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CHAPTER 141

HOUSE BILL 199

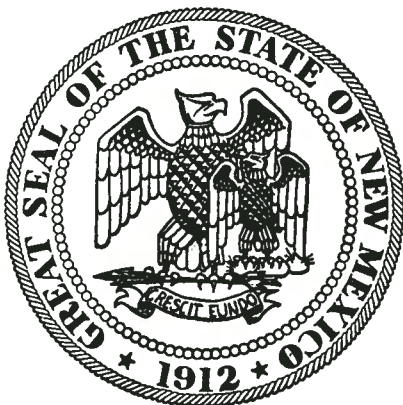
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Introduced by

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# Chapter 141

## AN ACT

RELATING TO REAL PROPERTY; ENACTING THE UNIFORM ASSIGNMENT OF RENTS ACT.

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

SECTION 1. SHORT TITLE.--This act may be cited as the "Uniform Assignment of Rents Act".

SECTION 2. DEFINITIONS.--As used in the Uniform Assignment of Rents Act:

A. "assignee" means a person entitled to enforce an assignment of rents;

B. "assignment of rents" means a transfer of an interest in rents in connection with an obligation secured by real property located in New Mexico and from which the rents arise;

C. "assignor" means a person that makes an assignment of rents or the successor owner of the real property from which the rents arise;

D. "cash proceeds" means proceeds that are money, checks, deposit accounts or the like;

E. "day" means a calendar day;

F. "deposit account" means a demand, time, savings, passbook or similar account maintained with a bank, savings bank, savings and loan association, credit union or trust company;

1 G. "document" means information that is inscribed  
2 on a tangible medium or that is stored on an electronic or  
3 other medium and is retrievable in perceivable form;

4 H. "notification" means a document containing  
5 information that the Uniform Assignment of Rents Act requires  
6 a person to provide to another, signed by the person required  
7 to provide the information;

8 I. "person" means an individual, corporation,  
9 business trust, estate, trust, partnership, limited liability  
10 company, association, joint venture, public corporation,  
11 government or governmental subdivision, agency or  
12 instrumentality or any other legal or commercial entity;

13 J. "proceeds" means personal property that is  
14 received or collected on account of a tenant's obligation to  
15 pay rents;

16 K. "purchase" means to take by sale, lease,  
17 discount, negotiation, mortgage, pledge, lien, security  
18 interest, issue or reissue, gift or any other voluntary  
19 transaction creating an interest in property;

20 L. "rents" means:

21 (1) sums payable for the right to possess or  
22 occupy, or for the actual possession or occupation of, real  
23 property of another person;

24 (2) sums payable to an assignor pursuant to  
25 a policy of rental interruption insurance covering real

1 property;

2 (3) claims arising out of a default in the  
3 payment of sums payable for the right to possess or occupy  
4 real property of another person;

5 (4) sums payable to terminate an agreement  
6 to possess or occupy real property of another person;

7 (5) sums payable to an assignor for payment  
8 or reimbursement of expenses incurred in owning, operating and  
9 maintaining, or constructing or installing improvements on,  
10 real property; or

11 (6) any other sums payable pursuant to an  
12 agreement relating to the real property of another person that  
13 constitute rents pursuant to any law of New Mexico other than  
14 the Uniform Assignment of Rents Act;

15 M. "secured obligation" means an obligation, the  
16 performance of which is secured by an assignment of rents;

17 N. "security instrument" means a document, however  
18 denominated, that creates or provides for a security interest  
19 in real property, whether or not it also creates or provides  
20 for a security interest in personal property;

21 O. "security interest" means an interest in  
22 property that arises by agreement and secures performance of  
23 an obligation;

24 P. "sign" means, with present intent to  
25 authenticate or adopt a document:

1 (1) to execute or adopt a tangible symbol;

2 or

3 (2) to attach to or logically associate with  
4 the document an electronic sound, symbol or process;

5 Q. "state" means a state of the United States, the  
6 District of Columbia, Puerto Rico, the United States Virgin  
7 Islands or any territory or insular possession subject to the  
8 jurisdiction of the United States;

9 R. "submit for recording" means to submit a  
10 document complying with applicable legal standards, with  
11 required fees, to the office of the county clerk in the county  
12 or counties designated in Section 14-9-1 NMSA 1978; and

13 S. "tenant" means a person that has an obligation  
14 to pay sums for the right to possess or occupy, or for  
15 possessing or occupying, the real property of another person.

