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HOUSE BILL 271

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Bill B. O'Neill

AN ACT

RELATING TO PROBATE; CONTINUING CERTAIN GUARDIANSHIP POWERS
AFTER THE DEATH OF A PROTECTED PERSON.

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

SECTION 1. Section 45-5-306 NMSA 1978 (being Laws 1975,
Chapter 257, Section 5-306, as amended) is amended to read:

"45-5-306. DEATH OF PROTECTED PERSON OR GUARDIAN--
INCAPACITY OF GUARDIAN.--

A. Except as provided in Subsection B of this
section, the authority and responsibility of a guardian for an
incapacitated person terminates upon the death of the guardian
or protected person, the determination of incapacity of the
guardian or upon removal or resignation as provided in Section
45-5-307 NMSA 1978. Upon the death of the protected person,
the guardian shall submit notice to the appointing court and to

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1 any relatives of the protected person known to the guardian.
2 Testamentary appointment under an informally probated will
3 terminates if the will is later denied probate in a formal
4 proceeding. Termination does not affect the guardian's
5 liability for prior acts nor the guardian's obligation to
6 account for funds and assets of the guardian's protected
7 person.

8 B. The following powers of a guardian shall remain
9 for up to one year after the death of the protected person, or
10 until the appointment of a personal representative, and shall
11 be exercised in accordance with the preferences of the
12 protected person if known to the guardian:

13 (1) the power to arrange and pay for a funeral
14 for or to consent to the cremation of the deceased protected
15 person;

16 (2) the power to request and receive medical,
17 financial or other records of the protected person;

18 (3) the power to request an autopsy of the
19 deceased protected person and to obtain its results;

20 (4) the power to make and file an accounting
21 of the protected person's financial affairs; and

22 (5) a power incidental to the closing of and
23 the accounting for the guardianship, which actions shall be
24 fully reported to the appointing court."