

## **Opinion No. 80-12**

April 15, 1980

**OPINION OF:** Jeff Bingaman, Attorney General

**BY:** Jill Z. Cooper, Deputy Attorney General

**TO:** Representative George Fettinger, Fettinger & Bloom, Attorneys at Law, First National Bank Building, Post Office Drawer M, Alamogordo, New Mexico 88310

### **COSTS**

A security interest created by a single mortgage covering several distinct parcels may not be released on a parcel by parcel basis without an additional charge being made for each parcel named in the release under Section 14-8-12(D) NMSA 1978.

### **FACTS**

Section 14-8-12 NMSA 1978 governs the matter of what fees may be collected by county clerks for the recording of various legal instruments. During the 1980 legislative session, Section 14-8-12(D) was amended to read:

"If an assignment or release assigns or releases an interest in property by reference to:

(1) more than one deed, mortgage, lease or other instrument which created the interests; or

(2) an instrument which describes more than one deed, mortgage, lease or other instrument as creating the interests in property, there shall be an additional recording fee of three dollars (\$3.00) for each such reference."

Laws 1980, Chapter 48, § 1. Section 14-8-12(D) had previously provided that blanket or multiple mortgages would not be accepted for recording by a county clerk. Because those terms had not been defined in the law, this office was asked for an interpretation and ruled in Opinion of the Attorney General No. 79-39, dated December 5, 1979, that for purposes of Section 14-8-12(D), multiple or blanket assignments were those involving multiple parties as assignor or assignee and did not depend upon the property interests being assigned.

### **QUESTIONS**

May a security interest created by a single mortgage covering several distinct parcels be released on a parcel by parcel basis without an additional charge being made for each parcel named in the release under Section 14-8-12(D) NMSA 1978?

## CONCLUSIONS

No.

## ANALYSIS

The 1980 amendment is apparently in response to the 1979 opinion. That is, Section 14-8-12(D) no longer refers to blanket or multiple releases or assignments but rather, is drafted in terms of "an interest in property." The 1980 amendment also more adequately reflects the practical problem involved.

## OPINION

The recording of an assignment of mortgage is necessary, for example, in order to protect the assignee whose rights in the mortgage would otherwise be void against a subsequent purchaser. **Hayden v. Speakman**, {*\*131*} 20 N.M. 513, 150 P. 292 (1915). Similarly, the recording of an assignment of an oil or gas lease is necessary under New Mexico law in order to be effective against subsequent assignees or purchasers. Sections 70-1-1, **et seq.**, NMSA 1978; **Bolack v. Underwood**, 340 F.2d 816 (10th Cir. 1965).

Thus, in order to accommodate the intent or purpose for recording assignments or releases of property interests conveyed by mortgages, leases, deeds and other instruments, such assignments or releases must be indexed by the subject property. A single document releasing more than one mortgage would be indexed with reference to each parcel on which a mortgage is released. Section 14-8-12(D), as amended in 1980, now clearly requires a \$3.00 recording fee for each release of mortgage.

This question, however, concerns a single document releasing a **single** mortgage covering several distinct parcels. Nevertheless, if constructive notice is to be given with respect to each of the parcels referenced, the release must be recorded more than once. While Section 14-8-12(D) may be ambiguous with respect to a single mortgage on more than one parcel and could be literally construed so as not to require the payment of more than one \$3.00 fee, such a construction is inconsistent with the spirit or purpose of the statute.

It is the number of property interests not the number of security interests which determines the number of recording fees to be paid. Section 14-8-12(D) is intended to require the payment of the \$3.00 fee for each property interest referenced by a release or assignment. The intent of the legislature and the reason for the law will prevail over a literal interpretation of its terms. **Martinez v. Research Park, Inc.**, 75 N.M. 672, 410 P.2d 200 (1965). Accordingly, where a release of a mortgage must be recorded more than once because it refers to more than one parcel, the \$3.00 fee must be paid for each time it is recorded.

**ATTORNEY GENERAL**

Jeff Bingaman, Attorney General