CHAPTER 14
Records, Rules, Legal Notices, Oaths

ARTICLE 1
Preservation, Restoration and Destruction of Records

14-1-1. [Filing certified copy of document when original is in danger of damage or destruction.]

Whenever any map, plat or other document on file with or in the official custody of any county clerk in this state shall be in danger of damage or destruction by reason of age, mutilation or any other cause, it shall be lawful for the board of county commissioners of such county to authorize the county clerk to have a true and correct copy thereof made and filed in the office of said county clerk, after having been certified by such county clerk to be a true, correct and compared copy of the original.

History: Laws 1939, ch. 130, § 1; 1941 Comp., § 13-401; 1953 Comp., § 71-4-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For state records administrator advising and assisting in programs for disposition of records, *see* 14-3-18 NMSA 1978.

For durability of records, *see* 14-8-7, 14-8-8 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 66 Am. Jur. 2d Records and Recording Laws §§ 81, 128.

76 C.J.S. Records § 2 et seq.

14-1-2. [Effect of filing certified copy.]

The filing of such certified copy of map, plat or other document in the office of the county clerk shall relate back to the date of the filing of the original and such certified copy shall have the same validity and effect as the original.

History: Laws 1939, ch. 130, § 2; 1941 Comp., § 13-402; 1953 Comp., § 71-4-2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

14-1-3. [Method of copying.]

That copies of such maps, plats or other documents may be made in any manner which the county clerk shall determine to be best to correctly and completely exemplify the original, including the making of copies by photographic, photostatic or any other mechanical process.

History: Laws 1939, ch. 130, § 3; 1941 Comp., § 13-403; 1953 Comp., § 71-4-3.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

14-1-4. ["Public officer" defined for purpose of microfilming records.]

The term public officer means any officer of the legislative, executive and judicial departments of the state whether elected or appointed, including officers of the boards, commissions, bureaus and all other agencies of this state and the departments thereof, and including officers of the state legislature and the officers and clerks of the courts of this state and, in like manner, the county and municipal officers of the counties, cities, towns and villages of this state.

History: 1941 Comp., § 13-406, enacted by Laws 1947, ch. 185, § 1; 1953 Comp., § 71-4-6.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Newspapers maintained by county clerks may be microfilmed, so long as the microfilm is accessible to the public. 1979 Op. Att'y Gen. No. 79-16.

14-1-5. [Authorization for photographing and microfilming public records.]

Any public officer of the state may cause any or all records, papers or documents kept by him to be photographed, microfilmed, microphotographed or reproduced on film. Such photographic film and the device used to reproduce such records on such film shall be one which accurately reproduces the original thereof in all details.

History: 1941 Comp., § 13-407, enacted by Laws 1947, ch. 185, § 2; 1953 Comp., § 71-4-7.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For provision that recording "book" includes microfilm, *see* 14-8-3 NMSA 1978.

When public record may be destroyed. — A public record may not be destroyed until its reproduction in film has been approved, copies of such reproduction have been made and filed and unless the original has been a public record for at least five years or has been audited by the state comptroller's (now state auditor's) office. 1947 Op. Att'y Gen. No. 47-5092.

Section controlled by 14-3-15 NMSA 1978. — Although this section permits county officials to microfilm the records maintained by them, 14-3-15 NMSA 1978 is the more specific statute and is controlling. 1979 Op. Att'y Gen. No. 79-26.

Newspapers maintained by county clerks may be microfilmed, so long as the microfilm is accessible to the public. 1979 Op. Att'y Gen. No. 79-16.

Authority of penitentiary warden to microfilm records, etc. — Since the penitentiary warden is an appointed public officer, he can microfilm all records, papers and documents and destroy the original records after obtaining approval, after he has made two reproductions of all original records, papers or documents, keeping one copy where the original record was kept and the other copy being sent to the secretary of state for his archives. No original records, papers or documents are to be destroyed, after copies have been made, until such records, papers or documents have been a public record for five years, or until the records have been audited by the office of the state comptroller (now state auditor). 1955 Op. Att'y Gen. No. 55-6113.

14-1-6. [Photographed or microfilmed copies deemed original records.]

Such photographs, microfilms, photographic film or microphotographs shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. A transcript, exemplification or certified copy thereof shall, for all purposes recited herein, be deemed to be a transcript, exemplification or certified copy of the original.

History: 1941 Comp., § 13-408, enacted by Laws 1947, ch. 185, § 3; 1953 Comp., § 71-4-8.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Copy did not violate best evidence rule. — A copy of the statement defendant gave to the police which was introduced into evidence did not violate the best evidence rule. *State v. Darden*, 1974-NMCA-032, 86 N.M. 198, 521 P.2d 1039.

Newspapers maintained by county clerks may be microfilmed, so long as the microfilm is accessible to the public. 1979 Op. Att'y Gen. No. 79-16.

14-1-7. Destruction of obsolete county records.

The following county records shall be deemed obsolete and may be destroyed:

A. purchase vouchers which are six years old;

B. chattel mortgages six years after the expiration of their term;

C. security agreements filed under the Uniform Commercial Code [Chapter 55 NMSA 1978] six years after the expiration of their term;

D. copies of state highway project contracts filed by the chief highway engineer three years after the date of filing;

E. duplicate information reports filed in the offices of county officials, including but not limited to duplicate reports of the county treasurer, sheriff, county agricultural agents and county health officers, which are two years old;

F. chattel mortgage releases six years after the date of filing; and

G. termination statements filed under the Uniform Commercial Code six years after the date of filing.

History: 1953 Comp., § 71-4-10, enacted by Laws 1957, ch. 192, § 1; 1965, ch. 123, § 1; 1967, ch. 82, § 1.

ANNOTATIONS

County employee payment vouchers and county clerk receipt books. — County employee payment vouchers for the period 1920 through 1950 presumably can be considered obsolete and can be destroyed after following the procedure set forth in 14-1-8 NMSA 1978. The same would apply to county clerk receipt books which are more than four years old. 1961 Op. Att'y Gen. No. 61-127.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 66 Am. Jur. 2d Records and Recording Laws § 10.

76 C.J.S. Records § 30 et seq.

14-1-8. [Obsolete county records; notice of proposed destruction; preservation desired by state records administrator; delivery of documents.]

An official charged with the custody of any records and who intends to destroy those records, shall give notice by registered or certified mail to the state records administrator, state records center, Santa Fe, New Mexico, of the date of the proposed destruction and the type and date of the records he intends to destroy. The notice shall be sent at least sixty days before the date of the proposed destruction. If the state records administrator wishes to preserve any of the records, the official shall allow the state records administrator to have the documents by calling for them at the place of storage.

History: 1953 Comp., § 71-4-11, enacted by Laws 1957, ch. 192, § 2; 1961, ch. 81, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Determination records obsolete to be made. — Prior to destroying any records under the authority of this section, a factual determination that the particular records are obsolete must be made. 1961 Op. Att'y Gen. No. 61-127.

Destruction of original records without action by records administrator. — If microfilmed and certified pursuant to 14-3-15 NMSA 1978, originals of records, including newspapers kept by county clerks, may be destroyed without any action on the part of the records administrator. 1979 Op. Att'y Gen. No. 79-16.

ARTICLE 2
Inspection of Public Records

14-2-1. Right to inspect public records; exceptions.

Every person has a right to inspect public records of this state except:

A. records pertaining to physical or mental examinations and medical treatment of persons confined to an institution;

B. letters of reference concerning employment, licensing or permits;

C. letters or memoranda that are matters of opinion in personnel files or students' cumulative files;

D. portions of law enforcement records that reveal:

(1) confidential sources, methods or information; or

(2) before charges are filed, names, address, contact information, or protected personal identifier information as defined in this Act of individuals who are:

(a) accused but not charged with a crime; or

(b) victims of or non-law-enforcement witnesses to an alleged crime of: 1) assault with intent to commit a violent felony pursuant to Section 30-3-3 NMSA 1978 when the violent felony is criminal sexual penetration; 2) assault against a household member with intent to commit a violent felony pursuant to Section 30-3-14 NMSA 1978 when the violent felony is criminal sexual penetration; 3) stalking pursuant to Section 30-3A-3 NMSA 1978; 4) aggravated stalking pursuant to Section 30-3A-3.1 NMSA 1978; 5) criminal sexual penetration pursuant to Section 30-9-11 NMSA 1978; or 6) criminal sexual contact pursuant to Section 30-9-12 NMSA 1978.

Law enforcement records include evidence in any form received or compiled in connection with a criminal investigation or prosecution by a law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent that they contain the information listed in this subsection; provided that the presence of such information on a law enforcement record does not exempt the record from inspection;

E. as provided by the Confidential Materials Act [14-3A-1, 14-3A-2 NMSA 1978];

F. trade secrets, attorney-client privileged information and long-range or strategic business plans of public hospitals discussed in a properly closed meeting;

G. tactical response plans or procedures prepared for or by the state or a political subdivision of the state, the publication of which could reveal specific vulnerabilities, risk assessments or tactical emergency security procedures that could be used to facilitate the planning or execution of a terrorist attack; and

H. as otherwise provided by law.

History: 1941 Comp., § 13-501, enacted by Laws 1947, ch. 130, § 1; 1953 Comp., § 71-5-1; Laws 1973, ch. 271, § 1; 1981, ch. 47, § 3; 1993, ch. 260, § 1; 1998 (1st S.S.), ch. 3, § 1; 1999, ch. 158, § 1; 2003, ch. 288, § 1; 2005, ch. 126, § 1; 2011, ch. 134, § 2; 2019, ch. 27, § 1.

ANNOTATIONS

Cross references. — For use of police reports for commercial solicitation, *see* 14-2A-1 NMSA 1978.

For provisions of Arrest Record Information Act, *see* Chapter 29, Article 10 NMSA 1978.

The 2019 amendment, effective June 14, 2019, provided an exception to the right to inspect public records for portions of law enforcement records that contain identifying information of certain victims of and witnesses to certain crimes; deleted subsection designation "A", deleted Subsection B, and redesignated former Paragraphs A(1) through A(8) as Subsections A through H, respectively; in Subsection D, added "portions of", added paragraph designations "(1)" and "(2)", in Paragraph D(1), after "methods", added "or", in Paragraph D(2), added "before charges are filed, names, address, contact information, or protected personal identifier information as defined in this Act of", after "individuals", added "who are", added new subparagraph designation "(a)", and Subparagraph D(2)(b); and after Paragraph D(2)(b), after "listed in this", deleted "paragraph" and added the remainder of the paragraph.

The 2011 amendment, effective July 1, 2011, permitted the inspection of records containing identity or identifying information about an applicant or nominee for president of a public institution of higher learning and the inspection of discharge papers of veterans, and authorized a public body to redact protected personal identifier information before inspection.

The 2005 amendment, effective July 1, 2005, added Subsection A(9) through (11) to provide exceptions to the right to inspect public records for certain discharge papers of military veterans.

The 2003 amendment, effective July 1, 2003, inserted Paragraph A(8) and redesignated former Paragraph A(8) as Paragraph A(9).

The 1999 amendment, effective April 5, 1999, in Subsection A added Paragraph (6) and redesignated the remaining paragraphs accordingly.

The 1998 amendment, effective May 11, 1998, designated the former introductory paragraph as Subsection A, redesignated the existing paragraphs thereunder as Paragraphs A(1)-(5) and (7), and added Paragraph A(6), making minor stylistic changes; and added Subsection B.

The 1993 amendment, effective June 18, 1993, substituted "person" for "citizen of this state" in the introductory language, substituted "institution" for "institutions" in Subsection A, added Subsection D, and redesignated former Subsections D and E as Subsections E and F.

I. GENERAL CONSIDERATION.

Retroactive application of the Supreme Court decision in Republication Party v. Taxation & Revenue. — Where, in 2007, plaintiff requested copies of a draft letter and emails relating to a federal program managed by defendant and defendant denied plaintiff's request on the grounds that the documents were protected by the deliberative process privilege and the rule of reason, the principles of Republican Party of N.M. v. N.M. Taxation & Revenue Dep't, 2012-NMSC-026, 283 P.3d 853 applied retroactively to plaintiff's request because the supreme court did not announce a new rule regarding the deliberative process privilege, and although the supreme court overruled cases in which the rule of reason was endorsed, defendant did not rely on the precedent overruled by the supreme court when it denied plaintiff's request, retroactive application of the decision would further the purposes of the Inspection of Public Records Act, and retroactive application of the decision would not result in any inequity. *Edenburn v. N.M. Dep't of Health*, 2013-NMCA-045, 299 P.3d 424, cert. denied, 2013-NMCERT-002.

Rule of reason. — The rule of reason is a non-statutory exception to disclosure which provides a mechanism for addressing claims of confidentiality that have not been specifically addressed by the legislature. The rule of reason applies only to public records that do not fall into one of the statutory exceptions to disclosure and requires the custodian of public records to justify why the records sought to be inspected should not be furnished and the district court to balance the fundamental right of all citizens to have reasonable access to public records against countervailing public policy considerations which favor confidentiality and nondisclosure. *City of Farmington v. The Daily Times*, 2009-NMCA-057, 146 N.M. 349, 210 P.3d 246.

Inspection of Public Records Act is statutory scheme of general application. *Crutchfield v. Taxation & Revenue Dep't*, 2005-NMCA-022, 137 N.M. 26, 106 P.3d 1273.

Citizen complaints concerning law enforcement officer. — Citizen complaints concerning the on-duty conduct of a law enforcement officer are public records available to the public for inspection. *Cox v. N.M. Dep't of Pub. Safety*, 2010-NMCA-096, 148 N.M. 934, 242 P.3d 501, cert. granted, 2010-NMCERT-010, 149 N.M. 64, 243 P.3d 1146, cert. quashed, 2011-NMCERT-006, 150 N.M. 763, 266 P.3d 632.

Right of citizen to inspect. — A citizen has a fundamental right to have access to public records. The citizen's right to know is the rule, and secrecy is the exception. Where there is no contrary statute or countervailing public policy, the right to inspect public records must be freely allowed. *State ex rel. Newsome v. Alarid*, 1977-NMSC-076, 90 N.M. 790, 568 P.2d 1236.

Nondisclosure of names of terminated employees. — Where the reason for termination of public employees is a matter of public knowledge before the individuals are terminated, the privacy of the disciplinary proceeding can only be protected by upholding the administrative decision not to disclose the names of the individuals affected. *State ex rel. Barber v. McCotter*, 1987-NMSC-046, 106 N.M. 1, 738 P.2d 119.

Defendant failed to meet burden of establishing privilege in request for public records action. — In an underlying enforcement action under the New Mexico Inspection of Public Records Act, 14-2-1 to -12 NMSA 1978, where plaintiffs made a combined seven written requests of the Albuquerque public schools (APS) to inspect documents referencing complaints or allegations of misconduct regarding the former superintendent of APS, the district court did not err in ordering the non-party appellant to answer plaintiffs' deposition questions, because appellant failed to identify any privilege, either adopted by the New Mexico supreme court or recognized under the New Mexico constitution, on which to base her argument that communications regarding "limited personnel matters" that occur during a closed public meeting are immune from discovery, and failed to meet her burden of establishing the essential elements necessary to prove the applicability of the attorney-client privilege, based on a claimed common interest, to her communications with APS attorneys. *Albuquerque Journal v. Board of Educ.*, 2019-NMCA-012, *cert. granted*.

II. RECORDS SUBJECT TO INSPECTION.

Property valuation records. — The valuation records statute, § 7-38-19, expressly recognizes that valuation records are public records except to the extent that they contain information regarding income, certain expenses, profits and losses relating to the property or owner, or diagrams of the interior arrangements of buildings or alarm, electrical, or plumbing systems; the presence of any of the above information on a property card does not render the entire card excepted from being a public record, since such a literal reading of the statute is unreasonable and would effect a nullification of the statutes providing that valuation records are, in general, public. *Gordon v. Sandoval Cnty. Assessor*, 2001-NMCA-044, 130 N.M. 573, 28 P.3d 1114.

Voter registration records. — A county chairman of a political party is entitled to have the working master record of the voter registration records of the county copied, or duplicated at his expense under the county clerk's supervision, as these records are public records. *Ortiz v. Jaramillo*, 1971-NMSC-041, 82 N.M. 445, 483 P.2d 500.

Military and arrest records of state employees. — Supreme court declined to hold that all information in employment records of state university regarding military discharges or arrest records should be exempted from disclosure. *State ex rel. Newsome v. Alarid*, 1977-NMSC-076, 90 N.M. 790, 568 P.2d 1236.

III. EXCEPTIONS.

A. IN GENERAL.

Rule of reason has no application to the inspection of public records. — The rule of reason, whereby courts determine whether records not specifically exempted by the Inspection of Public Records Act, Section 14-2-1 NMSA 1978 et seq., nevertheless should be withheld from the requestor on the grounds that disclosure would not be in the public interest, has no application to the inspection of public records under the act.

Courts should restrict their analysis to whether disclosure under the act may be withheld because of a specific exception contained within the act, or statutory or regulatory exceptions, or privileges adopted by the supreme court or grounded in the constitution. *Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, 2012-NMSC-026, 283 P.3d 853, *overruling City of Farmington v. The Daily Times*, 2009-NMCA-057, 146 N.M. 349, 210 P.3d 246 and *Board of Comm'rs of Dona Ana Cnty. v. Las Cruces Sun-News*, 2003-NMCA-102, 134 N.M. 283, 76 P.3d 36.

The deliberative process privilege does not exist under New Mexico law. — The common law deliberative process privilege, which applies to decision making of executive officials generally and which only covers material that is predecisional and deliberative, does not exist under New Mexico law. *Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, 2012-NMSC-026, 283 P.3d 853, *rev'g* 2010-NMCA-080, 148 N.M. 877, 242 P.3d 444 and disavowing *State ex rel. Att'y Gen. v. First Judicial Dist. Court*, 1981-NMSC-053, 96 N.M. 254, 629 P.2d 330.

Executive privilege. — The executive privilege in New Mexico, which derives from the constitution and which is reserved to and can be invoked only by the governor, extends only to documents that are communicative in nature, that are made to and from individuals in very close organizational and functional proximity to the governor, and that relate to decisions made by the governor in the performance of the governor's constitutionally-mandated duties. *Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, 2012-NMSC-026, 283 P.3d 853.

Application of the executive privilege to the inspection of public records. — Courts considering the application of the executive privilege to a request for the inspection of public records under the Inspection of Public Records Act, Section 14-2-1 NMSA 1978 et seq., must independently determine whether the documents at issue are in fact covered by the privilege and whether the privilege has been invoked by the governor, to whom the privilege is reserved. Courts are not required to balance the competing needs of the executive and the party seeking disclosure. Where appropriate, courts should conduct an in camera view of the documents at issue as part of their evaluation of the privilege. *Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, 2012-NMSC-026, 283 P.3d 853.

Executive privilege did not apply to drivers' license records. — Where petitioners requested public documents from the motor vehicle division relating to the issuance of drivers' licenses to foreign nationals and to an audit of the license program ordered by the governor; the motor vehicle division redacted information pursuant to executive privilege; the redacted documents included communications regarding New Mexico's negotiations with the Mexican government regarding access to identity documents and discussions related to implementing the audit of the driver's license program; the documents at issue were principally internal emails between staff of the motor vehicle division, not communications with the governor or the governor's immediate staff; and the motor vehicle division, not the governor, asserted the executive privilege; the documents at issue did not qualify for the executive privilege. *Republican Party of N.M.*

v. N.M. Taxation & Revenue Dep't, 2012-NMSC-026, 283 P.3d 853, *rev'g* 2010-NMCA-080, 148 N.M. 877, 242 P.3d 444.

Driver's license records. — Where plaintiffs, who wanted to research whether undocumented aliens were voting in elections in New Mexico, requested information about driver's licenses issued to persons who were not citizens or legal residents of the United States, defendants properly redacted individual tax identification numbers and the names, driver's license numbers, and addresses of drivers who obtained their license with proof of identification other than a social security number, because the redacted information was personal information which defendants were prohibited from disclosing by 18 U.S.C. § 2721(a)(1) and by Section 66-2-7.1 NMSA 1978. *Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, 2010-NMCA-080, 148 N.M. 877, 242 P.3d 444, cert. granted, 2010-NMCERT-008, 148 N.M. 942, 242 P.3d 1288.

Executive privilege is a non-statutory exception to disclosure which requires the court to balance the fundamental right of all citizens to have reasonable access to public records against countervailing public policy considerations which favor confidentiality and nondisclosure. *Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, 2010-NMCA-080, 148 N.M. 877, 242 P.3d 444, cert. granted, 2010-NMCERT-008, 148 N.M. 942, 242 P.3d 1288.

Executive privilege. — Where plaintiffs, who wanted to research whether undocumented aliens were voting in elections in New Mexico, requested information about driver's licenses issued to persons who were not citizens or legal residents of the United States, defendants were authorized by the executive privilege exception to redact communications between the governor's office and the defendants regarding New Mexico's negotiations with the Mexican government regarding driver's identification confirmation, discussions about drivers who applied for licenses using documents whose authenticity the motor vehicle division had not been able to confirm, and discussions related to an audit to determine whether licenses had been issued to individuals who submitted documents of questionable authenticity. *Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, 2010-NMCA-080, 148 N.M. 877, 242 P.3d 444, cert. granted, 2010-NMCERT-008, 148 N.M. 942, 242 P.3d 1288.

Attorney-client privilege. — Where plaintiffs, who wanted to research whether undocumented aliens were voting in elections in New Mexico, requested information about driver's licenses issued to persons who were not citizens or legal residents of the United States, defendants were authorized by the attorney-client privilege exception to redact communications between the general counsel for the governor's office and executive branch personnel about communications with the Mexican government regarding the issuance of driver's licenses in New Mexico, an audit of drivers who obtained licenses with individual tax identification numbers, communications with drivers whose documentation could not be verified, and legal analysis of the process for obtaining a driver's license. *Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, 2010-NMCA-080, 148 N.M. 877, 242 P.3d 444, cert. granted, 2010-NMCERT-008, 148 N.M. 942, 242 P.3d 1288.

B. PARTICULAR RECORDS EXCEPTED.

Draft documents are public documents that are subject to public inspection. *Edenburn v. N.M. Dep't of Health*, 2013-NMCA-045, 299 P.3d 424, cert. denied, 2013-NMCERT-002.

Draft letter and emails. — Where plaintiff requested a copy of a draft letter and a string of emails that related to a federal program managed by defendant; defendant denied plaintiff the right to inspect the emails on the ground that the emails were protected by the deliberative process privilege because they were deliberative communications between defendant's employees before any final determinations were made; and defendant denied plaintiff the right to inspect the draft letter on the grounds that the draft letter, as a draft document, was not subject to public records status and was exempt from disclosure by the rule of reason and the same principles upon which the deliberative process privilege is grounded, the draft letter and the emails were subject to disclosure because neither the deliberative process privilege nor the rule of reason are recognized in New Mexico and there was no specific statutory, regulatory, court adopted privilege, or constitutional provision that exempts draft documents from inspection. *Edenburn v. N.M. Dep't of Health*, 2013-NMCA-045, 299 P.3d 424, cert. denied, 2013-NMCERT-002.

The contents of an officeholder's personal election campaign Facebook page are not public records of a public body. — In a superintending control proceeding arising from an Inspection of Public Records Act (IPRA) action filed in the fifth judicial district court (district court), where the real party in interest, a party to a civil case in the first judicial district court, sought to inspect the contents of a personal election Facebook page maintained by a first judicial district court judge (judge), the district court did not err in determining that the contents of the judge's personal election campaign Facebook page were not public records of a public body subject to IPRA disclosure requirements, because IPRA is aimed at the affairs of government and the official acts of public officers and employees, and there was no evidence that the judge's personal election campaign or its Facebook site were acting on behalf of the first judicial district court or any other public body, that any government funding was involved in maintenance of the Facebook site or any of its activities, or that the judge conducted public business through the site. *Pacheco v. Hudson*, 2018-NMSC-022.

Judicial deliberation privilege. — There exists a judicial deliberation privilege protecting the confidentiality of draft judicial orders and other internal judicial-making processes between judges and between judges and the court's staff made in the course of the performance of their judicial duties and related to official court business. *Pacheco v. Hudson*, 2018-NMSC-022.

In a superintending control proceeding arising from an Inspection of Public Records Act (IPRA) action filed in the fifth judicial district court (district court), where the real party in interest, a party to a civil case in the first judicial district court, sought to inspect email communications related to a draft copy of a preliminary injunction order that a judge in

the first judicial district court had been preparing for issuance in the underlying civil case, email exchanges between the judge and court staff, as well as an email exchange between the judge and the supreme court law librarian, were protected by the judicial deliberation privilege, because the email exchanges reflected the judge's internal judicial decision-making processes. *Pacheco v. Hudson*, 2018-NMSC-022.

Child abuse and neglect proceedings. — Section 32A-4-33 NMSA 1978 of the Children's Code exempts the child's records in a civil abuse and neglect proceeding from the public's right to inspect public records authorized by Section 14-2-1(F) NMSA 1978 (1993) (now 14-2-1(A)(12) NMSA 1978). *State ex rel. Children, Youth & Families Dep't v. George F.*, 1998-NMCA-119, 125 N.M. 597, 964 P.2d 158.

Criminal investigation records. — The legislature has expressed its intent to protect from disclosure police investigatory materials in an on-going criminal investigation through the Inspection of Public Records Act (Section 14-2-1(A)(4) NMSA 1978). *Estate of Romero v. City of Santa Fe*, 2006-NMSC-028, 139 N.M. 671, 137 P.3d 611.

There is not a blanket exception from inspection for law enforcement records relating to an ongoing criminal investigation. — Where plaintiff sent a written request to the department of public safety (DPS) pursuant to IPRA for various records relating to the shooting death of his brother, and where DPS produced a primary incident report, the personnel records of one of the officers involved, and one subpoena, but denied production of all other pertinent records in its possession, claiming that the release of the requested information posed a demonstrable and serious threat to an ongoing criminal investigation and that the FBI asked DPS to withhold the records in order to maintain the integrity of its investigation, the district court erred in denying plaintiff's motion for summary judgment and in granting DPS's motion for summary judgment, because this section does not create a blanket exception from inspection of law enforcement records relating to an ongoing criminal investigation, and DPS did not present evidence that any specific records that it refused to produce revealed confidential sources, methods, information or individuals accused but not charged with a crime, nor did DPS present any evidence that it reviewed the requested records to separate the exempt from nonexempt information, or that it provided any nonexempt information existing within records containing exempt information. *Jones v. N.M. Dep't of Public Safety*, 2020-NMSC-013, *rev'g* No. A-1-CA-35120, mem. op. (May 10, 2018) (non-precedential).

Property valuation records. — The valuation records statute, Section 7-38-19 NMSA 1978, expressly recognizes that valuation records are public records except to the extent that they contain information regarding income, certain expenses, profits and losses relating to the property or owner, or diagrams of the interior arrangements of buildings or alarm, electrical, or plumbing systems; the presence of any of the above information on a property card does not render the entire card excepted from being a public record, since such a literal reading of the statute is unreasonable and would effect a nullification of the statutes providing that valuation records are, in general,

public. *Gordon v. Sandoval Cnty. Assessor*, 2001-NMCA-044, 130 N.M. 573, 28 P.3d 1114.

Driver's license records. — Where plaintiffs, who wanted to research whether undocumented aliens were voting in elections in New Mexico, requested information about drivers' licenses issued to persons who were not citizens or legal residents of the United States, defendants properly redacted individual tax identification numbers and the names, drivers' license numbers, and addresses of drivers who obtained their license with proof of identification other than a social security number, because the redacted information was personal information which defendants were prohibited from disclosing by 18 U.S.C. § 2721(a)(1) and by Section 66-2-7.1 NMSA 1978. *Republican Party of N.M. v. N.M. Taxation & Revenue Dep't*, 2010-NMCA-080, 148 N.M. 877, 242 P.3d 444, cert. granted, 2010-NMCERT-008, 148 N.M. 942, 242 P.3d 1288.

Computerized database of public record. — There is no intent on the part of the legislature with respect to Section 14-3-15.1 C NMSA 1978 that that statute and the policy underlying it, and not the Inspection of Public Records Act and the policies underlying it, apply to a copy of a medium containing a computerized database of a public record. *Crutchfield v. Taxation & Revenue Dep't*, 2005-NMCA-022, 137 N.M. 26, 106 P.3d 1273.

Letters of reference. — A letter of reference, as that term is used in Paragraph (2) of Subsection A of Section 14-2-1 NMSA 1978, is generally considered to be a statement of support for an applicant that assists a future employer or licensor in evaluation of an applicant for a job, license, or permit; is typically solicited either by a prospective applicant or the prospective employer; and addresses the prospective applicant's general qualifications for employment or licensing. *Cox v. N.M. Dep't of Pub. Safety*, 2010-NMCA-096, 148 N.M. 934, 242 P.3d 501, cert. granted, 2010-NMCERT-010, 149 N.M. 64, 243 P.3d 1146, cert. quashed, 2011-NMCERT-006, 150 N.M. 763, 266 P.3d 632.

