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BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

DISCUSSION DRAFT

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO PROPERTY; ENACTING THE UNIFORM PARTITION OF HEIRS
PROPERTY ACT AND MAKING CONFORMING AMENDMENTS TO THE UNIFORM
PROBATE CODE; AMENDING PROCEDURES FOR SELF-PROVING WILLS IN THE
UNIFORM PROBATE CODE; MAKING A TECHNICAL AMENDMENT TO THE
UNIFORM TRUST DECANTING ACT.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 13 of this act may be cited as the "Uniform Partition
of Heirs Property Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Uniform Partition of Heirs Property Act:

A. "ascendant" means an individual who precedes
another individual in lineage, in the direct line of ascent
from the other individual;

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1 B. "collateral" means an individual who is related
2 to another individual under the law of intestate succession of
3 this state but who is not the other individual's ascendant or
4 descendant;

5 C. "descendant" means an individual who follows
6 another individual in lineage, in the direct line of descent
7 from the other individual;

8 D. "determination of value" means a court order
9 determining the fair market value of heirs property under
10 Section 6 or 10 of the Uniform Partition of Heirs Property Act
11 or adopting the valuation of the property agreed to by all
12 cotenants;

13 E. "heirs property" means real property held in
14 tenancy in common that satisfies all of the following
15 requirements as of the filing of a partition action:

16 (1) there is no agreement in a record binding
17 all the cotenants that governs the partition of the property;

18 (2) one or more of the cotenants acquired
19 title from a relative, whether living or deceased; and

20 (3) any of the following applies:

21 (a) twenty percent or more of the
22 interests are held by cotenants who are relatives;

23 (b) twenty percent or more of the
24 interests are held by an individual who acquired title from a
25 relative, whether living or deceased; or

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1 (c) twenty percent or more of the
2 cotenants are relatives;

3 F. "partition by sale" means a court-ordered sale
4 of the entire heirs property, whether by auction, sealed bids
5 or open-market sale, conducted under Section 10 of the Uniform
6 Partition of Heirs Property Act;

7 G. "partition in kind" means the division of heirs
8 property into physically distinct and separately titled
9 parcels;

10 H. "record" means information that is inscribed on
11 a tangible medium or that is stored in an electronic or other
12 medium and is retrievable in perceivable form; and

13 I. "relative" means an ascendant, descendant or
14 collateral or an individual otherwise related to another
15 individual by blood, marriage, adoption or law of this state
16 other than the Uniform Partition of Heirs Property Act.

17 SECTION 3. [NEW MATERIAL] APPLICABILITY--RELATION TO
18 OTHER LAW.--

19 A. The Uniform Partition of Heirs Property Act
20 applies to partition actions filed on or after July 1, 2017.

21 B. In an action to partition real property under
22 Chapter 42, Article 5 NMSA 1978, the court shall determine
23 whether the property is heirs property. If the court
24 determines that the property is heirs property, the property
25 shall be partitioned under the Uniform Partition of Heirs

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1 Property Act unless all of the cotenants otherwise agree in a
2 record.

3 C. The Uniform Partition of Heirs Property Act
4 supplements Chapter 42, Article 5 NMSA 1978 and, if an action
5 is governed by the Uniform Partition of Heirs Property Act,
6 replaces provisions of Chapter 42, Article 5 NMSA 1978 that are
7 inconsistent with the Uniform Partition of Heirs Property Act.

8 SECTION 4. [NEW MATERIAL] SERVICE--NOTICE BY POSTING.--

9 A. The Uniform Partition of Heirs Property Act does
10 not limit or affect the method by which service of a complaint
11 in a partition action may be made.

12 B. If the plaintiff in a partition action seeks an
13 order of notice by publication and the court determines that
14 the property may be heirs property, the plaintiff, not later
15 than ten days after the court's determination, shall post and
16 maintain while the action is pending a conspicuous sign on the
17 property that is the subject of the action. The sign must
18 state that the action has commenced and identify the name and
19 address of the court and the common designation by which the
20 property is known. The court may require the plaintiff to
21 publish on the sign the name of the plaintiff and the known
22 defendants.

23 SECTION 5. [NEW MATERIAL] COMMISSIONERS.--If the court
24 appoints commissioners pursuant to Section 42-5-6 NMSA 1978,
25 each commissioner, in addition to the requirements and

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1 disqualifications applicable to commissioners in Section 42-5-6
2 NMSA 1978, shall be disinterested and impartial and not a party
3 to or a participant in the action.

4 SECTION 6. [NEW MATERIAL] DETERMINATION OF VALUE.--

5 A. Except as otherwise provided in Subsections B
6 and C of this section, if the court determines that the
7 property that is the subject of a partition action is heirs
8 property, the court shall determine the fair market value of
9 the property by ordering an appraisal pursuant to Subsection D
10 of this section.

11 B. If all cotenants have agreed to the value of the
12 property or to another method of valuation, the court shall
13 adopt that value or the value produced by the agreed method of
14 valuation.

15 C. If the court determines that the evidentiary
16 value of an appraisal is outweighed by the cost of the
17 appraisal, the court, after an evidentiary hearing, shall
18 determine the fair market value of the property and send notice
19 to the parties of the value.

20 D. If the court orders an appraisal, the court
21 shall appoint a disinterested real estate appraiser licensed in
22 this state to determine the fair market value of the property
23 assuming sole ownership of the fee simple estate. On
24 completion of the appraisal, the appraiser shall file a sworn
25 or verified appraisal with the court.

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1 E. If an appraisal is conducted pursuant to
2 Subsection D of this section, not later than ten days after the
3 appraisal is filed, the court shall send notice to each party
4 with a known address stating:

5 (1) the appraised fair market value of the
6 property;

7 (2) that the appraisal is available at the
8 clerk's office; and

9 (3) that a party may file with the court an
10 objection to the appraisal not later than thirty days after the
11 notice is sent, stating the grounds for the objection.

