

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 assignment of rents or the successor owner of the real property from which the rents arise;

D. "cash proceeds" means proceeds that are money, checks, deposit accounts or the like;

E. "day" means a calendar day;

F. "deposit account" means a demand, time, savings, passbook or similar account maintained with a bank, savings bank, savings and loan association, credit union or trust company;

G. "document" means information that is inscribed on a tangible medium or that is stored on an electronic or other medium and is retrievable in perceivable form;

H. "notification" means a document containing information that the Uniform Assignment of Rents Act requires a person to provide to another, signed by the person required to provide the information;

I. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity;

J. "proceeds" means personal property that is received or collected on account of a tenant's obligation to pay rents;

K. "purchase" means to take by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property;

L. "rents" means:

(1) sums payable for the right to possess or occupy, or for the actual possession or occupation of, real property of another person;

(2) sums payable to an assignor pursuant to a policy of rental interruption insurance covering real

property;

(3) claims arising out of a default in the payment of sums payable for the right to possess or occupy real property of another person;

(4) sums payable to terminate an agreement to possess or occupy real property of another person;

(5) sums payable to an assignor for payment or reimbursement of expenses incurred in owning, operating and maintaining, or constructing or installing improvements on, real property; or

(6) any other sums payable pursuant to an agreement relating to the real property of another person that constitute rents pursuant to any law of New Mexico other than the Uniform Assignment of Rents Act;

M. "secured obligation" means an obligation, the performance of which is secured by an assignment of rents;

N. "security instrument" means a document, however denominated, that creates or provides for a security interest in real property, whether or not it also creates or provides for a security interest in personal property;

O. "security interest" means an interest in property that arises by agreement and secures performance of an obligation;

P. "sign" means, with present intent to authenticate or adopt a document:

(1) to execute or adopt a tangible symbol;

or

(2) to attach to or logically associate with the document an electronic sound, symbol or process;

Q. "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States;

R. "submit for recording" means to submit a document complying with applicable legal standards, with required fees, to the office of the county clerk in the county or counties designated in Section 14-9-1 NMSA 1978; and

S. "tenant" means a person that has an obligation to pay sums for the right to possess or occupy, or for possessing or occupying, the real property of another person.

SECTION 3. MANNER OF GIVING NOTIFICATION.--

A. Except as otherwise provided in Subsections C and D of this section, a person gives a notification or a copy of a notification pursuant to the Uniform Assignment of Rents Act:

(1) by depositing it with the United States postal service or with a commercially reasonable delivery service, properly addressed to the intended recipient's address as specified in Subsection B of this section, with first-class postage or cost of delivery provided; or

(2) if the recipient agreed to receive notification by facsimile transmission, electronic mail or other electronic transmission, by sending it to the recipient in the agreed manner at the address specified in the agreement.

B. The following rules determine the proper address for giving a notification pursuant to Subsection A of this section:

(1) a person giving a notification to an assignee shall use the address for notices to the assignee provided in the document creating the assignment of rents, but, if the assignee has provided the person giving the notification with a more recent address for notices, the person giving the notification shall use that address;

(2) a person giving a notification to an assignor shall use the address for notices to the assignor provided in the document creating the assignment of rents, but, if the assignor has provided the person giving the notification with a more recent address for notices, the person giving the notification shall use that address; and

(3) if a tenant's agreement with an assignor provides an address for notices to the tenant and the person giving notification has received a copy of the agreement or knows the address for notices specified in the agreement, the person giving the notification shall use that address in

giving a notification to the tenant. Otherwise, the person shall use the address of the premises covered by the agreement.

C. If a person giving a notification pursuant to the Uniform Assignment of Rents Act and the recipient have agreed to the method for giving a notification, any notification shall be given by that method.

D. If a notification is received by the recipient, it is effective even if it was not given in accordance with Subsection A or C of this section.

