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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO PROPERTY INTERESTS; 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;

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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, estate, trust,
11 business or nonprofit entity, public corporation, government or
12 governmental subdivision, agency or instrumentality or other
13 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. The term
18 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 law of this state 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 may 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 may 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

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--

17 AFTER-ACQUIRED POWER.--Unless the terms of the instrument
18 exercising 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 Fraudulent Transfer Act.

25 C. Subject to Subsection B of this section,

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

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

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

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

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

23 A. Except as otherwise provided in Subsection B of
24 this section, appointive property subject to a general power of
25 appointment created by a person other than the powerholder is

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1 subject to a claim of a creditor of:

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

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

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

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

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

23 B. On the lapse, release or waiver of a power to
24 withdraw property from a trust, the power is treated as a
25 presently exercisable general power of appointment only to the

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1 extent that the value of the property affected by the lapse,
2 release or waiver exceeds the greater of the amount specified
3 in 26 U.S.C. Section 2041(b)(2) and 26 U.S.C. Section 2514(e)
4 or the amount specified in 26 U.S.C. Section 2503(b).

5 SECTION 504. [NEW MATERIAL] CREDITOR CLAIM--NONGENERAL
6 POWER.--

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

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

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

21 Article 6

22 MISCELLANEOUS PROVISIONS

23 SECTION 601. [NEW MATERIAL] UNIFORMITY OF APPLICATION AND
24 CONSTRUCTION.--In applying and construing the Uniform Powers of
25 Appointment Act, consideration must be given to the need to

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1 promote uniformity of the act with respect to its subject
2 matter among states that enact it.

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

12 SECTION 603. [NEW MATERIAL] APPLICATION TO EXISTING
13 RELATIONSHIPS.--

14 A. Except as otherwise provided in the Uniform
15 Powers of Appointment Act, on and after January 1, 2016:

16 (1) the Uniform Powers of Appointment Act
17 applies to a power of appointment created before, on or after
18 January 1, 2016;

19 (2) the Uniform Powers of Appointment Act
20 applies to a judicial proceeding concerning a power of
21 appointment commenced on or after January 1, 2016;

22 (3) the Uniform Powers of Appointment Act
23 applies to a judicial proceeding concerning a power of
24 appointment commenced before January 1, 2016 unless the court
25 finds that application of a particular provision of the Uniform

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1 Powers of Appointment Act would interfere substantially with
2 the effective conduct of the judicial proceeding or prejudice a
3 right of a party, in which case the particular provision of the
4 Uniform Powers of Appointment Act does not apply and the
5 superseded law applies;

6 (4) a rule of construction or presumption
7 provided in the Uniform Powers of Appointment Act applies to an
8 instrument executed before January 1, 2016 unless there is a
9 clear indication of a contrary intent in the terms of the
10 instrument; and

11 (5) except as otherwise provided in Paragraphs
12 (1) through (4) of this subsection, an action done before
13 January 1, 2016 is not affected by that act.

14 B. If a right is acquired, extinguished or barred
15 on the expiration of a prescribed period that commenced under
16 law of this state other than the Uniform Powers of Appointment
17 Act before January 1, 2016, the law continues to apply to the
18 right.

19 **SECTION 604.** Section 45-1-108 NMSA 1978 (being Laws 1975,
20 Chapter 257, Section 1-108) is amended to read:

21 "45-1-108. ACTS BY HOLDER OF GENERAL POWER.--~~[A.]~~ For the
22 purpose of granting consent or approval with regard to the acts
23 or accounts of a personal representative or trustee, including
24 relief from liability or penalty for failure to post bond, or
25 to perform other duties, and for purposes of consenting to

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1 modification or termination of a trust or deviation from its
2 terms, the sole holder or all co-holders of a presently
3 exercisable general power of appointment, including one in the
4 form of a power of amendment or revocation, are deemed to act
5 for beneficiaries to the extent their interests, as objects,
6 takers in default or otherwise, are subject to the power.