16 **SECTION 3. MANNER OF GIVING NOTIFICATION.--**

17 A. Except as otherwise provided in Subsections C  
18 and D of this section, a person gives a notification or a copy  
19 of a notification pursuant to the Uniform Assignment of Rents  
20 Act:

21 (1) by depositing it with the United States  
22 postal service or with a commercially reasonable delivery  
23 service, properly addressed to the intended recipient's  
24 address as specified in Subsection B of this section, with  
25 first-class postage or cost of delivery provided; or

1 (2) if the recipient agreed to receive  
2 notification by facsimile transmission, electronic mail or  
3 other electronic transmission, by sending it to the recipient  
4 in the agreed manner at the address specified in the  
5 agreement.

6 B. The following rules determine the proper  
7 address for giving a notification pursuant to Subsection A of  
8 this section:

9 (1) a person giving a notification to an  
10 assignee shall use the address for notices to the assignee  
11 provided in the document creating the assignment of rents,  
12 but, if the assignee has provided the person giving the  
13 notification with a more recent address for notices, the  
14 person giving the notification shall use that address;

15 (2) a person giving a notification to an  
16 assignor shall use the address for notices to the assignor  
17 provided in the document creating the assignment of rents,  
18 but, if the assignor has provided the person giving the  
19 notification with a more recent address for notices, the  
20 person giving the notification shall use that address; and

21 (3) if a tenant's agreement with an assignor  
22 provides an address for notices to the tenant and the person  
23 giving notification has received a copy of the agreement or  
24 knows the address for notices specified in the agreement, the  
25 person giving the notification shall use that address in

1 giving a notification to the tenant. Otherwise, the person  
2 shall use the address of the premises covered by the  
3 agreement.

4 C. If a person giving a notification pursuant to  
5 the Uniform Assignment of Rents Act and the recipient have  
6 agreed to the method for giving a notification, any  
7 notification shall be given by that method.

8 D. If a notification is received by the recipient,  
9 it is effective even if it was not given in accordance with  
10 Subsection A or C of this section.

11 SECTION 4. SECURITY INSTRUMENT CREATES ASSIGNMENT OF  
12 RENTS--ASSIGNMENT OF RENTS CREATES SECURITY INTEREST.--

13 A. An enforceable security instrument creates an  
14 assignment of rents arising from the real property described  
15 in the security instrument, unless the security instrument  
16 provides otherwise.

17 B. An assignment of rents creates a presently  
18 effective security interest in all accrued and unaccrued rents  
19 arising from the real property described in the document  
20 creating the assignment, regardless of whether the document is  
21 in the form of an absolute assignment, an absolute assignment  
22 conditioned upon default, an assignment as additional security  
23 or any other form. The security interest in rents is separate  
24 and distinct from any security interest held by the assignee  
25 in the real property.

1           SECTION 5. RECORDATION--PERFECTION OF SECURITY INTEREST  
2 IN RENTS--PRIORITY OF CONFLICTING INTERESTS IN RENTS.--

3           A. A document creating an assignment of rents may  
4 be submitted for recording in the office of the county clerk  
5 in the same manner as any other document evidencing a  
6 conveyance of an interest in real property.

7           B. Upon recording, the security interest in rents  
8 created by an assignment of rents is fully perfected, even if  
9 a provision of the document creating the assignment or law of  
10 New Mexico other than the Uniform Assignment of Rents Act  
11 would preclude or defer enforcement of the security interest  
12 until the occurrence of a subsequent event, including a  
13 subsequent default of the assignor, the assignee's obtaining  
14 possession of the real property or the appointment of a  
15 receiver.

