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

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

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

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

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

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

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

"45-2-704. POWER OF APPOINTMENT--COMPLIANCE WITH  
SPECIFIC REFERENCE REQUIREMENT.--A powerholder's substantial

1 compliance with a formal requirement of appointment imposed  
2 in a governing instrument by the donor, including a  
3 requirement that the instrument exercising the power of  
4 appointment make reference or specific reference to the  
5 power, is sufficient if:

6 A. the powerholder knows of and intends to  
7 exercise the power; and

8 B. the powerholder's manner of attempted exercise  
9 does not impair a material purpose of the donor in imposing  
10 the requirement."

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

13 "45-2-802. EFFECT OF DIVORCE, ANNULMENT AND DECREE OF  
14 SEPARATION.--

15 A. An individual who is divorced from the decedent  
16 or whose marriage to the decedent has been annulled is not a  
17 surviving spouse unless, by virtue of a subsequent marriage,  
18 the individual is married to the decedent at the time of  
19 death. A decree of separation that does not terminate the  
20 status of spouse is not a divorce for purposes of this  
21 section.

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

25 (1) an individual who obtains or consents to SB 503  
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1 a final decree or judgment of divorce from the decedent or an  
2 annulment of their marriage, which decree or judgment is not  
3 recognized as valid in this state, unless subsequently they  
4 participate in a marriage ceremony purporting to marry each  
5 to the other or live together as spouses;

6 (2) an individual who, following an invalid  
7 decree or judgment of divorce or annulment obtained by the  
8 decedent, participates in a marriage ceremony with a third  
9 individual; or

10 (3) an individual who was a party to a valid  
11 proceeding concluded by an order purporting to terminate all  
12 marital property rights, including a property division  
13 judgment entered pursuant to the provisions of Section  
14 40-4-20 NMSA 1978."

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

17 "45-2-804. REVOCATION OF PROBATE AND NONPROBATE  
18 TRANSFERS BY DIVORCE--NO REVOCATION BY OTHER CHANGES OF  
19 CIRCUMSTANCES.--

20 A. As used in this section:

21 (1) "disposition or appointment of property"  
22 includes a transfer of an item of property or other benefit  
23 to a beneficiary designated in a revocable trust or other  
24 governing instrument;

25 (2) "divorce or annulment" means a divorce,

1 annulment or dissolution or declaration of invalidity of a  
2 marriage that would exclude the spouse as a surviving spouse  
3 within the meaning of Section 45-2-802 NMSA 1978 or the  
4 commencement of a valid proceeding concluded either before or  
5 after an individual's death by an order purporting to  
6 terminate all marital property rights, including a property  
7 division judgment entered pursuant to the provisions of  
8 Section 40-4-20 NMSA 1978. A decree of separation that does  
9 not terminate the status of spouse is not a divorce for  
10 purposes of this section;

11 (3) "divorced individual" includes an  
12 individual whose marriage has been annulled;

13 (4) "governing instrument" means a governing  
14 instrument executed by the divorced individual before the  
15 divorce or annulment of the divorced individual's marriage to  
16 the former spouse;

17 (5) "relative of the divorced individual's  
18 former spouse" means an individual who is related to the  
19 divorced individual's former spouse by blood, adoption or  
20 affinity and who, after the divorce or annulment, is not  
21 related to the divorced individual by blood, adoption or  
22 affinity; and

23 (6) "revocable", with respect to a  
24 disposition, appointment, provision or nomination, means one  
25 under which the divorced individual, at the time of the

1 divorce or annulment, was alone empowered by law or under the  
2 governing instrument to cancel the designation in favor of  
3 the former spouse or former spouse's relative whether or not  
4 the divorced individual was then empowered to designate the  
5 divorced individual's own self in place of the former spouse  
6 or in place of the former spouse's relative and whether or  
7 not the divorced individual then had the capacity to exercise  
8 the power.

9 B. Except as provided by the express terms of a  
10 governing instrument, a court order or a contract relating to  
11 the division of the marital estate made between the divorced  
12 individuals before or after the marriage, divorce or  
13 annulment, the divorce or annulment of a marriage:

14 (1) revokes any revocable:

15 (a) disposition or appointment of  
16 property made by a divorced individual to the former spouse  
17 in a governing instrument and any disposition or appointment  
18 created by law or in a governing instrument to a relative of  
19 the divorced individual's former spouse;

20 (b) provision in a governing instrument  
21 conferring a general or nongeneral power of appointment on  
22 the divorced individual's former spouse or on a relative of  
23 the divorced individual's former spouse; and

24 (c) nomination in a governing  
25 instrument, nominating a divorced individual's former spouse

1 or a relative of the divorced individual's former spouse to  
2 serve in any fiduciary or representative capacity, including  
3 a personal representative, executor, trustee, conservator,  
4 agent or guardian; and

5 (2) severs the interests of the former  
6 spouses in property held by them at the time of the divorce  
7 or annulment as joint tenants with the right of survivorship,  
8 transforming the interests of the former spouses into equal  
9 tenancies in common.