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

12 SECTION 605. Section 45-1-401 NMSA 1978 (being Laws 1975,
13 Chapter 257, Section 1-401) is amended to read:

14 "45-1-401. NOTICE--METHOD AND TIME OF GIVING.--

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

22 (1) by mailing a copy thereof at least
23 fourteen days before the time set for the hearing by certified,
24 registered or ordinary first class mail addressed to the person
25 being notified at the post office address given in ~~[his]~~ the

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1 demand for notice, if any, or at [~~his~~] the person's office or
2 place of residence, if known; [~~or~~]

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

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

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

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

21 SECTION 606. Section 45-1-403 NMSA 1978 (being Laws 1975,
22 Chapter 257, Section 1-403, as amended) is amended to read:

23 "45-1-403. PLEADINGS--WHEN PARTIES BOUND BY OTHERS--
24 NOTICE.--In formal proceedings involving trusts, or estates of
25 decedents, minors, protected persons or incapacitated persons,

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1 and in judicially supervised settlements, ~~[the following rules~~
2 ~~apply:~~

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

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

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

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

17 ~~(a) an order binding a conservator binds~~
18 ~~the person whose estate the conservator controls;~~

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

22 ~~(c) an order binding a trustee binds~~
23 ~~beneficiaries of the trust in proceedings to probate a will~~
24 ~~establishing or adding to a trust, to review the acts or~~
25 ~~accounts of a former fiduciary and in proceedings involving~~

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1 ~~creditors or other third parties;~~

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

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

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

16 ~~G. if no conservator or guardian has been~~
17 ~~appointed, a parent may represent a minor child;~~

18 ~~D. notice is required as follows:~~

19 ~~(1) the notice prescribed by Section 45-1-401~~
20 ~~NMSA 1978 shall be given to every person having an interest in~~
21 ~~the subject of the hearing or to one who can bind an interested~~
22 ~~person as described in Paragraph (1) or (2) of Subsection B of~~
23 ~~this section. Notice may be given both to an interested person~~
24 ~~and to another who may bind that person; and~~

25 ~~(2) notice is given to unborn or unascertained~~

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

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

15 SECTION 607. A new section of the Uniform Probate Code,
16 Section 45-1-403.1 NMSA 1978, is enacted to read:

17 "45-1-403.1. [NEW MATERIAL] REPRESENTATION--BASIC
18 EFFECT.--

19 A. Notice to a person who may represent and bind
20 another person pursuant to the provisions of Chapter 45 NMSA
21 1978 has the same effect as if notice were given directly to
22 the other person.

23 B. The consent of a person who may represent and
24 bind another person pursuant to the provisions of Chapter 45
25 NMSA 1978 is binding on the person represented unless the

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1 person represented objects to the representation before the
2 consent would otherwise have become effective.

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

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

12 SECTION 608. A new section of the Uniform Probate Code,
13 Section 45-1-403.2 NMSA 1978, is enacted to read:

14 "45-1-403.2. [NEW MATERIAL] REPRESENTATION BY HOLDER OF
15 GENERAL TESTAMENTARY POWER OF APPOINTMENT.--To the extent there
16 is no conflict of interest between the holder of a general
17 testamentary power of appointment and the persons represented
18 with respect to the particular question or dispute, the holder
19 may represent and bind persons whose interests, as permissible
20 appointees, takers in default or otherwise, are subject to the
21 power."

22 SECTION 609. A new section of the Uniform Probate Code,
23 Section 45-1-403.3 NMSA 1978, is enacted to read:

24 "45-1-403.3. [NEW MATERIAL] REPRESENTATION BY FIDUCIARIES
25 AND PARENTS.--To the extent there is no conflict of interest

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1 between the representative and the person represented or among
2 those being represented with respect to a particular question
3 or dispute:

4 A. a conservator may represent and bind the estate
5 that the conservator controls;

6 B. a guardian may represent and bind the protected
7 person if a conservator of the protected person's estate has
8 not been appointed;

9 C. an agent having authority to act with respect
10 to the particular question or dispute may represent and bind
11 the principal;

12 D. a trustee may represent and bind the
13 beneficiaries of the trust;

14 E. a personal representative of a decedent's
15 estate may represent and bind persons interested in the
16 estate; and

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

20 SECTION 610. A new section of the Uniform Probate Code,
21 Section 45-1-403.4 NMSA 1978, is enacted to read:

22 "45-1-403.4. [NEW MATERIAL] REPRESENTATION BY PERSON
23 HAVING SUBSTANTIALLY IDENTICAL INTEREST.--Unless otherwise
24 represented, a minor, incapacitated or unborn person, or a
25 person whose identity or location is unknown and not reasonably

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1 ascertainable, may be represented by and bound by another
2 having a substantially identical interest with respect to the
3 particular question or dispute, but only to the extent that
4 there is no conflict of interest between the representative and
5 the person represented."