SECTION 4. SECURITY INSTRUMENT CREATES ASSIGNMENT OF RENTS--ASSIGNMENT OF RENTS CREATES SECURITY INTEREST.--

A. An enforceable security instrument creates an assignment of rents arising from the real property described in the security instrument, unless the security instrument provides otherwise.

B. An assignment of rents creates a presently effective security interest in all accrued and unaccrued rents arising from the real property described in the document creating the assignment, regardless of whether the document is in the form of an absolute assignment, an absolute assignment conditioned upon default, an assignment as additional security or any other form. The security interest in rents is separate and distinct from any security interest held by the assignee in the real property.

SECTION 5. RECORDATION--PERFECTION OF SECURITY INTEREST
IN RENTS--PRIORITY OF CONFLICTING INTERESTS IN RENTS.--

A. A document creating an assignment of rents may be submitted for recording in the office of the county clerk in the same manner as any other document evidencing a conveyance of an interest in real property.

B. Upon recording, the security interest in rents created by an assignment of rents is fully perfected, even if a provision of the document creating the assignment or law of New Mexico other than the Uniform Assignment of Rents Act would preclude or defer enforcement of the security interest until the occurrence of a subsequent event, including a subsequent default of the assignor, the assignee's obtaining possession of the real property or the appointment of a receiver.

C. Except as otherwise provided in Subsection D of this section, a perfected security interest in rents takes priority over the rights of a person that, after the security interest is perfected:

(1) acquires a judicial lien against the rents or the real property from which the rents arise; or

(2) purchases an interest in the rents or the real property from which the rents arise.

D. A perfected security interest in rents has priority over the rights of a person described in Subsection C

of this section with respect to future advances to the same extent as the assignee's security interest in the real property has priority over the rights of that person with respect to future advances.

SECTION 6. ENFORCEMENT OF SECURITY INTEREST IN RENTS.--

A. An assignee may enforce an assignment of rents using one or more of the methods specified in Sections 7, 8 and 9 of the Uniform Assignment of Rents Act or any other method sufficient to enforce the assignment pursuant to any law of New Mexico other than that act.

B. From the date of enforcement, the assignee or, in the case of enforcement by appointment of a receiver pursuant to Section 7 of the Uniform Assignment of Rents Act, the receiver is entitled to collect all rents that:

- (1) have accrued but remain unpaid on that date; and
- (2) accrue on or after that date, as those rents accrue.

SECTION 7. ENFORCEMENT BY APPOINTMENT OF RECEIVER.--

A. An assignee is entitled to the appointment of a receiver for the real property subject to the assignment of rents if:

- (1) the assignor is in default and:
 - (a) the assignor has agreed in a signed document to the appointment of a receiver in the event of the

assignor's default;

(b) it appears likely that the real property may not be sufficient to satisfy the secured obligation;

(c) the assignor has failed to turn over to the assignee proceeds that the assignee was entitled to collect; or

(d) a subordinate assignee of rents obtains the appointment of a receiver for the real property; or

(2) other circumstances exist that would justify the appointment of a receiver pursuant to the Receivership Act or any other law of New Mexico other than the Uniform Assignment of Rents Act.

B. An assignee may file a petition for the appointment of a receiver in connection with an action:

(1) to foreclose the security instrument;
(2) for specific performance of the assignment;

(3) seeking a remedy on account of waste or threatened waste of the real property subject to the assignment; or

(4) otherwise to enforce the secured obligation or the assignee's remedies arising from the assignment.

C. An assignee that files a petition pursuant to Subsection B of this section shall also give a copy of the petition in the manner specified in Section 3 of the Uniform Assignment of Rents Act to any other person that, ten days before the date the petition is filed, held a recorded assignment of rents arising from the real property.

D. If an assignee enforces an assignment of rents pursuant to this section, the date of enforcement is the date on which the court enters an order appointing a receiver for the real property subject to the assignment.

