

HOUSE BILL 293

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Greg Nibert

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO PUBLIC RECORDS; CHANGING THE REQUIREMENTS FOR FILING AND RECORDING DUPLICATES OF INSTRUMENTS OF WRITING SJC→; REMOVING CERTAIN USAGE OF THE COUNTY CLERK RECORDING AND FILING FUND; CREATING ACTUAL AUTHORITY FOR SPECIFIED PERSONS IN BUSINESS ENTITIES TO ENTER INTO REAL PROPERTY CONVEYANCES AND ENCUMBRANCES; PROVIDING EXCEPTIONS←SJC Sf1→; REPEALING A SECTION OF THE NMSA←Sf1.

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

SECTION 1. Section 14-8-4 NMSA 1978 (being Laws 1901,

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Chapter 62, Section 18, as amended) is amended to read:

"14-8-4. ACKNOWLEDGMENT NECESSARY FOR RECORDING--
EXCEPTIONS--RECORDING OF DUPLICATES--

A. Any original instrument of writing duly acknowledged may be filed and recorded. Any instrument of writing not duly acknowledged may not be filed and recorded or considered of record, though so entered, unless otherwise provided in this section. [~~A duplicate of an instrument of writing duly acknowledged may be filed and recorded to the same extent as the original.~~]

B. For purposes of this section, "acknowledged" means notarized by a person empowered to perform notarial acts pursuant to the Notary Public Act or the Uniform Law on Notarial Acts.

C. The following documents need not be acknowledged but may be filed and recorded:

(1) court-certified copies of a court order, judgment or other judicial decree;

(2) court-certified transcripts of any money judgment obtained in a court of [~~this state~~] New Mexico or, pursuant to Section 14-9-9 NMSA 1978, in the United States district court for the district of New Mexico;

(3) land patents and land office receipts;

(4) notice of lis pendens filed pursuant to Section 38-1-14 NMSA 1978;

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(5) provisional orders creating improvement districts pursuant to Section 4-55A-7 NMSA 1978;

(6) notices of levy on real estate under execution or writ of attachment when filed by a peace officer pursuant to Section 39-4-4 NMSA 1978;

(7) surveys of land that do not create a division of land but only show existing tracts of record when filed by a professional surveyor pursuant to Section 61-23-28.2 NMSA 1978;

(8) certified copies of foreign wills, marriages or birth certificates duly authenticated; and

(9) instruments of writing in any manner affecting lands in the state filed pursuant to Section 14-9-7 NMSA 1978, when these instruments have been duly executed by an authorized public officer.

D. If an original instrument of writing is unavailable but, if it were available, could be filed and recorded in accordance with this section, a duplicate of that instrument shall be accepted for filing and recording if accompanied by an affidavit executed pursuant to this subsection. The affidavit shall:

(1) provide the name, phone number and mailing address of the affiant;

(2) provide information regarding the execution of the instrument, consideration paid, delivery or

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other information establishing that the original instrument, if it were available, would be entitled to be recorded pursuant to Subsection A of this section;

(3) specify the reason the duplicate is filed and recorded in place of the original instrument;

(4) include a statement that the duplicate is a true and correct copy of the original instrument; and

(5) be acknowledged and made under oath confirming that the statements set forth in the affidavit are true and correct and of the personal knowledge of the affiant.

E. The filing of a duplicate instrument in accordance with Subsection D of this section shall not incur a fee in addition to the fee, if any, charged for filing an original instrument. When the clerk records the instrument, the grantor and grantee shall be those of the duplicate instrument and the name of the affiant shall be indexed under miscellaneous information.

~~[D-]~~ F. Any filing or recording permitted or required under the provisions of the Uniform Commercial Code need not comply with the requirements of this section.