6 SECTION 611. A new section of the Uniform Probate Code,
7 Section 45-1-403.5 NMSA 1978, is enacted to read:

8 "45-1-403.5. [NEW MATERIAL] APPOINTMENT OF
9 REPRESENTATIVE.--

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

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

22 C. In making decisions, a representative may
23 consider the general benefit accruing to the living members of
24 the person's family."

25 SECTION 612. Section 45-2-506 NMSA 1978 (being Laws 1993,
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1 Chapter 174, Section 29) is amended to read:

2 "45-2-506. CHOICE OF LAW AS TO EXECUTION.--A written will
3 is valid if executed in compliance with Section 45-2-502 NMSA
4 1978 or if its execution complies with the law at the time of
5 execution of the place where the will is executed or of the law
6 of the place where at the time of execution or at the time of
7 death the testator is domiciled, has a place of abode or is a
8 national."

9 SECTION 613. Section 45-2-517 NMSA 1978 (being Laws 1995,
10 Chapter 210, Section 13) is amended to read:

11 "45-2-517. PENALTY CLAUSE FOR CONTEST.--A provision in a
12 governing instrument purporting to penalize an interested
13 person for contesting [a] the governing instrument or
14 instituting other proceedings relating to [~~a governing~~
15 ~~instrument or an~~] the estate is unenforceable if probable cause
16 exists for instituting proceedings."

17 SECTION 614. Section 45-2-904 NMSA 1978 (being Laws 1992,
18 Chapter 66, Section 4, as amended) is amended to read:

19 "45-2-904. EXCLUSIONS.--Section 45-2-901 NMSA 1978 does
20 not apply to:

21 A. a nonvested property interest or a power of
22 appointment arising out of a nondonative transfer, except a
23 nonvested property interest or a power of appointment arising
24 out of:

25 (1) a premarital or postmarital agreement;

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- 1 (2) a separation or divorce settlement;
- 2 (3) a spouse's election;
- 3 (4) a similar arrangement arising out of a
4 prospective, existing or previous marital relationship between
5 the parties;
- 6 (5) a contract to make or not to revoke a will
7 or trust;
- 8 (6) a contract to exercise or not to exercise
9 a power of appointment;
- 10 (7) a transfer in satisfaction of a duty of
11 support; or
- 12 (8) a reciprocal transfer;
- 13 B. a fiduciary's power relating to the
14 administration or management of assets, including the power of
15 a fiduciary to sell, lease or mortgage property and the power
16 of a fiduciary to determine principal and income;
- 17 C. a power to appoint a fiduciary;
- 18 D. a discretionary power of a trustee to distribute
19 principal before termination of a trust to a beneficiary having
20 an indefeasibly vested interest in the income and principal;
- 21 E. a nonvested property interest held by a charity,
22 government or governmental agency or subdivision if the
23 nonvested property interest is preceded by an interest held by
24 another charity, government or governmental agency or
25 subdivision;

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1 F. a nonvested property interest in or a power of
2 appointment with respect to a trust or other property
3 arrangement forming part of a pension, profit-sharing, stock
4 bonus, health, disability, death benefit, income deferral or
5 other current or deferred benefit plan for one or more
6 employees, independent contractors or their beneficiaries or
7 spouses, to which contributions are made for the purpose of
8 distributing to or for the benefit of the participants or their
9 beneficiaries or spouses the property, income or principal in
10 the trust or other property arrangement, except a nonvested
11 property interest or a power of appointment that is created by
12 an election of a participant or a beneficiary or spouse; or

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

17 ~~H. a property interest or arrangement subject to a~~
18 ~~time limit under the provisions of Section 45-2-907 NMSA~~
19 ~~1978]."~~

20 SECTION 615. Section 45-3-712 NMSA 1978 (being Laws 1975,
21 Chapter 257, Section 3-712) is amended to read:

22 "45-3-712. IMPROPER EXERCISE OF POWER--BREACH OF
23 FIDUCIARY DUTY.--If the exercise of power concerning the estate
24 is improper, the personal representative is liable to
25 interested persons for damage or loss resulting from breach of

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1 ~~[his]~~ the personal representative's fiduciary duty to the same
2 extent as a trustee of an express trust. The rights of
3 purchasers and others dealing with a personal representative
4 shall be determined as provided in Sections ~~[3-713 and 3-714]~~
5 45-3-713 and 45-3-714 NMSA 1978."