12 F. If an appraisal is filed with the court pursuant
13 to Subsection D of this section, the court shall conduct a
14 hearing to determine the fair market value of the property not
15 sooner than thirty days after a copy of the notice of the
16 appraisal is sent to each party under Subsection E of this
17 section, whether or not an objection to the appraisal is filed
18 under Paragraph (3) of Subsection E of this section. In
19 addition to the court-ordered appraisal, the court may consider
20 any other evidence of value offered by a party.

21 G. After a hearing under Subsection F of this
22 section, but before considering the merits of the partition
23 action, the court shall determine the fair market value of the
24 property and send notice to the parties of the value.

25 SECTION 7. [NEW MATERIAL] COTENANT BUYOUT.--

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1 A. If any cotenant requests partition by sale,
2 after the determination of value under Section 6 of the Uniform
3 Partition of Heirs Property Act, the court shall send notice to
4 the parties that any cotenant except a cotenant that requests
5 partition by sale may buy all the interests of the cotenants
6 that request partition by sale.

7 B. Not later than forty-five days after the notice
8 is sent under Subsection A of this section, any cotenant except
9 a cotenant that requests partition by sale may give notice to
10 the court that it elects to buy all the interests of the
11 cotenants that request partition by sale.

12 C. The purchase price for each of the interests of
13 a cotenant that requests partition by sale is the value of the
14 entire parcel determined under Section 6 of the Uniform
15 Partition of Heirs Property Act multiplied by the cotenant's
16 fractional ownership of the entire parcel.

17 D. After expiration of the period in Subsection B
18 of this section, the following rules apply:

19 (1) if only one cotenant elects to buy all the
20 interests of the cotenants that request partition by sale, the
21 court shall notify all the parties of that fact;

22 (2) if more than one cotenant elects to buy
23 all the interests of the cotenants that request partition by
24 sale, the court shall allocate the right to buy those interests
25 among the electing cotenants based on each electing cotenant's

1 existing fractional ownership of the entire parcel divided by
2 the total existing fractional ownership of all cotenants
3 electing to buy and send notice to all the parties of that fact
4 and of the price to be paid by each electing cotenant; and

5 (3) if no cotenant elects to buy all the
6 interests of the cotenants that request partition by sale, the
7 court shall send notice to all the parties of that fact and
8 resolve the partition action under Subsections A and B of
9 Section 8 of the Uniform Partition of Heirs Property Act.

10 E. If the court sends notice to the parties under
11 Paragraph (1) or (2) of Subsection D of this section, the court
12 shall set a date, not sooner than sixty days after the date the
13 notice was sent, by which electing cotenants shall pay their
14 apportioned price into the court. After this date, the
15 following rules apply:

16 (1) if all electing cotenants timely pay their
17 apportioned price into court, the court shall issue an order
18 reallocating all the interests of the cotenants and disburse
19 the amounts held by the court to the persons entitled to them;

20 (2) if no electing cotenant timely pays its
21 apportioned price, the court shall resolve the partition action
22 under Subsections A and B of Section 8 of the Uniform Partition
23 of Heirs Property Act as if the interests of the cotenants that
24 requested partition by sale were not purchased; and

25 (3) if one or more but not all of the electing

1 cotenants fail to pay their apportioned price on time, the
2 court, on motion, shall give notice to the electing cotenants
3 that paid their apportioned price of the interest remaining and
4 the price for all that interest.

5 F. Not later than twenty days after the court gives
6 notice pursuant to Paragraph (3) of Subsection E of this
7 section, any cotenant that paid may elect to purchase all of
8 the remaining interest by paying the entire price into the
9 court. After the twenty-day period, the following rules apply:

10 (1) if only one cotenant pays the entire price
11 for the remaining interest, the court shall issue an order
12 reallocating the remaining interest to that cotenant. The
13 court shall issue promptly an order reallocating the interests
14 of all of the cotenants and disburse the amounts held by it to
15 the persons entitled to them;

16 (2) if no cotenant pays the entire price for
17 the remaining interest, the court shall resolve the partition
18 action under Subsections A and B of Section 8 of the Uniform
19 Partition of Heirs Property Act as if the interests of the
20 cotenants that requested partition by sale were not purchased;
21 and

22 (3) if more than one cotenant pays the entire
23 price for the remaining interest, the court shall reapportion
24 the remaining interest among those paying cotenants, based on
25 each paying cotenant's original fractional ownership of the

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1 entire parcel divided by the total original fractional
2 ownership of all cotenants that paid the entire price for the
3 remaining interest. The court shall issue promptly an order
4 reallocating all of the cotenants' interests, disburse the
5 amounts held by it to the persons entitled to them and promptly
6 refund any excess payment held by the court.

7 G. Not later than forty-five days after the court
8 sends notice to the parties pursuant to Subsection A of this
9 section, any cotenant entitled to buy an interest under this
10 section may request the court to authorize the sale as part of
11 the pending action of the interests of cotenants named as
12 defendants and served with the complaint but that did not
13 appear in the action.

14 H. If the court receives a timely request under
15 Subsection G of this section, the court, after hearing, may
16 deny the request or authorize the requested additional sale on
17 such terms as the court determines are fair and reasonable,
18 subject to the following limitations:

19 (1) a sale authorized under this subsection
20 may occur only after the purchase prices for all interests
21 subject to sale under Subsections A through F of this section
22 have been paid into court and those interests have been
23 reallocated among the cotenants as provided in those
24 subsections; and

25 (2) the purchase price for the interest of a

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1 nonappearing cotenant is based on the court's determination of
2 value under Section 6 of the Uniform Partition of Heirs
3 Property Act.