Citizen complaints concerning law enforcement officer. — Citizen complaints concerning the on-duty conduct of a law enforcement officer are not letters of reference as that term is used in Paragraph (2) of Subsection A of Section 14-2-1 NMSA 1978. *Cox v. N.M. Dep't of Pub. Safety*, 2010-NMCA-096, 148 N.M. 934, 242 P.3d 501, cert. granted, 2010-NMCERT-010, 149 N.M. 64, 243 P.3d 1146, cert. quashed, 2011-NMCERT-006, 150 N.M. 763, 266 P.3d 632.

Records in personnel files. — The location of a record in a personnel file is not dispositive of whether the exception in Paragraph (3) of Subsection A of Section 14-2-1 NMSA 1978 applies. The critical factor is the nature of the document itself. *Cox v. N.M. Dep't of Pub. Safety*, 2010-NMCA-096, 148 N.M. 934, 242 P.3d 501, cert. granted, 2010-NMCERT-010, 149 N.M. 64, 243 P.3d 1146, cert. quashed, 2011-NMCERT-006, 150 N.M. 763, 266 P.3d 632.

Matters of opinion in personnel files. — Matters of opinion in personnel files, as that term is used in Paragraph (3) of Subsection A of Section 14-2-1 NMSA 1978, constitute personnel information regarding the employer/employee relationship, such as internal evaluations; disciplinary reports or documentation; promotion, demotion or termination information; or performance evaluations. *Cox v. N.M. Dep't of Pub. Safety*, 2010-NMCA-096, 148 N.M. 934, 242 P.3d 501, cert. granted, 2010-NMCERT-010, 149 N.M. 64, 243 P.3d 1146, cert. quashed, 2011-NMCERT-006, 150 N.M. 763, 266 P.3d 632.

Citizen complaints concerning law enforcement officer. — Citizen complaints regarding a law enforcement officer's conduct while performing the officer's duties as a public official are not the type of opinion material this is excluded from public inspection by Paragraph (3) of Subsection A of Section 14-2-1 NMSA 1978. *Cox v. N.M. Dep't of Pub. Safety*, 2010-NMCA-096, 148 N.M. 934, 242 P.3d 501, cert. granted, 2010-NMCERT-010, 149 N.M. 64, 243 P.3d 1146, cert. quashed, 2011-NMCERT-006, 150 N.M. 763, 266 P.3d 632.

Records of non-mandated university employment office. — Student complaints against man who utilized the services of university employment office to obtain domestic help by means of job postings were not "public records," since there was no legal mandate for the operation of the employment office, nor was there an obligation of the office to make or keep records of the complaints. *Spadaro v. Univ. of N.M. Bd. of Regents*, 1988-NMSC-064, 107 N.M. 402, 759 P.2d 189.

Personnel records of state university employees pertaining to illness may be confidential. — Personnel records of employees of state university which pertain to illness, injury, disability, inability to perform a job task and sick leave are considered confidential under this section and not subject to release to the public, except by the consent or waiver of the particular employee. *State ex rel. Newsome v. Alarid*, 1977-NMSC-076, 90 N.M. 790, 568 P.2d 1236.

Faculty salary matters are not public records until the culmination of the contract between the board and the individual thought processes, or the offer of a contract, are not such a public record as would require public inspection, so that the right to inspect records of the board of regents of a state university on the subject of salary contract negotiations before the task was completed should be denied. *Sanchez v. Board of Regents*, 1971-NMSC-065, 82 N.M. 672, 486 P.2d 608.

Meaning of "as otherwise provided by law". — The exception in Subsection F of this section incorporates an administrative regulation that effectuates the legislature's intent in enacting the Public Employee Bargaining Act [now repealed]; any benefit to the public from inspecting the representation petition filed under that act would be significantly outweighed by a public employee's privacy interest. *City of Las Cruces v. Public Employee Labor Relations Bd.*, 1996-NMSC-024, 121 N.M. 688, 917 P.2d 451.

Exception to public policy.— The legislature, in enacting 14-3-15.1 C NMSA 1978, intended to permit state agencies to specifically limit public use of a certain type of

record, thereby creating an exception to the general public policy underlying the Inspection of Public Records Act. *Crutchfield v. Taxation & Revenue Dep't*, 2005-NMCA-022, 137 N.M. 26, 106 P.3d 1273.

Jury lists. — A jury list is a public record and the media are entitled to inspect and publish it. *State ex rel. N.M. Press Ass'n v. Kaufman*, 1982-NMSC-060, 98 N.M. 261, 648 P.2d 300.

Common-law concept. — The right of the public to inspect records which are in custody of a public officer is a common-law concept and exists even without statute. 1954 Op. Att'y Gen. No. 54-5933.

Public's right to inspection is not absolute. 1969 Op. Att'y Gen. No. 69-89.

Dissemination of information not necessarily included. — The right to inspect public records does not necessarily include the right to disseminate the information contained in those records. 1969 Op. Att'y Gen. No. 69-89.

Limited privacy of accused. — Section 29-10-4 NMSA 1978 protects the confidentiality of information concerning the identity of a person who has been accused, but not charged, with a crime only if that information has been collected in connection with an investigation of, or otherwise relates to, another person who has been charged with committing a crime. However, information in other records which identifies a person accused but not charged with or arrested for a crime may be protected from public disclosure under this section. Finally, even if it would otherwise be protected under either statute, information about a person accused but not charged with a crime is open to public inspection if it is contained in a document listed in 29-10-7 NMSA 1978. 1994 Op. Att'y Gen. No. 94-02.

Identity of individuals arrested or charged with crime not protected. — Neither the Arrest Record Information Act [27-10-1 NMSA 1978] nor the Inspection of Public Records Act [14-2-4 NMSA 1978] authorizes a law enforcement agency to protect the identity of persons who have been arrested or charged with a crime. 1994 Op. Att'y Gen. No. 94-02.

No defense to invasion of privacy action. — The right of inspection is no defense to an action for invasion of privacy based upon publication of matters which an individual has the right to keep private. 1969 Op. Att'y Gen. No. 69-89.

Criterion for determining what information is public record is whether the information is required by law to be kept or is necessarily kept in the discharge of a duty imposed by law. 1969 Op. Att'y Gen. No. 69-89.

Provisions of section contemplate some exception to the Public Records Act, 14-3-1 NMSA 1978 et seq. 1964 Op. Att'y Gen. No. 64-19.

Court opinions subject to inspection or copying. — The supreme court and the court of appeals are required to make available their current and past opinions to the public for inspection or for copying. 1979 Op. Att'y Gen. No. 79-14.

All records which do not deal with physical or mental examinations or medical treatment of patients are public records. This type of record would include payrolls, receipts and disbursements, etc. Any record which might fairly be called a record of examination of a patient or a record of medical treatment of a patient of any institution is not a public record and need not be submitted to public scrutiny. 1960 Op. Att'y Gen. No. 60-155.

Data compiled from case histories. — Case histories furnished by attending physicians on individual patients from which mortality data is to be taken are confidential records, but the data compiled from such case histories where the individual identity is lost are not confidential. 1959 Op. Att'y Gen. No. 59-158.

Workers' compensation claim files. — The workers' compensation division maintains workers' compensation claim files in the course of its statutory function of adjudicating claims filed by workers, which makes them public records within the meaning of state freedom of information laws. 1988 Op. Att'y Gen. 88-16.

Medical records introduced into evidence. — To the extent any medical records that otherwise are exempt from disclosure are introduced into evidence during the course of a formal workers' compensation hearing which is open to the public, such records lose their exempt status and may be inspected by the public. 1988 Op. Att'y Gen. No. 88-16.

Records of state penitentiary are public records and should be made available for public inspection in accordance with the provisions of this section. 1951 Op. Att'y Gen. No. 51-5342.

Public school records. — Business records, expenditures, daily attendance records and permanent records of an individual student's grades kept by the public schools are public records. 1961 Op. Att'y Gen. No. 61-137.

Public school records. — Any citizen of this state has a right to examine the public records of a school district when such records have been made a part of central records of such school district. This right to inspection is spelled out by statute, and the legislature has specified that the denial of such right of access is punishable as a misdemeanor. 1961 Op. Att'y Gen. No. 61-137.

Instructional material used in public school. — Local school boards have no authority to prohibit citizens of the state from inspecting instructional material used in a public school within the district. 1988 Op. Att'y Gen. No. 88-37.

Immunization records of school children are available to the public. 1959 Op. Att'y Gen. No. 59-158.

Names and addresses of teachers employed in New Mexico school systems which are contained in lists compiled by the department of education are public records. 1969 Op. Att'y Gen. No. 69-89.

Employee's file held by state personnel office. — Personnel actions, supervisor's ratings, arrest records, letters of commendation or condemnation from the employing agency, present employment history, the job application itself and educational history in an employee's file held by the state personnel office is a matter of public record. 1968 Op. Att'y Gen. No. 68-110.

Salary information pertaining to state employee which is possessed by the state personnel office is a matter of public record, since the state personnel director is required by law to establish and maintain a roster for all state employees showing the employee's pay rate, 10-9-12 NMSA 1978. 1968 Op. Att'y Gen. No. 68-110.

Job applicant's test score and position on eligibility list under 10-9-13 NMSA 1978, possessed by the state personnel office, is a public record. 1968 Op. Att'y Gen. No. 68-110.

Minutes of board of bar examiners meet the requirements of the definition of public records, and, as such, are required under the common law adopted by this state and also by this section, as amended, to be public records and, as such, are subject to the inspection of the public. 1954 Op. Att'y Gen. No. 54-5933.

Interstate stream commission. — Under the provisions of this section, any public records reflecting the work or action of the interstate stream commission are subject to public inspection. 1962 Op. Att'y Gen. No. 62-80.

County fair board. — Since the legislature has specifically granted counties the authority to conduct county fairs, a county fair board is an arm of the county and its records are county records which are subject to inspection as provided in this section and former 14-2-2 NMSA 1978. 1964 Op. Att'y Gen. No. 64-109.

Data of personal nature used in educating pupils not subject. — Such records or memoranda as may be kept by a teacher, or other school official, for informational purposes on individual students, and which may contain data of a personal nature for use in assisting teachers or school personnel in educating pupils, do not fall within the classification of public records entitled to be scrutinized by the public. 1961 Op. Att'y Gen. No. 61-137.

Temporary or partial grades or records kept by individual teachers are not public records. 1961 Op. Att'y Gen. No. 61-137.

Portions of applicant's file may be classified as confidential by state personnel board. — Not all records kept by a public officer are public records. The state personnel board has, within statutory limits, a limited and restricted right to classify certain portions

of an applicant's file as confidential. Any portion which would be made available to the state only on a confidential and restricted basis may be treated by the state personnel board as confidential. This right, however, should be narrowly and restrictively applied. 1968 Op. Att'y Gen. No. 68-110.

Personnel file. — Under the rule-making authority of 10-9-10 and 10-9-13 NMSA 1978, the state personnel board has a limited and restricted right to classify as confidential certain portions of an individual's personnel file which would not otherwise be made available to the state unless on a confidential or restricted basis. 1964 Op. Att'y Gen. No. 64-19.

Medical history and employment history solicited from applicant's previous employer for 10-9-13 NMSA 1978 are not public records. 1968 Op. Att'y Gen. No. 68-110.

Criminal complaints. — Complaints filed in J. P. (now magistrate) court by district attorney and sheriff's office do not constitute public records when the person complained against has not been arrested and is not subject to public inspection. 1947 Op. Att'y Gen. No. 47-5074.

Information obtained under Mental Health and Developmental Disabilities Code. — A district court clerk may not release the information identified in 43-1-19A NMSA 1978, governing disclosure under the Mental Health and Developmental Disabilities Code, without obtaining the consent of the person to whom that information pertains. 1988 Op. Att'y Gen. No. 88-75.

Human services department records. — Since other statutory provisions are made for inspection of records of the welfare department (now human services department), they are open for inspection only in accordance with 27-2-35. 1947 Op. Att'y Gen. No. 47-5032.

Law reviews. — For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

For survey of 1988-89 Administrative Law, see 21 N.M.L. Rev. 481 (1991).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 37A Am. Jur. 2d Freedom of Information Acts § 1 et seq. 52 Am. Jur. 2d Mandamus § 204; 66 Am. Jur. 2d Records and Recording Laws §§ 12 to 31.

Enforceability by mandamus of right to inspect public records, 60 A.L.R. 1356, 169 A.L.R. 653.

Right to inspect motor vehicle records, 84 A.L.R.2d 1261.

Confidentiality of records as to recipients of public welfare, 54 A.L.R.3d 768.

Payroll records of individual government employees as subject to disclosure to public, 100 A.L.R.3d 699.

Validity, construction, and effect of state laws requiring public officials to protect confidentiality of income tax returns or information, 1 A.L.R.4th 959.

What constitutes preliminary drafts or notes provided by or for state or local governmental agency, or intra-agency memorandums, exempt from disclosure or inspection under state freedom of information act, 26 A.L.R.4th 639.

Patient's right to disclosure of his or her own medical records under state freedom of information act, 26 A.L.R.4th 701.

What are "records" of agency which must be made available under state freedom of information act, 27 A.L.R.4th 680.

What constitutes an agency subject to application of state freedom of information act, 27 A.L.R.4th 742.

What constitutes "trade secrets" exempt from disclosure under state freedom of information act, 27 A.L.R.4th 773.

What constitutes legitimate research justifying inspection of state or local public records not open to inspection by general public, 40 A.L.R.4th 333.

State freedom of information act requests: right to receive information in particular medium or format, 86 A.L.R.4th 786.

Use of Freedom of Information Act (5 USCS § 552) as substitute for, or as means of, supplementing discovery procedures available to litigants in federal civil, criminal, or administrative proceedings, 57 A.L.R. Fed. 903.

What constitutes "confidential source" within Freedom of Information Act exemption permitting nondisclosure of identity of confidential source and, in specified instances, of confidential information furnished only by confidential source (5 USCS § 552(b)(7)(D)), 59 A.L.R. Fed. 550.

Waiver by federal government agency as affecting agency's right to claim exemption from disclosure requirements under the Freedom of Information Act (5 USCS § 552(b)), 67 A.L.R. Fed. 595.

When are government records "similar files" exempt from disclosure under Freedom of Information Act provision (5 USCS § 552(b)(6)) exempting certain personnel, medical, and "similar" files, 106 A.L.R. Fed. 94.

What constitutes "final opinion" or "order" of federal administrative agency required to be made available for public inspection and copying within meaning of 5 USCS § 552(a)(2)(A), 114 A.L.R. Fed. 287.

What constitutes "trade secrets and commercial or financial information obtained from person and privileged or confidential," exempt from disclosure under Freedom of Information Act (5 USCS § 552 (b)(4)) (FOIA), 139 A.L.R. Fed. 225.

What are "records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)), 153 A.L.R. Fed. 571.

Actions brought under Freedom of Information Act, 5 U.S.C.A. § 522 et seq. - supreme court cases, 167 A.L.R. Fed. 545.

What are interagency or intra-agency memorandums or letters exempt from disclosure under the Freedom of Information Act (5 U.S.C.A. § 552(b)), 168 A.L.R. Fed. 143.

What constitutes "confidential source" within Freedom of Information Act exemption permitting nondisclosure of confidential source and, in some instances, of information furnished by confidential source (5 U.S.C.A. § 552(b)), 171 A.L.R. Fed. 193.

76 C.J.S. Records § 48 et seq.

14-2-1.1. Personal identifier information.

Protected personal identifier information contained in public records may be redacted by a public body before inspection or copying of a record. The presence of protected personal identifier information on a record does not exempt the record from inspection. Unredacted records that contain protected personal identifier information shall not be made available on publicly accessible websites operated by or managed on behalf of a public body.

History: 1978 Comp., § 14-2-1.1, enacted by Laws 2019, ch. 27, § 2.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 27 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

14-2-2. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 258, § 10 repealed 14-2-2 NMSA 1978, as enacted by Laws 1947, ch. 130, § 2, requiring officers having custody of certain records to provide

opportunity and facilities for inspection, effective June 18, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

14-2-2.1. Copies of public records furnished.

When a copy of any public record is required by the veterans' administration to be used in determining the eligibility of any person to participate in benefits made available by the veterans' administration, the official custodian of such public record shall, without charge, provide the applicant for such benefits, or any person acting on his behalf, or the authorized representative of the veterans' administration, with a certified copy of such record.

History: Laws 1979, ch. 23, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 37A Am. Jur. 2d Freedom of Information Acts § 1 et seq. 66 Am. Jur. 2d Records and Recording Laws §§ 10, 12 to 15, 19.

Enforceability by mandamus of right to inspect public records, 60 A.L.R. 1356, 169 A.L.R. 653.

76 C.J.S. Records § 48 et seq.

14-2-3. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 258, § 10 repealed 14-2-3 NMSA 1978, as enacted by Laws 1947, ch. 130, § 3, providing a remedy for citizens who have been refused the right to inspect any public record, effective June 18, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 14-2-11 NMSA 1978.

14-2-4. Short title.

Chapter 14, Article 2 NMSA 1978 may be cited as the "Inspection of Public Records Act".

History: Laws 1993, ch. 258, § 1.

14-2-5. Purpose of act; declaration of public policy.

Recognizing that a representative government is dependent upon an informed electorate, the intent of the legislature in enacting the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978] is to ensure, and it is declared to be the public policy of this state, that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees. It is the further intent of the legislature, and it is declared to be the public policy of this state, that to provide persons with such information is an essential function of a representative government and an integral part of the routine duties of public officers and employees.

History: Laws 1993, ch. 258, § 2.

ANNOTATIONS

Purpose and intent. — The legislature has clearly and unequivocally indicated that public records are to be made public with the exception of certain confidential information and except as otherwise provided by law. 1958 Op. Att'y Gen. No. 58-197.

14-2-6. Definitions.

As used in the Inspection of Public Records Act:

A. "custodian" means any person responsible for the maintenance, care or keeping of a public body's public records, regardless of whether the records are in that person's actual physical custody and control;

B. "file format" means the internal structure of an electronic file that defines the way it is stored and used;

C. "inspect" means to review all public records that are not excluded in Section 14-2-1 NMSA 1978;

D. "person" means any individual, corporation, partnership, firm, association or entity;

E. "protected personal identifier information" means:

(1) all but the last four digits of a:

(a) taxpayer identification number;

(b) financial account number; or

(c) driver's license number;

(2) all but the year of a person's date of birth; and

(3) a social security number;

F. "public body" means the executive, legislative and judicial branches of state and local governments and all advisory boards, commissions, committees, agencies or entities created by the constitution or any branch of government that receives any public funding, including political subdivisions, special taxing districts, school districts and institutions of higher education;

G. "public records" means all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained; and

H. "trade secret" means trade secret as defined in Subsection D of Section 57-3A-2 NMSA 1978.

History: Laws 1993, ch. 258, § 3; 2011, ch. 134, § 3; 2011, ch. 181, § 1; 2011, ch. 182, § 1; 2013, ch. 117, § 1; 2013, ch. 214, § 2; 2018, ch. 61, § 1.

ANNOTATIONS

The 2018 amendment, effective May 16, 2018, added the definition of "trade secret" as used in the Inspection of Public Records Act; and added Subsection H.

The 2013 amendment, effective June 14, 2013, added the definition of "protected personal identifier information", and relettered the succeeding subsections.

The 2011 amendment, effective June 17, 2011, added the definition of "file format" in Subsection B; and relettered the succeeding subsections accordingly.

A private actor that contracts with a governmental entity to perform a public function is subject to the Inspection of Public Records Act. *State ex rel. Toomey v. City of Truth or Consequences*, 2012-NMCA-104, 287 P.3d 364.

Factors to determine whether a private entity is subject to the Inspection of Public Records Act. — Courts should consider the following factors in deciding whether private entities are subject to the Inspection of Public Records Act: (1) the level of public funding; (2) commingling of funds; (3) whether the activity was conducted on publicly owned property; (4) whether the services contracted for are an integral part of the agency's chosen decision-making process; (5) whether the private entity is performing a governmental function or a function which the public agency otherwise would perform; (6) the extent of the public agency's involvement with, regulation of, or control over the private entity; (7) whether the private entity was created by the public agency; (8) whether the public agency has a substantial financial interest in the private

entity; and (9) for whose benefit the private entity is functioning. *State ex rel. Toomey v. City of Truth or Consequences*, 2012-NMCA-104, 287 P.3d 364.

A private entity was subject to the Inspection of Public Records Act. — Where the municipality acquired a public access channel and adopted an ordinance that required the municipality to be responsible for management of the access channel and to adopt rules, regulations and procedures for the use of the access channel; the municipality contracted with a private entity to operate the access channel; the operation agreement required the private entity to operate the access channel in a manner that was consistent with the ordinance; the municipality funded the private entity with an annual grant that was released to the private entity when it gave the municipality an annual activity plan and budget; the private entity was required to account for how the funds were spent; for a nominal rent, the municipality leased the basement of the municipal civic center to the private entity to use as the public access television center; the municipality had the right to terminate the operating agreement without cause; the operating agreement identified the private entity as an independent contractor and stated that no principal or agent relationship existed between the municipality and the private entity; and the municipality denied plaintiff's request for recordings of city commission meetings that the private entity had recorded and played on the access channel, the private entity was acting on behalf of the municipality in its role as the access channel operational organization, and the recordings of city commission meetings made by the private entity were public records subject to inspection. *State ex rel. Toomey v. City of Truth or Consequences*, 2012-NMCA-104, 287 P.3d 364.

Settlement agreement documents were public records. — Where respondent, a private prison medical services provider that provided contracted healthcare services for the New Mexico corrections department (NMCD), negotiated and settled at least fifty-nine civil claims alleging instances of improper care and/or sexual assault of inmates, and where petitioners submitted written requests pursuant to the Inspection of Public Records Act seeking all settlement documents involving respondent in its role as medical services contractor for NMCD, the district court did not err in issuing a writ of mandamus ordering respondent to produce the settlement agreements and pay petitioners' reasonable attorney fees, because the settlement agreements were created as a result of respondent's public function acting on behalf of NMCD. Third-party settlement agreements resulting from medical care provided under a contract with the state are public documents subject to disclosure. *N.M. Found. for Open Gov't v. Corizon Health*, 2020-NMCA-014, cert. denied.

Definition of "public records" in Public Records Act (14-3-1 to 14-3-16 NMSA 1978) does not apply to section, the Inspection of Public Records Act. *State ex rel. Newsome v. Alarid*, 1977-NMSC-076, 90 N.M. 790, 568 P.2d 1236.

"Relate to public business" construed. — Where plaintiff submitted an IPRA request to the New Mexico department of game and fish (NMDGF) seeking the names and email address given by all applicants for hunting licenses in 2015 and 2016, which NMDGF determined amounted to over 300,000 entries, and where NMDGF concluded

that plaintiff's request sought personal identifier information that did not constitute a public record subject to disclosure and agreed to produce only the applicants' names, the district court did not err in granting plaintiff's motion for summary judgment because IPRA's definition of "relating to public business" means that the requested records are connected to governmental affairs or official actions by or on behalf of public bodies, and therefore the email addresses NMDGF collected in connection with its licensing system constitute public records that are subject to disclosure*. Dunn v. N.M. Dep't of Game & Fish*, 2020-NMCA-026.

Faculty salary matters are not public records until the culmination of the contract between the board and the individual; thought processes, or the offer of a contract, are not such a public record as would require public inspection, so that the right to inspect records of the board of regents of a state university on the subject of salary contract negotiations before the task was completed should be denied. *Sanchez v. Board of Regents*, 1971-NMSC-065, 82 N.M. 672, 486 P.2d 608.

Term "public records" is intended to include all papers or memoranda in the possession of public officers which are required by law to be kept by them. 1966 Op. Att'y Gen. No. 66-131.

Public records. — Elements essential to constitute a public record are that it be made by a public officer and that the officer be authorized by law to make it. 1963 Op. Att'y Gen. No. 63-55.

14-2-7. Designation of custodian; duties.

Each public body shall designate at least one custodian of public records who shall:

A. receive requests, including electronic mail or facsimile, to inspect public records;

B. respond to requests in the same medium, electronic or paper, in which the request was made in addition to any other medium that the custodian deems appropriate;

C. provide proper and reasonable opportunities to inspect public records;

D. provide reasonable facilities to make or furnish copies of the public records during usual business hours; and

E. post in a conspicuous location at the administrative office and on the publicly accessible web site, if any, of each public body a notice describing:

(1) the right of a person to inspect a public body's records;

(2) procedures for requesting inspection of public records, including the contact information for the custodian of public records;

(3) procedures for requesting copies of public records;

(4) reasonable fees for copying public records; and

(5) the responsibility of a public body to make available public records for inspection.

History: Laws 1993, ch. 258, § 4; 2001, ch. 204, § 1; 2011, ch. 182, § 2.

ANNOTATIONS

The 2011 amendment, effective June 17, 2011, in Subsection A, after "receive requests" added "including electronic mail or facsimile"; added Subsection B and relettered succeeding subsections; in Subsection E, after "administrative office", added "and on the publicly accessible web site, if any"; and in Subsection E(2), added "including the contact information for the custodian of public records" at the end of the sentence.

The 2001 amendment, effective June 15, 2001, added Subsection D.

Transferring duty as custodian prohibited. — By reason of this section, the records of the director of the department of public health (now secretary of health) are, in some instances, not open to public inspection, and the duty of the custodian of those records, to wit, the director of public health (now secretary), in the maintenance of the secrecy of those records would prohibit him, the governor or any other person from transferring the duty as custodian of the records to any other person. 1954 Op. Att'y Gen. No. 54-5943.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 37A Am. Jur. 2d Freedom of Information Acts § 1 et seq.

What are "records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)), 153 A.L.R. Fed. 571.

14-2-8. Procedure for requesting records.

A. Any person wishing to inspect public records may submit an oral or written request to the custodian. However, the procedures set forth in this section shall be in response to a written request. The failure to respond to an oral request shall not subject the custodian to any penalty.

B. Nothing in the Inspection of Public Records Act shall be construed to require a public body to create a public record.

C. A written request shall provide the name, address and telephone number of the person seeking access to the records and shall identify the records sought with

reasonable particularity. No person requesting records shall be required to state the reason for inspecting the records.

D. A custodian receiving a written request shall permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request. If the inspection is not permitted within three business days, the custodian shall explain in writing when the records will be available for inspection or when the public body will respond to the request. The three-day period shall not begin until the written request is delivered to the office of the custodian.

E. In the event that a written request is not made to the custodian having possession of or responsibility for the public records requested, the person receiving the request shall promptly forward the request to the custodian of the requested public records, if known, and notify the requester. The notification to the requester shall state the reason for the absence of the records from that person's custody or control, the records' location and the name and address of the custodian.

F. For the purposes of this section, "written request" includes an electronic communication, including email or facsimile; provided that the request complies with the requirements of Subsection C of this section.

History: Laws 1993, ch. 258, § 5; 2009, ch. 75, § 1.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, added Subsection F.

Documenting an oral request for public records does not convert an oral request into a written request for purposes of the Inspection of Public Records Act. — Where news reporter orally requested police lapel videos from the Albuquerque Police Department (APD), and where APD public information officer e-mailed the APD records custodian with the request for public records, the e-mail documenting the records request did not convert the oral request for public records into a written request for public records subjecting the records custodian to penalties pursuant to this section. *Holland v. City of Albuquerque*, 2015-NMCA-014.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 37A Am. Jur. 2d Freedom of Information Acts § 414 et seq.

What are "records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)), 153 A.L.R. Fed. 571.

14-2-9. Procedure for inspection.

A. Requested public records containing information that is exempt and nonexempt from disclosure shall be separated by the custodian prior to inspection, and the

nonexempt information shall be made available for inspection. If necessary to preserve the integrity of computer data or the confidentiality of exempt information contained in a database, a partial printout of data containing public records or information may be furnished in lieu of an entire database. Exempt information in an electronic document shall be removed along with the corresponding metadata prior to disclosure by utilizing methods or redaction tools that prevent the recovery of exempt information from a redacted electronic document.

B. A custodian shall provide a copy of a public record in electronic format if the public record is available in electronic format and an electronic copy is specifically requested. However, a custodian is only required to provide the electronic record in the file format in which it exists at the time of the request.

C. A custodian:

(1) may charge reasonable fees for copying the public records, unless a different fee is otherwise prescribed by law;

(2) shall not charge fees in excess of one dollar ($1.00) per printed page for documents eleven inches by seventeen inches in size or smaller;

(3) may charge the actual costs associated with downloading copies of public records to a computer disk or storage device, including the actual cost of the computer disk or storage device;

(4) may charge the actual costs associated with transmitting copies of public records by mail, electronic mail or facsimile;

(5) may require advance payment of the fees before making copies of public records;

(6) shall not charge a fee for the cost of determining whether any public record is subject to disclosure; and

(7) shall provide a receipt, upon request.