6 SECTION 616. Section 45-3-801 NMSA 1978 (being Laws 1975,
7 Chapter 257, Section 3-801, as amended) is repealed and a new
8 Section 45-3-801 NMSA 1978 is enacted to read:

9 "45-3-801. [NEW MATERIAL] NOTICE TO CREDITORS.--

10 A. A personal representative upon appointment may
11 publish a notice to creditors once a week for three successive
12 weeks in a newspaper of general circulation in the county in
13 which the probate proceeding is pending, announcing the
14 personal representative's appointment and address and notifying
15 creditors of the estate to present their claims within four
16 months after the date of the first publication of the notice or
17 be forever barred.

18 B. A personal representative may give written
19 notice by mail or other delivery to a creditor, announcing the
20 personal representative's appointment and address and notifying
21 the creditor to present the creditor's claim within four months
22 after the published notice, if given as provided in Subsection
23 A of this section, or within sixty days after the mailing or
24 other delivery of the notice, whichever is later, or be forever
25 barred.

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1 C. The personal representative is not liable to
2 anyone for giving or failing to give notice pursuant to this
3 section."

4 SECTION 617. Section 45-3-803 NMSA 1978 (being Laws 1975,
5 Chapter 257, Section 3-803, as amended) is amended to read:

6 "45-3-803. LIMITATIONS ON PRESENTATION OF CLAIMS.--

7 A. All claims against a decedent's estate that
8 arose before the death of the decedent, including claims of the
9 state and any political subdivision of the state, whether due
10 or to become due, absolute or contingent, liquidated or
11 unliquidated or founded on contract, tort or other legal basis,
12 if not barred earlier by another statute of limitations or
13 nonclaim statute, are barred against the estate, the personal
14 representative and the heirs, devisees and nonprobate
15 transferees of the decedent unless presented within the earlier
16 of the following:

17 (1) one year after the decedent's death; or
18 (2) the time provided by Subsection [~~A~~] B of
19 Section 45-3-801 NMSA 1978 for creditors who are given actual
20 notice and the time provided in Subsection [~~B~~] A of Section
21 45-3-801 NMSA 1978 for all creditors barred by publication.

22 B. A claim described in Subsection A of this
23 section that is barred by the nonclaim statute of the
24 decedent's domicile before the giving of notice to creditors in
25 this state is barred in this state.

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1 C. All claims against a decedent's estate that
2 arise at or after the death of the decedent, including claims
3 of the state and any political subdivision of the state,
4 whether due or to become due, absolute or contingent,
5 liquidated or unliquidated or founded on contract, tort or
6 other legal basis, are barred against the estate, the personal
7 representative and the heirs and devisees of the decedent
8 unless presented as follows:

9 (1) a claim based on a contract with the
10 personal representative within four months after performance by
11 the personal representative is due; or

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

15 D. Nothing in this section affects or prevents:

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

18 (2) to the limits of the insurance protection
19 only, a proceeding to establish liability of the decedent or
20 the personal representative for which the decedent or personal
21 representative is protected by liability insurance; or

22 (3) collection of compensation for services
23 rendered and reimbursement for expenses advanced by the
24 personal representative or by the attorney or accountant for
25 the personal representative of the estate."

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1 SECTION 618. Section 45-3-902 NMSA 1978 (being Laws 1975,
2 Chapter 257, Section 3-902, as amended) is amended to read:

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

5 A. Except as provided in Subsection C of this
6 section, shares of distributees abate, without any preference
7 or priority as between real and personal property, in the
8 following order:

- 9 (1) property not disposed of by the will;
- 10 (2) residuary devises;
- 11 (3) general devises; and
- 12 (4) specific devises.