4 SECTION 8. [NEW MATERIAL] PARTITION ALTERNATIVES.--

5 A. If all the interests of all cotenants that
6 requested partition by sale are not purchased by other
7 cotenants pursuant to Section 7 of the Uniform Partition of
8 Heirs Property Act or if, after conclusion of the buyout under
9 that section, a cotenant remains that has requested partition
10 in kind, the court shall order partition in kind unless the
11 court, after consideration of the factors listed in Section 9
12 of the Uniform Partition of Heirs Property Act, finds that
13 partition in kind will result in manifest prejudice to the
14 cotenants as a group. In considering whether to order
15 partition in kind, the court shall approve a request by two or
16 more parties to have their individual interests aggregated.

17 B. If the court does not order partition in kind
18 under Subsection A of this section, the court shall order
19 partition by sale pursuant to Section 10 of the Uniform
20 Partition of Heirs Property Act, or if no cotenant requested
21 partition by sale, the court shall dismiss the action.

22 C. If the court orders partition in kind pursuant
23 to Subsection A of this section, the court may require that one
24 or more cotenants pay one or more other cotenants' amounts so
25 that the payments, taken together with the value of the in-kind

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1 distributions to the cotenants, will make the partition in kind
2 just and proportionate in value to the fractional interests
3 held.

4 D. If the court orders partition in kind, the court
5 shall allocate to the cotenants that are unknown, unlocatable
6 or the subject of a default judgment, if their interests were
7 not bought out pursuant to Section 7 of the Uniform Partition
8 of Heirs Property Act, a part of the property representing the
9 combined interests of these cotenants as determined by the
10 court.

11 SECTION 9. [NEW MATERIAL] CONSIDERATIONS FOR PARTITION IN
12 KIND.--

13 A. In determining under Subsection A of Section 8
14 of the Uniform Partition of Heirs Property Act whether
15 partition in kind would result in manifest prejudice to the
16 cotenants as a group, the court shall consider the following:

17 (1) whether the heirs property practicably can
18 be divided among the cotenants;

19 (2) whether partition in kind would apportion
20 the property in such a way that the aggregate fair market value
21 of the parcels resulting from the division would be materially
22 less than the value of the property if it were sold as a whole,
23 taking into account the condition under which a court-ordered
24 sale likely would occur;

25 (3) evidence of the collective duration of

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1 ownership or possession of the property by a cotenant and one
2 or more predecessors in title or predecessors in possession to
3 the cotenant who are or were relatives of the cotenant or each
4 other;

5 (4) a cotenant's sentimental attachment to the
6 property, including any attachment arising because the property
7 has ancestral or other unique or special value to the cotenant;

8 (5) the lawful use being made of the property
9 by a cotenant and the degree to which the cotenant would be
10 harmed if the cotenant could not continue the same use of the
11 property;

12 (6) the degree to which the cotenants have
13 contributed their pro rata share of the property taxes,
14 insurance and other expenses associated with maintaining
15 ownership of the property or have contributed to the physical
16 improvement, maintenance or upkeep of the property; and

17 (7) any other relevant factor.

18 B. The court shall not consider any one factor in
19 Subsection A of this section to be dispositive without weighing
20 the totality of all relevant factors and circumstances.

21 SECTION 10. [NEW MATERIAL] OPEN-MARKET SALE, SEALED BIDS
22 OR AUCTION.--

23 A. If the court orders a sale of heirs property,
24 the sale must be an open-market sale unless the court finds
25 that a sale by sealed bids or an auction would be more

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1 economically advantageous and in the best interest of the
2 cotenants as a group.

3 B. If the court orders an open-market sale and the
4 parties, not later than ten days after the entry of the order,
5 agree on a real estate broker licensed in this state to offer
6 the property for sale, the court shall appoint the broker and
7 establish a reasonable commission. If the parties do not agree
8 on a broker, the court shall appoint a disinterested real
9 estate broker licensed in this state to offer the property for
10 sale and shall establish a reasonable commission. The broker
11 shall offer the property for sale in a commercially reasonable
12 manner at a price no lower than the determination of value and
13 on the terms and conditions established by the court.

14 C. If the broker appointed under Subsection B of
15 this section obtains within a reasonable time an offer to
16 purchase the property for at least the determination of value:

17 (1) the broker shall comply with the reporting
18 requirements in Section 11 of the Uniform Partition of Heirs
19 Property Act; and

20 (2) the sale may be completed in accordance
21 with state law other than the Uniform Partition of Heirs
22 Property Act.

23 D. If the broker appointed under Subsection B of
24 this section does not obtain within a reasonable time an offer
25 to purchase the property for at least the determination of

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1 value, the court, after hearing, may:

2 (1) approve the highest outstanding offer, if
3 any;

4 (2) redetermine the value of the property and
5 order that the property continue to be offered for an
6 additional time; or

7 (3) order that the property be sold by sealed
8 bids or at an auction.

9 E. If the court orders a sale by sealed bids or an
10 auction, the court shall set terms and conditions of the sale.
11 If the court orders an auction, the auction must be conducted
12 under Chapter 42, Article 5 NMSA 1978.

13 F. If a purchaser is entitled to a share of the
14 proceeds of the sale, the purchaser is entitled to a credit
15 against the price in an amount equal to the purchaser's share
16 of the proceeds.

17 SECTION 11. [NEW MATERIAL] REPORT OF OPEN-MARKET SALE.--

18 A. Unless required to do so within a shorter time
19 by Chapter 42, Article 5 NMSA 1978, a broker appointed under
20 Subsection B of Section 10 of the Uniform Partition of Heirs
21 Property Act to offer heirs property for open-market sale shall
22 file a report with the court not later than seven days after
23 receiving an offer to purchase the property for at least the
24 value determined under Section 6 or 10 of the Uniform Partition
25 of Heirs Property Act.