E. From the date of its appointment, a receiver is entitled to collect rents as provided in Subsection B of Section 6 of the Uniform Assignment of Rents Act. The receiver also has the authority provided in the order of appointment, the Receivership Act and any other law of New Mexico other than the Uniform Assignment of Rents Act.

F. The following rules govern priority among receivers:

(1) if more than one assignee qualifies pursuant to this section for the appointment of a receiver, a receivership requested by an assignee entitled to priority in rents pursuant to the Uniform Assignment of Rents Act has priority over a receivership requested by a subordinate assignee, even if a court has previously appointed a receiver for the subordinate assignee; and

(2) if a subordinate assignee obtains the appointment of a receiver, the receiver may collect the rents and apply the proceeds in the manner specified in the order appointing the receiver until a receiver is appointed pursuant to a senior assignment of rents.

SECTION 8. ENFORCEMENT BY NOTIFICATION TO ASSIGNOR.--

A. Upon the assignor's default, or as otherwise agreed by the assignor, the assignee may give the assignor a notification demanding that the assignor pay over the proceeds of any rents that the assignee is entitled to collect pursuant to Section 6 of the Uniform Assignment of Rents Act. The assignee shall also give a copy of the notification to any other person that, ten days before the notification date, held a recorded assignment of rents arising from the real property.

B. If an assignee enforces an assignment of rents pursuant to this section, the date of enforcement is the date on which the assignor receives a notification pursuant to Subsection A of this section.

C. An assignee's failure to give a notification pursuant to Subsection A of this section to any person holding a recorded assignment of rents does not affect the effectiveness of the notification as to the assignor, but the other person is entitled to any relief permitted pursuant to any law of New Mexico other than the Uniform Assignment of Rents Act.

D. An assignee that holds a security interest in rents solely by virtue of Subsection A of Section 4 of the Uniform Assignment of Rents Act shall not enforce the security interest pursuant to this section while the assignor occupies the real property as the assignor's primary residence.

SECTION 9. ENFORCEMENT BY NOTIFICATION TO TENANT.--

A. Upon the assignor's default, or as otherwise agreed by the assignor, the assignee may give to a tenant of the real property a notification demanding that the tenant pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrue. The assignee shall give a copy of the notification to the assignor and to any other person that, ten days before the notification date, held a recorded assignment of rents arising from the real property. The notification shall be signed by the assignee and shall:

(1) identify the tenant, assignor, assignee, premises covered by the agreement between the tenant and the assignor and assignment of rents being enforced;

(2) provide the recording data for the document creating the assignment or other reasonable proof that the assignment was made;

(3) state that the assignee has the right to collect rents in accordance with the assignment;

(4) direct the tenant to pay to the assignee all unpaid accrued rents and all unaccrued rents as they

accrue;

(5) describe the manner in which Subsections C and D of this section affect the tenant's payment obligations;

(6) provide the name and telephone number of a contact person and an address to which the tenant can direct payment of rents and any inquiry for additional information about the assignment or the assignee's right to enforce the assignment; and

(7) contain a statement that the tenant may consult a lawyer if the tenant has questions about its rights and obligations.

B. If an assignee enforces an assignment of rents pursuant to this section, the date of enforcement is the date on which the tenant receives a notification substantially complying with Subsection A of this section.

C. Subject to Subsection D of this section and any other claim or defense that a tenant has pursuant to any law of New Mexico other than the Uniform Assignment of Rents Act, following receipt of a notification substantially complying with Subsection A of this section:

(1) a tenant is obligated to pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrue, unless the tenant has previously received a notification from another assignee of rents given by that

assignee in accordance with this section and the other assignee has not canceled that notification;

(2) unless the tenant occupies the premises as the tenant's primary residence, a tenant that pays rents to the assignor is not discharged from the obligation to pay rents to the assignee;

(3) a tenant's payment to the assignee of rents then due satisfies the tenant's obligation pursuant to the tenant's agreement with the assignor to the extent of the payment made; and

(4) a tenant's obligation to pay rents to the assignee continues until the tenant receives a court order directing the tenant to pay the rent in a different manner or a signed document from the assignee canceling its notification, whichever occurs first.