D. Nothing in this section regarding the provision of public data in electronic format shall limit the ability of the custodian to engage in the sale of data as authorized by Sections 14-3-15.1 and 14-3-18 NMSA 1978, including imposing reasonable restrictions on the use of the database and the payment of a royalty or other consideration.

History: Laws 1993, ch. 258, § 6; 2011, ch. 181, § 2; 2011, ch. 182, § 3; 2013, ch. 117, § 2.

ANNOTATIONS

The 2013 amendment, effective April 2, 2013, expanded the authority to sell data; and in Subsection D, after "Sections 14-3-15.1", added "and 14-3-18".

The 2011 amendment, effective June 17, 2011.added the last sentence in Subsection A; added Subsection B and relettered the succeeding subsection; in Subsection C, added Subparagraphs (3) and (4), and renumbered the succeeding subparagraphs; and added a new Subsection D.

Right subject to reasonable restrictions and conditions. — The right to inspect public records commonly carries with it the right to make copies thereof, subject, however, to reasonable restrictions and conditions imposed as to their use, reasonable regulations as to appropriate times when and places where they may be inspected and copied and such reasonable supervision by the custodian thereof as may be necessary for their safety and as will secure equal opportunity for all to inspect and copy them. *Ortiz v. Jaramillo*, 1971-NMSC-041, 82 N.M. 445, 483 P.2d 500.

Recording Act governs real property records request. — Where plaintiff corporation sought all of Lea county's real property image and index records, the production provisions of the Recording Act, 14-8-1 through 14-8-17 NMSA 1978, rather than those of the Inspection of Public Records Act (IPRA), 14-2-1 through 14-2-12 NMSA 1978, governed the county's obligation in responding to plaintiff's records request, because IPRA creates a records inspection scheme of general application granting, with various exceptions, a right to inspect public records of this state, and the Recording Act more specifically provides a mechanism by which prospective purchasers can examine real property records, and places on county clerks associated duties to make these records available and searchable for the public. *TexasFile LLC v. Board of Cty. Comm'rs of Lea Cty*., 2019-NMCA-038, cert. denied.

There is not a blanket exception from inspection for law enforcement records relating to an ongoing criminal investigation. — Where plaintiff sent a written request to the department of public safety (DPS) pursuant to IPRA for various records relating to the shooting death of his brother, and where DPS produced a primary incident report, the personnel records of one of the officers involved, and one subpoena, but denied production of all other pertinent records in its possession, claiming that the release of the requested information posed a demonstrable and serious threat to an ongoing criminal investigation and that the FBI asked DPS to withhold the records in order to maintain the integrity of its investigation, the district court erred in denying plaintiff's motion for summary judgment and in granting DPS's motion for summary judgment, because § 14-2-1 NMSA 1978 does not create a blanket exception from inspection of law enforcement records relating to an ongoing criminal investigation, and DPS did not present evidence that any specific records that it refused to produce revealed confidential sources, methods, information or individuals accused but not charged with a crime, nor did DPS present any evidence that it reviewed the requested records to separate the exempt from nonexempt information, or that it provided any nonexempt information existing within records containing exempt information. *Jones v.*

N.M. Dep't of Public Safety, 2020-NMSC-013, *rev'g* No. A-1-CA-35120, mem. op. (May 10, 2018) (non-precedential).

Right to make copies. — The right to inspect or examine public records commonly includes the right of making copies thereof as the right to inspect would be valueless without this correlative right. 1959 Op. Att'y Gen. No. 59-170.

It is permissible for an individual or a company such as an abstractor to photocopy voter registrations in the offices of the county clerks so long as adequate precautions are taken to ensure the integrity of the records and to preserve their availability for inspection by others. 1959 Op. Att'y Gen. No. 59-170.

Charges not to be imposed. — A charge of $25.00 per month may not be imposed by counties upon abstract and title companies for such facilities as lights, telephone and janitorial services to reimburse the counties therefor in connection with abstract and title companies inspecting and copying public records, because this practice amounts to a denial of the right to inspect records. 1957 Op. Att'y Gen. No. 57-102.

Public's right to inspection is not absolute. 1969 Op. Att'y Gen. No. 69-89.

Court opinions subject to inspection or copying. — The supreme court and the court of appeals are required to make available their current and past opinions to the public for inspection or for copying. 1979 Op. Att'y Gen. No. 79-14.

Reimbursement or other consideration to courts for copying costs. — The supreme court and the court of appeals should require reasonable reimbursement for the costs incurred by them for copying opinions for the public or for retrieving their opinions for inspection. However, such a charge need not be made in those cases in which the courts receive some other form of consideration in return for supplying their opinions to private individuals or enterprises. 1979 Op. Att'y Gen. No. 79-14.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 37A Am. Jur. 2d Freedom of Information Acts § 434 et seq.

What are "records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)), 153 A.L.R. Fed. 571.

14-2-10. Procedure for excessively burdensome or broad requests.

If a custodian determines that a written request is excessively burdensome or broad, an additional reasonable period of time shall be allowed to comply with the request. The custodian shall provide written notification to the requester within fifteen days of receipt of the request that additional time will be needed to respond to the written request. The requester may deem the request denied and may pursue the remedies available pursuant to the Inspection of Public Records Act if the custodian does not permit the records to be inspected in a reasonable period of time.

History: Laws 1993, ch. 258, § 7.

ANNOTATIONS

Custodian may make reasonable restrictions and conditions on access. — Fact that request for inspection would pose an extreme burden on personnel office of state university was not a legitimate reason, by itself, for failure to make records available for inspection or for copying, but custodian could make reasonable restrictions and conditions on access to the records. Reasonable regulations could be made as to times when and places where they may be inspected or copied, and custodian could insist upon reasonable supervision for the safekeeping of the records. *State ex rel. Newsome v. Alarid*, 1977-NMSC-076, 90 N.M. 790, 568 P.2d 1236.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 37A Am. Jur. 2d Freedom of Information Acts § 425 et seq.

14-2-11. Procedure for denied requests.

A. Unless a written request has been determined to be excessively burdensome or broad, a written request for inspection of public records that has not been permitted within fifteen days of receipt by the office of the custodian may be deemed denied. The person requesting the public records may pursue the remedies provided in the Inspection of Public Records Act.

B. If a written request has been denied, the custodian shall provide the requester with a written explanation of the denial. The written denial shall:

(1) describe the records sought;

(2) set forth the names and titles or positions of each person responsible for the denial; and

(3) be delivered or mailed to the person requesting the records within fifteen days after the request for inspection was received.

C. A custodian who does not deliver or mail a written explanation of denial within fifteen days after receipt of a written request for inspection is subject to an action to enforce the provisions of the Inspection of Public Records Act and the requester may be awarded damages. Damages shall:

(1) be awarded if the failure to provide a timely explanation of denial is determined to be unreasonable;

(2) not exceed one hundred dollars ($100) per day;

(3) accrue from the day the public body is in noncompliance until a written denial is issued; and

(4) be payable from the funds of the public body.

History: Laws 1993, ch. 258, § 8.

ANNOTATIONS

In camera review. — When a public entity seeks to withhold public records, in camera review is most efficient, if not imperative. The public entity must designate the sealed records for review by the court. *Board of Comm'rs v. Las Cruces Sun-News*, 2003-NMCA-102, 134 N.M. 283, 76 P.3d 36.

County not permitted to circumvent established procedure of in camera review. — Where a county sought to circumvent the procedure outlined in *State ex rel. Newsome v. Alarid*, 1977-NMSC-076, 90 N.M. 790, 568 P.2d 1236, for in camera review of disputed documents by filing a motion for a protective order and asserting to the district court that it could only consider the settlement records if the motion for protective order was granted, the county's decision to bypass established procedure effectively obstructed full review by the district court and the court of appeals and the district court did not abuse its discretion in denying the motion for protective order. *Board of Comm'rs v. Las Cruces Sun-News*, 2003-NMCA-102, 134 N.M. 283, 76 P.3d 36.

The threshold requirements for an in camera inspection are that the custodian of the records must first determine whether the person requesting disclosure is a citizen and whether the request is for a lawful purpose; second, the custodian must justify why the records should not be furnished. *State ex rel. Blanchard v. City Comm'rs*, 1988-NMCA-008, 106 N.M. 769, 750 P.2d 469.

Justification for refusing to release records. — Fact that information was obtained under a promise of confidentiality, standing alone, would not suffice to preclude disclosure. The promise would have to coincide with reasonable justification, based on public policy, for refusing to release the records. Furthermore, the justification would have to be articulated by the custodian for the record. *State ex rel. Newsome v. Alarid*, 1977-NMSC-076, 90 N.M. 790, 568 P.2d 1236.

Duty of custodian to determine whether information can be justifiably withheld. — There may be circumstances under which the information contained in the record can be justifiably withheld. The custodian has the initial duty to make this determination as to each record requested. He must first determine that the person requesting access is a citizen and that he is requesting the information for a lawful purpose. The burden is upon the custodian to justify why the records sought to be examined should not be furnished. It shall then be the court's duty to determine whether the explanation of the custodian is reasonable and to weigh the benefits to be derived from nondisclosure

against the harm which may result if the records are not made available. *State ex rel. Newsome v. Alarid*, 1977-NMSC-076, 90 N.M. 790, 568 P.2d 1236.

Denial of request to review applications for position of city manager. — A municipality's denial of a request to inspect applications received by the municipality for the position of city manager on the grounds that disclosure of the applications would deter potential applicants and reduce the quality and scope of the applicant pool was insufficient, under the rule of reason, to outweigh the public's interest in disclosure. *City of Farmington v. The Daily Times*, 2009-NMCA-057, 146 N.M. 349, 210 P.3d 246.

The Inspection of Public Records Act provides for two separate remedies. — This section and 14-2-12 NMSA 1978 create separate remedies depending on the stage of the Inspection of Public Records Act (IPRA) request. This section requires a public entity to respond to a records request within fifteen days unless the request has been determined to be excessively burdensome or broad. If the request is denied, the custodian shall provide the requester with a written explanation of the denial. It is when the custodian fails to respond to a request or deliver a written explanation of the denial that the public entity is subject to damages pursuant to this section. The enforcement and damages provisions of 14-2-12 NMSA 1978 apply in an action for the post-denial enforcement of the IPRA request. *Faber v. King*, 2015-NMSC-015, *rev'g* 2013-NMCA-080, 306 P.3d 519.

Where the attorney general's office received a request for public records pursuant to the Inspection of Public Records Act (IPRA) and denied the request the next day, damages pursuant to this section were not applicable because the attorney general's office timely answered the request with a denial by following the denial procedures set out in this section. When the district court held that the attorney general's office wrongfully withheld the public records, the enforcement and damages provisions of 14-2-12(D) NMSA 1978 applied. *Faber v. King*, 2015-NMSC-015, *rev'g* 2013-NMCA-080, 306 P.3d 519.

Separate remedies distinguished. — Section 14-2-11 NMSA 1978 is focused on deterring nonresponsiveness and noncompliance by public bodies in the first instance, while 14-2-12 NMSA 1978 is focused on making whole a person who, believing his or her right of inspection has been impermissibly denied, brings a successful enforcement action. *Britton v. Office of the Att'y Gen.*, 2019-NMCA-002.

Incomplete or inadequate responses to IPRA requests. — Where plaintiff made a request for documents from the Attorney General's Office (AGO) pursuant to the Inspection of Public Records Act, §§ 14-2-1 to -12 NMSA 1978, and where the AGO incompletely and inadequately responded to the request, the district court erred in concluding that plaintiff's action is exclusively one that proceeds under 14-2-12 NMSA 1978 and limiting the damages plaintiff can recover to actual damages under Subsection D of that provision, because a public body that permits only partial inspection, that is inspection of some but not all nonexempt responsive records, has not

complied with its obligation to provide the greatest possible information regarding the affairs of government. *Britton v. Office of the Att'y Gen.*, 2019-NMCA-002.

Remedy for inadequate response to IPRA request. — Where plaintiff made a request for documents from the Attorney General's Office (AGO) pursuant to the Inspection of Public Records Act, §§ 14-2-1 to -12 NMSA 1978, and where the AGO failed to permit inspection of approximately 350 records that were responsive to plaintiff's request and for which no claim of exemption was ever asserted or written explanation of denial issued, the district court erred in concluding that plaintiff's action is exclusively one that proceeds under 14-2-12 NMSA 1978 and limiting the damages plaintiff can recover to actual damages under Subsection D of that provision, because the AGO's failure to either produce for inspection or deliver or mail a written explanation of denial regarding the 350 documents is the type of wrong that 14-2-11 NMSA 1978's statutory penalty seeks to remedy. *Britton v. Office of the Att'y Gen.*, 2019-NMCA-002.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 37A Am. Jur. 2d Freedom of Information Acts § 443 et seq.

What are "records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)), 153 A.L.R. Fed. 571.

14-2-12. Enforcement.

A. An action to enforce the Inspection of Public Records Act may be brought by:

(1) the attorney general or the district attorney in the county of jurisdiction; or

(2) a person whose written request has been denied.

B. A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Inspection of Public Records Act.

C. The exhaustion of administrative remedies shall not be required prior to bringing any action to enforce the procedures of the Inspection of Public Records Act.

D. The court shall award damages, costs and reasonable attorneys' fees to any person whose written request has been denied and is successful in a court action to enforce the provisions of the Inspection of Public Records Act.

History: Laws 1993, ch. 258, § 9.

ANNOTATIONS

A district court is without constitutional jurisdiction to enforce an IPRA action against another court of equal or superior jurisdiction. — In a superintending control proceeding arising from an Inspection of Public Records Act (IPRA) action filed

in the fifth judicial district court (district court), where the real party in interest, a party to a civil case in the first judicial district court, sought to inspect email communications related to a draft copy of a preliminary injunction order that a first judicial district court judge (judge) had been preparing for issuance in the underlying civil case and the contents of a personal election Facebook page maintained by the judge, not only did the enforcement action fail to name the proper defendant, because the designated records custodian is the only official who is assigned IPRA compliance duties, but because the action was a coercive judgment ordering production under IPRA, the fifth judicial district court had no constitutional jurisdiction to litigate any aspect of an IPRA enforcement action against the first judicial district court, because Article VI, Section 13 of the New Mexico constitution prohibits a district court from issuing writs of mandamus or injunction directed to judges or courts of equal or superior jurisdiction. *Pacheco v. Hudson*, 2018-NMSC-022.

An undisclosed principal cannot, as a plaintiff in an enforcement action, enforce a denial of records requested by its agent. *San Juan Agric. Water Users Ass'n v. KNME-TV*, 2010-NMCA-012, 147 N.M. 643, 227 P.3d 612, *aff'd in part, rev'd in part*, 2011-NMSC-011, 150 N.M. 64, 257 P.3d 884.

Undisclosed principal. — A principal, whether disclosed or not, can delegate the function of requesting public records to an agent, such as the principal's attorney, and either the agent or the principal, even if previously unknown to the public records custodian, can enforce the request if it is denied. *San Juan Agric. Water Users Ass'n v. KNME-TV*, 2011-NMSC-011, 150 N.M. 64, 257 P.3d 884, *rev'g* 2010-NMCA-012, 147 N.M. 643, 227 P.3d 612.

Where a law firm made a request to inspect public records on behalf of plaintiff; the request included the law firm's name, address, and telephone number; and the request did not disclose the fact that the request was being made on behalf of plaintiff, plaintiff had standing to enforce the public records request that it made through the law firm. *San Juan Agric. Water Users Ass'n v. KNME-TV*, 2011-NMSC-011, 150 N.M. 64, 257 P.3d 884, *rev'g* 2010-NMCA-012, 147 N.M. 643, 227 P.3d 612.

A person who has not requested public records, either personally or through an agent, does not have standing to seek judicial enforcement of the Inspection of Public Records Act. *San Juan Agric. Water Users Ass'n v. KNME-TV*, 2011-NMSC-011, 150 N.M. 64, 257 P.3d 884, *aff'g* 2010-NMCA-012, 147 N.M. 643, 227 P.3d 612.

Undisclosed principal has no standing. — Where a law firm made an inspection request for records relating to a news documentary program and the request failed to disclose that the law firm was making the request as attorney for or agent of plaintiffs, plaintiffs lacked standing to enforce the Inspection of Public Records Act. *San Juan Agric. Water Users Ass'n v. KNME-TV*, 2010-NMCA-012, 147 N.M. 643, 227 P.3d 612, *aff'd in part, rev'd in part*, 2011-NMSC-011, 150 N.M. 64, 257 P.3d 884.

Individuals who do not request access to documents cannot enforce a denial of a records request by another individual. *San Juan Agric. Water Users Ass'n v. KNME-TV*, 2010-NMCA-012, 147 N.M. 643, 227 P.3d 612, *aff'd in part, rev'd in part*, 2011-NMSC-011, 150 N.M. 64, 257 P.3d 884.

Citizen must follow court-ordered arrangement to inspect records. — When a citizen enforces this section through an action to compel production of documents, the citizen must comply with the court-ordered arrangements for inspection. *Newsome v. Farer*, 1985-NMSC-096, 103 N.M. 415, 708 P.2d 327.

Protective order precludes disclosure of records. — Where plaintiff was a petitioner in a domestic relations matter in district court that involved his ten-year-old child, and where, on plaintiff's motion, the district court appointed defendant as guardian ad litem to the child, and where plaintiff served defendant with a discovery request seeking all correspondence received or produced with either party or any other person in relation to the domestic relations case, and where the district court issued a protective order stating that defendant was not required to respond to plaintiff's request for production, prompting plaintiff to request from defendant and the designated custodian of records in the district court, pursuant to the Inspection of Public Records Act, 14-2-1 to -12 NMSA 1978, to produce all records of communications sent or received in any form in the domestic relations case, the district court did not err in granting summary judgment in favor of defendant, because the protective order barred disclosure of the requested records to plaintiff, and persons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order. *Dunn v. Brandt*, 2019-NMCA-061.

Successful action to enforce is prerequisite for damages. — It is only in the event that a court action is brought to enforce the Inspection of Public Records Act that a plaintiff may be awarded mandatory costs, fees, and damages, and then only if the plaintiff is successful in that action. *Derringer v. State*, 2003-NMCA-073, 133 N.M. 721, 68 P.3d 961, cert. denied, 133 N.M. 727, 69 P.3d 237.

Successful litigation interpreted. — Where the secretary of state’s office did not fully comply with an inspection of public records request, claiming that its late production of records to plaintiff cannot constitute success under the Inspection of Public Records Act (IPRA) because plaintiff already had possession of the records at the time the litigation was filed, and as a result, the secretary of state’s office did not withhold or deny plaintiff access to the records, the district court did not abuse its discretion in awarding attorney’s fees because IPRA does not include prior possession as a legitimate ground for withholding public documents, and the fact that plaintiff’s litigation secured the production of the denied responsive public records, the litigation was "successful" as that word is used in IPRA. *ACLU of New Mexico v. Duran*, 2016-NMCA-063.

Reasonable attorney’s fees. — Where the secretary of state’s office did not fully comply with an inspection of public records request, claiming that its late production of records to plaintiff cannot constitute success under the Inspection of Public Records Act

(IPRA) because plaintiff already had possession of the records at the time the litigation was filed, and as a result, did not withhold or deny plaintiff access to the records, the district court's award of attorney's fees was not an abuse of discretion because fees incurred in obtaining documents from a state agency are prima facie reasonable, and when withheld records are subsequently revealed and determined to be responsive, those records may become the basis for an award of attorney's fees in IPRA litigation. *ACLU of New Mexico v. Duran*, 2016-NMCA-063.

No action for damages after compliance. — The Inspection of Public Records Act does not provide for damages pursuant to an action brought after a public body has complied with the act. *Derringer v. State*, 2003-NMCA-073, 133 N.M. 721, 68 P.3d 961, cert. denied, 133 N.M. 727, 69 P.3d 237.

Indefinite delay as denial. — Under the Inspection of Public Records Act's enforcement provision, there is no distinction between a denial and an indefinite delay. *Board of Comm'rs v. Las Cruces Sun-News*, 2003-NMCA-102, 134 N.M. 283, 76 P.3d 36.

The Inspection of Public Records Act provides for two separate remedies. — Section 14-2-11 NMSA 1978 and this section create separate remedies depending on the stage of the Inspection of Public Records Act (IPRA) request. Section 14-2-11 NMSA 1978 requires a public entity to respond to a records request within fifteen days unless the request has been determined to be excessively burdensome or broad. If the request is denied, the custodian shall provide the requester with a written explanation of the denial. It is when the custodian fails to respond to a request or deliver a written explanation of the denial that the public entity is subject to damages pursuant to 14-2-11 NMSA 1978. The enforcement and damages provisions of this section apply in an action for the post-denial enforcement of the IPRA request. *Faber v. King*, 2015-NMSC-015, *rev'g* 2013-NMCA-080, 306 P.3d 519.

Where the attorney general's office received a request for public records pursuant to the Inspection of Public Records Act (IPRA) and denied the request the next day, damages pursuant to 14-2-11 NMSA 1978 were not applicable because the attorney general's office timely answered the request with a denial by following the denial procedures set out in 14-2-11 NMSA 1978. When the district court held that the attorney general's office wrongfully withheld the public records, the enforcement and damages provisions of this section applied. *Faber v. King*, 2015-NMSC-015, *rev'g* 2013-NMCA-080, 306 P.3d 519.

Mandamus is an appropriate remedy to enforce IPRA requests. — Where respondent, a private prison medical services provider that provided contracted healthcare services for the New Mexico corrections department (NMCD), negotiated and settled at least fifty-nine civil claims alleging instances of improper care and/or sexual assault of inmates, and where petitioners submitted written requests pursuant to the Inspection of Public Records Act (IPRA) seeking all settlement documents involving respondent in its role as medical services contractor for NMCD, and where the district

court issued a writ of mandamus ordering respondent to produce the settlement agreements, mandamus was a proper remedy to require respondent to produce public records pursuant to IPRA because petitioners had a clear legal right of enforcement and respondent had a clear legal duty to provide public records. *N.M. Found. for Open Gov't v. Corizon Health*, 2020-NMCA-014, cert. denied.

Award of attorney fees was supported by substantial evidence. — Where respondent, a private prison medical services provider that provided contracted healthcare services for the New Mexico corrections department (NMCD), negotiated and settled at least fifty-nine civil claims alleging instances of improper care and/or sexual assault of inmates, and where petitioners submitted written requests pursuant to the Inspection of Public Records Act (IPRA) seeking all settlement documents involving respondent in its role as medical services contractor for NMCD, and where the district court issued a writ of mandamus ordering respondent to produce the settlement agreements and pay petitioners' reasonable attorney fees, the district court's attorney fee award was supported by substantial evidence where the court considered the attorneys' years of experience and record of fee awards as well as an expert witness's testimony explaining market rates in the relevant jurisdiction. *N.M. Found. for Open Gov't v. Corizon Health*, 2020-NMCA-014, cert. denied.

Separate remedies distinguished. — Section 14-2-11 NMSA 1978 is focused on deterring nonresponsiveness and noncompliance by public bodies in the first instance, while 14-2-12 NMSA 1978 is focused on making whole a person who, believing his or her right of inspection has been impermissibly denied, brings a successful enforcement action. *Britton v. Office of the Att'y Gen.*, 2019-NMCA-002.

Incomplete or inadequate responses to IPRA requests. — Where plaintiff made a request for documents from the Attorney General's Office (AGO) pursuant to the Inspection of Public Records Act, §§ 14-2-1 to -12 NMSA 1978, and where the AGO incompletely and inadequately responded to the request, the district court erred in concluding that plaintiff's action is exclusively one that proceeds under 14-2-12 NMSA 1978 and limiting the damages plaintiff can recover to actual damages under Subsection D of that provision, because a public body that permits only partial inspection, that is inspection of some but not all nonexempt responsive records, has not complied with its obligation to provide the greatest possible information regarding the affairs of government. *Britton v. Office of the Att'y Gen.*, 2019-NMCA-002.

Remedy for inadequate response to IPRA request. — Where plaintiff made a request for documents from the Attorney General's Office (AGO) pursuant to the Inspection of Public Records Act, §§ 14-2-1 to -12 NMSA 1978, and where the AGO failed to permit inspection of approximately 350 records that were responsive to plaintiff's request and for which no claim of exemption was ever asserted or written explanation of denial issued, the district court erred in concluding that plaintiff's action is exclusively one that proceeds under 14-2-12 NMSA 1978 and limiting the damages plaintiff can recover to actual damages under Subsection D of that provision, because the AGO's failure to either produce for inspection or deliver or mail a written explanation

of denial regarding the 350 documents is the type of wrong that 14-2-11 NMSA 1978's statutory penalty seeks to remedy. *Britton v. Office of the Att'y Gen.*, 2019-NMCA-002.

Findings as to damages. — If the district court awards damages under Section 14-2-12(D) NMSA 1978 for enforcement of a denied request to inspect records, the district court is required to enter findings specifying the nature and measure of the damages. *Faber v. King*, 2013-NMCA-080, cert. granted, 2013-NMCERT-007.

Where plaintiff represented employees of defendant in an employment dispute in federal court; the federal court ordered a stay of discovery; plaintiff filed a request for inspection of employment records from defendant's office; defendant denied the request; the district court held that the discovery stay did not preempt rights granted by the Inspection of Public Records Act and ruled that defendant had violated the act; the district court awarded damages of $10 per day from the date of the wrongful denial to the date the federal court lifted the stay and thereafter damages of $100 per day until the records were provided; and although the district court did not specify the nature and purpose of the damage award, the record indicated that the damages were punitive, the award was unsupported by findings supporting compensatory damages, which are a prerequisite to punitive damages. *Faber v. King*, 2013-NMCA-080, cert. granted, 2013-NMCERT-007.

Attorney's fees. — Where plaintiff's made two requests for records of payments the school district made to a former employee; the school district denied both requests; the district court ordered the school district to produce the records; to support plaintiffs' request for attorneys' fees in the amount of $22,899, plaintiffs proffered their attorneys' itemized billing statements and resumes together with the affidavit of an attorney familiar with the prevailing rates charged by attorneys who attested to the reasonableness of the fees charged and the competency of plaintiffs' attorneys; the district court awarded plaintiffs an arbitrary fee of $5,000 on the grounds that plaintiffs' attorneys charged "strikingly high hourly rates", plaintiff filed only four pleadings, and there were no hearings; the court refused to review the billing statements, rejected the affidavit, and relied on its own assessment of a reasonable hourly rate and a reasonable amount of time to litigate the case; the court did not have a clear grasp of the time and labor involved in litigating the case to a successful conclusion or consider the novelty of the issues addressed in plaintiffs' pleadings or the policy goals of the Inspection of Public Records Act; and the court failed to utilize an objective basis for determining a reasonable award of attorney fees, the court abused its discretion. *Rio Grande Sun v. Jemez Mountains Pub. Sch. Dist.*, 2012-NMCA-091, 287 P.3d 318, cert. denied, 2012-NMCERT-008.

It is clear the Legislature intended to enforce disclosure by imposing a cost – including attorney fees – for nondisclosure within the time frames set by the Inspection of Public Records Act, regardless of whether the public entity characterizes the nondisclosure as a "denial" or as an indefinite "delay". *Board of Comm'rs v. Las Cruces Sun-News*, 2003-NMCA-102, 134 N.M. 283, 76 P.3d 36.

Remedy for denial of access to tax assessment records. — Taxpayers who believed that assessor wrongfully denied them access to public records should have pursued the remedies provided in this section. To the extent the board found that the information sought was irrelevant to the assessment of taxpayers' property, there was no error in the board's refusal to sanction assessor. *Hannahs v. Anderson*, 1998-NMCA-152, 126 N.M. 1, 966 P.2d 168, cert. denied, 126 N.M. 532, 972 P.2d 351.

This section does not authorize punitive damages. — Although government liability for punitive damages would deter the abuse of governmental power and promote accountability among government officials, the countervailing policy of protecting public revenues must prevail unless punitive damages are specifically authorized by statute. This section does not specifically authorize punitive damages. *Faber v. King*, 2015-NMSC-015, *rev'g* 2013-NMCA-080, 306 P.3d 519.

This section authorizes the recovery of compensatory damages. — The damages provisions contained in the Inspection of Public Records Act (IPRA) are designed to promote compliance and accountability from New Mexico's public servants. This section ensures that IPRA requests are not wrongfully denied, and if the requester is not made whole by the provision of the documents, the legislature authorized a successful litigant, in an action to enforce a wrongfully denied IPRA request, to seek compensatory or actual damages, costs, and attorneys' fees. *Faber v. King*, 2015-NMSC-015, *rev'g* 2013-NMCA-080, 306 P.3d 519.

Where plaintiff was successful in his state court action against the attorney general's office to enforce the provisions of the Inspection of Public Records Act (IPRA), and the state district court issued a writ of mandamus ordering the attorney general's office to comply with the request for public records, and further awarded per diem damages and costs to plaintiff, but failed to clarify the nature of the damages, the supreme court held that this section does not authorize punitive damages or per diem damages for the post-denial enforcement of an IPRA request. In a court action to enforce the provisions of IPRA, this section authorizes costs, reasonable attorneys' fees and compensatory or actual damages only. *Faber v. King*, 2015-NMSC-015, *rev'g* 2013-NMCA-080, 306 P.3d 519.

