalid
16 decree or judgment of divorce or annulment obtained by the
17 decedent, participates in a marriage ceremony with a third
18 individual; or

19 (3) an individual who was a party to a valid
20 proceeding concluded by an order purporting to terminate all
21 marital property rights, including a property division judgment
22 entered pursuant to the provisions of Section 40-4-20 NMSA
23 1978."

24 SECTION 4. Section 45-2-804 NMSA 1978 (being Laws 1993,
25 Chapter 174, Section 63, as amended) is amended to read:

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1 "45-2-804. REVOCATION OF PROBATE AND NONPROBATE TRANSFERS
2 BY DIVORCE--NO REVOCATION BY OTHER CHANGES OF CIRCUMSTANCES.--

3 A. As used in this section:

4 (1) "disposition or appointment of property"
5 includes a transfer of an item of property or ~~[any]~~ other
6 benefit to a beneficiary designated in a ~~[revocable trust or~~
7 ~~other]~~ governing instrument;

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

19 (3) "divorced individual" includes an
20 individual whose marriage has been annulled;

21 (4) "governing instrument" means a governing
22 instrument executed by the divorced individual before the
23 divorce or annulment of the divorced individual's marriage to
24 the former spouse;

25 (5) "relative of the divorced individual's

1 former spouse" means an individual who is related to the
2 divorced individual's former spouse by blood, adoption or
3 affinity and who, after the divorce or annulment, is not
4 related to the divorced individual by blood, adoption or
5 affinity; and

6 (6) "revocable", with respect to a
7 disposition, appointment, provision or nomination, means one
8 under which the divorced individual, at the time of the divorce
9 or annulment, was alone empowered by law or under the governing
10 instrument to cancel the designation in favor of the former
11 spouse or former spouse's relative whether or not the divorced
12 individual was then empowered to designate the divorced
13 individual's own self in place of the former spouse or in place
14 of the former spouse's relative and whether or not the divorced
15 individual then had the capacity to exercise the power.

16 B. Except as provided by the express terms of a
17 governing instrument, a court order or a contract relating to
18 the division of the marital estate made between the divorced
19 individuals before or after the marriage, divorce or annulment,
20 the divorce or annulment of a marriage:

21 (1) revokes any revocable:

22 (a) disposition or appointment of
23 property made by a divorced individual to the former spouse in
24 a governing instrument and any disposition or appointment
25 created by law or in a governing instrument to a relative of

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1 the divorced individual's former spouse;

2 (b) provision in a governing instrument
3 conferring a general or nongeneral power of appointment on the
4 divorced individual's former spouse or on a relative of the
5 divorced individual's former spouse; and

6 (c) nomination in a governing
7 instrument, nominating a divorced individual's former spouse or
8 a relative of the divorced individual's former spouse to serve
9 in any fiduciary or representative capacity, including a
10 personal representative, executor, trustee, conservator, agent
11 or guardian; and

12 (2) severs the interests of the former spouses
13 in property held by them at the time of the divorce or
14 annulment as joint tenants with the right of survivorship,
15 transforming the interests of the former spouses into equal
16 tenancies in common.

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

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1 D. Provisions of a governing instrument are given
2 effect as if the former spouse and relatives of the former
3 spouse disclaimed all provisions revoked by this section or, in
4 the case of a revoked nomination in a fiduciary or
5 representative capacity, as if the former spouse and relatives
6 of the former spouse died immediately before the divorce or
7 annulment.

