

45-5-301

Chapter 45. Uniform Probate Code.

ARTICLE 5 Protection of Persons Under Disability and Their Property

45-5-301. Appointment of guardian for incapacitated person; notice.

A. The parent of an unmarried incapacitated person may appoint by will, or other writing signed by the parent and attested by at least two witnesses, a guardian of the incapacitated person. If both parents are dead or incapacitated or the surviving parent has no parental rights or has been adjudged incapacitated, appointment becomes effective when, after having given seven days' prior written notice of intention to do so to the incapacitated person and to the person having care of the incapacitated person or to the nearest adult relative, the guardian files acceptance of appointment in the court in which the will is probated, or in the case of a non-testamentary instrument, in the court at the place where the incapacitated person resides or is present. The notice shall state that the appointment may be terminated by filing a written objection in the court, as provided in Subsection D of this section. If both parents are dead, an effective appointment by the parent who died later has priority.

B. The spouse of a married incapacitated person may appoint by will, or other writing signed by the spouse and attested by at least two witnesses, a guardian of the incapacitated person. The appointment becomes effective when, after having given seven days' prior written notice of intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is probated or, in the case of a non-testamentary nominating instrument, in the court at the place where the incapacitated person resides or is present. The notice shall state that the appointment may be terminated by filing a written objection in the court, as provided in Subsection D of this section. An effective appointment by a spouse has priority over an appointment by a parent.

C. An appointment effected by filing the guardian's acceptance under a will probated in the state of testator's domicile is effective in New Mexico.

D. On the filing in the court in which the will was probated or, in the case of a non-testamentary nominating instrument, in the court at the place where the incapacitated person resides or is present, of written objection to the appointment by the incapacitated person for whom a parental or spousal appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the parental or spousal nominee or

any other suitable person upon an adjudication of incapacity in proceedings under Sections 45-5-301.1 through 45-5-315 NMSA 1978.