

BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PROPERTY; AMENDING THE UNIFORM COMMERCIAL CODE;
PROVIDING THAT THE TRANSFEREE OF A NOTE CAN ENFORCE IT IF A
DIRECT OR INDIRECT TRANSFEROR COULD HAVE ENFORCED IT; PROVIDING
FOR A LOST-NOTE AFFIDAVIT.

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

SECTION 1. Section 55-3-309 NMSA 1978 (being Laws 1992,
Chapter 114, Section 122) is amended to read:

"55-3-309. ENFORCEMENT OF LOST, DESTROYED OR STOLEN
INSTRUMENT--LOST-NOTE AFFIDAVIT.--

(a) A person not in possession of an instrument is
entitled to enforce the instrument if (i) the person seeking to
enforce the instrument was [~~in possession of the instrument~~
~~and~~] entitled to enforce [~~it~~] the instrument when loss of
possession occurred or has directly or indirectly acquired

.204694.6

underscored material = new
[bracketed material] = delete

1 ownership of the instrument from a person that was entitled to
2 enforce the instrument when loss of possession occurred, (ii)
3 the loss of possession was not the result of a transfer by the
4 person or a lawful seizure and (iii) the person cannot
5 reasonably obtain possession of the instrument because the
6 instrument was destroyed, its whereabouts cannot be determined
7 or it is in the wrongful possession of an unknown person or a
8 person that cannot be found or is not amenable to service of
9 process.

10 (b) A person seeking enforcement of an instrument
11 under Subsection (a) of this section must prove the terms of
12 the instrument and the person's right to enforce the
13 instrument. If that proof is made, Section 55-3-308 NMSA 1978
14 applies to the case as if the person seeking enforcement had
15 produced the instrument. The court may not enter judgment in
16 favor of the person seeking enforcement unless it finds that
17 the person required to pay the instrument is adequately
18 protected against loss that might occur by reason of a claim by
19 another person to enforce the instrument. Adequate protection
20 may be provided by any reasonable means.

21 (c) In an action to foreclose a lien on real
22 property that is secured by the instrument, the creditor must
23 attest to the facts required by Subsection (a) of this section
24 in (i) a verified complaint or (ii) an affidavit or a statement
25 affirmed under penalty of perjury under the law of New Mexico

1 and attached to the complaint. An affidavit substantially in
2 the following form is sufficient:

3 "LOST-NOTE AFFIDAVIT

4 _____ [Name of affiant] (Affiant)

5 being sworn deposes and says:

6 1. Affiant is _____ [Title or
7 position] of _____ [Name of creditor]
8 (Lender) and is authorized to make this affidavit on Lender's
9 behalf.

10 2. Lender is the legal owner of a promissory note (Note)
11 executed by _____

12 _____
13 [Name(s) of obligor(s)] in the original principal amount of
14 \$_____ [dollar amount], dated

15 _____ [insert date] and secured by

16 _____ [Name of instrument] recorded in
17 _____ [recording reference]. Lender

18 has not sold, assigned, pledged, or otherwise transferred the
19 Note to any person. The Note is free and clear of all claims
20 and encumbrances.

21 3. The Note is lost, destroyed, or stolen and for this reason
22 cannot be produced.

23 4. On [insert date], Affiant made a diligent search for the
24 Note by personal examination of the books and records of

25 Lender, as follows:

[describe search efforts, including the books and records
examined by Affiant]

_____ [Name of affiant].

[ADD ACKNOWLEDGMENT]"."

SECTION 2. APPLICABILITY.--The provisions of this act
apply to:

A. an instrument if the loss of possession occurred
before, on or after January 1, 2018;

B. an instrument if the right to enforce the
instrument was acquired before, on or after January 1, 2018;

C. a judicial proceeding commenced on or after
January 1, 2018; and

D. a judicial proceeding commenced before January
1, 2018, unless the court finds that a provision of this act
would interfere substantially with the effective conduct of the
judicial proceeding or would prejudice the rights of a party,
in which case the superseded law, and not that provision,
applies.

SECTION 3. EFFECTIVE DATE.--The effective date of the
provisions of this act is January 1, 2018.