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HOUSE BILL 539

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Bill B. O'Neill

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

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

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1 assignment of rents or the successor owner of the real property
2 from which the rents arise;

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

5 E. "day" means a calendar day;

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

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

13 H. "notification" means a document containing
14 information that the Uniform Assignment of Rents Act requires a
15 person to provide to another, signed by the person required to
16 provide the information;

17 I. "person" means an individual, corporation,
18 business trust, estate, trust, partnership, limited liability
19 company, association, joint venture, public corporation,
20 government or governmental subdivision, agency or
21 instrumentality or any other legal or commercial entity;

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

25 K. "purchase" means to take by sale, lease,

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1 discount, negotiation, mortgage, pledge, lien, security
2 interest, issue or reissue, gift or any other voluntary
3 transaction creating an interest in property;

4 L. "rents" means:

5 (1) sums payable for the right to possess or
6 occupy, or for the actual possession or occupation of, real
7 property of another person;

8 (2) sums payable to an assignor pursuant to a
9 policy of rental interruption insurance covering real property;

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

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

15 (5) sums payable to an assignor for payment or
16 reimbursement of expenses incurred in owning, operating and
17 maintaining, or constructing or installing improvements on,
18 real property; or

19 (6) any other sums payable pursuant to an
20 agreement relating to the real property of another person that
21 constitute rents pursuant to any law of New Mexico other than
22 the Uniform Assignment of Rents Act;

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

25 N. "security instrument" means a document, however

1 denominated, that creates or provides for a security interest
2 in real property, whether or not it also creates or provides
3 for a security interest in personal property;

4 O. "security interest" means an interest in
5 property that arises by agreement and secures performance of an
6 obligation;

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

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

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

12 Q. "state" means a state of the United States, the
13 District of Columbia, Puerto Rico, the United States Virgin
14 Islands or any territory or insular possession subject to the
15 jurisdiction of the United States;

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

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

23 Section 3. MANNER OF GIVING NOTIFICATION.--

24 A. Except as otherwise provided in Subsections C
25 and D of this section, a person gives a notification or a copy

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1 of a notification pursuant to the Uniform Assignment of Rents
2 Act:

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

8 (2) if the recipient agreed to receive
9 notification by facsimile transmission, electronic mail or
10 other electronic transmission, by sending it to the recipient
11 in the agreed manner at the address specified in the agreement.

12 B. The following rules determine the proper address
13 for giving a notification pursuant to Subsection A of this
14 section:

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

21 (2) a person giving a notification to an
22 assignor shall use the address for notices to the assignor
23 provided in the document creating the assignment of rents, but,
24 if the assignor has provided the person giving the notification
25 with a more recent address for notices, the person giving the

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1 notification shall use that address; and

2 (3) if a tenant's agreement with an assignor
3 provides an address for notices to the tenant and the person
4 giving notification has received a copy of the agreement or
5 knows the address for notices specified in the agreement, the
6 person giving the notification shall use that address in giving
7 a notification to the tenant. Otherwise, the person shall use
8 the address of the premises covered by the agreement.

9 C. If a person giving a notification pursuant to
10 the Uniform Assignment of Rents Act and the recipient have
11 agreed to the method for giving a notification, any
12 notification shall be given by that method.

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

16 Section 4. SECURITY INSTRUMENT CREATES ASSIGNMENT OF
17 RENTS--ASSIGNMENT OF RENTS CREATES SECURITY INTEREST.--

18 A. An enforceable security instrument creates an
19 assignment of rents arising from the real property described in
20 the security instrument, unless the security instrument
21 provides otherwise.

22 B. An assignment of rents creates a presently
23 effective security interest in all accrued and unaccrued rents
24 arising from the real property described in the document
25 creating the assignment, regardless of whether the document is

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1 in the form of an absolute assignment, an absolute assignment
2 conditioned upon default, an assignment as additional security
3 or any other form. The security interest in rents is separate
4 and distinct from any security interest held by the assignee in
5 the real property.

6 Section 5. RECORDATION--PERFECTION OF SECURITY INTEREST
7 IN RENTS--PRIORITY OF CONFLICTING INTERESTS IN RENTS.--

8 A. A document creating an assignment of rents may
9 be submitted for recording in the office of the county clerk in
10 the same manner as any other document evidencing a conveyance
11 of an interest in real property.

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

20 C. Except as otherwise provided in Subsection D of
21 this section, a perfected security interest in rents takes
22 priority over the rights of a person that, after the security
23 interest is perfected:

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

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

3 D. A perfected security interest in rents has
4 priority over the rights of a person described in Subsection C
5 of this section with respect to future advances to the same
6 extent as the assignee's security interest in the real property
7 has priority over the rights of that person with respect to
8 future advances.

