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HOUSE BILL 199

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

INTRODUCED BY

Zachary J. Cook

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

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

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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 January 1, 2012.

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