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

23 C. If the will expresses an order of abatement or
24 if the testamentary plan or the express or implied purpose of
25 the devise would be defeated by the order of abatement stated

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1 in Subsection A of this section, the shares of the distributees
2 abate as may be found necessary to give effect to the intention
3 of the testator.

4 D. If an estate of a decedent consists partly of
5 separate property and partly of community property, the debts
6 and expenses of administration shall be apportioned and charged
7 against the different kinds of property in accordance with the
8 provisions of Subsection B of Section [~~45-2-805~~] 45-2-807 NMSA
9 1978.

10 E. If the subject of a preferred devise is sold or
11 used incident to administration, abatement shall be achieved by
12 appropriate adjustments in or contribution from other interests
13 in the remaining assets."

14 SECTION 619. A new section of the Uniform Probate Code,
15 Section 45-3-905 NMSA 1978, is enacted to read:

16 "45-3-905. [NEW MATERIAL] PENALTY CLAUSE FOR CONTEST.--A
17 provision in a will purporting to penalize any interested
18 person for contesting the will or instituting other proceedings
19 relating to the estate is unenforceable if probable cause
20 exists for instituting proceedings."

21 SECTION 620. Section 45-3-912 NMSA 1978 (being Laws 1975,
22 Chapter 257, Section 3-912) is amended to read:

23 "45-3-912. PRIVATE AGREEMENTS AMONG SUCCESSORS TO
24 DECEDENT BINDING ON PERSONAL REPRESENTATIVE.--Subject to the
25 rights of creditors and taxing authorities or their

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1 representatives, [~~competent~~] successors may agree among
2 themselves to alter the interests, shares or amounts to which
3 they are entitled under the will of the decedent or under the
4 laws of intestacy in any way that they provide in a written
5 contract executed by all who are affected by its provisions.
6 The personal representative shall abide by the terms of the
7 agreement subject to [~~his~~] the personal representative's
8 obligation to administer the estate for the benefit of
9 creditors, to pay all taxes and costs of administration and to
10 carry out the responsibilities of [~~his~~] the personal
11 representative's office for the benefit of any successors of
12 the decedent who are not parties. Personal representatives of
13 decedents' estates are not required to see to the performance
14 of trusts if the trustee thereof is another person who is
15 willing to accept the trust. Accordingly, trustees of a
16 testamentary trust are successors for the purposes of this
17 section. Nothing in this section relieves trustees of any
18 duties owed to beneficiaries of trusts."

19 **SECTION 621.** Section 45-3-1003 NMSA 1978 (being Laws
20 1975, Chapter 257, Section 3-1003, as amended) is amended to
21 read:

22 "45-3-1003. CLOSING ESTATES--BY SWORN STATEMENT OF
23 PERSONAL REPRESENTATIVE.--

24 A. Unless prohibited by order of the district court
25 and except for estates being administered in supervised

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1 administration proceedings, a personal representative may close
2 an estate by filing with the court, no earlier than [~~three~~] six
3 months after the date of original appointment of a general
4 personal representative for the estate, a verified statement
5 stating that the personal representative or a previous personal
6 representative has:

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

9 (2) fully administered the estate of the
10 decedent by making payment, settlement or other disposition of
11 all claims that were presented, expenses of administration and
12 estate, inheritance and other death taxes, except as specified
13 in the statement, and that the assets of the estate have been
14 distributed to the persons entitled. If any claims remain
15 undischarged, the statement shall state whether the personal
16 representative has distributed the estate subject to possible
17 liability with the agreement of the distributees or it shall
18 state in detail other arrangements that have been made to
19 accommodate outstanding liabilities; and

20 (3) sent a copy of the statement to all
21 distributees of the estate and to all creditors or other
22 claimants of whom the personal representative is aware whose
23 claims are neither paid nor barred and has furnished a full
24 account in writing of the personal representative's
25 administration to the distributees whose interests are affected

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1 thereby, including guardians ad litem appointed pursuant to
2 Section 45-1-403 NMSA 1978, conservators and guardians.

3 B. If no proceedings involving the personal
4 representative are pending in the district court one year after
5 the closing statement is filed, the appointment of the personal
6 representative terminates."