D. A tenant that has received a notification pursuant to Subsection A of this section is not in default for nonpayment of rents accruing within thirty days after the date the notification is received before the earlier of:

(1) ten days after the date the next regularly scheduled rental payment would be due; or

(2) thirty days after the date the tenant receives the notification.

E. Upon receiving a notification from another creditor that is entitled to priority pursuant to Subsection C

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of Section 5 of the Uniform Assignment of Rents Act that the other creditor has enforced and is continuing to enforce its interest in rents, an assignee that has given a notification to a tenant pursuant to Subsection A of this section shall immediately give another notification to the tenant canceling the earlier notification.

F. An assignee's failure to give a notification pursuant to Subsection A of this section to any person holding a recorded assignment of rents does not affect the effectiveness of the notification as to the assignor and those tenants receiving the notification. However, the person entitled to the notification is entitled to any relief permitted by any law of New Mexico other than the Uniform Assignment of Rents Act.

G. An assignee that holds a security interest in rents solely by virtue of Subsection A of Section 4 of the Uniform Assignment of Rents Act shall not enforce the security interest pursuant to this section while the assignor occupies the real property as the assignor's primary residence.

SECTION 10. NOTIFICATION TO TENANT--FORM.--No particular phrasing is required for the notification specified in Section 9 of the Uniform Assignment of Rents Act. However, the following form of notification, when properly completed, is sufficient to satisfy the requirements of that section:

"NOTIFICATION TO PAY RENTS TO PERSON OTHER THAN LANDLORD

Tenant:

[Name of Tenant]

Property Occupied by Tenant (the "Premises"): _____

[Address]

Landlord:

[Name of Landlord]

Assignee:

[Name of Assignee]

Address and Telephone Number of Assignee:

[Address of Assignee]

1. The Assignee named above has become the person entitled to collect your rents on the Premises listed above pursuant to _____ [name of document] (the "Assignment of Rents") dated _____, and recorded at _____ [recording data] in the office of the county clerk of the following county or counties:

_____. You may

obtain additional information about the Assignment of Rents and the Assignee's right to enforce it at the address listed above.

2. The Landlord is in default pursuant to the Assignment of Rents. Pursuant to the Assignment of Rents, the Assignee is entitled to collect rents from the Premises.

3. This notification affects your rights and obligations pursuant to the agreement pursuant to which you occupy the Premises (your "Agreement"). In order to provide you with an opportunity to consult with a lawyer, if your next scheduled rental payment is due within thirty days after you receive this notification, neither the Assignee nor the Landlord can hold you in default pursuant to your Agreement for nonpayment of that rental payment until ten days after the due date of that payment or thirty days following the date you receive this notification, whichever occurs first. You may consult a lawyer at your expense concerning your rights and obligations pursuant to your Agreement and the effect of this notification.

4. You shall pay to the Assignee at the address listed above all rents pursuant to your Agreement that are due and payable on the date you receive this notification and all rents accruing pursuant to your Agreement after you receive this notification. If you pay rents to the Assignee after receiving this notification, the payment will satisfy your

rental obligation to the extent of that payment.

5. Unless you occupy the Premises as your primary residence, if you pay any rents to the Landlord after receiving this notification, your payment to the Landlord will not discharge your rental obligation, and the Assignee may hold you liable for that rental obligation notwithstanding your payment to the Landlord.

6. If you have previously received a notification from another person that also holds an assignment of the rents due pursuant to your Agreement, you should continue paying your rents to the person that sent that notification until that person cancels that notification. Once that notification is canceled, you shall begin paying rents to the Assignee in accordance with this notification.

7. Your obligation to pay rents to the Assignee will continue until you receive either:

(a) a written order from a court directing you to pay the rent in a manner specified in that order; or

(b) written instructions from the Assignee canceling this notification.