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- 1 B. The report required by Subsection A of this
2 section shall contain the following information:
- 3 (1) a description of the property to be sold
4 to each buyer;
- 5 (2) the name of each buyer;
- 6 (3) the proposed purchase price;
- 7 (4) the terms and conditions of the proposed
8 sale, including the terms of any owner financing;
- 9 (5) the amounts to be paid to lienholders;
- 10 (6) a statement of contractual or other
11 arrangements or conditions of the broker's commission; and
- 12 (7) other material facts relevant to the sale.

13 **SECTION 12. [NEW MATERIAL] UNIFORMITY OF APPLICATION AND**
14 **CONSTRUCTION.--**In applying and construing the Uniform Partition
15 of Heirs Property Act, consideration shall be given to the need
16 to promote uniformity of the law with respect to its subject
17 matter among states that enact it.

18 **SECTION 13. [NEW MATERIAL] RELATION TO ELECTRONIC**
19 **SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--**The Uniform
20 Partition of Heirs Property Act modifies, limits and supersedes
21 the federal Electronic Signatures in Global and National
22 Commerce Act, 15 U.S.C. Section 7001 et seq., but does not
23 modify, limit or supersede Section 101(c) of that act, 15
24 U.S.C. Section 7001(c), or authorize electronic delivery of any
25 of the notices described in Section 103(b) of that act, 15

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1 U.S.C. Section 7003(b).

2 SECTION 14. Section 45-2-103 NMSA 1978 (being Laws 1993,
3 Chapter 174, Section 6, as amended) is amended to read:

4 "45-2-103. SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE.--

5 A. Any part of the intestate estate not passing to
6 a decedent's surviving spouse pursuant to Section 45-2-102 NMSA
7 1978, or the entire intestate estate if there is no surviving
8 spouse, passes in the following order to the individuals who
9 survive the decedent:

10 (1) to the decedent's descendants by
11 representation;

12 (2) if there is no surviving descendant, to
13 the decedent's parents equally if both survive, or to the
14 surviving parent if only one survives;

15 (3) if there is no surviving descendant or
16 parent, to the descendants of the decedent's parents or either
17 of them by representation;

18 (4) if there is no surviving descendant,
19 parent or descendant of a parent, but the decedent is survived
20 [~~on both the paternal and maternal sides~~] by one or more
21 grandparents or descendants of grandparents, on both
22 grandparents' sides:

23 (a) half to the decedent's [~~paternal~~]
24 grandparents on one side equally if both survive, or to the
25 [~~surviving paternal grandparent~~] survivor of them if only one

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1 survives, or to the descendants of the decedent's [~~paternal~~]
2 grandparents on this side or either of them if both are
3 deceased, the descendants taking by representation; and

4 (b) half to the decedent's [~~maternal~~]
5 grandparents on the other side equally if both survive, or to
6 the [~~surviving maternal grandparent~~] survivor of them if only
7 one survives, or to the descendants of the decedent's
8 [~~maternal~~] grandparents or either of them if both are deceased,
9 the descendants taking by representation; and

10 (5) if there is no surviving descendant
11 parent, or descendant of a parent, but the decedent is survived
12 by one or more grandparents or descendants of grandparents [~~on~~
13 ~~the paternal but not the maternal side, or on the maternal but~~
14 ~~not the paternal~~] on one side but not the other side, to the
15 decedent's relatives on the side with one or more surviving
16 members in the manner described in Paragraph (4) of this
17 subsection.

18 B. If there is no taker under Subsection A of this
19 section, but the decedent has:

20 (1) one deceased spouse who has one or more
21 descendants who survive the decedent, the estate or part
22 thereof passes to that spouse's descendants by representation;
23 or

24 (2) more than one deceased spouse who has one
25 or more descendants who survive the decedent, an equal share of

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1 the estate or part thereof passes to each set of descendants by
2 representation.

3 C. For purposes of Subsection B of this section,
4 the term "deceased spouse" means an individual to whom the
5 decedent was married at the individual's death, and does not
6 include a spouse who was divorced from, or treated pursuant to
7 Section 45-2-802 or Section 45-2-804 NMSA 1978 as divorced
8 from, the decedent at the time of the decedent's death."

9 SECTION 15. Section 45-2-504 NMSA 1978 (being Laws 1993,
10 Chapter 174, Section 27, as amended) is amended to read:

11 "45-2-504. SELF-PROVED WILL.--

12 A. A will may be simultaneously executed, attested
13 and made self-proved by acknowledgment thereof by the testator
14 and affidavits or affirmations under penalty of perjury of the
15 witnesses, each made before an officer authorized to administer
16 oaths under the laws of the state in which execution occurs and
17 evidenced by the officer's certificate, under official seal, in
18 substantially the following form:

19 [~~"I, _____, the testator, sign my name to this instrument~~
20 ~~this _____ day of _____, and being first duly sworn, do hereby~~
21 ~~declare to the undersigned authority that I sign and execute~~
22 ~~this instrument as my will and that I sign it willingly (or~~
23 ~~willingly direct another to sign for me), that I execute it as~~
24 ~~my free and voluntary act for the purposes therein expressed,~~
25 ~~and that I am eighteen years of age or older, of sound mind and~~

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1 ~~under no constraint or undue influence.]~~

2 "I, _____, the testator, swear or affirm under penalty of
3 perjury on this _____ day of _____, that I request _____
4 and _____ to act as witnesses to my will; that I declare to
5 them and the undersigned authority that this document is my
6 will; that I sign this will in the presence of both witnesses;
7 that they sign the will as witnesses in my presence and in the
8 presence of each other; that the will was read by me (or read
9 and explained to me) after being prepared and before I sign it;
10 that it clearly and accurately expresses my wishes; that I sign
11 it willingly (or willingly directed another to sign for me);
12 that I make and sign the will as my free and voluntary act for
13 the purposes expressed in the will; that I am eighteen years of
14 age or older; that I am mentally capable of disposing of my
15 estate by will; and that I am not acting under duress, menace,
16 fraud or undue influence of any person.