16           C. Except as otherwise provided in Subsection D of  
17 this section, a perfected security interest in rents takes  
18 priority over the rights of a person that, after the security  
19 interest is perfected:

20                   (1) acquires a judicial lien against the  
21 rents or the real property from which the rents arise; or

22                   (2) purchases an interest in the rents or  
23 the real property from which the rents arise.

24           D. A perfected security interest in rents has  
25 priority over the rights of a person described in Subsection C



1 of this section with respect to future advances to the same  
2 extent as the assignee's security interest in the real  
3 property has priority over the rights of that person with  
4 respect to future advances.

5 SECTION 6. ENFORCEMENT OF SECURITY INTEREST IN RENTS.--

6 A. An assignee may enforce an assignment of rents  
7 using one or more of the methods specified in Sections 7, 8  
8 and 9 of the Uniform Assignment of Rents Act or any other  
9 method sufficient to enforce the assignment pursuant to any  
10 law of New Mexico other than that act.

11 B. From the date of enforcement, the assignee or,  
12 in the case of enforcement by appointment of a receiver  
13 pursuant to Section 7 of the Uniform Assignment of Rents Act,  
14 the receiver is entitled to collect all rents that:

15 (1) have accrued but remain unpaid on that  
16 date; and

17 (2) accrue on or after that date, as those  
18 rents accrue.

19 SECTION 7. ENFORCEMENT BY APPOINTMENT OF RECEIVER.--

20 A. An assignee is entitled to the appointment of a  
21 receiver for the real property subject to the assignment of  
22 rents if:

23 (1) the assignor is in default and:

24 (a) the assignor has agreed in a signed  
25 document to the appointment of a receiver in the event of the

1 assignor's default;

2 (b) it appears likely that the real  
3 property may not be sufficient to satisfy the secured  
4 obligation;

5 (c) the assignor has failed to turn  
6 over to the assignee proceeds that the assignee was entitled  
7 to collect; or

8 (d) a subordinate assignee of rents  
9 obtains the appointment of a receiver for the real property;  
10 or

11 (2) other circumstances exist that would  
12 justify the appointment of a receiver pursuant to the  
13 Receivership Act or any other law of New Mexico other than the  
14 Uniform Assignment of Rents Act.

15 B. An assignee may file a petition for the  
16 appointment of a receiver in connection with an action:

17 (1) to foreclose the security instrument;  
18 (2) for specific performance of the  
19 assignment;

20 (3) seeking a remedy on account of waste or  
21 threatened waste of the real property subject to the  
22 assignment; or

23 (4) otherwise to enforce the secured  
24 obligation or the assignee's remedies arising from the  
25 assignment.

1 C. An assignee that files a petition pursuant to  
2 Subsection B of this section shall also give a copy of the  
3 petition in the manner specified in Section 3 of the Uniform  
4 Assignment of Rents Act to any other person that, ten days  
5 before the date the petition is filed, held a recorded  
6 assignment of rents arising from the real property.

7 D. If an assignee enforces an assignment of rents  
8 pursuant to this section, the date of enforcement is the date  
9 on which the court enters an order appointing a receiver for  
10 the real property subject to the assignment.

11 E. From the date of its appointment, a receiver is  
12 entitled to collect rents as provided in Subsection B of  
13 Section 6 of the Uniform Assignment of Rents Act. The  
14 receiver also has the authority provided in the order of  
15 appointment, the Receivership Act and any other law of New  
16 Mexico other than the Uniform Assignment of Rents Act.

17 F. The following rules govern priority among  
18 receivers:

19 (1) if more than one assignee qualifies  
20 pursuant to this section for the appointment of a receiver, a  
21 receivership requested by an assignee entitled to priority in  
22 rents pursuant to the Uniform Assignment of Rents Act has  
23 priority over a receivership requested by a subordinate  
24 assignee, even if a court has previously appointed a receiver  
25 for the subordinate assignee; and

1 (2) if a subordinate assignee obtains the  
2 appointment of a receiver, the receiver may collect the rents  
3 and apply the proceeds in the manner specified in the order  
4 appointing the receiver until a receiver is appointed pursuant  
5 to a senior assignment of rents.