7 **SECTION 622.** Section 45-3-1101 NMSA 1978 (being Laws
8 1975, Chapter 257, Section 3-1101, as amended) is amended to
9 read:

10 "45-3-1101. EFFECT OF APPROVAL OF AGREEMENTS INVOLVING
11 TRUSTS, INALIENABLE INTERESTS OR INTERESTS OF THIRD
12 PERSONS.--

13 A. A compromise of any controversy is binding on
14 all the parties thereto as to any lawful matter involving the
15 estate, and matters that may be resolved by the compromise
16 include:

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

19 (2) the construction, validity or effect of
20 any governing instrument;

21 (3) the rights or interests in the estate of
22 the decedent;

23 (4) the rights or interests of any successor;

24 or

25 (5) the administration of the estate, if

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1 approved in a formal proceeding in the district court for that
2 purpose.

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

7 SECTION 623. Section 45-3-1102 NMSA 1978 (being Laws
8 1975, Chapter 257, Section 3-1102, as amended) is amended to
9 read:

10 "45-3-1102. PROCEDURE FOR SECURING COURT APPROVAL OF
11 COMPROMISE.--The procedure for securing court approval of a
12 compromise is as follows:

13 A. The terms of the compromise shall be set forth
14 in an agreement in writing which shall be executed by all
15 ~~[competent] persons [and parents acting for any minor child]~~ or
16 their representatives having beneficial interests or having
17 claims ~~[which]~~ that will or may be affected by the compromise.

18 B. Any interested person, or the person's
19 representative, including the personal representative, if any,
20 or a trustee, may then submit the agreement to the district
21 court for its approval and for execution by the personal
22 representative, the trustee of every affected testamentary
23 trust and other fiduciaries and representatives.

24 C. After notice to all interested persons or their
25 representatives, including the personal representative of any

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1 estate and all affected trustees of trusts, the district court,
2 if it finds that an actual contest or controversy exists and
3 that the effect of the agreement upon the interests of persons
4 represented by fiduciaries or other representatives is just and
5 reasonable, shall make an order approving the agreement and
6 directing all fiduciaries under its supervision to execute the
7 agreement. Minor children represented only by their parents
8 may be bound only if their parents join with other ~~[competent]~~
9 persons or their representatives in execution of the
10 compromise. Upon the making of the order and the execution of
11 the agreement, all further disposition of the estate shall then
12 be made in accordance with the terms of the agreement."

13 SECTION 624. Section 46A-1-113 NMSA 1978 (being Laws
14 2011, Chapter 124, Section 95) is amended to read:

15 "46A-1-113. INSURABLE INTEREST OF TRUSTEE.--

16 A. In this section, "settlor" means a person
17 ~~[including a person for which a fiduciary or agent is acting]~~
18 that executes a trust instrument. "Settlor" includes a person
19 for which a fiduciary or agent is acting.

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

25 (1) the insured is:

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1 (a) a settlor of the trust; or

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

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

7 (a) an insurable interest in the life of
8 the insured; or

9 (b) a substantial interest engendered by
10 love and affection in the continuation of the life of the
11 insured and, if not already included under Subparagraph (a) of
12 this paragraph, who are: 1) related within the third degree or
13 closer, as measured by the civil law system of determining
14 degrees of relation, either by blood or law, to the insured; or
15 2) stepchildren of the insured."

16 SECTION 625. REPEAL.--Sections 45-2-608 and 45-2-704
17 NMSA 1978 (being Laws 1993, Chapter 174, Sections 47 and 52)
18 are repealed.

19 SECTION 626. REPEAL.--Section 45-2-907 NMSA 1978 (being
20 Laws 1995, Chapter 210, Section 30) is repealed.

21 SECTION 627. TEMPORARY PROVISION--INSTRUCTION TO
22 COMPILER.--The compiler shall compile Sections 101 through 603
23 of this act in Chapter 46 NMSA 1978.

24 SECTION 628. EFFECTIVE DATE.--

25 A. The effective date of the provisions of Sections
.197287.6

underscoring material = new
~~[bracketed material]~~ = delete

1 604 through 624 and 626 of this act is July 1, 2015.

2 B. The effective date of the provisions of Sections
3 101 through 603 and 625 of this act is January 1, 2016.

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