17 _____
18 Testator

19 We, _____ and _____, the witnesses, [~~sign our~~
20 ~~names to this instrument, and being first duly sworn, do hereby~~
21 ~~declare to the undersigned authority that the testator signs~~
22 ~~and executes this instrument as his will and that he signs it~~
23 ~~willingly (or willingly directs another to sign for him), and~~
24 ~~that each of us, in the presence of the testator, and in the~~
25 ~~presence of each other hereby signs this will as witness to the~~

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1 ~~testator's signing, and that to the best of our knowledge the~~
2 ~~testator is eighteen years of age or older, of sound mind and~~
3 ~~under no constraint or undue influence] do hereby swear or~~
4 affirm under penalty of perjury on this _____ day of
5 _____ to the undersigned authority that the
6 testator, _____, declares that the attached
7 document is his or her will; that the testator signs it
8 willingly (or willingly directs another to sign for him or
9 her); that the testator signs it in the presence of both of us
10 and requests both of us to sign as witnesses; that each of us,
11 in the presence of the testator and in the presence of each
12 other, signs this will as witness to the testator's signing;
13 that so far as we can determine, the testator is eighteen years
14 of age or older; that the testator is not acting under duress,
15 menace, fraud or undue influence of any person; and that the
16 testator, in our opinion, is mentally capable of disposing of
17 his or her estate by will.

Witness

Witness

22 [The] State of _____
23 County of _____

24 Subscribed and sworn to, or affirmed under penalty of
25 perjury, and acknowledged before me by _____, the

1 ~~in the presence of the testator, and in the presence of each~~
2 ~~other signed the will as witness, and that to the best of our~~
3 ~~knowledge the testator was at that time eighteen years of age~~
4 ~~or older, of sound mind and under no constraint or undue~~
5 ~~influence.~~

6 _____

7 Testator

8 _____

9 Witness

10 _____

11 Witness]

12 "I, _____, the testator, swear or
13 affirm under penalty of perjury on this _____ day of
14 _____ that I requested _____ and
15 _____ to act as witnesses to my will; that I
16 declared to them and the undersigned authority that this
17 document is my will; that I signed this will in the presence of
18 both witnesses; that they signed the will as witnesses in my
19 presence and in the presence of each other; that the will was
20 read by me (or read and explained to me) after being prepared
21 and before I signed it; that it clearly and accurately
22 expresses my wishes; that I signed it willingly (or willingly
23 directed another to sign for me); that I made and signed the
24 will as my free and voluntary act for the purposes expressed in
25 the will; that I am eighteen years of age or older; that I am

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1 mentally capable of disposing of my estate by will; and that I
2 am not acting under duress, menace, fraud or undue influence of
3 any person.

4 _____
5 Testator

6 We, _____ and _____,

7 the witnesses, do hereby swear or affirm under penalty of
8 perjury on this _____ day of _____
9 that the testator, _____, declared the attached
10 document to be his or her will; that the testator signed it
11 willingly (or willingly directed another to sign for the
12 testator); that the testator signed it in the presence of both
13 of us and requested both of us to sign as witnesses; that each
14 of us, in the presence of the testator and in the presence of
15 each other, signed this will as witness to the testator's
16 signing; that so far as we could determine, the testator is
17 eighteen years of age or older; that the testator was not
18 acting under duress, menace, fraud or undue influence of any
19 person; and that the testator, in our opinion, was mentally
20 capable of disposing of the testator's estate by will.

21 _____
22 Witness

23 _____
24 Witness

25 State of _____

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1 County of _____

2 Subscribed and sworn to, or affirmed under penalty of
3 perjury, and acknowledged before me by _____, the
4 testator, and subscribed and sworn to, or affirmed under
5 penalty of perjury, before me by _____ and _____,
6 witnesses, this _____ of _____.

7 (Seal)

8 (Signed) _____

9 _____

10 (Official capacity of officer)".

11 C. A signature affixed to a self-proving affidavit
12 attached to a will is considered a signature affixed to the
13 will if necessary to prove the will's due execution."

14 SECTION 16. Section 45-3-203 NMSA 1978 (being Laws 1975,
15 Chapter 257, Section 3-203, as amended) is amended to read:

16 "45-3-203. PRIORITY AMONG PERSONS SEEKING APPOINTMENT AS
17 PERSONAL REPRESENTATIVE.--

18 A. Whether the proceedings are formal or informal,
19 persons who are not disqualified have priority for appointment
20 in the following order:

21 (1) the person with priority as determined by
22 a probated will, including a person nominated by a power
23 conferred in a will;

24 (2) the surviving spouse of the decedent who
25 is a devisee of the decedent;

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- 1 (3) other devisees of the decedent;
2 (4) the surviving spouse of the decedent;
3 (5) other heirs of the decedent; and
4 (6) ~~[on application or petition of an~~
5 ~~interested person other than a spouse, devisee or heir, any~~
6 ~~qualified person]~~ forty-five days after the death of the
7 decedent, any creditor.