Damages. — Damages for enforcement of a denied request to inspect records are governed by 14-2-12(D) NMSA 1978, not 14-2-11(C) NMSA 1978. The statutory maximum per-day penalty of 14-2-11(C) NMSA 1978 does not create any standard for an amount of damages under 14-2-12(D) NMSA 1978. *Faber v. King*, 2013-NMCA-080, cert. granted, 2013-NMCERT-007.

ARTICLE 2A
Use of Police Reports

14-2A-1. Protection of victims of crimes or accidents; police reports; commercial solicitation prohibited.

No attorney, health care provider or their agents shall inspect, copy or use police reports or information obtained from police reports for the purpose of the solicitation of victims or the solicitation of the relatives of victims of reported crimes or accidents.

History: Laws 1993, ch. 123, § 1.

ANNOTATIONS

Cross references. — For right to inspect public records and exceptions, *see* 14-2-1 NMSA 1978.

ARTICLE 3
Public Records

14-3-1. Short title.

Chapter 14, Article 3 NMSA 1978 may be cited as the "Public Records Act".

History: 1953 Comp., § 71-6-1, enacted by Laws 1959, ch. 245, § 1; 1995, ch. 110, § 7.

ANNOTATIONS

Cross references. — For Public Health Act records being confidential, *see* 24-1-20 NMSA 1978.

For the Electronic Authentication of Documents Act, *see* Chapter 14, Article 15 NMSA 1978.

The 1995 amendment, effective July 1, 1995, substituted "Chapter 14, Article 3 NMSA 1978" for "This act".

Names and charges of juvenile arrestees. — A law enforcement agency is not prohibited by the Children's Code, 32A-1-1 NMSA 1978 et seq., the Arrest Record Information Act, 29-10-1 NMSA 1978 et seq., or any other law of New Mexico from releasing to the public the names of juveniles who have been arrested for criminal acts, and the charges for which they were arrested. 1987 Op. Att'y Gen. No. 87-29.

Law reviews. — For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

14-3-2. Definitions.

As used in the Public Records Act:

A. "administrator" means the state records administrator;

B. "agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico;

C. "commission" means the state commission of public records;

D. "microphotography" means the transfer of images onto film and electronic imaging or other information storage techniques that meet the performance guidelines for legal acceptance of public records produced by information system technologies pursuant to regulations adopted by the commission;

E. "microphotography system" means all microphotography equipment, services and supplies;

F. "personal identification information" means the name, social security number, military identification number, home address, telephone number, email address, fingerprint, photograph, identifying biometric data, genetic identification, personal financial account number, state identification number, including driver's license number, alien registration number, government passport number, personal taxpayer identification number, or government benefit account number of a natural person;

G. "public records" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government or because of the informational and historical value of data contained therein. Library or museum material of the state library, state institutions and state museums, extra copies of documents preserved only for convenience of reference and stocks of publications and processed documents are not included;

H. "records center" means the central records depository that is the principal state facility for the storage, disposal, allocation or use of noncurrent records of agencies or materials obtained from other sources;

I. "records custodian" means the statutory head of the agency using or maintaining the records or the custodian's designee; and

J. "records retention and disposition schedules" means rules adopted by the commission pursuant to Section 14-3-6 NMSA 1978 describing records of an agency, establishing a timetable for their life cycle and providing authorization for their disposition.

History: 1953 Comp., § 71-6-2, enacted by Laws 1959, ch. 245, § 2; 1963, ch. 186, § 1; 1977, ch. 301, § 1; 1995, ch. 27, § 2; 2005, ch. 79, § 1.

ANNOTATIONS

The 2005 amendment, effective June 17, 2005, revised all definitions.

The 1995 amendment, effective June 16, 1995, added Subsection G.

"Public records" not applicable to Inspection of Public Records Act. — Definition of "public records" in Public Records Act, 14-3-1 NMSA 1978 et seq., does not apply to 14-2-1 NMSA 1978 of the Inspection of Public Records Act. *State ex rel. Newsome v. Alarid*, 1977-NMSC-076, 90 N.M. 790, 568 P.2d 1236.

Term "public records" in this section includes the records of various public officials as that term is used in the inspection of public records provisions, former 14-2-1 to 14-2-3 NMSA 1978, being those "public records" which are necessary or incidental to fulfilling the public officer's duties imposed upon his office by operation of law. 1969 Op. Att'y Gen. No. 69-139.

"Public records" criteria. — In order to be considered a "public record," an item must have some continuing significance or importance. There must be some purpose or reason for its preservation. Therefore, general correspondence files are not public records per se. Certainly there are many items in such a file which should be treated as public records because their contents bring them within the statutory definition. However, there are many items which should be classified as transitory in value and interest. To treat such items as public records and to require their retention for at least three years (as formerly required under 14-3-11 NMSA 1978) would be burdensome, wasteful and unnecessary. 1960 Op. Att'y Gen. No. 60-72.

Confidential data not public record. — Data concerning the reliability, honesty, capability and personality traits of an individual which had been solicited with the understanding that they would be kept confidential are not public records. 1967 Op. Att'y Gen. No. 67-57.

County and municipal records are not included in the term "public records" as that term is defined in this article. 1960 Op. Att'y Gen. No. 60-181.

Elected state officials' records are "public records" within the meaning and scope of this article. 1969 Op. Att'y Gen. No. 69-139.

Elected state officials' records not required by law to be kept. — Papers and memoranda in the possession of elected state officials which are not required by law to be kept by such officials as an official record are not public records. 1969 Op. Att'y Gen. No. 69-139.

Examples of officials' records not required to be kept. — Generally, reports of private individuals to government officials, correspondence of public officials to private

individuals and memoranda of public officials made for their own convenience are not public records. 1969 Op. Att'y Gen. No. 69-139.

Papers and memoranda in the possession of public officers which are not required by law to be kept by a public official as an official record may not be public records. Generally, reports of private individuals to government officials, correspondence of public officials to private individuals and memoranda of public officers made for their own convenience are not public records. 1967 Op. Att'y Gen. No. 67-57.

Records which contain both official and personal matters are still public records and should be in the custody of the state records commission (now state commission of public records) at the state records center. 1969 Op. Att'y Gen. No. 69-139.

Records used to carry out duties deemed public. — It is clear that those records which are necessary and incidental to carrying out the duties imposed upon an individual by operation of law are generally deemed public records. 1961 Op. Att'y Gen. No. 61-137.

Accident reports. — Accident reports made by police officers as a part of their regular course of duty are considered public records. 1959 Op. Att'y Gen. No. 59-213.

School records deemed public. — Business records, expenditures, daily attendance records and permanent records of an individual student's grades kept by the public schools are public records. 1961 Op. Att'y Gen. No. 61-137.

Records kept for informational purposes or those containing data used in educating pupils not "public". — The attendance records and the grade and achievement records of students are public records, but records of information kept for informational purposes or which contain data of a personal nature for use in assisting teachers and school personnel in educating pupils do not fall within the category of public records. 1967 Op. Att'y Gen. No. 67-57.

Such records or memoranda as may be kept by a teacher, or other school official, for informational purposes on individual students, and which may contain data of a personal nature for use in assisting teachers or school personnel in educating pupils, do not fall within the classification of public records entitled to be scrutinized by the public; nor are temporary or partial grades or records kept by individual teachers public records in nature. 1961 Op. Att'y Gen. No. 61-137.

Availability to teacher of reports, etc., on teacher. — The reports of supervisors, comments of fellow teachers and parents concerning the reliability, honesty, capability and personality traits of the public school teacher are not public records which are available for inspection by the teacher except in accordance with the regulations of the governing body of the school. 1967 Op. Att'y Gen. No. 67-57.

A wallet placed in a probate file as an effect of a decedent is not a public record. 1987 Op. Att'y Gen. No. 87-26.

"State agency" indicates specific type of governmental organization and not state governmental entities generally. 1978 Op. Att'y Gen. No. 78-23.

Counties and municipalities not included in term "agency". — "Agency" includes only portions of the state government or other bodies that are under the direct supervision of, or are branches of, a portion of the state government. Counties and municipalities are not included in the term "agency," as it is defined in this section. 1960 Op. Att'y Gen. No. 60-181.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 66 Am. Jur. 2d Records and Recording Laws §§ 1 to 3.

What are "records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)), 153 A.L.R. Fed. 571.

What constitutes "agency" for purposes of Freedom of Information Act (5 U.S.C. § 552), 165 A.L.R. Fed. 591.

76 C.J.S. Records § 2 et seq.

14-3-3. State commission of public records; creation.

A. A "state commission of public records" is established consisting of:

(1) the secretary of state;

(2) the secretary of general services;

(3) the librarian of the supreme court law library;

(4) the secretary of cultural affairs;

(5) the state auditor;

(6) the attorney general; and

(7) a recognized, professionally trained historian in the field of New Mexico history, who is a resident in New Mexico, appointed by the governor for a term of six years.

B. Each member of the commission may designate an alternate to serve in the member's stead.

C. The commission shall elect one of its members to be chair and another to be secretary. The members of the commission shall serve without compensation other than actual expenses of attending meetings of the commission or while in performance of their official duties in connection with the business of the commission.

D. The commission shall hold not less than four meetings during each calendar year and may hold special meetings as may be necessary to transact business of the commission. All meetings shall be called by the chair or when requested in writing by any two members of the commission. Four members of the commission shall constitute a quorum.

E. The administrator shall attend all meetings of the commission.

History: 1953 Comp., § 71-6-3, enacted by Laws 1959, ch. 245, § 3; 1977, ch. 247, § 181; 1983, ch. 301, § 32; 2015, ch. 19, § 2.

ANNOTATIONS

Cross references. — For Per Diem and Mileage Act, *see* 10-8-1 NMSA 1978 et seq.

The 2015 amendment, effective July 1, 2015, provided for new members on the state commission of public records; in Paragraph (3) of Subsection A, after "the", deleted "state law", and after "librarian", added "of the supreme court law library"; in Paragraph (4) of Subsection A, after "the", deleted "director of the museum of New Mexico" and added "secretary of cultural affairs"; in Paragraph (7) of Subsection A, after "history,", added "who is a"; designated the last sentence of Paragraph (7) of Subsection A as Subsection B and redesignated the succeeding subsections accordingly; in the present Subsection B, after "serve in", deleted "his" and added "the member's"; in the present Subsection C, after "members to be", deleted "chairman" and added "chair"; in the present Subsection D, after "called by the", deleted "chairman" and added "chair".

Governor has no constitutional or statutory power to establish agency to meet governmental printing and duplication needs as a new division of the commission of public records whose existence and scope of functioning is based on a legislative enactment which cannot fairly be construed to include authority to undertake such services. 1969 Op. Att'y Gen. No. 69-03.

14-3-4. Duties and powers of commission.

It shall be the duty of the commission to:

A. employ as state records administrator a competent, experienced person professionally trained as an archivist and records manager who shall serve at the pleasure of the commission. He need not be a resident of New Mexico at the time of his employment. His salary shall be fixed by the commission;

B. approve the biennial budget covering costs of the operations set forth in this act [Chapter 14, Article 3 NMSA 1978], as prepared by the administrator for presentation to the state legislature;

C. decide, by majority vote, any disagreements between the administrator and any state officer regarding the disposition of records within the custody of said officer, such decisions to have the effect of law;

D. consider the recommendations of the administrator for the destruction of specifically reported records, and by unanimous vote either order or forbid such destruction;

E. approve in writing, or reject, the written terms and conditions of each proposed loan of documentary material to the records center, as agreed upon by the lender and the administrator;

F. adopt and publish rules and regulations to carry out the purposes of the Public Records Act;

G. request any agency to designate a records liaison officer to cooperate with, assist and advise the administrator in the performance of his duties and to provide such other assistance and data as will enable the commission and administrator properly to carry out the purposes of the Public Records Act; and

H. prepare an annual report to the governor on the operations conducted under the terms of this act during the previous year, including a complete fiscal report on costs and effected savings, and cause same to be published.

History: 1953 Comp., § 71-6-4, enacted by Laws 1959, ch. 245, § 4.

ANNOTATIONS

Necessary and implied authority. — The commission of public records has all necessary and implied authority to carry out the responsibilities delegated to it by law. 1969 Op. Att'y Gen. No. 69-03.

Duty not to exceed authority. — The commission of public records has a duty not to exceed the authority delegated to it by law. 1969 Op. Att'y Gen. No. 69-03.

Governor has no constitutional or statutory power to establish agency to meet governmental printing and duplication needs as a new division of the commission of public records whose existence and scope of functioning is based on a legislative enactment which cannot fairly be construed to include authority to undertake such services. 1969 Op. Att'y Gen. No. 69-03.

14-3-5. Gifts, donations and loans.

A. The commission may receive from private sources financial or other donations to assist in building, enlarging, maintaining or equipping a records center or for the acquisition by purchase of documentary material, in accordance with plans made and agreed upon by the commission and the administrator. The commission may also receive from private sources financial or other donations for support of specific agency functions if the donations are so designated. Funds thus received shall be administered by the commission separately from funds supplied by the state for the execution of the Public Records Act but shall be audited by the state. Such funds shall not be subject to reversion to the general fund if unexpended at the close of the fiscal year. Although all material acquired by expenditure of such donated funds and all such donated material shall become the unqualified and unrestricted property of the state, permanent public acknowledgment of the names of the donors may, in each case, be made in an appropriate manner.

B. The commission may receive either as donations or loans from private sources, other state agencies, counties, municipalities, the federal government and other states or countries documentary materials of any physical form or characteristics that are deemed to be of value to the state and the general public for historical reference or research purposes. Acceptance of both donations and loans shall be at the discretion of the commission upon advice of the administrator. Accepted donations shall become, without qualification or restriction, the property of the state of New Mexico. Loans shall be accepted only after a written agreement covering all terms and conditions of each loan shall have been signed by the lender and the administrator and approved by the commission.

History: 1953 Comp., § 71-6-5, enacted by Laws 1959, ch. 245, § 5; 2011, ch. 132, § 1.

ANNOTATIONS

The 2011 amendment, effective June 17, 2011, allowed private financial and other donations for the support of specific agency functions.

State commission of public records may receive private documents if they are deemed to be of value to the state and general public for historical reference and research purposes. The legislature intended the state records center to be the repository for private documents that are primarily valuable for historical reference and research purposes. This is not to say that such private documents are public records. But if such documents are donated or loaned to the commission from any source, the commission is authorized to take custody of them and retain them in the state records center in perpetuity, in the case of donations, or for the period specified in the loan agreement, in the case of loans. 1961 Op. Att'y Gen. No. 61-07.

Receipts of state commission of public records derived from sale of boxes and archival materials in the state records center are not funds that have been appropriated to the commission, and may not be expended by the commission. 1960 Op. Att'y Gen. No. 60-169. (*See* 2002 enactment of 14-3-8.1 NMSA 1978).

14-3-6. Administrator; duties.

The administrator is the official custodian and trustee for the state of all public records and archives of whatever kind which are transferred to him from any public office of the state or from any other source. He shall have overall administrative responsibility for carrying out the purposes of the Public Records Act, and may employ necessary personnel, purchase equipment and provide facilities as may be required in the execution of the powers conferred and duties imposed upon him. He shall keep the commission advised throughout the year of operations conducted and future operations projected, and shall report annually to the commission which records have been destroyed, transferred or otherwise processed during the year. The administrator shall establish a records management program for the application of efficient and economical management methods to the creation, utilization, maintenance, retention, preservation and disposal of official records. It shall be the duty of the administrator, in cooperation with and with the approval of the general services department, to establish standards, procedures and techniques for effective management of public records, to make continuing surveys of paperwork operations, and to recommend improvements in current records management practices including the use of space, equipment and supplies employed in creating, maintaining and servicing records. It shall be the duty of the head of each state agency to cooperate with the administrator in conducting surveys and to establish and maintain an active, continuing program for the economical and efficient management of the agency's records. The administrator shall establish records disposal schedules for the orderly retirement of records and adopt regulations necessary for the carrying out of the Public Records Act. Records disposal schedules shall be filed with the librarian of the supreme court library, and shall not become effective until thirty days after the date of filing. Records so scheduled may be transferred to the records center at regular intervals, in accordance with the regulations of the administrator.

History: 1953 Comp., § 71-6-6, enacted by Laws 1959, ch. 245, § 6; 1965, ch. 81, § 1; 1983, ch. 301, § 33.

ANNOTATIONS

Adoption of regulations by administrator. — The administrator may adopt regulations which will guide state officers in determining which records are "public records" and providing for separate disposal standards and retention periods for nonpublic record correspondence. The disposition of those records found to be "public records" within the meaning of the statutory definition must be controlled by the applicable portions of the Public Records Act, 14-3-1 NMSA 1978 et seq. 1960 Op. Att'y Gen. No. 60-72.

Administrator has authority to ensure compliance by county officials with the applicable provisions of 14-3-15 NMSA 1978. 1979 Op. Att'y Gen. No. 79-26.

14-3-7. Inspection and survey of public records.

The administrator is authorized to inspect or survey the records of any agency, and to make surveys of records management and records disposal practices in the various agencies, and he shall be given the full cooperation of officials and employees of the agencies in such inspections and surveys. Records, the use of which is restricted by or pursuant to law or for reasons of security or the public interest, may be inspected or surveyed by the administrator, subject to the same restrictions imposed upon employees of the agency holding the records.

History: 1953 Comp., § 71-6-7, enacted by Laws 1959, ch. 245, § 7.

14-3-7.1. Access to confidential records.

A. Notwithstanding any other provision of law, any public record deemed by law to be confidential and required by a records retention and disposition schedule to be maintained longer than twenty-five years shall not, after twenty-five years from the date of creation, be confidential and shall be accessible to the public, except:

(1) personal identification information deemed confidential by law, which shall remain confidential for one hundred years after the date of creation, unless a shorter duration is otherwise required by law;

(2) records that are confidential pursuant to Section 2-3-13 NMSA 1978, which shall remain confidential for seventy-five years after the date of creation;

(3) records that are confidential pursuant to Section 18-6-11.1 NMSA 1978; and

(4) records whose disclosure is prohibited by court action or federal law.

B. Nothing in this section shall limit or remove the discretion of a records custodian to withhold a public record pursuant to Section 14-2-1 NMSA 1978.

History: Laws 2005, ch. 79, § 2.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 79 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

14-3-8. Records center.

A records center is established in Santa Fe under the supervision and control of the administrator. The center, in accordance with the regulations established by the administrator and the commission, shall be the facility for the receipt, storage or disposition of all inactive and infrequently used records of present or former state

agencies or former territorial agencies which at or after the effective date of this act may be in custody of any state agency or instrumentality, and which are not required by law to be kept elsewhere, or which are not ordered destroyed by the commission.

Records required to be confidential by law and which are stored in the center shall be available promptly when called for by the originating agency, but shall not be made available for public inspection except as provided by law. All other records retained by the center shall be open to the inspection of the general public, subject to reasonable rules and regulations prescribed by the administrator. Facilities for the use of these records in research by the public shall be provided in the center.

History: 1953 Comp., § 71-6-8, enacted by Laws 1959, ch. 245, § 8.

ANNOTATIONS

Compiler's notes. — The phrase "effective date of this act", appearing in the second sentence of the first paragraph, means June 12, 1959, the effective date of Laws 1959, ch. 245.

Official documents and correspondence of former officials. — It is clear that the official documents and correspondence of a former territorial governor, chief justice, representative and delegate should be in the custody of the commission in the state records center. 1961 Op. Att'y Gen. No. 61-07.

Records which contain both official and personal matters are still public records and should be in the custody of the commission at the state records center. 1969 Op. Att'y Gen. No. 69-139.

14-3-8.1. Records center revolving fund; created; revenues from sales deposited in fund.

The "records center revolving fund" is created in the state treasury. Money from the sale of state records center publications, services, equipment, supplies and materials shall be deposited in the fund. The fund shall be administered by the state records center, and money in the fund is appropriated to the state records center to carry out the administrative purposes of the Public Records Act and the State Rules Act [Chapter 14, Article 4 NMSA 1978]. Expenditures from the fund shall be by warrant of the secretary of finance and administration upon vouchers signed by the state records administrator or his authorized representative.

History: Laws 2002, ch. 56, § 2.

ANNOTATIONS

Emergency clauses. — Laws 2002, ch. 56, § 4 contained an emergency clause and was approved March 4, 2002.

Temporary provisions. — Laws 2002, ch. 56, § 3, effective March 4, 2002, provided that all money in the special revolving fund established by Laws 1961, Chapter 111 for the use of the state records center be transferred to the records center revolving fund.

14-3-9. Disposition of public records.

Upon completion of an inspection or survey of the public records of any agency by the administrator, or at the request of the commission or the head of any agency, the administrator, attorney general and the agency official in charge of the records of that agency shall together make a determination as to whether:

A. the records shall be retained in the custody of the agency;

B. the records shall be transferred to the records center; or

C. a recommendation for destruction of the records shall be made to the commission.

If it is determined that the records are to be transferred to the records center, they shall be within a reasonable time so transferred. A list of the records so transferred shall be retained in the files of the agency from which the records were transferred.

Public records in the custody of the administrator may be transferred or destroyed only upon order of the commission.

History: 1953 Comp., § 71-6-9, enacted by Laws 1959, ch. 245, § 9.

ANNOTATIONS

County officials are not required to comply with specific terms of 14-3-9 through 14-3-11 NMSA 1978, when they destroy the records kept by them. 1979 Op. Att'y Gen. No. 79-16.

Disposition of official's records upon expiration of term. — After his term of office has expired, an elected state official may not dispose of his official public records in any manner other than that prescribed by the New Mexico commission of public records. 1969 Op. Att'y Gen. No. 69-139.

14-3-10. Disagreement as to value of records.

In the event the attorney general and the administrator determine that any records in the custody of a public officer including the administrator are of no legal, administrative or historical value, but the public officer having custody of the records or from whose office the records originated fails to agree with such determination or refuses to dispose of the records, the attorney general and the administrator may request the state

commission of public records to make its determination as to whether the records should be disposed of in the interests of conservation of space, economy or safety.

History: 1953 Comp., § 71-6-10, enacted by Laws 1959, ch. 245, § 10.

ANNOTATIONS

County officials are not required to comply with specific terms of 14-3-9 through 14-3-11 NMSA 1978, when they destroy the records kept by them. 1979 Op. Att'y Gen. No. 79-16.

14-3-11. Destruction of records.

If it is determined by the administrator, attorney general and agency head that destruction of records will be recommended, the administrator shall have prepared a list of records, together with a brief description of their nature, and shall place upon the agenda of the next meeting of the commission the matter of destruction of the records. The records may be stored in the center awaiting decision of the commission.

The commission's decision with reference to destruction of the records shall be entered on its minutes, together with the date of its order to destroy the records and a general description of the records which it orders to be destroyed. A copy of the commission's order shall be filed with the librarian of the supreme court library.

No public records shall be destroyed if the law prohibits their destruction.

History: 1953 Comp., § 71-6-11, enacted by Laws 1959, ch. 245, § 11; 1965, ch. 81, § 2.

ANNOTATIONS

Destruction of paper originals reproduced by microphotography. — It is clear from reading this article that "public records," as defined herein, may be reproduced by microphotography. However, there is no implication that the paper originals can then be destroyed by the administrator. Destruction of such documents can be accomplished only as provided in 14-3-9 to 14-3-11 NMSA 1978, which require, among other things, an appropriate order by the commission. 1960 Op. Att'y Gen. No. 60-68.

County officials are not required to comply with specific terms of 14-3-9 through 14-3-11 NMSA 1978, when they destroy the records kept by them. 1979 Op. Att'y Gen. No. 79-16.

Records made or kept by municipality under its own authority and for its own purposes may be disposed of as the municipality sees fit. What the municipality has power to create, it has power to destroy, but what is created by the state, or by authority

of the state, can only be destroyed by the state, or with its permission. 1961 Op. Att'y Gen. No. 61-36.

14-3-12. Transfer of records upon termination of state agencies.

All public records of any agency, upon the termination of the existence and functions of that agency, shall be checked by the administrator and the attorney general and either transferred to the custody of another agency having a use for the records, or to the custody of the administrator at the center in accordance with the procedure of the Public Records Act [Chapter 14, Article 3 NMSA 1978].

When an agency is terminated or reduced by the transfer of its powers and duties to another agency or to other agencies, its appropriate public records shall pass with the powers and duties so transferred.

History: 1953 Comp., § 71-6-12, enacted by Laws 1959, ch. 245, § 12.

14-3-13. Protection of records.

The administrator and every other custodian of public records shall carefully protect and preserve such records from deterioration, mutilation, loss or destruction and, whenever advisable, shall cause them to be properly repaired and renovated. All paper, ink and other materials used in public offices for the purposes of permanent records shall be of durable quality.

History: 1953 Comp., § 71-6-13, enacted by Laws 1959, ch. 245, § 13.

ANNOTATIONS

Cross references. — For durability of county clerks' records, *see* 14-8-7 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 66 Am. Jur. 2d Records and Recording Laws § 10.

76 C.J.S. Records § 30 et seq.

14-3-14. Advisory groups.

The commission upon recommendation of the administrator may from time to time appoint advisory groups to more effectively obtain the best professional thinking of the bar, historians, political scientists, librarians, accountants, genealogists, patriotic groups, associations of public officials and other groups, on the steps to be taken with regard to any particular group or type of records.

History: 1953 Comp., § 71-6-14, enacted by Laws 1959, ch. 245, § 14.

14-3-15. Reproduction on film; evidence; review, inventory and approval of systems.

A. Any public officer of the state or of any district or political subdivision may cause any public records, papers or documents kept by him to be photographed, microphotographed or reproduced on film.

B. The state records administrator shall review any proposed state agency microphotography system and shall advise and consult with the agency. The administrator has the authority to approve or disapprove the system of any state agency.

C. The microphotography system used pursuant to this section shall comply with the minimum standards approved by the New Mexico commission of public records. The microphotography system used to reproduce such records on film shall be one which accurately reproduces the original in all details.

D. The administrator shall establish and maintain an inventory of all microfilm equipment owned or leased by state agencies. The administrator is authorized to arrange the transfer of microphotography equipment from a state agency which does not use it, and which has released it, to a state agency needing such equipment for a current microphotography system.

E. Photographs, microphotographs or photographic film made pursuant to this section shall be deemed to be original records for all purposes, including introduction in evidence in all courts and administrative agencies. A transcript, exemplification or certified copy, for all purposes, shall be deemed to be a transcript, exemplification or certified copy of the original.

F. Whenever such photographs, microphotographs or reproductions on film are properly certified and are placed in conveniently accessible files, and provisions are made for preserving, examining and using them, any public officer may cause the original records from which the photographs or microphotographs have been made, or any part thereof, to be disposed of according to methods prescribed by Sections 14-3-9 through 14-3-11 NMSA 1978. Copies shall be certified by their custodian as true copies of the originals before the originals are destroyed or lost, and the certified copies shall have the same effect as the originals. Copies of public records transferred from the office of origin to the administrator, when certified by the administrator or his deputy, shall have the same legal effect as if certified by the original custodian of the records.

G. For the purposes of this section, "state agency" shall include the district courts.

History: 1953 Comp., § 71-6-15, enacted by Laws 1959, ch. 245, § 15; 1975, ch. 215, § 1; 1977, ch. 301, § 2.

ANNOTATIONS

Cross references. — For provision that recording "book" includes microfilm, *see* 14-8-3 NMSA 1978.

Subsection B applies only to governmental organizations which are considered state agencies and not to governmental organizations generally. State institutions are considered to be distinct governmental organizations not included within the term "state agency." State educational institutions, as state institutions, are not therefore considered to be state agencies within the terms of the statute. 1978 Op. Att'y Gen. No. 78-23.

Subsection C standards apply to state educational institutions. — The state records administrator only has the authority to insure that state educational institutions comply with the standards for microphotography established pursuant to Subsection C; the administrator does not have the authority to review and to approve or disapprove the microphotography systems of state educational institutions in their entirety. 1978 Op. Att'y Gen. No. 78-23.

Subsection D applies only to state agencies and not to state educational institutions. 1978 Op. Att'y Gen. No. 78-23.

Section controls microfilming of records by county officials. — Although 14-1-5 NMSA 1978 permits county officials to microfilm the records maintained by them, this section is the more specific statute and is controlling. 1979 Op. Att'y Gen. No. 79-26.

County clerks may microfilm papers kept by them. — County clerks, as public officials of a political subdivision of the state, may microfilm the papers kept by them. 1979 Op. Att'y Gen. No. 79-16.

Administrator has authority to ensure compliance by county officials with the applicable provisions of this section. 1979 Op. Att'y Gen. No. 79-26.

