

HOUSE CONSUMER AND PUBLIC AFFAIRS
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 125

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

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

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1 the estate or for torts committed in the course of
2 administration of the estate only if the conservator is
3 personally at fault.

4 C. Claims based on contracts entered into by a
5 conservator in the conservator's fiduciary capacity on
6 obligations arising from ownership or control of the estate or
7 on torts committed in the course of administration of the
8 estate may be asserted against the estate by proceeding against
9 the conservator in the conservator's fiduciary capacity,
10 whether or not the conservator is individually liable for those
11 claims.

12 D. Any question of liability between the estate and
13 the conservator individually may be determined in a proceeding
14 for accounting, surcharge or indemnification or other
15 appropriate proceeding or action.

16 ~~[E. No person shall request, procure or receive a
17 release or waiver of liability, however denominated, of a
18 conservator, an agent, an affiliate or a designee of a
19 conservator or any other third party acting on behalf of a
20 conservator.]~~

21 ~~F. A release or waiver of liability that is
22 requested, procured or received contrary to the provisions of
23 this section is void.]~~

24 E. The court presiding over a conservatorship may
25 enter an order approving an action, a proposed action or a

1 report of a conservator. An order entered pursuant to this
2 subsection may be entered only after:

3 (1) the conservator files a petition and
4 serves a copy of the petition to all persons entitled to notice
5 pursuant to Subsection D of Section 45-5-405 NMSA 1978, along
6 with the notice of hearing on the petition; and

7 (2) the court conducts a hearing on the
8 petition with notice to all persons entitled to notice pursuant
9 to Subsection D of Section 45-5-405 NMSA 1978.

10 F. Upon termination of a conservatorship, a
11 conservator may petition the court for an order approving the
12 conservator's final report and discharging the conservator from
13 further claim or demand of any interested person related to the
14 management of the protected person's estate. An order entered
15 pursuant to this subsection may be entered only after:

16 (1) the conservator files a petition and
17 serves a copy of the petition to all persons entitled to notice
18 pursuant to Subsection D of Section 45-5-405 NMSA 1978, along
19 with the notice of hearing on the petition; and

20 (2) the court conducts a hearing on the
21 petition with notice pursuant to Subsection D of Section
22 45-5-405 NMSA 1978 and, in the case of the death of the
23 protected person:

24 (a) the heirs of the protected person's
25 estate whose addresses are known to the conservator; and

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1 (b) the personal representative
2 nominated by the protected person's last will and testament
3 known to the conservator.

4 G. A release of liability of a conservator signed
5 by a protected person subject to a conservatorship or
6 guardianship at the time the release is signed shall not be
7 valid or enforceable.

8 H. The court may appoint a guardian ad litem or
9 court investigator to review a petition filed pursuant to
10 Subsection E or F of this section and to submit a written
11 report to the court stating the conclusions of that review.
12 The report shall be filed in the protective proceeding and made
13 available to the conservator and all persons who are entitled
14 to receive a copy of the petition as provided in Subsection E
15 or F of this section."

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