8 B. An objection to an appointment may be made only
9 in formal proceedings. In case of objection, the priorities
10 stated in Subsection A of this section apply except that:

11 (1) if the estate appears to be more than
12 adequate to meet allowances and costs of administration but
13 inadequate to discharge anticipated unsecured claims, the
14 court, on petition of creditors, may appoint any qualified
15 person; and

16 (2) in case of objection to appointment of a
17 person other than one whose priority is determined by will by
18 an heir or devisee appearing to have a substantial interest in
19 the estate, the court may appoint a person who is acceptable to
20 heirs and devisees whose interests in the estate appear to be
21 worth in total more than half of the probable distributable
22 value of the estate or, in default of this accord, any suitable
23 person.

24 C. A person entitled to letters under Paragraphs
25 (2) through (5) of Subsection A of this section or a person who

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1 has not reached the age of majority and who [~~might~~] would be
2 entitled to letters but for the person's age may nominate a
3 qualified person to act as personal representative by an
4 appropriate writing filed with the court and thereby confer the
5 person's relative priority for appointment on the person's
6 nominee. Any person who has reached the age of majority may
7 renounce the right to nominate or to an appointment by an
8 appropriate writing filed with the court. When two or more
9 persons entitled to letters under Paragraphs (2) through (5) of
10 Subsection A of this section share a priority, all those who do
11 not renounce [~~shall~~] must concur in nominating another to act
12 for them or in applying for appointment by an appropriate
13 writing filed with the court. The person so nominated shall
14 have the same priority as those who nominated the person. A
15 nomination or renunciation shall be signed by each person
16 making it, the person's attorney or the person's representative
17 authorized by Subsection D of this section.

18 D. Conservators of the estates of protected persons
19 or, if there is no conservator, any guardian except a guardian
20 ad litem of a minor or incapacitated person may exercise the
21 same right to nominate, to object to another's appointment or
22 to participate in determining the preference of a majority in
23 interest of the heirs and devisees that the protected person
24 would have if qualified for appointment.

25 E. Appointment of one who does not have [~~highest~~]

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1 priority, including [highest] priority resulting from
2 renunciation or nomination determined pursuant to this section,
3 may be made only in formal proceedings. Before appointing one
4 without [highest] priority, the court shall determine that
5 those having [highest] priority, although given notice of the
6 proceedings, have failed to request appointment or to nominate
7 another for appointment and that administration is necessary.

8 F. No person is qualified to serve as a personal
9 representative who is:

10 (1) under the age of majority; or

11 (2) a person whom the court finds unsuitable
12 in formal proceedings [~~or~~

13 ~~(3) a creditor of the decedent unless the~~
14 ~~appointment is to be made after forty-five days have elapsed~~
15 ~~from the death of the decedent].~~

16 G. A personal representative appointed by a court
17 of the decedent's domicile has priority over all other persons
18 except where the decedent's will nominates different persons to
19 be personal representatives in New Mexico and in the state of
20 domicile. The domiciliary personal representative may nominate
21 another, who shall have the same priority as the domiciliary
22 personal representative.

23 H. This section governs priority for appointment of
24 a successor personal representative but does not apply to the
25 selection of a special administrator."

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1 SECTION 17. Section 45-3-703 NMSA 1978 (being Laws 1975,
2 Chapter 257, Section 3-703, as amended) is amended to read:

3 "45-3-703. GENERAL DUTIES--RELATION AND LIABILITY TO
4 PERSONS INTERESTED IN ESTATE--STANDING TO SUE.--

5 A. A personal representative is a fiduciary who
6 shall observe the same standards of care applicable to
7 trustees. A personal representative is under a duty to settle
8 and distribute the estate of a decedent in accordance with the
9 terms of any probated and effective will and the Uniform
10 Probate Code and as expeditiously and efficiently as is
11 consistent with the best interests of the estate. The personal
12 representative shall use the authority conferred upon the
13 personal representative by the Uniform Probate Code, the terms
14 of the will, if any, and any order in proceedings to which the
15 personal representative is party for the best interests of
16 successors to the estate.

17 B. A personal representative may not be surcharged
18 for acts of administration or distribution if the conduct in
19 question was authorized at the time. Subject to other
20 obligations of administration, an informally probated will
21 authorizes a personal representative to administer and
22 distribute the estate according to its terms.

23 C. An order of appointment of a personal
24 representative, whether issued in informal or formal
25 proceedings, authorizes a personal representative to distribute

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1 apparently intestate assets to the heirs of the decedent if, at
2 the time of distribution, the personal representative is not
3 aware of:

4 (1) a pending testacy proceeding;

5 (2) a proceeding to vacate an order entered in
6 an earlier testacy proceeding;

7 (3) a formal proceeding questioning the
8 personal representative's appointment or fitness to continue;
9 or

10 (4) a supervised administration proceeding.

11 D. This section does not affect the duty of the
12 personal representative to administer and distribute the estate
13 in accordance with the rights of claimants whose claims have
14 been allowed, the surviving spouse, any minor and dependent
15 children and any pretermitted child of the decedent.

16 E. Except as to proceedings that do not survive the
17 death of the decedent, a personal representative of a decedent
18 domiciled in New Mexico at the decedent's death has the same
19 standing to sue and be sued in the courts of New Mexico and the
20 courts of any other jurisdiction as the decedent had
21 immediately prior to death.

22 F. The personal representative must not delay
23 distribution of an estate pending the possible birth of a
24 posthumously conceived child unless the personal
25 representative:

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1 (1) has received written notice or has actual
2 knowledge that there is an intention to use a decedent's
3 genetic material to create a child; and

4 (2) the birth of the child pursuant to the
5 provisions of Section 45-2-120 NMSA 1978 or other law could
6 have an effect on the personal representative's distribution of
7 the estate. As used in this subsection, "genetic material"
8 means eggs, sperm or embryos."