Subsections A, C, E, and F are applicable to county officials and the microphotography undertaken by them. 1979 Op. Att'y Gen. No. 79-26.

Subsections B, D, G and 14-3-17 NMSA 1978 apply only to state agencies and not to counties or other governmental organizations. 1979 Op. Att'y Gen. No. 79-26.

Procedure where public officer offers his records to state after microfilming. — If any public officer sees fit to offer his records to the state records administrator, after microfilming them, then the procedure to determine the disposition of the records is exactly as outlined in 14-3-9 NMSA 1978, with the state records administrator surveying the records involved and determining, in conjunction with the attorney general and the agency official involved, what disposition shall be made of them. 1960 Op. Att'y Gen. No. 60-179.

Destruction of original records without action by records administrator. — If microfilmed and certified pursuant to this section, originals of records, including newspapers kept by county clerks, may be destroyed without any action on the part of the records administrator. 1979 Op. Att'y Gen. No. 79-16.

County officials are not required to comply with specific terms of 14-3-9 through 14-3-11 NMSA 1978, when they destroy the records kept by them. 1979 Op. Att'y Gen. No. 79-16.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 29A Am. Jur. 2d Evidence § 1121 et seq.

32A C.J.S. Evidence § 834 et seq.

14-3-15.1. Records of state agencies; public records; copy fees; computer databases; criminal penalty.

A. Except as otherwise provided by federal or state law, information contained in information systems databases shall be a public record and shall be subject to disclosure in printed or typed format by the state agency that has inserted that information into the database, in accordance with the Public Records Act, upon the payment of a reasonable fee for the service.

B. The administrator shall recommend to the commission the procedures, schedules and technical standards for the retention of computer databases.

C. The state agency that has inserted data in a database may authorize a copy to be made of a computer tape or other medium containing a computerized database of a public record for any person if the person agrees:

(1) not to make unauthorized copies of the database;

(2) not to use the database for any political or commercial purpose unless the purpose and use is approved in writing by the state agency that created the database;

(3) not to use the database for solicitation or advertisement when the database contains the name, address or telephone number of any person unless such use is otherwise specifically authorized by law;

(4) not to allow access to the database by any other person unless the use is approved in writing by the state agency that created the database; and

(5) to pay a royalty or other consideration to the state as may be agreed upon by the state agency that created the database.

D. If more than one state agency is responsible for the information inserted in the database, the agencies shall enter into an agreement designating a lead agency. If the agencies cannot agree as to the designation of a lead state agency, the commission shall designate one of the state agencies as the lead agency to carry out the responsibilities set forth in this section.

E. Subject to any confidentiality provisions of law, any state agency may permit another state agency access to all or any portion of a computerized database created by a state agency.

F. If information contained in a database is searched, manipulated or retrieved or a copy of the database is made for any private or nonpublic use, a fee shall be charged by the state agency permitting access or use of the database.

G. Except as authorized by law or rule of the commission, any person who reveals to any unauthorized person information contained in a computer database or who uses or permits the unauthorized use or access of any computer database is guilty of a misdemeanor, and upon conviction the court shall sentence that person to jail for a definite term not to exceed one year or to payment of a fine not to exceed five thousand dollars ($5,000) or both. That person shall not be employed by the state for a period of five years after the date of conviction.

History: Laws 1986, ch. 81, § 9; 1993, ch. 197, § 11; 1978 Comp., § 15-1-9, amended and recompiled as 1978 Comp., § 14-3-15.1 by Laws 1995, ch. 110, § 8.

ANNOTATIONS

Repeals. — Laws 1986, ch. 81, § 15 repealed former 15-1-9 NMSA 1978, as enacted by Laws 1984, ch. 64, § 12, relating to records contained in information systems databases, effective May 21, 1986. Laws 1986, ch. 81, § 9 enacted a new 15-1-9 NMSA 1978.

Recompilations. — Laws 1995, ch. 110, § 8 recompiled and amended former 15-1-9 NMSA 1978 as 14-3-1 NMSA 1978, effective July 1, 1995.

Cross references. — For electronic authentication and substitution for signature, *see* 14-3-15.2 NMSA 1978.

For format of rules filings under State Rules Act, *see* 14-4-3 NMSA 1978.

For Computer Crimes Act, *see* 30-45-1 to 30-45-7 NMSA 1978.

The 1995 amendment, effective July 1, 1995, renumbered the section; substituted "administrator" for "secretary" and made a minor stylistic change in Subsection B; deleted "with the approval of the secretary" following "database" in Subsection C; deleted "secretary and the" preceding "state agency" in Paragraph (2) of Subsection C;

deleted "the commission and" following "writing by" in Paragraph (4) of Subsection C; deleted "the secretary and" preceding "the state agency"; substituted the language beginning with "the agencies shall enter" and ending with "the lead agency" for "a single state agency shall be designated by the secretary" in Subsection D; deleted "to be prescribed by rule of the secretary" following "a fee" in Subsection F; and substituted "commission" for "secretary" in Subsection G.

The 1993 amendment, effective July 1, 1993, substituted "commission" for "council" in Paragraph (4) of Subsection C and made minor stylistic changes in Subsections A, C and G.

Subsection C is statute of very specific application. *Crutchfield v. Taxation & Revenue Dep't*, 2005-NMCA-022, 137 N.M. 26, 106 P.3d 1273.

Intent of Subsection C. — The legislature, in enacting Subsection C of this section, intended to permit state agencies to specifically limit public use of a certain type of record. *Crutchfield v. Taxation & Revenue Dep't*, 2005-NMCA-022, 137 N.M. 26, 106 P.3d 1273.

Computerized database of public record. — There is no intent on the part of the legislature with respect to Subsection C of this section that that statute and the policy underlying it, and not the Inspection of Public Records Act and the policies underlying it, apply to a copy of a medium containing a computerized database of a public record. *Crutchfield v. Taxation & Revenue Dep't*, 2005-NMCA-022, 137 N.M. 26, 106 P.3d 1273.

Waiver of rights under Subsection C. — That the department of taxation & revenue has decided to provide, free of charge, portions of its database piecemeal on the website while at the same time placing restrictions on or even denying use to persons requesting the entire database for commercial use does not require a finding that the department waived its rights under Subsection C of this section. *Crutchfield v. Taxation & Revenue Dep't*, 2005-NMCA-022, 137 N.M. 26, 106 P.3d 1273.

Access to abbreviations and terms used in electronic database. — Where trial court did not err in upholding the department of taxation and revenue's rejection pursuant to Subsection C of this section of plaintiff's electronic database request, there is no basis in which plaintiff is entitled to the records that contained abbreviations and terms used by the department in categorizing and sorting the severance tax data on its electronic database. *Crutchfield v. Taxation & Revenue Dep't*, 2005-NMCA-022, 137 N.M. 26, 106 P.3d 1273.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 50 Am. Jur. 2d Larceny § 67 et seq.; 66 Am. Jur. 2d Records and Recording Laws §§ 1 to 3, 10, 12 to 15, 19.

Enforceability by mandamus of right to inspect public records, 60 A.L.R. 1356, 169 A.L.R. 653.

Proof of public records kept or stored on electronic computing equipment, 71 A.L.R.3d 232.

Criminal liability for theft of, interference with or unauthorized use of, computer programs, files, or systems, 51 A.L.R.4th 971.

52A C.J.S. Larceny § 129(2); 76 C.J.S. Records § 1 et seq.

14-3-15.2. Electronic authentication; substitution for signature.

Whenever there is a requirement for a signature on any document, electronic authentication that meets the standards promulgated by the commission may be substituted.

History: Laws 1995, ch. 27, § 1.

ANNOTATIONS

Cross references. — For format of rules filings under State Rules Act, *see* 14-4-3 NMSA 1978.

For electronic filing of report of campaign expenditures and contributions, *see* 1-19-31 NMSA 1978.

For electronic filing under Taxation and Revenue Department Act, *see* 9-11-6.4 NMSA 1978.

For electronic filing of annual statement by insurer, *see* 59A-5-29 NMSA 1978.

For electronic copies and abstracts of motor vehicle records, *see* 66-2-7 NMSA 1978.

For electronic filing of title applications for motor vehicle titles, *see* 66-3-201 NMSA 1978.

For use of electronic versions of uniform traffic citations in the issuance of citations, *see* 66-8-128 NMSA 1978.

For submission of required information to the Motor Vehicle Division of penalty assessments under municipal programs via electronic means, *see* 66-8-130 NMSA 1978.

For electronic filing of abstract of record in cases involving violations of Motor Vehicle Code, *see* 66-8-135 NMSA 1978.

For the Electronic Authentication of Documents Act, *see* Chapter 14, Article 15 NMSA 1978.

14-3-16. Attorney general may replevin state records.

On behalf of the state and the administrator, the attorney general may replevin any papers, books, correspondence or other public records which were formerly part of the records or files of any public office in the territory or state of New Mexico, and which the state still has title to or interest in and which have passed out of the official custody of the state, its agencies or instrumentalities.

History: 1953 Comp., § 71-6-16, enacted by Laws 1959, ch. 245, § 16.

14-3-17. Approval of existing state agency systems.

Upon the effective date of this act, the state records administrator shall review any existing state agency microphotography system and, after consultation with the agency, shall approve, disapprove or require modification to the system. For the purposes of this section, "state agency" shall include the district courts. Upon disapproval, the agency shall cease to use the system. Modifications shall be completed within a period specified by the administrator.

History: 1953 Comp., § 71-6-17, enacted by Laws 1975, ch. 215, § 2.

ANNOTATIONS

Compiler's notes. — Laws 1963, ch. 303, § 30-1, repealed former 71-6-17, 1953 Comp. (Laws 1959, ch. 245, § 17), relating to unlawful disposition of public records. For present comparable provisions, *see* 30-26-1 NMSA 1978.

The phrase "effective date of this act", appearing near the beginning of this section, means July 1, 1975, the effective date of Laws 1975, Chapter 215.

Subsections B, D and G of 14-3-15 NMSA 1978 and this section apply only to state agencies and not to counties or other governmental organizations. 1979 Op. Att'y Gen. No. 79-26.

14-3-18. County and municipal records; geographic information system; computer databases; copy fees.

A. The administrator may advise and assist county and municipal officials in the formulation of programs for the disposition of public records maintained in county and municipal offices.

B. Notwithstanding the provisions of Subsection E of this section, a county or municipality may charge a reasonable fee, as adopted by ordinance of the respective board of county commissioners or governing body of a municipality, for a document or product generated by a geographic information system.

C. Except as otherwise provided by federal or state law, information contained in a computer database shall be a public record and shall be subject to disclosure in printed or typed format by a county or municipality that has inserted that information into the database, in accordance with the Public Records Act.

D. The administrator may advise and assist county and municipal officials with the procedures, schedules and technical standards for the retention of computer databases.

E. A county or municipality that has inserted data in a computer database shall authorize an electronic copy to be made of the computer database of a public record on a currently available electronic medium for a person if the person agrees to pay a reasonable fee based upon the cost of:

(1) materials;

(2) making an electronic copy of the computer database; and

(3) personnel time to research and retrieve the electronic record.

F. Subject to any confidentiality provisions of law, a county or municipality may permit another federal, state or local government entity access to all or any portion of a computer database created by the county or municipality.

G. A county or municipality may at its option, and if it has the capability, permit access or use of its computer and network system to search, manipulate or retrieve information from a computer database and charge reasonable fees based on the cost of materials, personnel time, access time and the use of the county or municipality's computer network.

History: 1953 Comp., § 71-6-17.1, enacted by Laws 1963, ch. 186, § 2; 1965, ch. 81, § 3; 2005, ch. 217, § 1.

ANNOTATIONS

The 2005 amendment, effective June 17, 2005, added Subsection B to provide that a county or a municipality may charge a reasonable fee for a document or product generated by a geographic information system; added Subsection C to provide that except as otherwise provide by law, information contained in a computer database is a public record subject to disclosure in printed or typed format in accordance with the Public Records Act; added Subsection D to provide that the administrator may advise and assist with procedures, schedules and technical standards for the retention of computer databases; added Subsection E to provide that an electronic copy of a database of a public record shall be made if the person requesting the record agrees to pay a reasonable fee for the cost of the materials, the making of the copy, and personnel time to research and retrieve the record; and added Subsection F to provide

that subject to confidentiality provisions of law, an other governmental entity may have access to a computer database created by a county or municipality.

14-3-19. Storage equipment, supplies and materials; microfilm services and supplies; purchase by state commission of public records for resale.

The state commission of public records may purchase for resale such storage boxes, forms, microfilm supplies necessary to the providing of microfilm services and other supplies and materials as in its judgment are necessary to facilitate the various aspects of its programs. The commission may sell such items and services at cost plus a five percent handling charge. All receipts from such sales shall go into the records center revolving fund.

History: 1953 Comp., § 71-6-18, enacted by Laws 1968, ch. 14, § 1; 2002, ch. 56, § 1.

ANNOTATIONS

Cross references. — For records center revolving fund, *see* 14-3-8.1 NMSA 1978.

The 2002 amendment, effective March 4, 2002, in the present last sentence, substituted "records center revolving fund" for "special revolving fund established by Laws 1961, Chapter 111, which is hereby continued", and deleted the former last sentence, which related to appropriations.

14-3-20. Interstate compacts; filing; index.

A. Each agency of this state and each political subdivision of the state entering into or administering an interstate compact or other intergovernmental agreement between or among states, subdivisions of this state and other states or between this state or any subdivision and the federal government, having the force of law and to which this state or any subdivision is a party, shall file with the records center:

(1) a certified copy of the compact or agreement;

(2) a listing of all other jurisdictions party to the compact or agreement and the date on which each jurisdiction entered into participation;

(3) the status of each compact or agreement with respect to withdrawals of participating jurisdictions;

(4) citations to any act or resolution of the congress of the United States consenting to the compact or agreement; and

(5) any amendment, supplementary agreement or administrative rule or regulation having the force of law and implementing or modifying the compact or agreement.

B. The records center shall index these documents and make them available for inspection upon request of any person during normal business hours.

C. The provisions of this section are in addition to other requirements of law for filing, publication or distribution.

D. No compact or agreement entered into after the effective date of this section shall become effective until filed as required in this section.

E. The executive official in charge of any state agency or political subdivision which fails to file any compact or agreement required by this section to be filed is guilty of a misdemeanor.

F. The records center shall be furnished copies of all interstate compacts, when available, as defined in this section, which have been filed with the supreme court librarian.

History: 1953 Comp., § 71-6-19, enacted by Laws 1963, ch. 185, § 1; 1981, ch. 221, § 1.

ANNOTATIONS

Compiler's notes. — The phrase "effective date of this section", referred to in Subsection D, means June 7, 1963, the effective date of Laws 1963, ch. 185, § 1.

Interstate contract is not instrument similar to rules, reports and notices issued by state agencies. *State v. Ellis*, 1980-NMCA-187, 95 N.M. 427, 622 P.2d 1047.

State does not have valid prisoner transfer agreement with Arizona. — Due to fact that an exhaustive search of the supreme court library found only one contract for a term from April 24, 1973, to June 30, 1974, and a renewal for July 1, 1975, to June 30, 1976, New Mexico does not have a valid agreement with Arizona concerning transfers of prisoners. *State v. Ellis*, 1980-NMCA-187, 95 N.M. 427, 622 P.2d 1047.

14-3-21. [State publications; manuals of procedure; rules; reports; uniform style and form.]

The state records administrator shall develop and recommend to the state commission of public records uniform standards of style and format for the following:

A. manuals of procedure prepared and published by state agencies for the guidance of public officers and employees engaged in operations required for the efficient

operation of state and local government, including but not limited to acquiring space, budgeting, accounting, purchasing, contracting, vouchering, printing, appointment and dismissal of employees and record maintenance;

B. manuals of procedures prepared and published by state agencies for the guidance of their own employees and for their own operations;

C. official rules and regulations and reprints of laws published by state agencies, excluding session laws published by the secretary of state; and

D. official reports of state agencies required by law, excluding the budget document presented to the legislature.

The state commission of public records, after consultation with the affected agencies, and with the approval of the governor, shall adopt and promulgate uniform standards of style and format for the above publications and a schedule of distribution for each class of publication which shall be binding upon all state agencies. "Agencies" means, for the purposes of this section, all state departments, bureaus, commissions, committees, institutions and boards, except those agencies of the legislative and judicial branches, and those educational institutions listed in Article 12, Section 11 of the New Mexico Constitution.

History: 1953 Comp., § 71-6-20, enacted by Laws 1965, ch. 154, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For provisions of the State Rules Act, *see* Chapter 14, Article 4 NMSA 1978.

14-3-22. Public policy on certain publications; state commission of public records duties.

A. It is the intent of the legislature and the public policy of this state to reduce unnecessary expense to the taxpayers of this state in connection with publications of state agencies designed primarily for the purpose of reporting to or the informing of the governor, the legislature, other state agencies or the political subdivisions of this state.

B. The state commission of public records shall develop and adopt regulations which shall be binding upon all state agencies. The regulations shall provide for uniform standards for those publications set forth in Subsection A of this section and shall include but be not limited to:

(1) a standard size format to accommodate paper of the most economical type available;

(2) prohibiting the use of expensive covers, binders and fasteners;

(3) prohibiting the use of photographs, art work and design, unless absolutely necessary for clarification of the report;

(4) limiting the use of color stock paper, where such color stock would be more expensive than the use of white paper; and

(5) requiring offset or mimeograph or other means of duplication when it cannot be demonstrated that printing of such publication would be equal to or less than the cost of offset, mimeograph or other means of duplication.

C. The state commission of public records shall maintain constant and continuing supervision of such publications by state agencies and shall report persistent violations of the regulations made pursuant to this act [Chapter 14, Article 3 NMSA 1978] to the secretary of general services.

History: 1953 Comp., § 71-6-21, enacted by Laws 1977, ch. 209, § 1; 1983, ch. 301, § 34.

14-3-23. [Manuals of procedure; preparation by state agencies; review by state records administrator; publication.]

Each state agency which has an official duty to establish methods and procedures involved in the internal structure and operation of state government, including but not limited to acquiring space, budgeting, accounting, purchasing, contracting, vouchering, printing, appointment and dismissal of employees and record-keeping, shall prepare, within the means provided by current operating budgets, manuals of procedure for the guidance of public officers and employees engaged in such work. Such manual or manuals shall be reviewed and ordered published by the state records administrator and in accordance with uniform standards of style and format promulgated by the state commission of public records.

History: 1953 Comp., § 71-6-22, enacted by Laws 1965, ch. 154, § 3.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

14-3-24, 14-3-25. Recompiled.

ANNOTATIONS

Recompilations. — Laws 1995, ch. 110, § 9, recompiled former 14-3-24 and 14-3-25 NMSA 1978, describing duties of the state records administrator, as 14-4-10 and 14-4-11 NMSA 1978, effective July 1, 1995.

ARTICLE 3A
Confidential Materials

14-3A-1. Short title.

Sections 1 and 2 [14-3A-1, 14-3A-2 NMSA 1978] of this act may be cited as the "Confidential Materials Act".

History: Laws 1981, ch. 47, § 1.

ANNOTATIONS

Cross references. — For public records generally, *see* Chapter 14, Article 3 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — What constitutes "confidential source" within Freedom of Information Act exemption permitting nondisclosure of identity of confidential source and, in specified instances, of confidential information furnished only by confidential source (5 USCS § 522(b)(7)(D)), 59 A.L.R. Fed. 550.

14-3A-2. Donation of confidential material.

A. Any library, college, university, museum or institution of the state or any of its political subdivisions may hold in confidence materials of a historical or educational value upon which the donor or seller has imposed restrictions with respect to access to and inspection of the materials for a definite period of time as specified by the donor or seller.

B. Access to and inspection of such materials may be restricted during the period specified by the donor or seller in the manner specified by the donor or seller.

C. The provisions of Subsections A and B of this section do not apply to materials which were public records of New Mexico as defined in Section 14-2-1 NMSA 1978 while in the possession of the donor or seller at the time of the donation or sale.

History: Laws 1981, ch. 47, § 2.

ARTICLE 4
State Rules

14-4-1. Short title.

Chapter 14, Article 4 NMSA 1978 may be cited as the "State Rules Act".

History: 1953 Comp., § 71-7-1, enacted by Laws 1967, ch. 275, § 1; 1995, ch. 110, § 1.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, substituted "Chapter 14, Article 4, NMSA 1978" for "This act".

This act is inapplicable to interstate agreements. *State v. Ellis*, 1980-NMCA-187, 95 N.M. 427, 622 P.2d 1047.

Interstate contract is not similar to rules, reports and notices issued by state agencies. *State v. Ellis*, 1980-NMCA-187, 95 N.M. 427, 622 P.2d 1047.

State corporation commission (now public regulation commission) may promulgate regulations interpreting school bus exemption in Motor Carrier Act without holding hearing prior to the issuance of the regulation, so long as it complies with State Rules Act, unless and until the legislature were to place the state corporation commission (now public regulation commission) under the Administrative Procedures Act, 12-8-1 NMSA 1978 et seq. 1969 Op. Att'y Gen. No. 69-100.

Law reviews. — For article, "An Administrative Procedure Act for New Mexico," see 8 Nat. Resources J. 114 (1968).

For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M. L. Rev. 105 (1973).

For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

For survey of 1988-89 Administrative Law, see 21 N.M.L. Rev. 481 (1991).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73 C.J.S. Public Administrative Law and Procedure §§ 112, 114.

14-4-2. Definitions.

As used in the State Rules Act:

A. "agency" means any agency, board, commission, department, institution or officer of the state government except the judicial and legislative branches of the state government;

B. "person" includes individuals, associations, partnerships, companies, business trusts, political subdivisions and corporations;

C. "proceeding" means a formal agency process or procedure that is commenced or conducted pursuant to the State Rules Act;

D. "proposed rule" means a rule that is provided to the public by an agency for review and public comment prior to its adoption, amendment or repeal, and for which there is specific legal authority authorizing the proposed rule;

E. "provide to the public" means for an agency to distribute rulemaking information by:

(1) posting it on the agency website, if any;

(2) posting it on the sunshine portal;

(3) making it available in the agency's district, field and regional offices, if any;

(4) sending it by electronic mail to persons who have made a written request for notice from the agency of announcements addressing the subject of the rulemaking proceeding and who have provided an electronic mail address to the agency;

(5) sending it by electronic mail to persons who have participated in the rulemaking and who have provided an electronic mail address to the agency;

(6) sending written notice that includes, at a minimum, an internet and street address where the information may be found to persons who provide a postal address; and

(7) providing it to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees;

F. "rule" means any rule, regulation, or standard, including those that explicitly or implicitly implement or interpret a federal or state legal mandate or other applicable law and amendments thereto or repeals and renewals thereof, issued or promulgated by any agency and purporting to affect one or more agencies besides the agency issuing the rule or to affect persons not members or employees of the issuing agency, including affecting persons served by the agency. An order or decision or other document issued or promulgated in connection with the disposition of any case or agency decision upon a particular matter as applied to a specific set of facts shall not be deemed such a rule, nor shall it constitute specific adoption thereof by the agency. "Rule" does not include rules relating to the management, confinement, discipline or release of inmates of any penal or charitable institution, the New Mexico boys' school, the girls' welfare home or any hospital; rules made relating to the management of any particular educational institution, whether elementary or otherwise; or rules made relating to admissions,

discipline, supervision, expulsion or graduation of students from any educational institution; and

G. "rulemaking" means the process for adoption of a new rule or the amendment, readoption or repeal of an existing rule.

History: 1953 Comp., § 71-7-2, enacted by Laws 1967, ch. 275, § 2; 1969, ch. 92, § 1; 2017, ch. 137, § 1.

ANNOTATIONS

The 2017 amendment, effective July 1, 2017, defined "proceeding", "proposed rule", "provide to the public", and "rulemaking", and revised the definitions of certain terms, as used in the State Rules Act; in Subsection B, after "business trusts", added "political subdivisions", and deleted "and" at the end of the subsection; added new Subsections C through E and redesignated former Subsection C as Subsection F; in Subsection F, after "regulation", deleted "order" and added "or", after "standard", deleted "statement of policy", after "including", added "those that explicitly or implicitly implement or interpret a federal or state legal mandate or other applicable law and", after "repeals", added "and renewals", after "the issuing agency", added ", including affecting persons served by the agency", deleted "Such term shall" and added "'Rule' does", after "charitable institution, the", deleted "Springer" and added "New Mexico", after "welfare home", deleted "of" and added "or", after "any hospital", deleted "nor to", after "elementary or otherwise", deleted "nor to", after the semicolon, added "or", and after "graduation of students", deleted "therefrom" and added "from any educational institution; and"; and added Subsection G.

A standard is a rule, if the proper procedure has been followed in promulgating it. *Bokum Resources Corp. v. New Mexico Water Quality Control Comm'n*, 1979-NMSC-090, 93 N.M. 546, 603 P.2d 285.

Prison rules. — The Legislature could not have made it more clear that rules relating to the management, confinement, discipline or release of inmates are not subject to filing under the State Rules Act since, although the Corrections Department Act requires that all rules be filed in accordance with the State Rules Act, the latter clearly excludes certain rules relating to inmates from its definition of rules, in 14-4-2 NMSA 1978. *Johnson v. Francke*, 1987-NMCA-029, 105 N.M. 564, 734 P.2d 804.

"Rules" and "standards". — The terms "rule" and "standard" include procedural standards, manuals, directives and requirements if they purport to affect one or more agencies besides the issuing agency or persons other than the issuing agencies' members or employees. 1993 Op. Att'y Gen. No. 93-01.

Museum resolution. — A resolution of the Museum of New Mexico permitting only Indians to sell handicrafts under the portal of the Palace of the Governors in Santa Fe was a rule within the meaning of the State Rules Act. *Livingston v. Ewing*, 1982-NMSC-

110, 98 N.M. 685, 652 P.2d 235; *State v. Joyce*, 1980-NMCA-086, 94 N.M. 618, 614 P.2d 30.

Orders and decisions excluded by definition from class of rules to which State Rules Act applies are not subject to the provisions of those sections and, in particular, are not governed by 14-4-3 and 14-4-5 NMSA 1978. 1979 Op. Att'y Gen. No. 79-32.

Law reviews. — For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M. L. Rev. 1 (1981).

14-4-3. Format of rules; filing; distribution.

A. Each agency promulgating any rule shall place the rule in the format and style required by rule of the state records administrator and shall deliver the rule to the state records administrator or the administrator's designee, accompanied by the concise explanatory statement required by the State Rules Act. The state records administrator or the administrator's designee shall note thereon the date and hour of filing.

B. The state records administrator or the administrator's designee shall maintain a copy of the rule as a permanent record open to public inspection during office hours, on the website of the records center, published in a timely manner in the New Mexico register and compiled into the New Mexico Administrative Code.

C. At the time of filing, an agency may submit to the state records administrator or the administrator's designee a copy, for annotation with the date and hour of filing, to be returned to the agency.

D. The state records administrator, after written notification to the filing agency, may make minor, nonsubstantive corrections in spelling, grammar and format in filed rules. The state records administrator shall make a record of the correction and shall deliver the record to the filing agency and issuing authority within ten days of the change. Within thirty days of receiving that state records administrator's record of a correction, the agency shall provide to the public notice of the correction in the same manner as the agency used to give notice of the rulemaking proceeding pursuant to Section 4 of this 2017 act [14-4-5.2 NMSA 1978].

History: 1953 Comp., § 71-7-3, enacted by Laws 1967, ch. 275, § 3; 1969, ch. 92, § 2; 1987, ch. 40, § 1; 1995, ch. 110, § 2; 2017, ch. 137, § 2.

ANNOTATIONS

Cross references. — For records of state agencies and databases under Public Records Act, *see* 14-3-15.1 NMSA 1978.

For electronic authentication and substitution for signature, *see* 14-3-15.2 NMSA 1978.

The 2017 amendment, effective July 1, 2017, replaced the "records center" with the "state records administrator" for purposes of receiving promulgated rules, revised the requirements for submitting a rule to the state records administrator, allowed the state records administrator to make minor, non-substantive corrections to submitted rules, and required the agency to give public notice of minor non-substantive corrections made by the state records administrator in the same manner as required for rulemaking; ; added new subsection designation "A."; in Subsection A, after "required by rule of the", deleted "records center" and added "state records administrator", after "shall deliver", deleted "one original paper copy and one electronic copy" and added "the rule", after "to the", deleted "records center" and added "state records administrator or the administrator's designee, accompanied by the concise explanatory statement required by the State Rules Act"; added subsection designation "B."; in Subsection B, after "shall maintain", deleted "the original" and added "a", after "copy", added "of the rule", after "office hours,", deleted "and shall have the rule" and added "on the website of the records center"; added subsection designation "C."; in Subsection C, after "may submit to the", deleted "records center an additional paper" and added "state records administrator or the administrator's designee a"; and added Subsection D.

The 1995 amendment, effective July 1, 1995, substituted "deliver one original paper copy and one electronic copy" for "cause seven copies to be delivered" in the first sentence; substituted "maintain the original copy" for "a list of places to file copies" in the third sentence; added the language at the end of the section beginning "and shall have"; and made minor stylistic changes throughout the section.