[Name of Assignee]

By: _____

[Officer/Authorized Agent of Assignee]".

SECTION 11. EFFECT OF ENFORCEMENT.--The enforcement of

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an assignment of rents by one or more of the methods identified in Sections 7, 8 and 9 of the Uniform Assignment of Rents Act, the application of proceeds by the assignee pursuant to Section 12 of that act after enforcement, the payment of expenses pursuant to Section 13 of that act or an action pursuant to Subsection D of Section 14 of that act does not:

- A. make the assignee a mortgagee in possession of the real property;
- B. make the assignee an agent of the assignor;
- C. constitute an election of remedies that precludes a later action to enforce the secured obligation;
- D. make the secured obligation unenforceable; or
- E. limit any right available to the assignee with respect to the secured obligation.

SECTION 12. APPLICATION OF PROCEEDS.--Unless otherwise agreed, an assignee that collects rents pursuant to the Uniform Assignment of Rents Act or collects upon a judgment in an action pursuant to Subsection D of Section 14 of that act shall apply the sums collected in the following order to:

- A. the assignee's reasonable expenses of enforcing its assignment of rents, including, to the extent provided for by agreement and not prohibited by any law of New Mexico other than the Uniform Assignment of Rents Act, reasonable attorney fees and costs incurred by the assignee;

B. reimbursement of any expenses incurred by the assignee to protect or maintain the real property subject to the assignment;

C. payment of the secured obligation;

D. payment of any obligation secured by a subordinate security interest or other lien on the rents if, before distribution of the proceeds, the assignor and assignee receive a notification from the holder of the interest or lien demanding payment of the proceeds; and

E. the assignor.

SECTION 13. APPLICATION OF PROCEEDS TO EXPENSES OF PROTECTING REAL PROPERTY--CLAIMS AND DEFENSES OF TENANT.--

A. Unless otherwise agreed by the assignee, and subject to Subsection C of this section, an assignee that collects rents following enforcement pursuant to Section 8 or 9 of the Uniform Assignment of Rents Act need not apply them to the payment of expenses of protecting or maintaining the real property subject to the assignment.

B. Unless a tenant has made an enforceable agreement not to assert claims or defenses, the right of the assignee to collect rents from the tenant is subject to the terms of the agreement between the assignor and tenant and any claim or defense arising from the assignor's nonperformance of that agreement.

C. The Uniform Assignment of Rents Act does not

limit the standing or right of a tenant to request a court to appoint a receiver for the real property subject to the assignment or to seek other relief on the grounds that the assignee's nonpayment of expenses of protecting or maintaining the real property has caused or threatened harm to the tenant's interest in the property. Whether the tenant is entitled to the appointment of a receiver or other relief is governed by any law of New Mexico other than the Uniform Assignment of Rents Act.

SECTION 14. TURNOVER OF RENTS--COMMINGLING AND IDENTIFIABILITY OF RENTS--LIABILITY OF ASSIGNOR.--

A. As used in this section, "good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

B. If an assignor collects rents that the assignee is entitled to collect pursuant to the Uniform Assignment of Rents Act:

(1) the assignor shall turn over the proceeds to the assignee, less any amount representing payment of expenses authorized by the assignee; and

(2) the assignee continues to have a security interest in the proceeds so long as they are identifiable.

C. For purposes of the Uniform Assignment of Rents Act, cash proceeds are identifiable if they are maintained in

a segregated account or, if commingled with other funds, to the extent the assignee can identify them by a method of tracing, including application of equitable principles, that is permitted pursuant to any law of New Mexico other than the Uniform Assignment of Rents Act with respect to commingled funds.

D. In addition to any other remedy available to the assignee pursuant to any law of New Mexico other than the Uniform Assignment of Rents Act, if an assignor fails to turn over proceeds to the assignee as required by Subsection B of this section, the assignee may recover from the assignor in a civil action:

(1) the proceeds, or an amount equal to the proceeds, that the assignor was obligated to turn over pursuant to Subsection B of this section; and

(2) reasonable attorney fees and costs incurred by the assignee to the extent provided for by agreement and not prohibited by any law of New Mexico other than the Uniform Assignment of Rents Act.