6 SECTION 8. ENFORCEMENT BY NOTIFICATION TO ASSIGNOR.--

7 A. Upon the assignor's default, or as otherwise  
8 agreed by the assignor, the assignee may give the assignor a  
9 notification demanding that the assignor pay over the proceeds  
10 of any rents that the assignee is entitled to collect pursuant  
11 to Section 6 of the Uniform Assignment of Rents Act. The  
12 assignee shall also give a copy of the notification to any  
13 other person that, ten days before the notification date, held  
14 a recorded assignment of rents arising from the real property.

15 B. If an assignee enforces an assignment of rents  
16 pursuant to this section, the date of enforcement is the date  
17 on which the assignor receives a notification pursuant to  
18 Subsection A of this section.

19 C. An assignee's failure to give a notification  
20 pursuant to Subsection A of this section to any person holding  
21 a recorded assignment of rents does not affect the  
22 effectiveness of the notification as to the assignor, but the  
23 other person is entitled to any relief permitted pursuant to  
24 any law of New Mexico other than the Uniform Assignment of  
25 Rents Act.

1 D. An assignee that holds a security interest in  
2 rents solely by virtue of Subsection A of Section 4 of the  
3 Uniform Assignment of Rents Act shall not enforce the security  
4 interest pursuant to this section while the assignor occupies  
5 the real property as the assignor's primary residence.

6 SECTION 9. ENFORCEMENT BY NOTIFICATION TO TENANT.--

7 A. Upon the assignor's default, or as otherwise  
8 agreed by the assignor, the assignee may give to a tenant of  
9 the real property a notification demanding that the tenant pay  
10 to the assignee all unpaid accrued rents and all unaccrued  
11 rents as they accrue. The assignee shall give a copy of the  
12 notification to the assignor and to any other person that, ten  
13 days before the notification date, held a recorded assignment  
14 of rents arising from the real property. The notification  
15 shall be signed by the assignee and shall:

16 (1) identify the tenant, assignor, assignee,  
17 premises covered by the agreement between the tenant and the  
18 assignor and assignment of rents being enforced;

19 (2) provide the recording data for the  
20 document creating the assignment or other reasonable proof  
21 that the assignment was made;

22 (3) state that the assignee has the right to  
23 collect rents in accordance with the assignment;

24 (4) direct the tenant to pay to the assignee  
25 all unpaid accrued rents and all unaccrued rents as they

1 accrue;

2 (5) describe the manner in which Subsections  
3 C and D of this section affect the tenant's payment  
4 obligations;

5 (6) provide the name and telephone number of  
6 a contact person and an address to which the tenant can direct  
7 payment of rents and any inquiry for additional information  
8 about the assignment or the assignee's right to enforce the  
9 assignment; and

10 (7) contain a statement that the tenant may  
11 consult a lawyer if the tenant has questions about its rights  
12 and obligations.

13 B. If an assignee enforces an assignment of rents  
14 pursuant to this section, the date of enforcement is the date  
15 on which the tenant receives a notification substantially  
16 complying with Subsection A of this section.

17 C. Subject to Subsection D of this section and any  
18 other claim or defense that a tenant has pursuant to any law  
19 of New Mexico other than the Uniform Assignment of Rents Act,  
20 following receipt of a notification substantially complying  
21 with Subsection A of this section:

22 (1) a tenant is obligated to pay to the  
23 assignee all unpaid accrued rents and all unaccrued rents as  
24 they accrue, unless the tenant has previously received a  
25 notification from another assignee of rents given by that

1 assignee in accordance with this section and the other  
2 assignee has not canceled that notification;

3 (2) unless the tenant occupies the premises  
4 as the tenant's primary residence, a tenant that pays rents to  
5 the assignor is not discharged from the obligation to pay  
6 rents to the assignee;

7 (3) a tenant's payment to the assignee of  
8 rents then due satisfies the tenant's obligation pursuant to  
9 the tenant's agreement with the assignor to the extent of the  
10 payment made; and

11 (4) a tenant's obligation to pay rents to  
12 the assignee continues until the tenant receives a court order  
13 directing the tenant to pay the rent in a different manner or  
14 a signed document from the assignee canceling its  
15 notification, whichever occurs first.