Records center may require certificate of compliance. — Pursuant to its authority under this section to adopt a rule governing the style and format of the rules and regulations to be filed, the records center may require a certificate of compliance as a matter of style or format. While the records center has no authority to look behind a certificate of compliance or to make any determination of actual compliance, failure to incorporate such a certificate of compliance on rules and regulations submitted for filing would constitute a failure to comply with the required style and format. 1978 Op. Att'y Gen. No. 78-07.

Orders and decisions excluded by definition from class of rules to which this article and 13-3-24 and 13-3-25 NMSA 1978 apply are not subject to the provisions of those sections and, in particular, are not governed by this section and 14-4-5 NMSA 1978. 1979 Op. Att'y Gen. No. 79-32.

Law reviews. — For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M. L. Rev. 105 (1973).

14-4-4. Publication filing and distribution; official depository.

Each agency issuing any publication, pamphlet, report, notice, proclamation or similar instrument shall immediately file five copies thereof with the records center. The records center shall deliver three copies to the state library, which shall keep one copy available for public inspection during office hours. All other copies may be circulated. The state library is designated to be an official depository of all such publications, pamphlets, reports, notices, proclamations and similar instruments.

History: 1953 Comp., § 71-7-5, enacted by Laws 1967, ch. 275, § 5; 1969, ch. 92, § 3; 1995, ch. 110, § 3.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, added the section heading.

No fundamental right to notice and hearing. — There is no fundamental right to notice and hearing before the adoption of a rule. Such a right is statutory only. *Livingston v. Ewing*, 1982-NMSC-110, 98 N.M. 685, 652 P.2d 235.

Actual notice of rule does not dispel necessity of compliance with State Rules Act. *State v. Joyce*, 1980-NMCA-086, 94 N.M. 618, 614 P.2d 30.

What and with whom matters to be filed. — Formerly, all official reports, pamphlets, publications, regulations, rules, codes of fair competition, proclamations and orders issued, prescribed or promulgated by the state corporation commission (now public regulation commission) of general application were to be filed, in accordance with statute, with the supreme court librarian of the state of New Mexico, with the exception of any rule or regulation or order or other document of the corporation commission (now public regulation commission), wherein it is exercising its duty of fixing, determining, supervising, regulating and controlling all charges and rates of railway, express, telephone, telegraph, sleeping car or similar company and common carrier within the state. 1953 Op. Att'y Gen. No. 53-5814.

Law reviews. — For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M. L. Rev. 1 (1981).

14-4-5. Time limit on adoption of a proposed rule; filing and compliance required for validity.

A. Except in the case of an emergency rule, no rule shall be valid or enforceable until it is published in the New Mexico register as provided by the State Rules Act.

B. An agency shall not adopt a rule until the public comment period has ended. If the agency fails to take action on a proposed rule within two years after the notice of proposed rulemaking is published in the New Mexico register, the rulemaking is automatically terminated unless the agency takes action to extend the period. The agency may extend the period of time for adopting the proposed rule for an additional

period of two years by filing a statement of good cause for the extension in the rulemaking record, but it shall provide for additional public participation, comments and rule hearings prior to adopting the rule.

C. An agency may terminate a rulemaking at any time by publishing a notice of termination in the New Mexico register. If a rulemaking is terminated pursuant to this section, the agency shall provide notice to the public.

D. Within fifteen days after adoption of a rule, an agency shall file the adopted rule with the state records administrator or the administrator's designee and shall provide to the public the adopted rule. The state records administrator or the administrator's designee shall publish rules as soon as practicable after filing, but in no case later than ninety days after the date of adoption of the proposed rule. Unless a later date is otherwise provided by law or in the rule, the effective date of a rule shall be the date of publication in the New Mexico register.

E. A proposed rule shall not take effect unless it is adopted and filed within the time limits set by this section.

History: 1953 Comp., § 71-7-6, enacted by Laws 1967, ch. 275, § 6; 1969, ch. 92, § 4; 1995, ch. 110, § 4; 2017, ch. 137, § 3.

ANNOTATIONS

The 2017 amendment, effective July 1, 2017, prohibited agencies from adopting rules until the public comment period has ended, provided time limits on adoption of proposed rules after the public notice period, required the state records administrator to publish the rule within 90 days after the date of adoption of proposed rules, and provided for termination of the rulemaking if no action is taken on a proposed rule within two years after notice is published; in the catchline, added "Time limit on adoption of a proposed rule"; added subsection designation "A."; in Subsection A, added "Except in the case of an emergency rule", and after "until it is", deleted "filed with the records center and"; added Subsections B and C; added subsection designation "D."; in Subsection D, added the first two sentences of the subsection, after "provided by law", added "or in the rule", and deleted "Emergency regulations may go into effect immediately upon filing with the records center, but shall be effective no more than thirty days unless they are published in the New Mexico register"; and added Subsection E.

The 1995 amendment, effective July 1, 1995, added the section heading, substituted the language at the end of the first sentence beginning "filed with" for "so filed and shall only be valid and enforceable upon such filing and compliance with any other law", and added the last two sentences.

When rule becomes valid or enforceable. — The language of this section is categorical: a rule is not valid or enforceable until it is filed. There is no implicit exception that makes the rule effective before filing with respect to those with actual

notice of the rule. *Pineda v. Grande Drilling Corp.*, 1991-NMCA-004, 111 N.M. 536, 807 P.2d 234.

Prisoner disciplinary rules not covered by act. — Disciplinary rules promulgated by the secretary of corrections, governing the conduct of prisoners confined within a penitentiary, were not required to be filed with the state's record center in the manner required under State Rules Act. *Johnson v. Francke*, 1987-NMCA-029, 105 N.M. 564, 734 P.2d 804.

No fundamental right to notice and hearing. — There is no fundamental right to notice and hearing before the adoption of a rule. Such a right is statutory only. *Livingston v. Ewing*, 1982-NMSC-110, 98 N.M. 685, 652 P.2d 235.

Election rules. — Secretary of state’s memorandum # 80-50 which listed the name variations which could be counted for the various write-in candidates, and required the precinct officials to list all of the variations, was never filed in the records center as required by Section 14-4-5 NMSA 1978 and was void. *Weldon v. Sanders*, 1982-NMSC-136, 99 N.M. 160, 655 P.2d 1004.

Actual notice of rule does not dispel necessity of compliance with State Rules Act. *State v. Joyce*, 1980-NMCA-086, 94 N.M. 618, 614 P.2d 30.

Effect of failure to comply with statutory requirements. — Where the board of cosmetology failed to (1) comply with the repeal procedure of 12-8-4A NMSA 1978, in failing to give notice to interested parties and to hold a hearing prior to taking action, and (2) failed to file the record of its regulatory proceedings with the state records administrator as required by this section, the action of the board in repealing a licensing reciprocity regulation was contrary to law and the repeal was invalid. *Rivas v. Board of Cosmetologists*, 1984-NMSC-076, 101 N.M. 592, 686 P.2d 934.

Effect of unfiled rules and regulations. — Former statutes (4-10-13 to 4-10-19, 1953 Comp.) did not provide that all unfiled rules and regulations were ineffective, but merely provided that such rules and regulations would not be valid as against any person who did not have actual knowledge of their contents. *Maestas v. Christmas*, 1958-NMSC-021, 63 N.M. 447, 321 P.2d 631.

Amendment has no effect on validity of previous resolution. — The subsequent adoption of an amended resolution has no effect on the validity of a previous resolution. *Livingston v. Ewing*, 1982-NMSC-110, 98 N.M. 685, 652 P.2d 235.

Criminal trespass charges not a means to enforce rule until filing. — Criminal trespass charges under 30-20-13 NMSA 1978 are not a means to enforce a rule available to the state until the rule is properly filed in compliance with State Rules Act. *State v. Joyce*, 1980-NMCA-086, 94 N.M. 618, 614 P.2d 30.

Policies that affect other agencies. — If a policy manual or directive contains statements of policy purporting to affect one or more agencies besides the agency issuing the manual or to affect persons not members or employees of the issuing agency, it must be filed in accordance with the State Rules Act. 1993 Op. Att'y Gen. No. 93-01.

Statute does not authorize center to investigate validity of rules. — The statute makes no provision for a preliminary investigation by the records center with respect to the compliance of the submitting agency to any notice and hearing requirements. As an administrative body, the records center can only act within the scope of the authority delegated by statute, and any independent investigation into the validity of the rules and regulations submitted for filing does not come within the records center's authority; therefore the records center has no power to make a determination as to whether, in fact, the promulgating agency has complied with notice and hearing requirements. 1978 Op. Att'y Gen. No. 78-07.

Orders and decisions excluded by definition from class of rules to which State Rules Act applies are not subject to the provisions of those sections and, in particular, are not governed by 14-4-3 NMSA 1978 and this section. 1979 Op. Att'y Gen. No. 79-32.

What and with whom matters to be filed. — Formerly, all official reports, pamphlets, publications, regulations, rules, codes of fair competition, proclamations and orders issued, prescribed or promulgated by the state corporation commission (now public regulation commission) of general application were to be filed, in accordance with statute, with the supreme court librarian of the state of New Mexico, with the exception of any rule or regulation or order or other document of the corporation commission (now public regulation commission), wherein it is exercising its duty of fixing, determining, supervising, regulating and controlling all charges and rates of railway, express, telephone, telegraph, sleeping car or similar company and common carrier within the state. 1953 Op. Att'y Gen. No. 53-5814.

Law reviews. — For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

14-4-5.1. Temporary provision.

Notwithstanding the provisions of 14-4-5 NMSA 1978, rules filed prior to July 1, 1995 shall continue in effect if such rules were filed with the state records center in accordance with the law applicable at the time of filing, and they have not otherwise been repealed, amended, or superseded.

History: Laws 1995, ch. 110, § 10.

14-4-5.2. Notice of proposed rulemaking.

A. Not later than thirty days before a public rule hearing, the agency proposing the rule shall provide to the public and publish in the New Mexico register a notice of proposed rulemaking. The notice shall include:

(1) a summary of the full text of the proposed rule;

(2) a short explanation of the purpose of the proposed rule;

(3) a citation to the specific legal authority authorizing the proposed rule and the adoption of the rule;

(4) information on how a copy of the full text of the proposed rule may be obtained;

(5) information on how a person may comment on the proposed rule, where comments will be received and when comments are due;

(6) information on where and when a public rule hearing will be held and how a person may participate in the hearing; and

(7) a citation to technical information, if any, that served as a basis for the proposed rule, and information on how the full text of the technical information may be obtained.

B. An agency may charge a reasonable fee for providing any records in nonelectronic form when provided to a person pursuant to this section. An agency shall not charge a fee for providing any records in electronic form when provided to a person pursuant to this section.

C. An internet link providing free access to the full text of the proposed rule shall be included on the notice of proposed rulemaking.

D. If the agency changes the date of the public rule hearing or the deadline for submitting comments as stated in the notice, the agency shall provide notice to the public of the change.

E. The state records administrator or the administrator's designee shall timely publish the notice of proposed rulemaking in the next publication of the New Mexico register.

History: Laws 2017, ch. 137, § 4.

ANNOTATIONS

Effective dates. — Laws 2017, ch. 137, § 11 made Laws 2017, ch. 137, § 4 effective July 1, 2017.

14-4-5.3. Public participation, comments and rule hearings.

A. The notice of proposed rulemaking shall specify a public comment period of at least thirty days after publication in the New Mexico register during which a person may submit information and comment on the proposed rule. The information or comment may be submitted in an electronic or written format or at a public rule hearing pursuant to Subsection B of this section. The agency shall consider all information and comment on a proposed rule that is submitted within the comment period.

B. At the public rule hearing, members of the public shall be given a reasonable opportunity to submit data, views or arguments orally or in writing. Each agency shall determine, in accordance with governing statutory and case law, the manner in which parties to the proceeding and members of the public will be able to participate in public hearings. All public hearings shall be conducted in a fair and equitable manner. Except as otherwise provided by law, an agency representative or hearing officer shall preside over a public rule hearing.

C. The public rule hearing shall be open to the public and be recorded.

History: Laws 2017, ch. 137, § 5.

ANNOTATIONS

Effective dates. — Laws 2017, ch. 137, § 11 made Laws 2017, ch. 137, § 5 effective July 1, 2017.

14-4-5.4. Agency record in rulemaking proceeding.

A. An agency shall maintain a rulemaking record for each rule it proposes to adopt. The record and materials incorporated by reference in the proposed rule shall be readily available for public inspection in the central office of the agency and available for public display on the state sunshine portal. If an agency determines that any part of the rulemaking record cannot be practicably displayed or is inappropriate for public display on the sunshine portal, the agency shall describe that part of the record, shall note on the sunshine portal that the part of the record is not displayed and shall provide instructions for accessing or inspecting that part of the record.

B. A rulemaking record shall contain:

(1) a copy of all publications in the New Mexico register relating to the proposed rule;

(2) a copy of any technical information that was relied upon in formulating the final rule;

(3) any official transcript of a public rule hearing or, if not transcribed, any audio recording or verbatim transcript of the hearing, and any memoranda summarizing the contents of the hearing prepared by the hearing officer or agency official who presided over the hearing;

(4) a copy of all comments and other material received by the agency during the public comment period and at the public hearing;

(5) a copy of the full text of the initial proposed rule and the full text of the final adopted rule and the concise explanatory statement filed with the state records administrator or the administrator's designee; and

(6) any corrections made by the state records administrator pursuant to Section 14-4-3 NMSA 1978.

History: Laws 2017, ch. 137, § 6.

ANNOTATIONS

Effective dates. — Laws 2017, ch. 137, § 11 made Laws 2017, ch. 137, § 6 effective July 1, 2017.

14-4-5.5. Concise explanatory statement.

At the time it adopts a rule, an agency shall provide to the public a concise explanatory statement containing:

A. the date the agency adopted the rule;

B. a reference to the specific statutory or other authority authorizing the rule; and

C. any findings required by a provision of law for adoption of the rule.

History: Laws 2017, ch. 137, § 7.

ANNOTATIONS

Effective dates. — Laws 2017, ch. 137, § 11 made Laws 2017, ch. 137, § 7 effective July 1, 2017.

14-4-5.6. Emergency rule.

A. An agency shall comply with the rulemaking procedures of the State Rules Act unless the agency finds that the time required to complete the procedures would:

(1) cause an imminent peril to the public health, safety or welfare;

(2) cause the unanticipated loss of funding for an agency program; or

(3) place the agency in violation of federal law.

B. The agency shall provide to the public a record of any finding pursuant to Subsection A of this section and a detailed justification for that finding before issuing an emergency rule. The record shall include a statement that the emergency rule is temporary. After such record has been provided to the public, the agency may issue the emergency rule immediately without a public rule hearing or with any abbreviated notice and hearing that it finds practicable.

C. When an agency makes a finding pursuant to Subsection A of this section, the agency shall follow the provisions of this section in addition to any more specific requirements in statute that pertain to the agency regarding promulgating emergency or interim rules.

D. Emergency rules may take effect immediately upon filing with the state records administrator or the administrator's designee or at a later date specified in the emergency rule. Emergency rules shall be published in the New Mexico register.

E. No emergency rule shall permanently amend or repeal an existing rule. An emergency rule shall remain in effect until a permanent rule takes effect under the normal rulemaking process. If no permanent rule is adopted within one hundred eighty days from the effective date of the emergency rule, the emergency rule shall expire and may not be readopted as an emergency rule. If an expired emergency rule temporarily amended or repealed an existing rule, the rule shall revert to what it would have been had the emergency rule not been issued.

History: Laws 2017, ch. 137, § 8.

ANNOTATIONS

Effective dates. — Laws 2017, ch. 137, § 11 made Laws 2017, ch. 137, § 8 effective July 1, 2017.

14-4-5.7. Conflicts between rule and statute; variance between proposed and final action.

A. No rule is valid or enforceable if it conflicts with statute. A conflict between a rule and a statute is resolved in favor of the statute.

B. A word or phrase that is defined in an applicable statute should not be defined in rule. A conflict between a definition that appears in a rule and in an applicable statute is resolved in favor of the statute.

History: Laws 2017, ch. 137, § 9.

ANNOTATIONS

Effective dates. — Laws 2017, ch. 137, § 11 made Laws 2017, ch. 137, § 9 effective July 1, 2017.

14-4-5.8. Procedural rules.

No later than January 1, 2018, the attorney general shall adopt default procedural rules for public rule hearings for use by agencies that have not adopted their own procedural rules consistent with the State Rules Act. Each agency may adopt its own procedural rules, or continue in effect existing rules, which shall provide at least as much opportunity for participation by parties and members of the public as is provided in the procedural rules adopted by the attorney general. An agency that adopts its own procedural rules shall send a copy of those procedural rules to the attorney general and shall maintain those procedural rules on the agency's website.

History: Laws 2017, ch. 137, § 10.

ANNOTATIONS

Effective dates. — Laws 2017, ch. 137, § 11 made Laws 2017, ch. 137, § 10 effective July 1, 2017.

14-4-6. [Trade, sale and exchange of agency rules, publications and reports by records center.]

The records center is hereby authorized to trade, sell or exchange such rules, pamphlets, reports or similar instruments for rules, pamphlets, reports or similar instruments of similar value and to sell the same at a reasonable price.

History: 1953 Comp., § 71-7-7, enacted by Laws 1967, ch. 275, § 7.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Law reviews. — For article, "An Administrative Procedure Act for New Mexico," see 8 Nat. Resources J. 114 (1968).

14-4-7. Current listing of rules; rule repeals.

A. The state records administrator shall prepare and publish a listing and index of all current rules which are filed with the records center.

B. All pamphlets, reports, proclamations or similar instruments which are filed with the librarian of the supreme court law library of the state of New Mexico on the effective date of the State Rules Act and which would, if filed after the effective date of the State Rules Act, be filed with the records center shall be transferred to the records center.

C. The records center shall be furnished a reasonable opportunity to obtain copies of all rules, as defined in the State Rules Act, filed with the librarian of the supreme court law library of the state of New Mexico on the effective date of the State Rules Act.

D. All rules filed with the librarian of the supreme court law library that have not been filed with the records center pursuant to the State Rules Act by June 30, 1991 are repealed.

History: 1953 Comp., § 71-7-8, enacted by Laws 1967, ch. 275, § 10; 1969, ch. 92, § 5; 1991, ch. 221, § 1.

ANNOTATIONS

Compiler's notes. — The phrase "effective date of the State Rules Act", used three times in this section, means April 14, 1967, the effective date of Laws 1967, Chapter 275.

The 1991 amendment, effective June 14, 1991, added the section heading; designated the formerly undesignated provisions as Subsections A to C; deleted the former last sentence of the section which read: "The librarian of the supreme court shall not be required to retain more than the original or one copy thereof"; added Subsection D; and made minor stylistic changes throughout the section.

Interstate agreement not contemplated within this act. — Despite the broad language in this section regarding "[a]ll pamphlets, reports, proclamations or similar instruments," an interstate agreement contract is not contemplated within the State Rules Act. *State v. Ellis*, 1980-NMCA-187, 95 N.M. 427, 622 P.2d 1047.

Interstate contract is not instrument similar to rules, reports and notices issued by state agencies. *State v. Ellis*, 1980-NMCA-187, 95 N.M. 427, 622 P.2d 1047.

Law reviews. — For article, "An Administrative Procedure Act for New Mexico," see 8 Nat. Resources J. 114 (1968).

14-4-7.1. New Mexico register.

A. The state records administrator shall provide for publication of a New Mexico register at least twice a month. The New Mexico register shall be published in such a way as to minimize the cost to the state. To accomplish this, the state records administrator is authorized to provide for charges for subscriptions and for publication of notice and other items, including advertising, in the register.

B. The New Mexico register shall be the official publication for all notices of rule makings and filings of adopted rules, including emergency rules, by agencies.

(1) The register shall include the full text of any adopted rules, including emergency rules. Proposed rules may be published in full or in part at the discretion of the issuing agency.

(2) Upon request of an issuing agency, the state records administrator may determine that publication in the register of the full text of an adopted rule would be unduly cumbersome, expensive or otherwise inexpedient, and may publish instead a synopsis of the adopted rule and a statement that a copy of the rule is available from the issuing agency.

C. The New Mexico register shall be available by subscription and single copy purchase to any person, including agencies of the executive, judicial and legislative branches of state government and its political subdivisions, at a reasonable charge approved by the state records administrator. The administrator may authorize distribution of a certain number of copies of the register without charge to agencies or political subdivisions as deemed economically feasible and appropriate.

D. The New Mexico register may include a summary or the text of any governor's executive order, a summary, listing or the text of any attorney general's opinion, a calendar listing the date, time and place of all or selected agency rule-making hearings, a list of gubernatorial appointments of state officials and board and commission members or other material related to administrative law and practice.

E. The state records administrator shall adopt and promulgate rules necessary for the implementation and administration of this section.

History: Laws 1989, ch. 38, § 1; 1995, ch. 110, § 5.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, in Subsection A, substituted "for publication" for "if economically feasible, for development and publication" and deleted "after January 1, 1990" following "month"; in Subsection B, redesignated the last two sentences as Paragraph (1) and rewrote the paragraph to make publication of the full text of adopted rules mandatory, and added Paragraph (2); and made minor stylistic changes throughout the section.

Adequate notice under Open Meetings Act. — A notice of proposed rulemaking in the New Mexico register probably would not constitute reasonable notice under the Open Meetings Act, 10-15-1 to 10-15-4 NMSA 1978, because the register is not widely circulated and is not readily available to the general public. 1993 Op. Att'y Gen. No. 93-02.

Notice requirements for legal publication. — A notice published in the New Mexico register would not fulfill the requirements for legal publication under 14-11-1 to 14-11-8 NMSA 1978 because the register is not a newspaper of general paid circulation. 1993 Op. Att'y Gen. No. 93-02.

Publication in human services register. — Publication of a notice, proposed rule, or adopted rule in the New Mexico human services register does not fulfill the human services department's duty to publish materials required by the New Mexico register. 1993 Op. Att'y Gen. No. 93-02.

Publication requirements under the Administrative Procedures Act. — The state rules administrator was not required to publish a separate bulletin under former 12-8-6 NMSA 1978 for agencies subject to the Administrative Procedures Act. Specifically, the provisions of this section superseded the requirements in former 12-8-6 NMSA 1978 for issuing a bimonthly publication, for publishing the full text of rules except under the specified conditions and for providing bulletins free of charge to state agencies and political subdivisions upon request. 1993 Op. Att'y Gen. No. 93-03.

Incorporation by reference. — An agency may not avoid filing and publishing a rule by incorporating by reference any otherwise properly filed and published rule. However, this section grants the state records administrator and the issuing agency discretion to agree on publication of less than a full text of incorporated materials. 1993 Op. Att'y Gen. No. 93-01.

14-4-7.2. New Mexico Administrative Code.

A. The state records administrator shall create and have published a New Mexico Administrative Code, which shall contain all adopted rules. The administrator shall adopt regulations setting forth procedures for the compilation of the code and prescribing the format and structure of the code, including provisions for at least annual supplementation or revision.

B. All rulemaking agencies shall revise, restate and repromulgate their existing rules as needed to expedite publication of the New Mexico Administrative Code.

History: 1978 Comp., § 14-4-7.2, enacted by Laws 1995, ch. 110, § 6.

ANNOTATIONS

Effective dates. — Laws 1995, ch. 110, § 12 made the act effective January 1, 1995.

8.302.1.15 NMAC recognizes alternative sources of payment, but intends for Medicaid to be the final payer for services and where the plaintiff sought and received payment from Medicaid, the plaintiff was precluded from seeking payment from defendant insurers. *Alliance Health of Santa Teresa, Inc. v. Natl. Presto Industries, Inc.*, 2007-NMCA-157, 143 N.M. 133, 173 P.3d 55.

14-4-8. Documents not required to be filed with state library.

The state librarian may by appropriate written instructions advise the records center that he no longer desires a particular class of instrument to be filed with the state library and thereafter such records center shall no longer file such class of documents with the state library unless such rejection is rescinded in writing and sent to such agency or agencies.

History: 1953 Comp., § 71-7-9, enacted by Laws 1967, ch. 275, § 11; 1977, ch. 246, § 47.

14-4-9. [Law governing filing of agency rules, documents and publications.]

Wherever any law requires an agency to file a rule, pamphlet, document or publication with the librarian of the supreme court law library such shall be accomplished by the delivery and filing as provided in the State Rules Act.

History: 1953 Comp., § 71-7-10, enacted by Laws 1967, ch. 275, § 12.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

14-4-10. State publications for sale or issue by state agencies; listing by state records administrator.

The state records administrator shall maintain a file of all state publications which are for sale or issue by agencies of the state. He shall prepare and publish a list of all such publications which are current and effective. The list shall include such documents as books, manuals, pamphlets, bulletins, monographs and periodicals designed to instruct, inform or direct either the general public or public officers and employees. Correspondence and those documents developed by agencies for their own internal administration are excluded.

History: 1953 Comp., § 71-6-23, enacted by Laws 1967, ch. 275, § 8; 1977, ch. 301, § 3; 1978 Comp., § 14-3-24, recompiled as 1978 Comp., § 14-4-10 by Laws 1995, ch. 110, § 9.

14-4-11. [Personal files, records and documents of elected state officials; placing in state archives by the state records administrator.]

The state records administrator may accept and place in the state archives the personal files, records and documents of elected state officials or of former elected state officials, subject to any reasonable restrictions, moratoriums and requirements concerning their use by other persons. Such restrictions, moratoriums and requirements made by the donor, however, shall not prevent the archivist of the state records center from having access to the files, records and documents for indexing and cataloguing purposes.

History: 1953 Comp., § 71-6-24, enacted by Laws 1967, ch. 275, § 9; 1978 Comp., § 14-3-25, recompiled as 1978 Comp., § 14-4-11 by Laws 1995, ch. 110, § 9.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

ARTICLE 4A
Small Business Regulatory Relief Act

14-4A-1. Short title.

This act [14-4A-1 to 14-4A-6 NMSA 1978] may be cited as the "Small Business Regulatory Relief Act".

History: Laws 2005, ch. 244, § 1.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 244, § 7 made Laws 2005, ch. 244, § 1 effective July 1, 2005.

14-4A-2. Legislative findings.

The legislature finds that:

A. a vibrant and growing small business sector is critical to creating jobs in a dynamic economy;

B. small businesses bear a disproportionate share of regulatory costs and burdens;

C. fundamental changes that are needed in the regulatory culture of state agencies to make them more responsive to small business can be made without compromising the statutory missions of the agencies;

D. when adopting rules to protect the health, safety and economic welfare of the state, agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on small businesses;

E. uniform regulatory reporting requirements can impose unnecessary and disproportionately burdensome demands, including legal, accounting and consulting costs, upon small businesses with limited resources;

F. the failure to recognize differences in the scale and resources of regulated businesses can adversely affect competition in the marketplace, discourage innovation and restrict improvements in productivity;

G. unnecessary rules create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

H. the practice of treating all regulated businesses as equivalent may lead to inefficient use of agency resources, enforcement problems and, in some cases, to actions inconsistent with stated legislative intent of health, safety, environmental, economic welfare and other legislation;

I. alternative regulatory approaches that do not conflict with applicable statutes may be available to minimize the significant economic impact of rules on small businesses; and

J. the process by which state rules are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, to examine the effect of proposed and existing rules on such businesses and to review the continued need for existing rules.

History: Laws 2005, ch. 244, § 2.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 244, § 7 made Laws 2005, ch. 244, § 2 effective July 1, 2005.

14-4A-3. Definitions.

As used in the Small Business Regulatory Relief Act:

A. "agency" means every department, agency, board, commission, committee or institution of the executive branch of state government;

B. "commission" means the small business regulatory advisory commission;

C. "proposed rule" means a proposal by an agency for a new rule or for a change in, addition to or repeal of an existing rule;

D. "rule" means any rule, regulation, order, standard or statement of policy, including amendments to or repeals of any of those, issued or promulgated by an agency and purporting to affect one or more agencies besides the agency issuing the rule or to affect persons not members or employees of the issuing agency. An order or decision or other document issued or promulgated in connection with the disposition of any case or agency decision upon a particular matter as applied to a specific set of facts shall not be deemed a rule nor shall it constitute specific adoption of a rule by the agency. "Rule" does not include rules relating to the management, confinement, discipline or release of inmates of any penal or charitable institution, the New Mexico boys' school, the girls' welfare home or a public hospital; or rules made relating to the management of any particular educational institution, whether elementary or otherwise; or rules made relating to admissions, discipline, supervision, expulsion or graduation of students from an educational institution; and

E. "small business" means a business entity, including its affiliates, that is independently owned and operated and employs fifty or fewer full-time employees.

History: Laws 2005, ch. 244, § 3.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 244, § 7 made Laws 2005, ch. 244, § 3 effective July 1, 2005.

14-4A-4. Rules affecting small business.