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

20 D. Provisions of a governing instrument are given  
21 effect as if the former spouse and relatives of the former  
22 spouse disclaimed all provisions revoked by this section or,  
23 in the case of a revoked nomination in a fiduciary or  
24 representative capacity, as if the former spouse and  
25 relatives of the former spouse died immediately before the

1 divorce or annulment.

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

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

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

20 Written notice of the divorce, annulment or remarriage  
21 pursuant to the provisions of this section shall be mailed to  
22 the payor's or other third party's main office or home by  
23 registered or certified mail, return receipt requested, or  
24 served upon the payor or other third party in the same manner  
25 as a summons in a civil action. Upon receipt of the written

1 notice of the divorce, annulment or remarriage, a payor or  
2 other third party may pay any amount owed or transfer or  
3 deposit any item of property held by it to or with the court  
4 having jurisdiction of the probate proceedings relating to  
5 the decedent's estate or, if no proceedings have been  
6 commenced, to or with the court having jurisdiction of  
7 probate proceedings relating to decedents' estates located in  
8 the county of the decedent's residence. The court shall hold  
9 the funds or item of property and, upon its determination  
10 pursuant to the provisions of this section, shall order  
11 disbursement or transfer in accordance with the  
12 determination. Payments, transfers or deposits made to or  
13 with the court discharge the payor or other third party from  
14 all claims for the value of amounts paid to or items of  
15 property transferred to or deposited with the court.

16 H. A person who purchases property from a former  
17 spouse, relative of a former spouse or any other person for  
18 value and without notice or who receives from a former  
19 spouse, relative of a former spouse or any other person a  
20 payment or other item of property in partial or full  
21 satisfaction of a legally enforceable obligation is neither  
22 obligated pursuant to the provisions of this section to  
23 return the payment, item of property or benefit nor is liable  
24 pursuant to the provisions of this section for the amount of  
25 the payment or the value of the item of property or benefit.



1 But a former spouse, relative of a former spouse or other  
2 person who, not for value, received a payment, item of  
3 property or any other benefit to which that person is not  
4 entitled pursuant to the provisions of this section is  
5 obligated to return the payment, item of property or benefit  
6 or is personally liable for the amount of the payment or the  
7 value of the item of property or benefit to the person who is  
8 entitled to it pursuant to the provisions of this section.

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

21 SECTION 5. Section 45-7-507 NMSA 1978 (being Laws 1992,  
22 Chapter 66, Section 54) is amended to read:

23 "45-7-507. MULTIPLE BENEFICIARIES--SEPARATE CUSTODIAL  
24 TRUSTS--SURVIVORSHIP.--

25 A. Beneficial interests in a custodial trust

1 created for multiple beneficiaries are deemed to be separate  
2 custodial trusts of equal undivided interests for each  
3 beneficiary. Except in a transfer or declaration for use and  
4 benefit of spouses, for whom a right of survivorship is  
5 presumed, a right of survivorship does not exist unless the  
6 instrument creating the custodial trust specifically provides  
7 for a right of survivorship.

8 B. Custodial trust property held under the Uniform  
9 Custodial Trust Act by the same custodial trustee for the use  
10 and benefit of the same beneficiary may be administered as a  
11 single custodial trust.

12 C. A custodial trustee of custodial trust property  
13 held for more than one beneficiary shall separately account  
14 to each beneficiary pursuant to Sections 45-7-508 and  
15 45-7-516 NMSA 1978 for the administration of the custodial  
16 trust."

17 SECTION 6. Section 46-11-305 NMSA 1978 (being Laws  
18 2016, Chapter 69, Section 305) is amended to read:

19 "46-11-305. PERMISSIBLE APPOINTMENT.--

20 A. A powerholder of a general power of appointment  
21 that permits appointment to the powerholder or the  
22 powerholder's estate may make any appointment, including an  
23 appointment in trust or creating a new power of appointment,  
24 that the powerholder could make in disposing of the  
25 powerholder's own property.

1           B. A powerholder of a general power of appointment  
2 that permits appointment only to the creditors of the  
3 powerholder or of the powerholder's estate may appoint only  
4 to those creditors.

5           C. Unless the terms of the instrument creating a  
6 power of appointment manifest a contrary intent, the  
7 powerholder of a nongeneral power may:

8                   (1) make an appointment in any form,  
9 including an appointment in trust, in favor of a permissible  
10 appointee;

11                   (2) create a general power in a permissible  
12 appointee;

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

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

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

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

25                   B. a judicial proceeding commenced on or after

1 July 1, 2019; and

2 C. a judicial proceeding commenced before  
3 July 1, 2019, unless the court finds that application of a  
4 particular provision of this act would substantially  
5 interfere with the effective conduct of the judicial  
6 proceeding or prejudice a right of a party, in which case the  
7 particular provision does not apply and the previous law  
8 applies.

9 SECTION 8. EFFECTIVE DATE.--The effective date of the  
10 provisions of this act is July 1, 2019. \_\_\_\_\_

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