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HOUSE BILL 183

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

INTRODUCED BY

Zachary J. Cook

AN ACT

RELATING TO PROPERTY; REVISING THE STATUTORY RULE AGAINST PERPETUITIES AS IT AFFECTS PROPERTY INTERESTS, INCLUDING REAL PROPERTY INTERESTS, HELD IN TRUST.

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

SECTION 1. Section 45-2-904 NMSA 1978 (being Laws 1992, Chapter 66, Section 4, as amended) is amended to read:

"45-2-904. EXCLUSIONS--REAL PROPERTY HELD IN TRUST---

A. The provisions of Section 45-2-901 NMSA 1978

~~does~~ do not apply to:

~~[A.]~~ (1) a nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of:

~~[1.]~~ (a) a premarital or postmarital

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1 agreement;

2 [~~(2)~~] (b) a separation or divorce

3 settlement;

4 [~~(3)~~] (c) a spouse's election;

5 [~~(4)~~] (d) a similar arrangement arising
6 out of a prospective, existing or previous marital relationship
7 between the parties;

8 [~~(5)~~] (e) a contract to make or not to
9 revoke a will or trust;

10 [~~(6)~~] (f) a contract to exercise or not
11 to exercise a power of appointment;

12 [~~(7)~~] (g) a transfer in satisfaction of
13 a duty of support; or

14 [~~(8)~~] (h) a reciprocal transfer;

15 [~~B-~~] (2) a fiduciary's power relating to the
16 administration or management of assets, including the power of
17 a fiduciary to sell, lease or mortgage property and the power
18 of a fiduciary to determine principal and income;

19 [~~G-~~] (3) a power to appoint a fiduciary;

20 [~~D-~~] (4) a discretionary power of a trustee to
21 distribute principal before termination of a trust to a
22 beneficiary having an indefeasibly vested interest in the
23 income and principal;

24 [~~E-~~] (5) a nonvested property interest held by
25 a charity, government or governmental agency or subdivision if

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1 the nonvested property interest is preceded by an interest held
2 by another charity, government or governmental agency or
3 subdivision;

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

16 ~~[G.]~~ (7) a property interest, power of
17 appointment or arrangement that was not subject to the
18 common-law rule against perpetuities or that is excluded by
19 another statute of New Mexico; ~~[or~~

20 ~~H.]~~ (8) a property interest or arrangement
21 subject to a time limit under the provisions of Section
22 45-2-907 NMSA 1978; or

23 (9) a property interest held in trust.

24 B. For real property held in trust, at the end of
25 three hundred sixty-five years from the later of the date on

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1 which an interest in real property is added to or purchased by
2 a trust or the date that the trust became irrevocable, if the
3 interest in real property is still held in trust and if the
4 trust instrument:

5 (1) provides for the distribution of the
6 interest upon termination of the trust, the property shall be
7 distributed as though termination occurred at that time;

8 (2) does not provide for the distribution of
9 the interest upon termination of the trust, the property shall
10 be distributed to the beneficiaries who are then entitled to
11 receive income from the trust:

12 (a) in proportion to the amount of
13 income each is entitled to receive; or

14 (b) if that proportion is not specified
15 in the trust instrument, in equal shares; or

16 (3) does not provide for the distribution of
17 the interest upon termination of the trust and there is no
18 income beneficiary of the trust, the property shall be
19 distributed, pursuant to the laws of New Mexico then in effect
20 that govern the distribution of interstate real property, to
21 the then-living persons who are then determined to be the
22 settlor's or testator's distributees as though the settlor or
23 testator had died at that time, intestate, a resident of New
24 Mexico and owning the property so distributable. For the
25 purposes of this paragraph, "settlor" means a person who

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1 creates or contributes property to a trust.

2 C. A trust shall not become void or subject to
3 termination pursuant to the provisions of this section or
4 Section 45-2-901 NMSA 1978 if:

5 (1) a trust holds an interest in a
6 corporation, a limited liability company, a partnership, a
7 statutory trust, a business trust or another corporate entity;

8 (2) the entity is the owner of an interest in
9 real property;

10 (3) the entity terminates; and

11 (4) the trust becomes the holder of an
12 interest in real property.

13 D. Except as otherwise provided in the trust
14 instrument, the trustee of a trust that becomes the holder of
15 an interest in real property through the sequence outlined in
16 Subsection C of this section may:

17 (1) distribute the interest in real property
18 in accordance with the provisions of this subsection; or

19 (2) convey the interest in real property to
20 another corporate entity in exchange for an interest in that
21 entity to be held by the trustee.

22 E. For the purposes of this section, "real
23 property" does not include:

24 (1) intangible personal property; or

25 (2) an interest in a corporation, a limited

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1 liability company, a partnership, a statutory trust, a business
2 trust or another corporate entity, regardless of whether the
3 entity is the owner of an interest in real property."

4 SECTION 2. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2015.

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