9 Section 6. ENFORCEMENT OF SECURITY INTEREST IN RENTS.--

10 A. An assignee may enforce an assignment of rents
11 using one or more of the methods specified in Sections 7, 8 and
12 9 of the Uniform Assignment of Rents Act or any other method
13 sufficient to enforce the assignment pursuant to any law of New
14 Mexico other than that act.

15 B. From the date of enforcement, the assignee or,
16 in the case of enforcement by appointment of a receiver
17 pursuant to Section 7 of the Uniform Assignment of Rents Act,
18 the receiver is entitled to collect all rents that:

19 (1) have accrued but remain unpaid on that
20 date; and

21 (2) accrue on or after that date, as those
22 rents accrue.

23 Section 7. ENFORCEMENT BY APPOINTMENT OF RECEIVER.--

24 A. An assignee is entitled to the appointment of a
25 receiver for the real property subject to the assignment of

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1 rents if:

2 (1) the assignor is in default and:

3 (a) the assignor has agreed in a signed
4 document to the appointment of a receiver in the event of the
5 assignor's default;

6 (b) it appears likely that the real
7 property may not be sufficient to satisfy the secured
8 obligation;

9 (c) the assignor has failed to turn over
10 to the assignee proceeds that the assignee was entitled to
11 collect; or

12 (d) a subordinate assignee of rents
13 obtains the appointment of a receiver for the real property; or

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

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

20 (1) to foreclose the security instrument;

21 (2) for specific performance of the
22 assignment;

23 (3) seeking a remedy on account of waste or
24 threatened waste of the real property subject to the
25 assignment; or

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1 (4) otherwise to enforce the secured
2 obligation or the assignee's remedies arising from the
3 assignment.

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

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

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

20 F. The following rules govern priority among
21 receivers:

22 (1) if more than one assignee qualifies
23 pursuant to this section for the appointment of a receiver, a
24 receivership requested by an assignee entitled to priority in
25 rents pursuant to the Uniform Assignment of Rents Act has

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1 priority over a receivership requested by a subordinate
2 assignee, even if a court has previously appointed a receiver
3 for the subordinate assignee; and

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

9 Section 8. ENFORCEMENT BY NOTIFICATION TO ASSIGNOR.--

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

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

22 C. An assignee's failure to give a notification
23 pursuant to Subsection A of this section to any person holding
24 a recorded assignment of rents does not affect the
25 effectiveness of the notification as to the assignor, but the

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1 other person is entitled to any relief permitted pursuant to
2 any law of New Mexico other than the Uniform Assignment of
3 Rents Act.

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

9 Section 9. ENFORCEMENT BY NOTIFICATION TO TENANT.--

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

19 (1) identify the tenant, assignor, assignee,
20 premises covered by the agreement between the tenant and the
21 assignor and assignment of rents being enforced;

22 (2) provide the recording data for the
23 document creating the assignment or other reasonable proof that
24 the assignment was made;

25 (3) state that the assignee has the right to

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1 collect rents in accordance with the assignment;

2 (4) direct the tenant to pay to the assignee
3 all unpaid accrued rents and all unaccrued rents as they
4 accrue;

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

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

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

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 tenant receives a notification substantially
18 complying with Subsection A of this section.

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

24 (1) a tenant is obligated to pay to the
25 assignee all unpaid accrued rents and all unaccrued rents as

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1 they accrue, unless the tenant has previously received a
2 notification from another assignee of rents given by that
3 assignee in accordance with this section and the other assignee
4 has not canceled that notification;

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

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

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

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

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

24 (2) thirty days after the date the tenant
25 receives the notification.

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

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

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

22 Section 10. NOTIFICATION TO TENANT--FORM.--No particular
23 phrasing is required for the notification specified in Section
24 9 of the Uniform Assignment of Rents Act. However, the
25 following form of notification, when properly completed, is

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1 sufficient to satisfy the requirements of that section:

2 "NOTIFICATION TO PAY RENTS TO PERSON OTHER THAN LANDLORD

3 Tenant:

4 _____

5 [Name of Tenant]

6 Property Occupied by Tenant (the "Premises"): _____

7 _____

8 [Address]

9 Landlord: _____

10 [Name of Landlord]

11 Assignee:

12 _____

13 [Name of Assignee]

14 Address and Telephone Number of Assignee:

15 _____

16 _____

17 [Address of Assignee]

18 _____

19 [Telephone Number of Assignee]