9 SECTION 18. Section 45-3-705 NMSA 1978 (being Laws 1975,
10 Chapter 257, Section 3-705, as amended) is amended to read:

11 "45-3-705. DUTY OF PERSONAL REPRESENTATIVE--NOTICE TO
12 HEIRS AND DEVISEES.--

13 A. Not later than [~~ten~~] thirty days after [~~his~~]
14 appointment, every personal representative, except [~~any~~] a
15 special administrator, shall give notice of [~~his~~] the
16 appointment to the heirs and devisees, including, if there has
17 been no formal testacy proceeding and if the personal
18 representative was appointed on the assumption that the
19 decedent died intestate, the devisees in any will mentioned in
20 the application or petition for appointment of a personal
21 representative.

22 B. The notice shall be delivered or [~~mailed~~] sent
23 by ordinary mail to each of the heirs and devisees whose
24 address is reasonably available to the personal representative.

25 The duty does not extend to require notice to persons:

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1 (1) who have been adjudicated in a prior
2 formal testacy proceeding to have no interest in the estate; or

3 (2) who are born more than thirty days after
4 the personal representative's appointment, including children
5 born by posthumous conception.

6 C. The notice shall:

7 (1) include the name and address of the
8 personal representative;

9 (2) indicate that it is being sent to persons
10 who have or may have some interest in the estate being
11 administered;

12 (3) indicate whether bond has been filed; and

13 (4) describe the court where papers relating
14 to the estate are on file.

15 ~~[D-]~~ D. The notice shall state that the estate is
16 being administered by the personal representative pursuant to
17 the provisions of the Uniform Probate Code without supervision
18 by the court but that recipients are entitled to information
19 regarding the administration from the personal representative
20 and can petition the court in any matter relating to the
21 estate, including distribution of assets and expenses of
22 administration.

23 ~~[D-]~~ E. The personal representative shall file a
24 statement with the appointing court giving the names and
25 addresses of those persons notified pursuant to Subsection A of

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1 this section.

2 [E-] F. The personal representative's failure to
3 give notice pursuant to this section is a breach of [~~his~~] duty
4 to the persons concerned but does not affect the validity of
5 [~~his~~] the appointment, [~~his~~] the personal representative's
6 powers or other duties. A personal representative may inform
7 other persons of [~~his~~] the appointment by delivery or ordinary
8 mail."

9 SECTION 19. Section 45-3-911 NMSA 1978 (being Laws 1975,
10 Chapter 257, Section 3-911) is amended to read:

11 "45-3-911. PARTITION FOR PURPOSE OF DISTRIBUTION.--

12 A. When two or more heirs or devisees are entitled
13 to distribution of undivided interests in any real or personal
14 property of the estate, the personal representative or one or
15 more of the heirs or devisees may petition the district court
16 prior to the formal or informal closing of the estate to make
17 partition.

18 B. After notice to the interested heirs or
19 devisees, the district court shall partition the property
20 pursuant to the provisions of the Uniform Partition of Heirs
21 Property Act.

22 C. The district court may direct the personal
23 representative to sell any property [~~which cannot be~~
24 ~~partitioned without prejudice to the interested heirs and~~
25 ~~devisees and which cannot conveniently be allotted to any one~~

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1 party] pursuant to the provisions of the Uniform Partition of
2 Heirs Property Act."

3 SECTION 20. Section 46-12-119 NMSA 1978 (being Laws 2016,
4 Chapter 72, Section 1-119) is amended to read:

5 "46-12-119. TAX-RELATED LIMITATIONS.--

6 A. As used in this section:

7 (1) "grantor trust" means a trust as to which
8 a settlor of a first trust is considered the owner under 26
9 U.S.C. Sections 671 through 677, as amended, or 26 U.S.C.
10 Section 679, as amended;

11 (2) "Internal Revenue Code" means the United
12 States Internal Revenue Code of 1986, as amended;

13 (3) "nongrantor trust" means a trust that is
14 not a grantor trust; and

15 (4) "qualified benefits property" means
16 property subject to the minimum distribution requirements of 26
17 U.S.C. Section 401(a)(9), as amended, and any applicable
18 regulations or subject to any similar requirements that refer
19 to 26 U.S.C. Section 401(a)(9), as amended or the regulations.

20 B. An exercise of the decanting power is subject to
21 the following limitations:

22 (1) if a first trust contains property that
23 qualified, or would have qualified but for provisions of the
24 Uniform Trust Decanting Act other than those in this section,
25 for a marital deduction for purposes of the gift or estate tax

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1 under the Internal Revenue Code or a state gift, estate or
2 inheritance tax, the second-trust instrument shall not include
3 or omit any term that, if included in or omitted from the trust
4 instrument for the trust to which the property was transferred,
5 would have prevented the transfer from qualifying for the
6 deduction, or would have reduced the amount of the deduction,
7 under the same provisions of the Internal Revenue Code or state
8 law under which the transfer qualified;

9 (2) if the first trust contains property that
10 qualified, or would have qualified but for provisions of the
11 Uniform Trust Decanting Act other than those in this section,
12 for a charitable deduction for purposes of the income, gift or
13 estate tax under the Internal Revenue Code or a state income,
14 gift, estate or inheritance tax, the second-trust instrument
15 shall not include or omit any term that, if included in or
16 omitted from the trust instrument for the trust to which the
17 property was transferred, would have prevented the transfer
18 from qualifying for the deduction, or would have reduced the
19 amount of the deduction, under the same provisions of the
20 Internal Revenue Code or state law under which the transfer
21 qualified;

22 (3) if the first trust contains property that
23 qualified, or would have qualified but for provisions of the
24 Uniform Trust Decanting Act other than those in this section,
25 for the exclusion from the gift tax described in 26 U.S.C.

