HOUSE BILL 125

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Marian Matthews

AN ACT

RELATING TO PROBATE; ALLOWING LIABILITY WAIVERS FOR

CONSERVATORS.

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

SECTION 1. Section 45-5-429 NMSA 1978 (being Laws 1975,

Chapter 257, Section 5-429, as amended) is amended to read:

"45-5-429. INDIVIDUAL LIABILITY OF CONSERVATOR.--

A. Unless otherwise provided in the contract, a

conservator is not individually liable on a contract properly

entered into in the conservator's fiduciary capacity in the

course of administration of the estate unless the conservator

fails to reveal the conservator's representative capacity and

identify the estate in the contract.

B. The conservator is individually liable for

obligations arising from ownership or control of property of

the estate or for torts committed in the course of

administration of the estate only if the conservator is

personally at fault.

C.   Claims based on contracts entered into by a

conservator in the conservator's fiduciary capacity on

obligations arising from ownership or control of the estate or

on torts committed in the course of administration of the

estate may be asserted against the estate by proceeding against

the conservator in the conservator's fiduciary capacity,

whether or not the conservator is individually liable for those

claims.

D.   Any question of liability between the estate and

the conservator individually may be determined in a proceeding

for accounting, surcharge or indemnification or other

appropriate proceeding or action.

[E.   No person shall request, procure or receive a

release or waiver of liability, however denominated, of a

conservator, an agent, an affiliate or a designee of a

conservator or any other third party acting on behalf of a

conservator.

F.   A release or waiver of liability that is

requested, procured or received contrary to the provisions of

this section is void.]"

- 2 -

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