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

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

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

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

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

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

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

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

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

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

20 _____
21 [Name of Assignee]

22 By: _____
23 [Officer/Authorized Agent of Assignee]".

24 Section 11. EFFECT OF ENFORCEMENT.--The enforcement of an
25 assignment of rents by one or more of the methods identified in

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

6 A. make the assignee a mortgagee in possession of
7 the real property;

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

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

11 D. make the secured obligation unenforceable; or

12 E. limit any right available to the assignee with
13 respect to the secured obligation.

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

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

24 B. reimbursement of any expenses incurred by the
25 assignee to protect or maintain the real property subject to

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1 the assignment;

2 C. payment of the secured obligation;

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

8 E. the assignor.

9 Section 13. APPLICATION OF PROCEEDS TO EXPENSES OF
10 PROTECTING REAL PROPERTY--CLAIMS AND DEFENSES OF TENANT.--

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

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

23 C. The Uniform Assignment of Rents Act does not
24 limit the standing or right of a tenant to request a court to
25 appoint a receiver for the real property subject to the

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

8 Section 14. TURNOVER OF RENTS--COMMINGLING AND
9 IDENTIFIABILITY OF RENTS--LIABILITY OF ASSIGNOR.--

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

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

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

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

21 C. For purposes of the Uniform Assignment of Rents
22 Act, cash proceeds are identifiable if they are maintained in a
23 segregated account or, if commingled with other funds, to the
24 extent the assignee can identify them by a method of tracing,
25 including application of equitable principles, that is

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1 permitted pursuant to any law of New Mexico other than the
2 Uniform Assignment of Rents Act with respect to commingled
3 funds.

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

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

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

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

23 F. Unless otherwise agreed, if an assignee entitled
24 to priority pursuant to Subsection C of Section 5 of the
25 Uniform Assignment of Rents Act enforces its interest in rents

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1 after another creditor holding a subordinate security interest
2 in rents has enforced its interest pursuant to Section 8 or 9
3 of that act, the creditor holding the subordinate security
4 interest in rents is not obligated to turn over any proceeds
5 that it collects in good faith before the creditor receives
6 notification that the senior assignee has enforced its interest
7 in rents. The creditor shall turn over to the senior assignee
8 any proceeds that it collects after it receives the
9 notification.

10 Section 15. PERFECTION AND PRIORITY OF ASSIGNEE'S
11 SECURITY INTEREST IN PROCEEDS.--

12 A. As used in this section:

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

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

20 (a) a security interest arising pursuant
21 to Article 9; or

22 (b) any other interest if Article 9
23 resolves the priority conflict between that person and a
24 secured party with a conflicting security interest in the
25 proceeds.

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1 B. An assignee's security interest in identifiable
2 cash proceeds is perfected if its security interest in rents is
3 perfected. An assignee's security interest in identifiable
4 noncash proceeds is perfected only if the assignee perfects
5 that interest in accordance with Article 9.

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

10 D. An assignee's perfected security interest in
11 identifiable cash proceeds is subordinate to a conflicting
12 interest that is perfected by control pursuant to Article 9 but
13 has priority over a conflicting interest that is perfected
14 other than by control.

15 Section 16. PRIORITY SUBJECT TO SUBORDINATION.--The
16 Uniform Assignment of Rents Act does not preclude subordination
17 by agreement as to rents or proceeds.

18 Section 17. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--
19 In applying and construing the Uniform Assignment of Rents Act,
20 consideration shall be given to the need to promote uniformity
21 of the law with respect to its subject matter among states that
22 enact it.

23 Section 18. RELATION TO FEDERAL ELECTRONIC SIGNATURES IN
24 GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform Assignment of
25 Rents Act modifies, limits and supersedes the federal

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1 Electronic Signatures in Global and National Commerce Act but
2 does not modify, limit or supersede Section 101(c) of that act
3 or authorize electronic delivery of any of the notices
4 described in Section 103(b) of that act.

5 Section 19. APPLICATION TO EXISTING RELATIONSHIPS.--

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

12 B. The Uniform Assignment of Rents Act does not
13 affect an action or proceeding commenced before the effective
14 date of that act.

15 C. Subsection A of Section 4 of the Uniform
16 Assignment of Rents Act does not apply to any security
17 instrument signed and delivered before the effective date of
18 that act.

19 D. The Uniform Assignment of Rents Act does not
20 affect:

21 (1) the enforceability of an assignee's
22 security interest in rents or proceeds if, immediately before
23 the effective date of that act, that security interest was
24 enforceable;

25 (2) the perfection of an assignee's security

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

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

9 Section 20. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2009.

11 - 26 -