A. Prior to the adoption of a proposed rule that may have an adverse effect on small business, an agency shall provide a copy of the proposed rule to the commission at the same time as persons who have requested advance notice of rulemaking.

B. Prior to the adoption of a proposed rule that the agency deems to have an adverse effect on small business, the agency shall consider regulatory methods that accomplish the objectives of the applicable law while minimizing the adverse effects on small business.

History: Laws 2005, ch. 244, § 4.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 244, § 7 made Laws 2005, ch. 244, § 4 effective July 1, 2005.

14-4A-5. Small business regulatory advisory commission created; membership; powers and duties.

A. The "small business regulatory advisory commission" is created. The commission shall consist of nine members who are current or former small business owners, five appointed by the governor and two each appointed by the speaker of the house of representatives and the president pro tempore of the senate. Each member shall be from a different geographic region of the state. Members shall serve two-year terms. A member shall not serve more than three consecutive terms. Members shall name the chairperson of the commission. The commission shall meet at the call of the chairperson. A majority of the members constitutes a quorum for the conduct of business. Members are entitled to per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

B. The commission is administratively attached to the economic development department, and staff for the commission shall be provided by the department.

C. The commission may:

(1) provide state agencies with input regarding proposed rules that may adversely affect small business;

(2) consider requests from small business owners to review rules adopted by an agency;

(3) review rules promulgated by an agency to determine whether a rule places an unnecessary burden on small business and make recommendations to the agency to mitigate the adverse effects; and

(4) provide an annual evaluation report to the governor and the legislature, including recommendations and evaluations of agencies regarding regulatory fairness for small businesses.

D. The commission does not have authority to:

(1) interfere with, modify, prevent or delay an agency or administrative enforcement action;

(2) intervene in legal actions; or

(3) subpoena witnesses to testify or to produce documents, but it may request witnesses to voluntarily testify or produce documents.

History: Laws 2005, ch. 244, § 5.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 244, § 7 made Laws 2005, ch. 244, § 5 effective July 1, 2005.

14-4A-6. Periodic review of rules.

A. By July 1, 2010, each agency shall have reviewed all of its rules that existed on the effective date of the Small Business Regulatory Relief Act to determine whether the rules should be continued without change or should be amended or repealed to minimize the economic impact of the rules on small businesses, subject to compliance with the stated objectives of the laws pursuant to which the rules were adopted.

B. Rules adopted and promulgated after the effective date of the Small Business Regulatory Relief Act shall be reviewed every five years to ensure that they continue to minimize economic impacts on small businesses while implementing the state objectives of the laws pursuant to which the rules were adopted.

C. In reviewing its rules to minimize economic impacts on small businesses, an agency shall consider the following factors:

(1) continued need for the rule;

(2) the nature of complaints or comments received from the public concerning the rule;

(3) the complexity of the rule;

(4) the extent to which the rule overlaps, duplicates or conflicts with other federal, state and local government rules; and

(5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions or other factors have changed in the topical area affected by the rule.

History: Laws 2005, ch. 244, § 6.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 244, § 7 made Laws 2005, ch. 244, § 6 effective July 1, 2005.

ARTICLE 5
Public Records Recovery

14-5-1. Short title.

This act [14-5-1 to 14-5-10 NMSA 1978] may be cited as the "Public Records Recovery Act".

History: 1953 Comp., § 71-8-1, enacted by Laws 1973, ch. 270, § 1.

14-5-2. Definitions.

As used in the Public Records Recovery Act:

A. "public officer" means any officer or employee of the legislative, executive or judicial departments of the state or any of its agencies, and any officer or employee of any of the political subdivisions of the state, who is the official custodian of any public record or class of public records; and

B. "public record" means all instruments and documents duly recorded in the records of the county clerk, district court or probate court, which affect interest in real property.

History: 1953 Comp., § 71-8-2, enacted by Laws 1973, ch. 270, § 2.

14-5-3. Recovery authorized.

Any public officer is authorized to recover public records and to duplicate copies of them in the possession of any private party.

History: 1953 Comp., § 71-8-3, enacted by Laws 1973, ch. 270, § 3.

14-5-4. Method of recovery.

Upon determining that a particular public record is not in the hands of the official custodian of such record and upon forming a reasonable belief that those records or copies of them are in the possession of a private party or parties, the public officer shall send a postage prepaid, certified letter, return receipt requested, to the party believed to be in possession of the records or copies of them, making demand for the production of the record if he has it and if he does not have it, any copy of the record. The letter shall:

A. name with particularity the record, the original or copy of which is believed to be in the possession of the private party;

B. allege that the public record is not in the hands of the official custodian of the record;

C. state the grounds on which the public officer believes that the private party is in possession of the public record or a copy of it; and

D. demand that within thirty days of the receipt of the letter, the recipient shall appear at a time and place stated in the letter, bringing the named public record or if the demand is for a copy, the copy with him.

History: 1953 Comp., § 71-8-4, enacted by Laws 1973, ch. 270, § 4.

14-5-5. Return of public record.

If the recipient of the public officer's letter complies with the demand and produces the document or documents, the public officer:

A. shall determine if the document produced is a missing record or a copy of a missing record; and

B. then shall duplicate the document and return the private party's document to him if it is a copy, or if it is the original public record, give the private party a copy and keep the original public record.

History: 1953 Comp., § 71-8-5, enacted by Laws 1973, ch. 270, § 5.

14-5-6. Refusal to appear and produce document; procedure.

If within thirty days of the receipt of the letter, the recipient fails to appear or fails to produce the requested document or documents without showing cause, the public officer making the demand shall apply to the district court in the judicial district where the documents are allegedly located for an order compelling production of the documents for recovery or copying as provided above.

A. The application shall:

(1) name with particularity the record, the original or copy of which is believed to be in the possession of the third party;

(2) allege that the public record is not in the hands of the official custodian of the record;

(3) state the grounds upon which the public officer believes that the private party is in possession of the public record or copies of it; and

(4) state, by affidavit or otherwise, that due demand as required by the Public Records Recovery Act has been made and that the private party or parties have either failed or refused to produce the document or documents.

B. The application shall be docketed in the district court as a civil proceeding and shall proceed as a civil suit under the rules of civil procedure of the district courts.

History: 1953 Comp., § 71-8-6, enacted by Laws 1973, ch. 270, § 6.

14-5-7. District court findings and orders.

If the district court finds that the petition of the public officer is true and that the named document or documents are in the possession of the named party or parties, the court shall order that the document or documents be turned over for recovery or duplication as required in Subsection B [D] of Section 4 [14-5-4 NMSA 1978] of the Public Records Recovery Act.

History: 1953 Comp., § 71-8-7, enacted by Laws 1973, ch. 270, § 7.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

The reference to Subsection B of Section 4 of the Public Records Recovery Act probably should be to Subsection D of that section, 14-5-4 NMSA 1978.

14-5-8. Replacement of recovered document.

Records recovered by any public officer or duplicated by the public officer pursuant to the Public Records Recovery Act shall immediately be returned to the official custodian entitled to possession of the record. Prior to replacing the recovered documents, the public officer shall attach a certificate to each of them in a manner that it cannot be removed without destruction of the document stating the date on which the documents were recovered and the name of the person who had possession of the original or copy, the statement under oath of the person who had possession as to the authenticity of the original or copy, and if possible attesting to the belief of the public officer that the recovered documents are previously missing public records, or true copies of them.

History: 1953 Comp., § 71-8-8, enacted by Laws 1973, ch. 270, § 8.

14-5-9. Effect of replacement of recovered document.

Nothing in the Public Records Recovery Act shall be construed to enlarge the rights of a person claiming an interest in real property under a document recovered under the terms of that act, or to make any conclusive presumptions as to the authenticity of the recovered documents.

History: 1953 Comp., § 71-8-9, enacted by Laws 1973, ch. 270, § 9.

14-5-10. Alternative method.

The remedies provided in this act [14-5-1 to 14-5-10 NMSA 1978] are in addition to and not in lieu of any remedies contained in Section 14-3-16 NMSA 1978 or any other statute relating to the recovery of public records.

History: 1953 Comp., § 71-8-10, enacted by Laws 1973, ch. 270, § 10.

ARTICLE 6
Health and Hospital Records

14-6-1. Health information; confidentiality; immunity from liability for furnishing.

A. All health information that relates to and identifies specific individuals as patients is strictly confidential and shall not be a matter of public record or accessible to the public even though the information is in the custody of or contained in the records of a governmental agency or its agent, a state educational institution, a duly organized state or county association of licensed physicians or dentists, a licensed health facility or staff committees of such facilities.

B. A custodian of information classified as confidential in Subsection A may furnish the information upon request to a governmental agency or its agent, a state educational institution, a duly organized state or county association of licensed physicians or dentists, a licensed health facility or staff committees of such facilities, and the custodian furnishing the information shall not be liable for damages to any person for having furnished the information.

C. Statistical studies and research reports based upon confidential information may be published or furnished to the public, but these studies and reports shall not in any way identify individual patients directly or indirectly nor in any way violate the privileged or confidential nature of the relationship and communications between practitioner and patient.

D. This section does not affect the status of original medical records of individual patients and the rules of confidentiality and accessibility applicable to these records continue in force. This section does not affect the status of vital statistical records of the health and environment department.

History: 1953 Comp., § 12-18-1, enacted by Laws 1971, ch. 137, § 1, and recompiled as 1953 Comp., § 12-25-6, by Laws 1972, ch. 51, § 9; 1977, ch. 253, § 37.

ANNOTATIONS

Compiler's notes. — Laws 1991, ch. 25, § 16 repealed former 9-7-4 NMSA 1978, relating to the health and environment department, referred to in this section, and enacted a new 9-7-4 NMSA 1978, which created the department of health. Laws 1991, ch. 25, § 4 created the department of environment.

Cross references. — For use of medical records by medical review commission, *see* 41-5-15, 41-5-16 NMSA 1978.

Law reviews. — For article, "Disclosure of Medical Information - Criminal Prosecution of Medicaid Fraud in New Mexico," see 9 N.M. L. Rev. 321 (1979).

For note, "Evidence: Protecting Privileged Information – A New Procedure for Resolving Claims of the Physician-Patient Privilege in New Mexico – Pina v. Espinoza", see 32 N.M. L. Rev. 453 (2002).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 81 Am. Jur. 2d Witnesses §§ 262 et seq., 417, 434.

Physician-patient privilege as extending to patient's medical or hospital records, 10 A.L.R.4th 552.

97 C.J.S. Witnesses §§ 293 to 314.

14-6-2. Hospital records; retention.

A. Unless provided otherwise in this section, a hospital shall retain and preserve all records directly relating to the care and treatment of a patient for a period of ten years following the last discharge of the patient. Retention and preservation of such records in microfilm or other photographically reproduced form shall be deemed compliance with this subsection and such reproduced and retained copies shall be deemed originals for the purposes of the rules of evidence promulgated by the supreme court of New Mexico.

B. Laboratory test records and reports may be destroyed one year after the date of the test recorded or reported therein provided that one copy is placed in the patient's record. If a copy of the laboratory test records and reports is not placed in the patient's record, they may not be destroyed for a period of four years from the date of the test recorded or reported.

C. X-ray films may be destroyed four years after the date of exposure, if there are in the hospital record written findings of a radiologist who has read such x-ray films. At any time after the third year after the date of exposure, and upon proper identification, the patient may recover his own x-ray films as may be retained pursuant to this section. Such written radiological findings shall be retained as provided in Subsection A of this section.

D. At any time after the retention periods specified in Subsections A, B and C of this section, the hospital may, without thereby incurring liability, destroy such records, by burning, shredding or other effective method in keeping with the confidential nature of their contents; provided, however, that destruction of such records must be in the ordinary course of business and no record shall be destroyed on an individual basis.

E. For the purposes of this section, "hospital" means an institution for the reception and care of the ill or infirm which is licensed by the health and social services department [department of health].

History: 1953 Comp., § 12-34-24, enacted by Laws 1977, ch. 371, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1977, ch. 253, § 5, abolished the health and social services department, and Laws 1977, ch. 253, § 4, established the health and environment department under former 9-7-4 NMSA 1978. Laws 1991, ch. 25, § 16 repealed former 9-7-4 NMSA 1978 and enacted a new 9-7-4 NMSA 1978, which created the department of health.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Medical malpractice: presumption or inference from failure of hospital or doctor to produce relevant medical records, 69 A.L.R.4th 906.

14-6-3. Access to medical records by applicants for disability benefits; violations.

A. Within thirty days of receiving a request from a patient or former patient who is applying for benefits based on social security disability or who is appealing a denial of such benefits or from an authorized representative of such a patient or former patient, a health care provider shall furnish the requestor with a copy of that patient's medical records. A fee as established by the department of health, may be charged by the health care provider to the requestor for the copies or for the service in obtaining the records.

B. A request made pursuant to Subsection A of this section shall include a statement or document from the agency that administers the benefits that confirms the application or appeal.

C. As used in this section:

(1) "health care provider" means a person who is licensed, certified or otherwise authorized by law to provide or render health care in the ordinary course of

business or practice of a profession and includes a facility employing, or contracting with, such a person; and

(2) "medical records" means information in a medical or mental health patient file, including drug or alcohol treatment records, medical reports, clinical notes, nurses' notes, history of injury, subjective and objective complaints, test contents and results, interpretations of tests, reports and summaries of interpretations of tests and other reports, diagnoses and prognoses, bills, invoices, referral requests, consultative reports and reports of services requested by the health care provider.

D. Nothing in this section shall be interpreted to grant access for a patient or patient's representative to medical records that are otherwise protected by law.

E. The department of health shall enforce the provisions of this section and may impose a civil penalty in an amount not to exceed one hundred dollars ($100) for a violation of this section. The department may promulgate rules necessary for the implementation and enforcement of the provisions of this section, including a fee schedule by obtaining records as provided in Subsection A of this section for a patient who has a financial ability to pay.

History: Laws 1999, ch. 206, § 1.

ARTICLE 7
Financial Institution Records

14-7-1. Requiring notice of intent to gain access to records of financial institutions.

A. At least seven days prior to a state agency, board or commission requesting or gaining access to or copies of the records of a person, corporation, company or organization maintained by a bank, savings and loan association, small loan company or other similar financial institution, the agency, board or commission shall notify by certified or registered mail the person, corporation, company or other organization of its intent to gain access or acquire such records.

B. The requirement of notice set forth in Subsection A of this section shall not apply to the audit of, compliance monitoring of or preparation of reports concerning any bank, savings and loan association, small loan company or other similar financial institution by a state agency, when conducted pursuant to the agency's statutory directive.

C. The provisions of Subsection A of this section shall not apply to requests for records made pursuant to an administrative subpoena. In such instances, at least twenty-four hours' notice shall be given to the person, corporation, company or organization.

History: 1953 Comp., § 48-10-13, enacted by Laws 1977, ch. 291, § 1; 2007, ch. 86, § 1.

ANNOTATIONS

The 2007 amendment, effective November 1, 2007, provided that the notice requirement does not apply to compliance monitoring or preparation of reports concerning financial institutions by a state agency.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73 C.J.S. Public Administrative Law and Procedure §§ 77 to 79, 82, 83.

14-7-2. Requirements of state agencies, boards and commissions prior to access to a financial institution's records.

A. Prior to a state agency, board or commission receiving access to or copies of the records of a person, corporation, company or organization maintained by a bank, savings and loan association, small loan company or other similar financial institution, the agency, board or commission shall:

(1) allow the institution forty-eight hours to comply with an administrative subpoena;

(2) allow the institution to provide authenticated copies of original records rather than the original copies in response to an administrative subpoena; and

(3) pay the institution the reasonable cost of production of such records including both the cost of materials and wages.

B. The provisions of Subsection A of this section shall not apply to the audit of any bank, savings and loan association, small loan company or other similar financial institution by a state agency when conducted pursuant to the agency's statutory directive.

History: 1953 Comp., § 48-10-14, enacted by Laws 1977, ch. 337, § 1.

ARTICLE 8
Recording

14-8-1. County clerks to be recorders.

The county clerks of the different counties of this state shall be ex officio recorders in their respective counties.

History: Laws 1855-1856, p. 18, § 1; C.L. 1865, ch. 88, § 1; C.L. 1884, § 429; C.L. 1897, § 776; Code 1915, § 4779; C.S. 1929, § 118-101; 1941 Comp., § 13-101; 1953 Comp., § 71-1-1; 2011, ch. 134, § 4.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The 1915 Code compilers substituted "county clerks" for "clerks of the probate courts," apparently to correspond with N.M. Const., art. VI, § 22, providing that the county clerk shall act as probate clerk until otherwise provided by law.

The 2011 amendment, effective July 1, 2011, made a stylistic change.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 66 Am. Jur. 2d Records and Recording Laws §§ 81, 83.

76 C.J.S. Records § 9 et seq.

14-8-2. County clerk; duty as recorder.

It is the duty of the county clerk to maintain permanently all documents that by law should be recorded.

History: Laws 1855-1856, p. 18, § 2; C.L. 1865, ch. 88, § 2; C.L. 1884, § 430; C.L. 1897, § 777; Code 1915, § 4780; C.S. 1929, § 118-102; 1941 Comp., § 13-102; 1953 Comp., § 71-1-2; 2011, ch. 134, § 5.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For durability of records, *see* 14-8-7, 14-8-8 NMSA 1978.

The 2011 amendment, effective July 1, 2011, required county clerks to maintain permanent records of documents that by law should be recorded.

Applicability to boundary commission orders. — No specific language in the statutes regarding filing of boundary commission orders concerning annexation (Section 3-7-15(E) or 3-7-16(A) NMSA 1978) brings either statute within the requirement of recordation contained in Section 14-8-2; "filing" — used in the former statutes — and "recording" as those terms as known to the law are not synonymous. *Town of Hurley v. N.M. Mun. Boundary Comm'n*, 1980-NMSC-083, 94 N.M. 606, 614 P.2d 18.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 66 Am. Jur. 2d Records and Recording Laws §§ 84 to 86, 132, 133.

76 C.J.S. Records § 9 et seq.

14-8-3. Recording books.

When used in Chapter 14, Articles 1 through 5 and 8 through 10 NMSA 1978, "book" includes microfilm and digitized documents.

History: 1953 Comp., § 71-1-2.1, enacted by Laws 1963, ch. 52, § 1; 2011, ch. 134, § 6.

ANNOTATIONS

Cross references. — For microfilming of records, *see* 14-1-4 to 14-1-6 NMSA 1978.

For provisions relating to reproduction on film under the Public Records Act, *see* 14-3-15 NMSA 1978.

The 2011 amendment, effective July 1, 2011, included digitized documents in the definition of "book".

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.

B. For purposes of this section, "acknowledged" means notarized by a person empowered to perform notarial acts pursuant to the Notary Public Act [14-12A-1 to 14-12A-26 NMSA 1978] or the Uniform Law on Notarial Acts [14-14-1 to 14-14-11 NMSA 1978].

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 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;

(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 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.

F. Any filing or recording permitted or required under the provisions of the Uniform Commercial Code [Chapter 55 NMSA 1978] need not comply with the requirements of this section.

G. Instruments acknowledged on behalf of a corporation need not have the corporation's seal affixed thereto in order to be filed and recorded.

History: Laws 1901, ch. 62, § 18; Code 1915, § 4795; C.S. 1929, § 118-119; 1941 Comp., § 13-103; 1953 Comp., § 71-1-3; Laws 1961, ch. 96, § 11-118; 1967, ch. 10, § 1; 1981, ch. 219, § 1; 2011, ch. 134, § 7; 2013, ch. 214, § 3; 2019, ch. 130, § 1.

ANNOTATIONS

Cross references. — For notary publics and validation of certain prior acknowledgments, *see* 14-13-13 to 14-13-25 NMSA 1978.

For short forms of acknowledgment, *see* 14-14-8 NMSA 1978.

The 2019 amendment, effective July 1, 2019, provided that when a duplicate of an original instrument of writing is filed and recorded with the county clerk, the duplicate instrument must be accompanied by an affidavit executed in accordance with this section, and provided that the filing of a duplicate shall not incur a fee in addition to any fee charged for filing an original instrument; in the section heading, after "exceptions", added "recording of duplicates"; in Subsection A, after "Any", added "original", and after "provided in this section.", deleted "A duplicate of an instrument of writing duly acknowledged may be filed and recorded to the same extent as the original."; added new Subsections D and E and redesignated former Subsections D and E as Subsections F and G, respectively.

The 2013 amendment, effective June 14, 2013, changed the types of documents that must be acknowledged before being filed and recorded; in Subsection A, in the second sentence, after "though so entered", added the remainder of the sentence and added the third sentence; in Subsection C, in the introductory sentence, deleted "Notwithstanding Subsection A of this section"; deleted former Paragraph (4) of Subsection C, which permitted mining location notices to be filed without an acknowledgement; and added Paragraphs (5) through (7) of Subsection C.

The 2011 amendment, effective July 1, 2011, in Subsection B, defined "acknowledged"; and in Subsection C, listed certain documents that do not have to be acknowledged.

I. GENERAL CONSIDERATION.

Taking acknowledgment ministerial duty. — The duties performed by an officer in taking an acknowledgment in this state are ministerial in character rather than judicial. *Garcia v. Leal*, 1924-NMSC-078, 30 N.M. 249, 231 P. 631.

Necessity for acknowledgment. — Laws 1874, ch. 14 (now superseded by § 14-13-13), cured defective acknowledgments to deeds made prior to January 8, 1874, but did not supply the want nor obviate the necessity of an acknowledgment as between the parties to the deed. *Armijo v. N.M. Town Co.*, 1885-NMSC-026, 3 N.M. (Gild.) 427, 5 P. 709. *See* note to 14-13-13 NMSA 1978.

This section does not require deeds to be acknowledged except for recordation and for the protection of the grantee against subsequent purchasers in good faith and without notice. *Garcia v. Leal*, 1924-NMSC-078, 30 N.M. 249, 231 P. 631.

An acknowledgment of a deed, or other writing, affecting real estate, by the party whose real estate is affected, in the manner established by statute, is a necessary prerequisite to its being recorded. *McBee v. O'Connell*, 1911-NMSC-049, 16 N.M. 469, 120 P. 734; appeal after remand, 1914-NMSC-088, 19 N.M. 565, 145 P. 123.

Although acknowledgment is not essential to validity of conveyance as between parties, without it the instrument may not be admitted to record. *Kitchen v. Canavan*, 1932-NMSC-037, 36 N.M. 273, 13 P.2d 877.

Acknowledgment not part of instrument. — Although an acknowledgment is required before an instrument may be filed, in the absence of a statute so providing, an acknowledgment is not a part of an instrument and is not necessary to its validity. *Garrett Bldg. Centers, Inc. v. Hale*, 1981-NMSC-009, 95 N.M. 450, 623 P.2d 570; *Germany v. Murdock*, 1983-NMSC-041, 99 N.M. 679, 662 P.2d 1346.

Bankruptcy plans. — The recording statute does not prohibit the district court from considering bankruptcy plans that are approved by the bankruptcy court when assessing the amenity rights of affected property owners. *Home & Land Owners, Inc. v. Angel Fire Resort Operations, L.L.C.*, 2003-NMCA-070, 133 N.M. 733, 69 P.3d 243.

Section does not govern admissibility. — This section addresses the filing and recording of documents and does not govern the admissibility of documents in a court of law. *Home & Land Owners, Inc. v. Angel Fire Resort Operations, L.L.C.*, 2003-NMCA-070, 133 N.M. 733, 69 P.3d 243.

Constructive notice of easement. — Deeds and contract granting easement across land owned by defendants, which were properly acknowledged, certified and recorded (§ 14-8-4), were therefore constructive notice to defendants and the public of their contents (§ 14-8-6). *Germany v. Murdock*, 1983-NMSC-041, 99 N.M. 679, 662 P.2d 1346.

II. UNACKNOWLEDGED INSTRUMENTS.

Absent valid acknowledgment, instrument may not be treated as recorded. *New Mexico Properties, Inc. v. Lennox Indus., Inc.*, 1980-NMSC-087, 95 N.M. 64, 618 P.2d 1228; *F & S Co. v. Gentry*, 1985-NMSC-065, 103 N.M. 54, 702 P.2d 999.

Effect of unacknowledged deed. — Where there is a quitclaim deed not attested to by a notary public, this section only prevents the recording of the deed and does not make it void. The general rule is that an unacknowledged deed is binding between the parties thereto, their heirs and representatives and persons having actual notice of the instrument. *Baker v. Baker*, 1977-NMSC-006, 90 N.M. 38, 559 P.2d 415.

Unacknowledged mortgage gives no constructive notice. — An unacknowledged mortgage is not entitled to record and gives no constructive notice. *Vorenberg v. Bosserman*, 1913-NMSC-005, 17 N.M. 433, 130 P. 438.

Restrictive covenants not effective. — Since the instrument purporting to establish the subdivision covenants tendered for filing on June 5, 1978 was not properly acknowledged and did not comply with the requirements of the statute, it was ineffective to establish restrictive covenants against the subdivision which ran with the land. *Pollock v. Ramirez*, 1994-NMCA-011, 117 N.M. 187, 870 P.2d 149.

Developer's declaration of covenants was legally ineffective to establish restrictive covenants that run with the land because it was not acknowledged before a notary public. *Cyprus Gardens, Ltd. v. Platt*, 1998-NMCA-007, 124 N.M. 472, 952 P.2d 467.

Constructive notice not found. — Because the covenants sought to be imposed did not comply with the requirements of this section and the covenants were recorded subsequent to the conveyance to the decedents, constructive notice of the existence of valid covenants cannot properly be implied. *Pollock v. Ramirez*, 1994-NMCA-011, 117 N.M. 187, 870 P.2d 149.

Recorded and filed lien, lacking acknowledgment, valid and binding. — A valid materialmen's lien which lacked an acknowledgment, but had been filed and recorded, was valid and binding as between the parties to an action on the lien. *Garrett Bldg. Centers, Inc. v. Hale*, 1981-NMSC-009, 95 N.M. 450, 623 P.2d 570.

III. VALIDITY OF ACKNOWLEDGMENT.

Acknowledgment when signature made by mark. — A deed executed by using the hand of a person to make his mark thereon at the place of signature is void where the grantor does not consciously assent to the signature so made, nor afterwards ratify the same, and a certificate of acknowledgment placed thereon under such circumstances does not operate to render such conveyance valid. *Garcia v. Leal*, 1924-NMSC-078, 30 N.M. 249, 231 P. 631.

Certificate of acknowledgment is not conclusive and may be contested. *Garcia v. Leal*, 1924-NMSC-078, 30 N.M. 249, 231 P. 631.

Certificate of acknowledgment should be impeached by only clear and convincing evidence. — A certificate of acknowledgment duly executed as required by law is prima facie evidence of the execution of the instrument it acknowledges, and

should be impeached only by clear and convincing evidence. *Garcia v. Leal*, 1924-NMSC-078, 30 N.M. 249, 231 P. 631.

Conflicting evidence. — Where evidence for plaintiff to the effect that a deed had not been consciously executed by the grantor and that the notary's certificate of acknowledgment thereon was false, if believed by the trial court, is clear and convincing, a judgment setting aside such deed will not be disturbed on appeal, although evidence on behalf of defendants may be in direct conflict therewith. *Garcia v. Leal*, 1924-NMSC-078, 30 N.M. 249, 231 P. 631.

Generally. — Under the wording of this section, it is provided that any instrument of writing which is not duly acknowledged and certified is not entitled to be filed and recorded, nor considered of record, though so entered, unless expressly excepted under the terms of such statute. 1962 Op. Att'y Gen. No. 62-01.

Death certificates. — County clerks could not issue certified copies of death certificates pursuant to this section so that persons may avoid the higher fees charged for the issuance of certificates by the vital statistics bureau. 1988 Op. Att'y Gen. No. 88-01.

Instruments filed pursuant to provisions of Uniform Commercial Code not required to be acknowledged. — In keeping with the declared purpose of the Uniform Commercial Code (Chapter 55 NMSA 1978) to simplify, clarify and modernize the law governing commercial transactions, and the rule of construction that the Code shall be liberally construed and applied so as to promote its underlying purposes and policies, such instruments as are filed pursuant to the provisions of the Uniform Commercial Code are not required to be acknowledged as a prerequisite to being filed with the county clerks. 1962 Op. Att'y Gen. No. 62-01 (opinion rendered prior to 1967 amendment adding second proviso to section).

Law reviews. — For article, "Attachment in New Mexico - Part I," see 1 Nat. Resources J. 303 (1961).

For annual survey of New Mexico law relating to property, see 12 N.M.L. Rev. 459 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1 Am. Jur. 2d Acknowledgment §§ 4, 60 et seq.; 66 Am. Jur. 2d Records and Recording Laws § 77.

Sufficiency of certificate of acknowledgment, 25 A.L.R.2d 1124.

Record of instrument without acknowledgment or insufficiently acknowledged as notice, 59 A.L.R.2d 1299.

1A C.J.S. Acknowledgments § 7; 76 C.J.S. Records § 9 et seq.

