

FIFTY-FOURTH LEGISLATURE
FIRST SESSION, 2019

HB 293/a

March 13, 2019

Mr. President:

Your **JUDICIARY COMMITTEE**, to whom has been referred

HOUSE BILL 293

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. On page 1, line 12, after "WRITING", insert "; 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".

2. On page 4, between lines 13 and 14, insert the following new sections:

"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;

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~~[(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 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;

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

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

(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 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

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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;

(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

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(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."

Respectfully submitted,

Richard C. Martinez, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against
Yes: 6
No: 0
Excused: Baca, Griggs, Lopez, Moores, Wirth
Absent: None

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