~~[E-]~~ G. Instruments acknowledged on behalf of a corporation need not have the corporation's seal affixed thereto in order to be filed and recorded. Sfl→"←Sfl

Sfl→**REPEAL.—Section 14-8-15.1 (being Laws 2011, Chapter 134, Section 22) is repealed.**←Sfl

SJC→SECTION 2. Section 14-8-12.2 NMSA 1978 (being Laws 1985, Chapter 122, Section 2, as amended) is amended to read:

"14-8-12.2. COUNTY CLERK RECORDING AND FILING

FUND--USES.--

A. A "county clerk recording and filing fund" is established in each county.

B. Expenditures from the county clerk recording and filing fund shall be determined annually by the county clerk and approved by the board of county commissioners.

C. Expenditures from the county clerk recording and filing fund may be expended only:

(1) to rent, purchase, lease or lease-purchase recording equipment and for supplies, training and maintenance for such equipment;

~~[(2) to rent, purchase, lease or lease-purchase equipment associated with all regular duties in the county clerk's office and for supplies, training and maintenance for such equipment;~~

~~(3)]~~ (2) to rent, purchase, lease or lease-purchase vehicles associated with all regular duties in the county clerk's office and for supplies, training and maintenance for such vehicles, provided that the county clerk shall report annually to the board of county commissioners the usage, mileage and necessity of any vehicle acquired pursuant

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to this paragraph;

[<4)] (3) for technical assistance or for training associated with all regular duties of the county clerk's office; or

[<5)] (4) for staff travel associated with all regular duties of the county clerk's office pursuant to the Per Diem and Mileage Act."

SECTION 3. A new section of Chapter 47, Article 1 NMSA 1978 is enacted to read:

"[NEW MATERIAL] ACTUAL AUTHORITY--REPRESENTATIVES OF BUSINESS ENTITIES--EXCEPTION.--

A. Except as provided in Subsections B and D of this section, the persons in the following offices or positions shall each have the authority to execute conveyancing instruments and contracts for the transfer or encumbrance of real property owned by a business entity:

(1) for a cooperative association: president and vice president;

(2) for a professional corporation: president and vice president;

(3) for a nonprofit corporation: president and vice president;

(4) for a business corporation: president and vice president;

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(5) for a limited liability company: manager, member manager, president and vice president;

(6) for a general partnership: partner;

(7) for a limited liability partnership: general partner; and

(8) for a limited partnership: general partner.

B. A business entity may limit or expand the authority provided for in Subsection A of this section by filing with the county clerk, in the county where the real property is located, a statement reflecting limitations on the persons listed as having authority, requiring multiple persons to exercise such authority or authorizing other officers or positions to have the requisite authority to act to transfer or encumber real property owned by the business entity. The recorded statement shall be binding until the business entity revokes or amends the recorded statement and records the revocation or amendment with the county clerk.

C. A person may rely on the authority of the persons set forth in Subsection A of this section to act on behalf of a business entity, subject to limitations set forth in a previously recorded statement as provided in Subsection B of this section. Nothing in this section shall preclude a business entity from executing a power of attorney and

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empowering an attorney in fact to also act on its behalf pursuant to the Uniform Power of Attorney Act.

D. An instrument or contract for the transfer or encumbrance of real property by a person without the authority provided in Subsection A or B of this section may be relied upon as binding the business entity if the instrument or contract has been recorded for a period exceeding ten years. That recorded instrument or contract may not be relied upon as binding, however, if:

(1) prior to the execution of that instrument or contract, the business entity recorded another document reflecting that the person who executed the instrument or contract did not have the authority to bind the business entity; or

(2) the authority of the person who executed the instrument or contract has been successfully challenged or is in the process of being challenged in a court having jurisdiction.

E. As used in this section, "business entity" means a:

(1) cooperative association created pursuant to the Cooperative Association Act;

(2) professional corporation created pursuant to the Professional Corporation Act;

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(3) nonprofit corporation created pursuant to the Nonprofit Corporation Act;

(4) business corporation created pursuant to the Business Corporation Act;

(5) limited liability company created pursuant to the Limited Liability Company Act;

(6) partnership created pursuant to the Uniform Partnership Act (1994);

(7) limited liability partnership created pursuant to the Uniform Partnership Act (1994); or

(8) limited partnership created pursuant to the Uniform Revised Limited Partnership Act."

SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.←SJC