16 D. A tenant that has received a notification  
17 pursuant to Subsection A of this section is not in default for  
18 nonpayment of rents accruing within thirty days after the date  
19 the notification is received before the earlier of:

20 (1) ten days after the date the next  
21 regularly scheduled rental payment would be due; or

22 (2) thirty days after the date the tenant  
23 receives the notification.

24 E. Upon receiving a notification from another  
25 creditor that is entitled to priority pursuant to Subsection C HB 199

1 of Section 5 of the Uniform Assignment of Rents Act that the  
2 other creditor has enforced and is continuing to enforce its  
3 interest in rents, an assignee that has given a notification  
4 to a tenant pursuant to Subsection A of this section shall  
5 immediately give another notification to the tenant canceling  
6 the earlier notification.

7 F. An assignee's failure to give a notification  
8 pursuant to Subsection A of this section to any person holding  
9 a recorded assignment of rents does not affect the  
10 effectiveness of the notification as to the assignor and those  
11 tenants receiving the notification. However, the person  
12 entitled to the notification is entitled to any relief  
13 permitted by any law of New Mexico other than the Uniform  
14 Assignment of Rents Act.

15 G. An assignee that holds a security interest in  
16 rents solely by virtue of Subsection A of Section 4 of the  
17 Uniform Assignment of Rents Act shall not enforce the security  
18 interest pursuant to this section while the assignor occupies  
19 the real property as the assignor's primary residence.

20 SECTION 10. NOTIFICATION TO TENANT--FORM.--No  
21 particular phrasing is required for the notification specified  
22 in Section 9 of the Uniform Assignment of Rents Act. However,  
23 the following form of notification, when properly completed,  
24 is sufficient to satisfy the requirements of that section:

25 "NOTIFICATION TO PAY RENTS TO PERSON OTHER THAN LANDLORD



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Tenant:

\_\_\_\_\_

[Name of Tenant]

Property Occupied by Tenant (the "Premises"): \_\_\_\_\_

\_\_\_\_\_

[Address]

Landlord:

\_\_\_\_\_

[Name of Landlord]

Assignee:

\_\_\_\_\_

[Name of Assignee]

Address and Telephone Number of Assignee:

\_\_\_\_\_

\_\_\_\_\_

[Address of Assignee]

\_\_\_\_\_

1. The Assignee named above has become the person entitled to collect your rents on the Premises listed above pursuant to \_\_\_\_\_ [name of document] (the "Assignment of Rents") dated \_\_\_\_\_, and recorded at \_\_\_\_\_ [recording data] in the office of the county clerk of the following county or counties:

\_\_\_\_\_. You may

1 obtain additional information about the Assignment of Rents  
2 and the Assignee's right to enforce it at the address listed  
3 above.

4 2. The Landlord is in default pursuant to the  
5 Assignment of Rents. Pursuant to the Assignment of Rents, the  
6 Assignee is entitled to collect rents from the Premises.

7 3. This notification affects your rights and  
8 obligations pursuant to the agreement pursuant to which you  
9 occupy the Premises (your "Agreement"). In order to provide  
10 you with an opportunity to consult with a lawyer, if your next  
11 scheduled rental payment is due within thirty days after you  
12 receive this notification, neither the Assignee nor the  
13 Landlord can hold you in default pursuant to your Agreement  
14 for nonpayment of that rental payment until ten days after the  
15 due date of that payment or thirty days following the date you  
16 receive this notification, whichever occurs first. You may  
17 consult a lawyer at your expense concerning your rights and  
18 obligations pursuant to your Agreement and the effect of this  
19 notification.

20 4. You shall pay to the Assignee at the address listed  
21 above all rents pursuant to your Agreement that are due and  
22 payable on the date you receive this notification and all  
23 rents accruing pursuant to your Agreement after you receive  
24 this notification. If you pay rents to the Assignee after  
25 receiving this notification, the payment will satisfy your

1 rental obligation to the extent of that payment.