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

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

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

25 Written notice of the divorce, annulment or remarriage

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1 pursuant to the provisions of this section shall be mailed to
2 the payor's or other third party's main office or home by
3 registered or certified mail, return receipt requested, or
4 served upon the payor or other third party in the same manner
5 as a summons in a civil action. Upon receipt of the written
6 notice of the divorce, annulment or remarriage, a payor or
7 other third party may pay any amount owed or transfer or
8 deposit any item of property held by it to or with the court
9 having jurisdiction of the probate proceedings relating to the
10 decedent's estate or, if no proceedings have been commenced, to
11 or with the court having jurisdiction of probate proceedings
12 relating to decedents' estates located in the county of the
13 decedent's residence. The court shall hold the funds or item
14 of property and, upon its determination pursuant to the
15 provisions of this section, shall order disbursement or
16 transfer in accordance with the determination. Payments,
17 transfers or deposits made to or with the court discharge the
18 payor or other third party from all claims for the value of
19 amounts paid to or items of property transferred to or
20 deposited with the court.

21 H. A person who purchases property from a former
22 spouse, relative of a former spouse or any other person for
23 value and without notice or who receives from a former spouse,
24 relative of a former spouse or any other person a payment or
25 other item of property in partial or full satisfaction of a

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1 legally enforceable obligation is neither obligated pursuant to
2 the provisions of this section to return the payment, item of
3 property or benefit nor is liable pursuant to the provisions of
4 this section for the amount of the payment or the value of the
5 item of property or benefit. But a former spouse, relative of
6 a former spouse or other person who, not for value, received a
7 payment, item of property or any other benefit to which that
8 person is not entitled pursuant to the provisions of this
9 section is obligated to return the payment, item of property or
10 benefit or is personally liable for the amount of the payment
11 or the value of the item of property or benefit to the person
12 who is entitled to it pursuant to the provisions of this
13 section.

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

25 **SECTION 5.** Section 45-7-507 NMSA 1978 (being Laws 1992,

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1 Chapter 66, Section 54) is amended to read:

2 "45-7-507. MULTIPLE BENEFICIARIES--SEPARATE CUSTODIAL
3 TRUSTS--SURVIVORSHIP.--

4 A. Beneficial interests in a custodial trust
5 created for multiple beneficiaries are deemed to be separate
6 custodial trusts of equal undivided interests for each
7 beneficiary. Except in a transfer or declaration for use and
8 benefit of [~~husband and wife~~] spouses, for whom a right of
9 survivorship is presumed, a right of survivorship does not
10 exist unless the instrument creating the custodial trust
11 specifically provides for a right of survivorship.

12 B. Custodial trust property held under the Uniform
13 Custodial Trust Act by the same custodial trustee for the use
14 and benefit of the same beneficiary may be administered as a
15 single custodial trust.

16 C. A custodial trustee of custodial trust property
17 held for more than one beneficiary shall separately account to
18 each beneficiary pursuant to Sections 45-7-508 and 45-7-516
19 NMSA 1978 for the administration of the custodial trust."

20 **SECTION 6.** Section 46-11-305 NMSA 1978 (being Laws 2016,
21 Chapter 69, Section 305) is amended to read:

22 "46-11-305. PERMISSIBLE APPOINTMENT.--

23 A. A powerholder of a general power of appointment
24 that permits appointment to the powerholder or the
25 powerholder's estate may make any appointment, including an

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1 appointment in trust or creating a new power of appointment,
2 that the powerholder could make in disposing of the
3 powerholder's own property.

4 B. A powerholder of a general power of appointment
5 that permits appointment only to the creditors of the
6 powerholder or of the powerholder's estate may appoint only to
7 those creditors.

8 C. Unless the terms of the instrument creating a
9 power of appointment manifest a contrary intent, the
10 powerholder of a nongeneral power may:

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

13 (2) create a general power in a permissible
14 appointee; ~~[or]~~

15 (3) create a nongeneral power in any person to
16 appoint to one or more of the permissible appointees of the
17 original nongeneral power; or

18 (4) create a nongeneral power in a permissible
19 appointee to appoint to one or more persons if the permissible
20 appointees of the new nongeneral power include the permissible
21 appointees of the original nongeneral power."

22 SECTION 7. APPLICABILITY.--The provisions of this act
23 apply to:

24 A. a governing instrument created before, on or
25 after July 1, 2019;

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