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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/11

SPONSOR Cook LAST UPDATED \_\_\_\_\_ HB 199

SHORT TITLE Uniform Assignment of Rents Act SB \_\_\_\_\_

ANALYST Graeser

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI	NA	NA

(Parenthesis ( ) Indicate Expenditure Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		NFI	NFI	NFI	NA	NA

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

National Conference of Commissioners on Uniform State Laws (NCCUSL)

Responses Received From

Regulation and Licensing Division

### SUMMARY

#### Synopsis of Bill

House Bill 199 enacts national model legislation proposed and adopted by the National Conference of Commissioners on Uniform State Laws (NCCUSL). This bill provides uniform procedures that would affect the assignment of rents collected from tenants occupying real property in New Mexico when the property secures a financial obligation, such as a mortgage. The primary impact of the bill would be that the tenant in a property in default would pay rent directly to the financial institution rather than the property owner or manager. The purpose of the NCCUSL is to foster uniformity of laws among the states.

## **FISCAL IMPLICATIONS**

No fiscal impact of this bill on state or local agencies and jurisdictions. It is possible that rent defaults could be addressed through the provisions of this bill rather than filing suit in district court. This could perhaps reduce case loads in the district system.

## **SIGNIFICANT ISSUES**

This model legislation was proposed and adopted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) at its 2005 annual conference. NCCUSL proposes uniform laws throughout the US in various areas. The preface to the legislation explains the purpose of the Uniform Assignment of Rents Act.

### **UNIFORM ASSIGNMENT OF RENTS ACT**

#### **Prefatory Note**

Traditionally, under the title theory of mortgages, a mortgage effected a transfer of legal title to real property as security for the mortgage debt. As an incident of this legal title, the mortgagee obtained the right to collect rents arising from the real property and apply them to the mortgage debt unless the mortgage stated otherwise. By contrast, in the majority of American states that follow the lien theory of mortgages, a mortgage grants the mortgagee only a right of security, capable of being enforced via foreclosure in the event of the mortgagor's default. Under the lien theory, until such enforcement occurs, a mortgage does not by itself convey to the mortgagee the right to collect rents accruing from the mortgaged real property.

As a result, it has become customary that when a lender makes a mortgage loan on income-producing real property, the lender requires the borrower to execute a document typically entitled an "Assignment of Leases and Rents." This assignment can serve a number of practical purposes, but its most significant purpose is to provide the mortgagee with a security interest in rents that accrue before the mortgagee can complete a foreclosure proceeding. In many states, the foreclosure process can be quite lengthy, and the mortgage lender faces a heightened risk that while a foreclosure proceeding is pending, the borrower may continue to collect rents and spend them other than to reduce the mortgage debt or paying operating expenses of the real property (a process often referred to as "milking" the rents). By taking the assignment, the lender makes clear its intent to hold a lien upon all future rents produced by the real property, including those that accrue during the period between the mortgagor's default and the mortgagee's completion of a foreclosure proceeding. The assignment typically permits the lender to take steps following the borrower's default to collect rents and apply them to reduce the mortgage debt. These steps may include, among others, the lender's taking physical possession of the project (becoming a "mortgagee in possession"), obtaining the appointment of a receiver for the project, or notifying tenants to direct all future rent payments to the lender.

## **OTHER SUBSTANTIVE ISSUES**

The state has had a long tradition of honoring the deliberations and workproduct of the NCCUL in many areas. The Uniform Division of Income for Tax Purposes Act (Chapter 7, Article 4 NMSA 1978), first enacted in 1965 may be the oldest national model legislation adopted by the

state. The NCCUL has also proposed national model acts for Unclaimed Property, Child Custody, and the Probate Code among other national model legislation.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

New Mexico would lose the opportunity to conform its law to national model legislation for Assignment of rents.

LG/bym