2 5. Unless you occupy the Premises as your primary  
3 residence, if you pay any rents to the Landlord after  
4 receiving this notification, your payment to the Landlord will  
5 not discharge your rental obligation, and the Assignee may  
6 hold you liable for that rental obligation notwithstanding  
7 your payment to the Landlord.

8 6. If you have previously received a notification from  
9 another person that also holds an assignment of the rents due  
10 pursuant to your Agreement, you should continue paying your  
11 rents to the person that sent that notification until that  
12 person cancels that notification. Once that notification is  
13 canceled, you shall begin paying rents to the Assignee in  
14 accordance with this notification.

15 7. Your obligation to pay rents to the Assignee will  
16 continue until you receive either:

17 (a) a written order from a court directing you to  
18 pay the rent in a manner specified in that order; or

19 (b) written instructions from the Assignee  
20 canceling this notification.

21 \_\_\_\_\_  
22 [Name of Assignee]

23 By: \_\_\_\_\_

24 [Officer/Authorized Agent of Assignee]".

25 SECTION 11. EFFECT OF ENFORCEMENT.--The enforcement of

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1 an assignment of rents by one or more of the methods  
2 identified in Sections 7, 8 and 9 of the Uniform Assignment of  
3 Rents Act, the application of proceeds by the assignee  
4 pursuant to Section 12 of that act after enforcement, the  
5 payment of expenses pursuant to Section 13 of that act or an  
6 action pursuant to Subsection D of Section 14 of that act does  
7 not:

8 A. make the assignee a mortgagee in possession of  
9 the real property;

10 B. make the assignee an agent of the assignor;

11 C. constitute an election of remedies that  
12 precludes a later action to enforce the secured obligation;

13 D. make the secured obligation unenforceable; or

14 E. limit any right available to the assignee with  
15 respect to the secured obligation.

16 SECTION 12. APPLICATION OF PROCEEDS.--Unless otherwise  
17 agreed, an assignee that collects rents pursuant to the  
18 Uniform Assignment of Rents Act or collects upon a judgment in  
19 an action pursuant to Subsection D of Section 14 of that act  
20 shall apply the sums collected in the following order to:

21 A. the assignee's reasonable expenses of enforcing  
22 its assignment of rents, including, to the extent provided for  
23 by agreement and not prohibited by any law of New Mexico other  
24 than the Uniform Assignment of Rents Act, reasonable attorney  
25 fees and costs incurred by the assignee;

1           B. reimbursement of any expenses incurred by the  
2 assignee to protect or maintain the real property subject to  
3 the assignment;

4           C. payment of the secured obligation;

5           D. payment of any obligation secured by a  
6 subordinate security interest or other lien on the rents if,  
7 before distribution of the proceeds, the assignor and assignee  
8 receive a notification from the holder of the interest or lien  
9 demanding payment of the proceeds; and

10          E. the assignor.

11           SECTION 13. APPLICATION OF PROCEEDS TO EXPENSES OF  
12 PROTECTING REAL PROPERTY--CLAIMS AND DEFENSES OF TENANT.--

13           A. Unless otherwise agreed by the assignee, and  
14 subject to Subsection C of this section, an assignee that  
15 collects rents following enforcement pursuant to Section 8 or  
16 9 of the Uniform Assignment of Rents Act need not apply them  
17 to the payment of expenses of protecting or maintaining the  
18 real property subject to the assignment.

19           B. Unless a tenant has made an enforceable  
20 agreement not to assert claims or defenses, the right of the  
21 assignee to collect rents from the tenant is subject to the  
22 terms of the agreement between the assignor and tenant and any  
23 claim or defense arising from the assignor's nonperformance of  
24 that agreement.

25           C. The Uniform Assignment of Rents Act does not

1 limit the standing or right of a tenant to request a court to  
2 appoint a receiver for the real property subject to the  
3 assignment or to seek other relief on the grounds that the  
4 assignee's nonpayment of expenses of protecting or maintaining  
5 the real property has caused or threatened harm to the  
6 tenant's interest in the property. Whether the tenant is  
7 entitled to the appointment of a receiver or other relief is  
8 governed by any law of New Mexico other than the Uniform  
9 Assignment of Rents Act.

