

## **PRIORITY FOR APPOINTMENT OF PERSONAL REPRESENTATIVE**

### **NEW MEXICO RULES ANNOTATED 1B-304 & 1B-306**

#### ***INTESTATE (NO WILL)***

If you were married to the decedent and are not disqualified to act as personal representative, you have the first priority to act as personal representative. If you were not married to the decedent and you are not an heir or are not the only heir, each of the other heirs, including the decedent's spouse, if any, must consent to your appointment as personal representative. For example, if you have two brothers, your mother is no longer living, and you want to probate your father's estate, each of your brothers must sign the consent section of Form 4B-301 NMRA, Application. If any of the heirs do not consent to your appointment as personal representative, a formal proceeding in district court is required. See Section [45-3-203](#) NMSA 1978. If a formal proceeding is required you may not use the forms and you should seek the advice of a lawyer.

#### ***TESTATE (WILL)***

If you are designated in the will to act as personal representative, you have the first priority to act as personal representative. If you are not the first person designated in the will or are not listed in the will to act as personal representative, the person nominated in the will to be personal representative and each of the devisees must consent to your appointment as personal representative. For example, if you are the second person listed to act as personal representative but every person listed in the will wants you to act as personal representative, each person with a higher priority to serve as personal representative must sign the consent section of Form 4B-302 NMRA, Application. If any person with an equal or higher priority to serve as personal representative does not consent to your appointment as personal representative, a formal proceeding in district court is required. See Section [45-3-203](#) NMRA 1978. If a formal proceeding is required you may not use the forms and you should seek the advice of a lawyer.