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1 Section 2503(b), as amended, the second-trust instrument shall
2 not include or omit a term that, if included in or omitted from
3 the trust instrument for the trust to which the property was
4 transferred, would have prevented the transfer from qualifying
5 under 26 U.S.C. Section 2503(b), as amended. If the first
6 trust contains property that qualified, or would have qualified
7 but for provisions of the Uniform Trust Decanting Act other
8 than those in this section, for the exclusion from the gift tax
9 described in 26 U.S.C. Section 2503(b), as amended, by
10 application of 26 U.S.C. Section 2503(c), as amended, the
11 second-trust instrument shall not include or omit a term that,
12 if included or omitted from the trust instrument for the trust
13 to which the property was transferred, would have prevented the
14 transfer from qualifying under 26 U.S.C. Section 2503(c), as
15 amended;

16 (4) if the property of the first trust
17 includes shares of stock in an S corporation, as defined in 26
18 U.S.C. Section 1361, as amended, and the first trust is, or,
19 but for provisions of the Uniform Trust Decanting Act other
20 than those in this section, would be, a permitted shareholder
21 under any provision of 26 U.S.C. Section 1361, as amended, an
22 authorized fiduciary may exercise the power with respect to
23 part or all of the S-corporation stock only if any second trust
24 receiving the stock is a permitted shareholder under 26 U.S.C.
25 Section 1361(c)(2), as amended. If the property of the first

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1 trust includes shares of stock in an S corporation and the
2 first trust is, or, but for provisions of the Uniform Trust
3 Decanting Act other than those in this section, would be, a
4 qualified subchapter-S trust within the meaning of 26 U.S.C.
5 Section 1361(d), as amended, the second-trust instrument shall
6 not include or omit a term that prevents the second trust from
7 qualifying as a qualified subchapter-S trust;

8 (5) if the first trust contains property that
9 qualified, or, but for provisions of the Uniform Trust
10 Decanting Act other than those in this section, would have
11 qualified, for a zero inclusion ratio for purposes of the
12 generation-skipping transfer tax under 26 U.S.C. Section
13 2642(c), as amended, the second-trust instrument shall not
14 include or omit a term that, if included in or omitted from the
15 first-trust instrument, would have prevented the transfer to
16 the first trust from qualifying for a zero inclusion ratio
17 under 26 U.S.C. Section 2642(c), as amended;

18 (6) if the first trust is directly or
19 indirectly the beneficiary of qualified benefits property, the
20 second-trust instrument shall not include or omit any term
21 that, if included in or omitted from the first-trust
22 instrument, would have increased the minimum distributions
23 required with respect to the qualified benefits property under
24 26 U.S.C. Section 401(a)(9), as amended, and any applicable
25 regulations or any similar requirements that refer to 26 U.S.C.

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1 Section 401(a)(9), as amended, or the regulations. If an
2 attempted exercise of the decanting power violates this
3 paragraph, the trustee is deemed to have held the qualified
4 benefits property and any reinvested distributions of the
5 property as a separate share from the date of the exercise of
6 the power, and Section [~~1-122 of the Uniform Trust Decanting~~
7 ~~Act~~] 46-12-122 NMSA 1978 applies to the separate share;

8 (7) if the first trust qualifies as a grantor
9 trust because of the application of 26 U.S.C. Section
10 672(f)(2)(A), as amended, the second trust shall not include or
11 omit a term that, if included in or omitted from the first-
12 trust instrument, would have prevented the first trust from
13 qualifying under 26 U.S.C. Section 672(f)(2)(A), as amended;

14 (8) as used in this paragraph, "tax benefit"
15 means a federal or state tax deduction, exemption, exclusion or
16 other benefit not otherwise listed in this section, except for
17 a benefit arising from being a grantor trust. Subject to
18 Paragraph (9) of this subsection, a second-trust instrument
19 shall not include or omit a term that, if included in or
20 omitted from the first-trust instrument, would have prevented
21 qualification for a tax benefit if:

22 (a) the first-trust instrument expressly
23 indicates an intent to qualify for the benefit or the first-
24 trust instrument clearly is designed to enable the first trust
25 to qualify for the benefit; and

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1 (b) the transfer of property held by the
2 first trust or the first trust qualified, or, but for
3 provisions of the Uniform Trust Decanting Act other than those
4 in this section, would have qualified, for the tax benefit;

5 (9) subject to Paragraph (4) of this
6 subsection:

7 (a) except as otherwise provided in
8 Paragraph (7) of this subsection, the second trust may be a
9 nongrantor trust, even if the first trust is a grantor trust;
10 and

11 (b) except as otherwise provided in
12 Paragraph (10) of this subsection, the second trust may be a
13 grantor trust, even if the first trust is a nongrantor trust;
14 and

15 (10) an authorized fiduciary shall not
16 exercise the decanting power if a settlor objects in a signed
17 record delivered to the fiduciary within the notice period and:

18 (a) the first trust and a second trust
19 are both grantor trusts, in whole or in part, the first trust
20 grants the settlor or another person the power to cause the
21 [~~second~~] first trust to cease to be a grantor trust and the
22 second trust does not grant an equivalent power to the settlor
23 or other person; or

24 (b) the first trust is a nongrantor
25 trust and a second trust is a grantor trust, in whole or in

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1 part, with respect to the settlor, unless: 1) the settlor has
2 the power at all times to cause the second trust to cease to be
3 a grantor trust; or 2) the first-trust instrument contains a
4 provision granting the settlor or another person a power that
5 would cause the first trust to cease to be a grantor trust and
6 the second-trust instrument contains the same provision."

7 SECTION 21. EFFECTIVE DATE.--

8 A. The effective date of the provisions of Sections
9 14 and 20 of this act is July 1, 2017.

10 B. The effective date of the provisions of Sections
11 1 through 13 and 15 through 19 of this act is January 1, 2018.