10 SECTION 14. TURNOVER OF RENTS--COMMINGLING AND  
11 IDENTIFIABILITY OF RENTS--LIABILITY OF ASSIGNOR.--

12 A. As used in this section, "good faith" means  
13 honesty in fact and the observance of reasonable commercial  
14 standards of fair dealing.

15 B. If an assignor collects rents that the assignee  
16 is entitled to collect pursuant to the Uniform Assignment of  
17 Rents Act:

18 (1) the assignor shall turn over the  
19 proceeds to the assignee, less any amount representing payment  
20 of expenses authorized by the assignee; and

21 (2) the assignee continues to have a  
22 security interest in the proceeds so long as they are  
23 identifiable.

24 C. For purposes of the Uniform Assignment of Rents  
25 Act, cash proceeds are identifiable if they are maintained in

1 a segregated account or, if commingled with other funds, to  
2 the extent the assignee can identify them by a method of  
3 tracing, including application of equitable principles, that  
4 is permitted pursuant to any law of New Mexico other than the  
5 Uniform Assignment of Rents Act with respect to commingled  
6 funds.

7 D. In addition to any other remedy available to  
8 the assignee pursuant to any law of New Mexico other than the  
9 Uniform Assignment of Rents Act, if an assignor fails to turn  
10 over proceeds to the assignee as required by Subsection B of  
11 this section, the assignee may recover from the assignor in a  
12 civil action:

13 (1) the proceeds, or an amount equal to the  
14 proceeds, that the assignor was obligated to turn over  
15 pursuant to Subsection B of this section; and

16 (2) reasonable attorney fees and costs  
17 incurred by the assignee to the extent provided for by  
18 agreement and not prohibited by any law of New Mexico other  
19 than the Uniform Assignment of Rents Act.

20 E. The assignee may maintain an action pursuant to  
21 Subsection D of this section without bringing an action to  
22 foreclose any security interest that it may have in the real  
23 property. Any sums recovered in the action shall be applied  
24 in the manner specified in Section 12 of the Uniform  
25 Assignment of Rents Act.

1 F. Unless otherwise agreed, if an assignee  
2 entitled to priority pursuant to Subsection C of Section 5 of  
3 the Uniform Assignment of Rents Act enforces its interest in  
4 rents after another creditor holding a subordinate security  
5 interest in rents has enforced its interest pursuant to  
6 Section 8 or 9 of that act, the creditor holding the  
7 subordinate security interest in rents is not obligated to  
8 turn over any proceeds that it collects in good faith before  
9 the creditor receives notification that the senior assignee  
10 has enforced its interest in rents. The creditor shall turn  
11 over to the senior assignee any proceeds that it collects  
12 after it receives the notification.

13 SECTION 15. PERFECTION AND PRIORITY OF ASSIGNEE'S  
14 SECURITY INTEREST IN PROCEEDS.--

15 A. As used in this section:

16 (1) "Article 9" means Chapter 55, Article 9  
17 NMSA 1978 or, to the extent applicable to any particular  
18 issue, Article 9 of the Uniform Commercial Code as adopted by  
19 the state whose laws govern that issue pursuant to the choice-  
20 of-laws rules contained in Chapter 55, Article 9 NMSA 1978;  
21 and

22 (2) "conflicting interest" means an interest  
23 in proceeds, held by a person other than an assignee, that is:

24 (a) a security interest arising  
25 pursuant to Article 9; or



1 (b) any other interest if Article 9  
2 resolves the priority conflict between that person and a  
3 secured party with a conflicting security interest in the  
4 proceeds.

5 B. An assignee's security interest in identifiable  
6 cash proceeds is perfected if its security interest in rents  
7 is perfected. An assignee's security interest in identifiable  
8 noncash proceeds is perfected only if the assignee perfects  
9 that interest in accordance with Article 9.

10 C. Except as otherwise provided in Subsection D of  
11 this section, priority between an assignee's security interest  
12 in identifiable proceeds and a conflicting interest is  
13 governed by the priority rules in Article 9.