E. The assignee may maintain an action pursuant to Subsection D of this section without bringing an action to foreclose any security interest that it may have in the real property. Any sums recovered in the action shall be applied in the manner specified in Section 12 of the Uniform Assignment of Rents Act.

F. Unless otherwise agreed, if an assignee entitled to priority pursuant to Subsection C of Section 5 of the Uniform Assignment of Rents Act enforces its interest in rents after another creditor holding a subordinate security interest in rents has enforced its interest pursuant to Section 8 or 9 of that act, the creditor holding the subordinate security interest in rents is not obligated to turn over any proceeds that it collects in good faith before the creditor receives notification that the senior assignee has enforced its interest in rents. The creditor shall turn over to the senior assignee any proceeds that it collects after it receives the notification.

SECTION 15. PERFECTION AND PRIORITY OF ASSIGNEE'S SECURITY INTEREST IN PROCEEDS.--

A. As used in this section:

(1) "Article 9" means Chapter 55, Article 9 NMSA 1978 or, to the extent applicable to any particular issue, Article 9 of the Uniform Commercial Code as adopted by the state whose laws govern that issue pursuant to the choice-of-laws rules contained in Chapter 55, Article 9 NMSA 1978; and

(2) "conflicting interest" means an interest in proceeds, held by a person other than an assignee, that is:

(a) a security interest arising pursuant to Article 9; or

(b) any other interest if Article 9 resolves the priority conflict between that person and a secured party with a conflicting security interest in the proceeds.

B. An assignee's security interest in identifiable cash proceeds is perfected if its security interest in rents is perfected. An assignee's security interest in identifiable noncash proceeds is perfected only if the assignee perfects that interest in accordance with Article 9.

C. Except as otherwise provided in Subsection D of this section, priority between an assignee's security interest in identifiable proceeds and a conflicting interest is governed by the priority rules in Article 9.

D. An assignee's perfected security interest in identifiable cash proceeds is subordinate to a conflicting interest that is perfected by control pursuant to Article 9 but has priority over a conflicting interest that is perfected other than by control.

SECTION 16. PRIORITY SUBJECT TO SUBORDINATION.--The Uniform Assignment of Rents Act does not preclude subordination by agreement as to rents or proceeds.

SECTION 17. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In applying and construing the Uniform Assignment of Rents Act, consideration shall be given to the need to promote uniformity of the law with respect to its

subject matter among states that enact it.

SECTION 18. RELATION TO FEDERAL ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform Assignment of Rents Act modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act but does not modify, limit or supersede Section 101(c) of that act or authorize electronic delivery of any of the notices described in Section 103(b) of that act.

SECTION 19. APPLICATION TO EXISTING RELATIONSHIPS.--

A. Except as otherwise provided in this section, the Uniform Assignment of Rents Act governs the enforcement of an assignment of rents and the perfection and priority of a security interest in rents, even if the document creating the assignment was signed and delivered before the effective date of that act.

B. The Uniform Assignment of Rents Act does not affect an action or proceeding commenced before the effective date of that act.

C. Subsection A of Section 4 of the Uniform Assignment of Rents Act does not apply to any security instrument signed and delivered before the effective date of that act.

D. The Uniform Assignment of Rents Act does not affect:

(1) the enforceability of an assignee's

security interest in rents or proceeds if, immediately before the effective date of that act, that security interest was enforceable;

(2) the perfection of an assignee's security interest in rents or proceeds if, immediately before the effective date of that act, that security interest was perfected; or

(3) the priority of an assignee's security interest in rents or proceeds with respect to the interest of another person if, immediately before the effective date of that act, the interest of the other person was enforceable and perfected, and that priority was established.

SECTION 20. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2012. _____