14 D. An assignee's perfected security interest in  
15 identifiable cash proceeds is subordinate to a conflicting  
16 interest that is perfected by control pursuant to Article 9  
17 but has priority over a conflicting interest that is perfected  
18 other than by control.

19 SECTION 16. PRIORITY SUBJECT TO SUBORDINATION.--The  
20 Uniform Assignment of Rents Act does not preclude  
21 subordination by agreement as to rents or proceeds.

22 SECTION 17. UNIFORMITY OF APPLICATION AND  
23 CONSTRUCTION.--In applying and construing the Uniform  
24 Assignment of Rents Act, consideration shall be given to the  
25 need to promote uniformity of the law with respect to its

1 subject matter among states that enact it.

2 SECTION 18. RELATION TO FEDERAL ELECTRONIC SIGNATURES  
3 IN GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform Assignment  
4 of Rents Act modifies, limits and supersedes the federal  
5 Electronic Signatures in Global and National Commerce Act but  
6 does not modify, limit or supersede Section 101(c) of that act  
7 or authorize electronic delivery of any of the notices  
8 described in Section 103(b) of that act.

9 SECTION 19. APPLICATION TO EXISTING RELATIONSHIPS.--

10 A. Except as otherwise provided in this section,  
11 the Uniform Assignment of Rents Act governs the enforcement of  
12 an assignment of rents and the perfection and priority of a  
13 security interest in rents, even if the document creating the  
14 assignment was signed and delivered before the effective date  
15 of that act.

16 B. The Uniform Assignment of Rents Act does not  
17 affect an action or proceeding commenced before the effective  
18 date of that act.

19 C. Subsection A of Section 4 of the Uniform  
20 Assignment of Rents Act does not apply to any security  
21 instrument signed and delivered before the effective date of  
22 that act.

23 D. The Uniform Assignment of Rents Act does not  
24 affect:

25 (1) the enforceability of an assignee's

1 security interest in rents or proceeds if, immediately before  
2 the effective date of that act, that security interest was  
3 enforceable;

4 (2) the perfection of an assignee's security  
5 interest in rents or proceeds if, immediately before the  
6 effective date of that act, that security interest was  
7 perfected; or

8 (3) the priority of an assignee's security  
9 interest in rents or proceeds with respect to the interest of  
10 another person if, immediately before the effective date of  
11 that act, the interest of the other person was enforceable and  
12 perfected, and that priority was established.

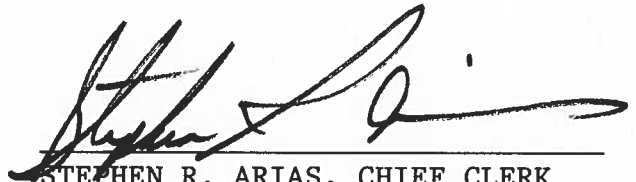
13 SECTION 20. EFFECTIVE DATE.--The effective date of the  
14 provisions of this act is January 1, 2012. \_\_\_\_\_

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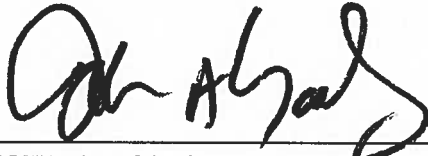
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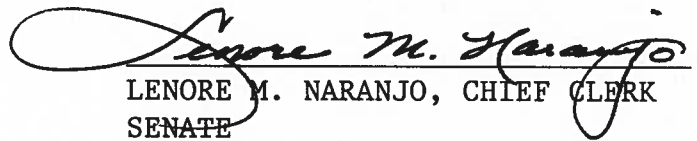
BEN LUJAN, SPEAKER  
HOUSE OF REPRESENTATIVES



STEPHEN R. ARIAS, CHIEF CLERK  
HOUSE OF REPRESENTATIVES



JOHN A. SANCHEZ, PRESIDENT  
SENATE



LENORE M. NARANJO, CHIEF CLERK  
SENATE

Approved by me this 27<sup>th</sup> day of April, 2011



SUSANA MARTINEZ, GOVERNOR  
STATE OF NEW MEXICO

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