14-8-5. [Mining location notices; recording.]

All recordings of unacknowledged mining location notices and amended or additional notices made pursuant to Sections 69-3-1, 69-3-2, 69-3-12 or 69-3-21 [repealed] NMSA 1978, and the record thereof in the office of the county clerk, are hereby confirmed and made valid, the provisions of Section 14-8-4 NMSA 1978 notwithstanding; provided, however, existing or intervening rights of others are not affected. Hereafter, such notices need not be acknowledged but may be filed, recorded and considered of record if properly signed by the locator.

History: 1953 Comp., § 71-1-3.1, enacted by Laws 1971, ch. 202, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1981, ch. 310, § 7 repealed 69-3-21 NMSA 1978, effective May 20, 1981.

14-8-6. County clerks; to endorse and record land titles; notice.

When any land title or other document is delivered to the county clerk to be recorded, it is the clerk's duty to endorse immediately on that document or other paper the day, month and year in which the clerk received it, and the clerk shall record it in the book of record as soon as possible. The documents, from the date on which they were delivered to the county clerk, shall be considered as recorded, and this shall be sufficient notice to the public of the contents thereof.

History: Laws 1855-1856, p. 18, § 3; C.L. 1865, ch. 88, § 3; C.L. 1884, § 431; C.L. 1897, § 778; Code 1915, § 4781; C.S. 1929, § 118-103; 1941 Comp., § 13-104; 1953 Comp., § 71-1-4; 2011, ch. 134, § 8.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For recording assignment of royalties, *see* 70-1-1, 70-1-2 NMSA 1978.

The 2011 amendment, effective July 1, 2011, made stylistic changes.

Endorsement on boundary survey plant. — A potential conflict between Section 14-8-6 NMSA 1978, which imposes a duty to "endorse immediately" and to record "as soon as possible," Section 14-8-2 NMSA 1978, which limits the duty to only those documents that are recordable, and Section 47-6-6 NMSA 1978, which imposes an unqualified duty

not to accept an unapproved subdivision plat for filing can be harmonized by treating a Section 14-8-6 NMSA 1978 endorsement on a boundary survey plat merely as a conditional acceptance, pending review to confirm that the plat does not reflect a subdivision of land within the meaning of the New Mexico Subdivision Act. *Valdez v. Vigil*, 2007-NMCA-031, 141 N.M. 316, 154 P.3d 691

Constructive notice of easement. — Deeds and contract granting easement across land owned by defendants, which were properly acknowledged, certified and recorded (Section 14-8-4 NMSA 1978), were constructive notice to defendants and the public of their contents (Section 14-8-6 NMSA 1978). *Germany v. Murdock*, 1983-NMSC-041, 99 N.M. 679, 662 P.2d 1346.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Priority where senior instrument is recorded after execution but before recording of junior instrument, 32 A.L.R. 344.

Withdrawal of paper after delivery to proper officer as affecting question whether it is filed, 37 A.L.R. 670.

Use of diminutive or nickname as affecting operation or record as notice, 45 A.L.R. 557.

Effect of neglect or fault of recording or filing officer, 70 A.L.R. 595.

Necessity of recording appointment of substitute for trustee under deed of trust securing bonds, 98 A.L.R. 1159.

Improper insertion or omission of middle initial of one's name as affecting constructive notice from public records, 122 A.L.R. 909.

Fraudulent misrepresentation or concealment, public records as constructive notice of, so as to start running of statute of limitations against action for fraud, 152 A.L.R. 461.

Record of instrument which comprises or includes an interest or right that is not proper subject of record, 3 A.L.R.2d 577.

Reformation of instruments as against third persons, record of incorrect instrument as notice of intended contents, 79 A.L.R.2d 1180.

Recorded real property instrument as charging third party with constructive notice of provisions of extrinsic instrument referred to therein, 89 A.L.R.3d 901.

76 C.J.S. Records § 9 et seq.

14-8-7. Standards; durability requirements.

It is the duty of county clerks in this state in recording all instruments of writing that by law they are required to record to do so by a method that ensures permanency and

durability. The county clerk of each county in the state shall provide, at the expense of the clerk's respective county, such books or technology as may be necessary and suitable in which to record notices, affidavits and other documents.

History: Laws 1923, ch. 114, § 1; C.S. 1929, § 118-114; 1941 Comp., § 13-105; 1953 Comp., § 71-1-5; 2011, ch. 134, § 9.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For protection of records, *see* 14-3-13 NMSA 1978.

For provision that recording books include microfilm, *see* 14-8-3 NMSA 1978.

The 2011 amendment, effective July 1, 2011, required county clerks to use a method of recording that ensures the permanency and durability of recorded instruments.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Photostatic or other method of recording instrument, 57 A.L.R. 159.

Mutilations, alterations, and deletions as affecting admissibility in evidence of public record, 28 A.L.R.2d 1443.

76 C.J.S. Records 9 et seq.

14-8-8. Repealed.

History: Laws 1923, ch. 114, § 2; C.S. 1929, § 118-115; 1941 Comp., § 13-106; 1953 Comp., § 71-1-6; repealed by Laws 2011, ch. 134, § 24.

ANNOTATIONS

Repeals. — Laws 2011, ch. 134, § 24 repealed 14-8-8 NMSA 1978, as enacted by Laws 1923, ch. 114, § 2, relating to noncompliance with durability requirements and penalties, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

14-8-9. Security of books of record; delivery to successors.

It is the duty of the county clerks to keep their books of record well secured, and when they leave office as clerks, they shall deliver them complete to their successors, including all necessary keys, combinations and passwords.

History: Laws 1855-1856, p. 18, § 4; C.L. 1865, ch. 88, § 4; C.L. 1884, § 432; C.L. 1897, § 779; Code 1915, § 4782; C.S. 1929, § 118-104; 1941 Comp., § 13-107; 1953 Comp., § 71-1-7; 2011, ch. 134, § 10.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, required county clerks to deliver keys, combinations and passwords to their successors.

14-8-9.1. Public records; inspection; exceptions.

A. Except as provided in this section, all documents filed and recorded in the office of the county clerk are public records.

B. The county clerk shall publicly post in the office of the county clerk and on the county's web page a notice that documents recorded in the office of the county clerk are public records, subject to inspection and disclosure.

C. Before purchasing or digitizing of documents by third parties, protected personal identifier information, as defined in the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978], shall be redacted.

D. Documents containing health information that relates to and identifies specific individuals as patients are exempt as a public record pursuant to Section 14-6-1 NMSA 1978.

E. Discharge papers of a veteran of the armed forces of the United States recorded in the office of the county clerk shall be segregated from public records in the office of the county clerk. Discharge papers recorded before July 1, 2005 that have been commingled with public records and that remain unsegregated are available for inspection in the office of the county clerk but shall not be purchased, copied or digitized by any third party, except by those persons authorized in this section. As the technology becomes available, county clerks shall segregate commingled discharge papers from the public records in the office of the county clerk. Discharge papers recorded in the office of the county clerk are available only to:

(1) the veteran who filed the papers;

(2) the veteran's next of kin;

(3) the deceased veteran's properly appointed personal representative or executor;

(4) a person holding the veteran's general power of attorney; or

(5) a person designated by the veteran in an acknowledged statement to receive the records.

F. Death certificates that have been recorded in the office of the county clerk may be inspected, but shall not be purchased, copied or digitized by any third party unless fifty years have elapsed after the date of death. Death certificates and other vital records recorded in the office of the county clerk are exempt from the restrictions contained in Subsection A of Section 24-14-27 NMSA 1978. The act of recording a death certificate in the office of the county clerk is considered a convenience; provided that no person shall be required to record a death certificate in the office of the county clerk to effect change of title or interest in property.

History: Laws 2011, ch. 134, § 21; 2017, ch. 87, § 3.

ANNOTATIONS

The 2017 amendment, effective June, 16, 2017, removed a reference to the Inspection of Public Records Act, and removed the requirement that certain information on death certificates be redacted before the death certificate may be purchased, copied or digitized by a third party; in Subsection A, after "public records", deleted "subject to disclosure pursuant to the Inspection of Public Records Act"; in Subsection C, after "Before", deleted "digitizing or", and after "purchasing", added "or digitizing"; in Subsection E, after "shall not be", deleted "copied, digitized or", and after "purchased", added "copied or digitized"; and in Subsection F, after "but shall not be", deleted "copied, digitized", after "purchased", added "copied or digitized", and after "the date of death", deleted "and the cause of death and any other medical information contained on the death certificate is redacted, in addition to redaction of protected personal identifier information".

14-8-10. County clerks; failure to perform duties as recorder.

For failure to comply with the responsibilities and duties in Chapter 14, Article 8 NMSA 1978, each county clerk is responsible on the clerk's official bond for damages suffered by the injured party.

History: Laws 1855-1856, p. 18, § 5; C.L. 1865, ch. 88, § 5; C.L. 1884, § 433; C.L. 1897, § 780; Code 1915, § 4783; C.S. 1929, § 118-105; 1941 Comp., § 13-108; 1953 Comp., § 71-1-8; Laws 1965, ch. 97, § 1; 2011, ch. 134, § 11.

ANNOTATIONS

Cross references. — For provision requiring fees to be paid in advance of filing or recording, *see* 14-8-15 NMSA 1978.

The 2011 amendment, effective July 1, 2011, eliminated the former list of recording fees.

Fee for certificate and seal controlling. — This section is controlling and in direct conflict with 14-8-13 NMSA 1978, and the fee which it sets out for each certificate and seal to documents recorded is the proper fee to be charged by county clerks. 1967 Op. Att'y Gen. No. 67-53.

County clerks must charge for certified copies of public records requested by the American Red Cross. 1943 Op. Att'y Gen. No. 43-4221.

14-8-11. Repealed.

History: Laws 1939, ch. 179, § 1; 1941 Comp., § 13-109; 1953 Comp., § 71-1-9; 1978 Comp., § 14-8-11, repealed by Laws 2011, ch. 134, § 24.

ANNOTATIONS

Repeals. — Laws 2011, ch. 134, § 24 repealed 14-8-11 NMSA 1978, as enacted by Laws 1939, ch. 179, § 1, relating to standard form of instruments, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

14-8-12. Repealed.

History: Laws 1939, ch. 179, § 2; 1941 Comp., § 13-110; Laws 1941, ch. 22, § 1; 1953 Comp., § 71-1-10; Laws 1953, ch. 51, § 1; 1955, ch. 213, § 1; 1957, ch. 95, § 1; 1959, ch. 253, § 2; 1977, ch. 179, § 5; 1979, ch. 185, § 1; 1980, ch. 48, § 1; 1985, ch. 122, § 1; 1978 Comp., § 14-2-12, repealed by Laws 2008, ch. 66, § 3.

ANNOTATIONS

Repeals. — Laws 2008, ch. 66, § 3 repealed 14-8-12 NMSA 1978, as enacted by Laws 1939, ch. 179, § 2, relating to recording fees when instrument was not photocopied, effective May 14, 2008. For provisions of former section, *see* the 2007 NMSA 1978 on *NMOneSource.com.*

14-8-12.1. Temporary provision; validation.

Any instrument received for recording after June 16, 1977 and before the effective date of this act and which would have been validly filed but for the provisions of Laws 1979, Chapter 185, Section 1, Subsection D or Laws 1977, Chapter 179, Section 5, Subsection D shall be conclusively presumed to have been validly filed on the date received for recording.

History: Laws 1980, ch. 48, § 2.

ANNOTATIONS

Compiler's notes. — The phrase "effective date of the act" means February 28, 1980, the effective date of Laws 1980, Chapter 48.

Laws 1979, ch. 185, § 1, Subsection D, and Laws 1977, ch. 179, § 5, Subsection D, both referred to in this section, both amended 14-8-12D NMSA 1978, which was deleted by Laws 1985, ch. 122, § 1.

Cross references. — For effect of filing for record, *see* 14-9-4 NMSA 1978.

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 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;

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

(4) for staff travel associated with all regular duties of the county clerk's office pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

History: 1978 Comp., § 14-8-12.2, enacted by Laws 1985, ch. 122, § 2; 1987, ch. 288, § 1; 1994, ch. 28, § 1; 1995, ch. 26, § 1; 2002, ch. 97, § 1; 2008, ch. 66, § 1; 2011, ch. 134, § 12; 2019, ch. 130, § 2.

ANNOTATIONS

The 2019 amendment, effective July 1, 2019, removed an allowed expenditure from the county clerk recording and filing fund; and in Subsection C, deleted Paragraph C(2) and redesignated former Paragraphs C(3) through C(5) as Paragraphs C(2) through C(4), respectively.

The 2011 amendment, effective July 1, 2011, eliminated the former list of recording fees and authorized payment of staff travel from the county clerk recording and filing fund.

The 2008 amendment, effective May 14, 2008, in Subsection C, deleted the former limitation on expenditures of the county clerk recording and filing fund and added Subsection E.

The 2002 amendment, effective May 15, 2002, in the last sentence of Subsection B, raised the maximum equipment recording fee and deleted an exception for class A counties.

The 1995 amendment, effective June 16, 1995, in the second sentence of Subsection C, inserted "rent" and "lease or lease-purchase" and added the language beginning "and for staff" at the end of the sentence.

The 1994 amendment, effective May 18, 1994, designated the previously undesignated language as Subsection A, added Subsections B to D and made minor stylistic changes.

The 1987 amendment, effective June 19, 1987, increased the fees from three dollars and one dollar to five dollars and two dollars respectively, and added "of the same instrument" at the end of the section.

14-8-12.3. Repealed.

History: 1978 Comp., § 14-8-12.3, enacted by Laws 1985, ch. 122, § 3; 1987, ch. 288, § 2; 2008, ch. 66, § 2; repealed by Laws 2011, ch. 134, § 24.

ANNOTATIONS

Repeals. — Laws 2011, ch. 134, § 24 repealed 14-8-12.3 NMSA 1978, as enacted by Laws 1985, ch. 122, § 3, relating to recording fees and assignments or releases of interest in property, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

14-8-12.4. Repealed.

History: 1978 Comp., § 14-8-12.4, enacted by Laws 1985, ch. 122, § 4; repealed by Laws 2011, ch. 134, § 24.

ANNOTATIONS

Repeals. — Laws 2011, ch. 134, § 24 repealed 14-8-12.4 NMSA 1978, as enacted by Laws 1985, ch. 122, § 4, relating to recording fees, more than two acknowledgments, more than two hundred words and when number of words is in excess of standard form,

effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

14-8-13. [Fees; copying records; issuing licenses; acknowledgments.]

The county clerk shall be allowed the following fees: for recording letters testamentary or of administration, one dollar [($1.00)]; for filing the bond of the executor or administrator, fifty cents [($.50)]; for order appointing guardian or curator, twelve and one-half cents [($.125)]; for filing and preserving bond of guardian or curator, fifty cents [($.50)]; for every order of publication, twenty-five cents [($.25)]; for every order relating to executors, administrators or guardians, not otherwise provided for, twelve and one-half cents [($.125)]; for copying any order, record or paper, for every one hundred words, ten cents [($.10)]; for entering any judgment and verdict, twelve and one-half cents [($.125)]; for proof of every will and codicil taken by the probate judge, twenty-five cents [($.25)]; for every certificate and seal, twenty-five cents [($.25)]; for issuing every subpoena, twenty-five cents [($.25)]; for administering every oath, three cents [($.03)]; for keeping abstracts of demands, for each defendant, three cents [($.03)]; for certifying the amount, date and classes of any demand, without seal, five cents [($.05)]; for entering every motion or rule, five cents [($.05)]; for swearing and entering a jury, twenty-five cents [($.25)]; for entering every trial, five cents [($.05)]; for a commission to take depositions, twenty-five cents [($.25)]; for every execution, fifty cents [($.50)]; for every continuance of a cause, five cents [($.05)]; for entering an appeal, twelve and one-half cents [($.125)]; for every writ to summon a jury, twelve and one-half cents [($.125)]; for every order to distribute effects among heirs, etc., twelve and one-half cents [($.125)]; for every settlement of executor, administrator or guardian, whether annual or final, twenty-five cents [($.25)]; for every order appointing road overseers, twenty-five cents [($.25)]; for filing and preserving constable's bond, to be paid for by the constable, twenty-five cents [($.25)]; for all services in filing, taking and safekeeping the collectors' bonds for territorial taxes, to be paid by the territory, one dollar [($1.00)]; for like services for collectors' bonds for county taxes, to be paid by the territory and county, each for its own, for every one hundred words, ten cents [($.10)]; for issuing any license, to be paid for by the applicant, fifty cents [($.50)]; for taking, filing and safekeeping of every other bond not otherwise provided for, fifty cents [($.50)]; for issuing each writ, and receiving, filing and docketing the return, fifty cents [($.50)]; for taking every acknowledgment to a deed or writing, twenty-five cents [($.25.)].

History: Kearny Code, Fees, § 2; C.L. 1865, ch. 46, § 2; C.L. 1884, § 1251; C.L. 1897, § 1768; Code 1915, § 1240; C.S. 1929, § 33-4306; 1941 Comp., § 13-111; 1953 Comp., § 71-1-11.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — Many of the provisions in this section appear to be superseded by other statutes. *See* 34-7-14 to 34-7-16 NMSA 1978.

Cross references. — For payment of fees before filing or recording, *see* 14-8-15 NMSA 1978.

Section held determinative of proper charges. — Where probate clerk died in 1906 while in process of making transcripts of property records of old county for use of new county, the compensation to which his estate was entitled was fixed by this section, and not by the subsequently enacted Laws 1907, ch. 28 (4-33-16 NMSA 1978), which imposed additional duties to be done which were not done by the decedent. *Summers v. Board of Cnty. Comm'rs*, 1910-NMSC-025, 15 N.M. 376, 110 P. 509.

The provision applicable to certificate and seal conflicts with 14-8-10 NMSA 1978. Both sections were reenacted in the 1865 Code and became effective the same day. See note below from 1967 Op. Att'y Gen. No. 67-53.

Prior to statehood, this section referred to the probate clerk who was also ex-officio recorder. See compiler's note to 14-8-1 NMSA 1978.

Not controlling as to fee for certificate and seal. — Section 14-8-10 NMSA 1978 is controlling over this section, and the fee which it sets out for each certificate and seal to documents recorded is the proper fee to be charged by county clerks. 1967 Op. Att'y Gen. No. 67-53.

County clerk is not under any legal duty to conduct searches at request of private persons of records filed in such office pursuant to the Uniform Commercial Code, Chapter 55 NMSA 1978, and no statutory fee is provided for such service. 1962 Op. Att'y Gen. No. 62-20.

Section 14-8-12 NMSA 1978 and this section relate to specifically enumerated fees which county clerks are legally entitled to charge, but such statutes do not provide for conducting searches of county records upon request of an individual for possible liens or encumbrances under the name of any debtor. 1962 Op. Att'y Gen. No. 62-20.

14-8-14. Searching records; reproduction of records; fees.

A. Records maintained in the office of the county clerk are available to be searched without charge during regular business hours.

B. County clerks:

(1) may charge reasonable fees for conducting searches and for reproducing or permitting reproduction of their records as well as for certifying documents;

(2) shall not charge fees in excess of one dollar ($1.00) per page for documents eleven inches by seventeen inches in size or smaller;

(3) may require advance payment of fees before making copies of public records;

(4) shall not charge a fee for the cost of determining whether any public record is subject to disclosure; and

(5) shall provide a receipt, upon request.

C. County clerks shall establish reasonable fees for conducting searches and for reproducing or copying records maintained at the office of the county clerk.

History: Laws 1886-1887, ch. 10, § 6; C.L. 1897, § 3958; Code 1915, § 4785; C.S. 1929, § 118-107; 1941 Comp., § 13-112; 1953 Comp., § 71-1-12; 2011, ch. 134, § 13.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For delivery of certified copies by county clerk, *see* 4-40-5 NMSA 1978.

The 2011 amendment, effective July 1, 2011, rewrote this section to permit county clerks to charge fees for conducting searches and reproducing records.

Recording Act governs real property records request. — Where plaintiff corporation sought all of Lea county's real property image and index records, the production provisions of the Recording Act, 14-8-1 to -17 NMSA 1978, rather than those of the Inspection of Public Records Act (IPRA), 14-2-1 to -12 NMSA 1978, governed the county's obligation in responding to plaintiff's records request, because IPRA creates a records inspection scheme of general application granting, with various exceptions, a right to inspect public records of this state, and the Recording Act more specifically provides a mechanism by which prospective purchasers can examine real property records, and places on county clerks associated duties to make these records available and searchable for the public. *TexasFile LLC v. Board of Cty. Comm'rs of Lea Cty.*, 2019-NMCA-038, cert. denied.

No electronic production requirement in the Recording Act. — Where plaintiff corporation filed a complaint alleging that Lea county's fee demand for electronic copies of real property records was unreasonable based on "reasonable fee" provisions appearing in the Inspection of Public Records Act, 14-2-1 to -12 NMSA 1978, and the Recording Act, 14-8-1 to -17 NMSA 1978, and where plaintiff requested a declaratory judgment declaring the county's quoted fees unreasonable as a matter of law, the

district court did not err in dismissing plaintiff's complaint for failure to state a claim upon which relief could be granted, because the Recording Act, as the more specific statute, governed the county's production obligation with respect to plaintiff's record request, and the Recording Act imposes no requirement on the county to produce its documents electronically. *TexasFile LLC v. Board of Cty. Comm'rs of Lea Cty.*, 2019-NMCA-038, cert. denied.

Certificates of nonencumbrance as to state lands. — For each certificate of nonencumbrance, required by commissioner of public lands, as to state lands, the county clerk was entitled to a fee of 25 cents, and five cents for each year for which search was made. 1915-16 Op. Att'y Gen. 49.

14-8-15. Payment of fees; disposition.

A. No county clerk shall receive any instrument of writing for filing or record unless the fees for such filing and recording have first been paid.

B. Unless otherwise specified by law, the county clerk shall collect a recording fee of twenty-five dollars ($25.00) for each document filed or recorded by the county clerk.

C. If a document being filed or recorded contains more than ten entries to the county recording index, the county clerk shall collect an additional fee of twenty-five dollars ($25.00) for each additional block of ten or fewer entries to the county recording index from the document.

D. To the extent documents described in Section 14-8-13 NMSA 1978 are filed or recorded in the office of the county clerk, the documents shall be received pursuant to the fees described in this section.

E. For each fee of twenty-five dollars ($25.00) collected by the county clerk pursuant to this section, eighteen dollars ($18.00) shall be deposited in the county general fund and seven dollars ($7.00) shall be deposited in the county clerk recording and filing fund.

History: Laws 1901, ch. 62, § 19; 1909, ch. 49, § 1; Code 1915, § 4797; C.S. 1929, § 118-121; 1941 Comp., § 13-113; 1953 Comp., § 71-1-13; 2011, ch. 134, § 14.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For deduction from salary for failure to collect fees to be paid in advance, see 4-44-29 NMSA 1978.

The 2011 amendment, effective July 1, 2011, imposed fees for recording documents.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 66 Am. Jur. 2d Records and Recording Laws § 80.

76 C.J.S. Records § 19 et seq.

14-8-15.1. Repealed.

History: Laws 2011, ch. 134, § 22; repealed by Laws 2019, ch. 130, § 4.

ANNOTATIONS

Repeals. — Laws 2019, ch. 130, § 4 repealed 14-8-15.1 NMSA 1978, as enacted by Laws 2011, ch. 134, § 22, relating to payment of fees, in-person filings, disposition, effective July 1, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com.*

14-8-16. Filings of legal descriptions and plats of real property authorized; recording.

A. A person owning real property that is subject to property taxation under the Property Tax Code [Chapter 7, Articles 35 through 38 NMSA 1978] may file for record in the office of the county clerk of the county where the real property is located a legal description or a plat of the real property. The legal description or plat shall be acknowledged and shall be certified by a professional surveyor licensed in the state.

B. The United States, the state or its political subdivisions and any agency, department or instrumentality of the United States, the state or its political subdivisions may file for record in the office of the county clerk of the county where the real property is located a legal description or a plat of real property. The legal description or plat shall be acknowledged and shall be certified by a professional surveyor licensed in the state and shall show the governmental agency, department or political subdivision under whose supervision and direction the description or plat was prepared.

C. The county clerk shall number descriptions filed under this section consecutively and shall number plats filed under this section consecutively. Immediately upon receiving a description or plat for filing, the county clerk shall note on the instrument the filing number, the date and the time of filing and shall make proper entries in the reception book and in the index to general real estate records.

D. The county clerk shall record all descriptions and plats in the same manner as other similar instruments affecting real property are recorded. The county clerk shall charge a fee as provided for in Section 14-8-15 NMSA 1978 for recording documents in the office of the county clerk.

E. If the county clerk has the appropriate technology, the clerk shall record the plat electronically, return the original to the person who submitted the plat and forward an

electronic copy to the county assessor. Otherwise, all plats to be recorded shall be filed in duplicate with the county clerk. One copy shall be recorded by the county clerk, and one copy shall be delivered by the county clerk to the county assessor.

History: 1953 Comp., § 71-1-14, enacted by Laws 1973, ch. 258, § 150; 1989, ch. 106, § 1; 1994, ch. 28, § 2; 1995, ch. 26, § 2; 2002, ch. 97, § 2; 2011, ch. 134, § 15.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, required legal descriptions and plats to be acknowledged; eliminated the former list of fees for recording legal descriptions and plats and imposed the fees provided in Section 14-8-15 NMSA 1978; and required county clerks to record plats electronically if the technology is available.

The 2002 amendment, effective May 15, 2002, in the last sentence of Subsection E, raised the maximum equipment recording fee and deleted an exception for class A counties.

The 1995 amendment, effective June 16, 1995, in the second sentence of Subsection F, inserted "rent" and "lease or lease-purchase" and added the language beginning "and for staff" at the end of the sentence.

The 1994 amendment, effective May 18, 1994, substituted "shall" for "must" throughout the second sentences in Subsections A and B, inserted Subsections E to G, and redesignated former Subsection E as Subsection H.

The 1989 amendment, effective June 16, 1989, substituted "certified by a professional surveyor licensed in the state" for "certified as being correct by a professional engineer or land surveyor licensed in the state and the certification must be properly acknowledged" in the second sentence of Subsections A and B.

14-8-17. Documents recorded without cost.

The county clerk shall record free of charge:

A. oaths of public office made pursuant to Article 20, Section 1 of the constitution of New Mexico;

B. the discharge papers of any person who was accepted for service and served in the armed forces of the United States for thirty days or more;

C. notices of state tax liens filed by the taxation and revenue department pursuant to Section 7-1-38 NMSA 1978;

D. tax delinquency lists filed by the county treasurer pursuant to Section 7-38-61 NMSA 1978;

E. notices and warrants issued by the secretary of workforce solutions for defaults on payments to the unemployment compensation administration fund filed pursuant to Section 51-1-36 NMSA 1978; and

F. a claim of lien under oath of the state engineer, artesian well supervisor or an officer of an artesian conservancy district filed pursuant to Section 72-13-8 NMSA 1978.

History: Laws 1921, ch. 61, § 1; C.S. 1929, § 122-401; 1941, ch. 103, § 1; 1941 Comp., § 66-1501; 1953 Comp., § 74-2-1; 1987, ch. 217, § 1; 1978 Comp., § 28-13-16 recompiled as § 14-8-17 by Laws 2004, ch. 19, § 31; 2011, ch. 134, § 16; 2013, ch. 214, § 4.

ANNOTATIONS

Recompilations. — Laws 2004, ch. 19, § 31 recompiled former 28-13-16 NMSA 1978 as 14-8-17 NMSA 1978.

The 2013 amendment, effective June 14, 2013, required that state tax liens be filed; and added Subsection C.

The 2011 amendment, effective July 1, 2011, required county clerks to record free of charge oaths of public office, tax delinquency lists, notices and warrants issued by the secretary of the workforce solutions department for defaults on payments to the unemployment compensation administration, and claims of lien of the state engineer, artesian well supervisor or officer of an artesian conservancy district.

ARTICLE 9
Records Affecting Real Property

14-9-1. Instruments affecting real estate; recording.

All deeds, mortgages, leases of an initial term plus option terms in excess of five years, or memoranda of the material terms of such leases, assignments or amendments to such leases, leasehold mortgages, United States patents and other writings affecting the title to real estate shall be recorded in the office of the county clerk of the county or counties in which the real estate affected thereby is situated. Leases of any term or memoranda of the material terms thereof, assignments or amendments thereto may be recorded in the manner provided in this section. As used in this section, "memoranda of the material terms of a lease" means a memorandum containing the names and mailing addresses of all lessors, lessees or assignees; if known, a description of the real property subject to the lease; and the terms of the lease, including the initial term and the term or terms of all renewal options, if any.

History: Laws 1886-1887, ch. 10, § 1; C.L. 1897, § 3953; Code 1915, § 4786; C.S. 1929, § 118-108; 1941 Comp., § 13-201; 1953 Comp., § 71-2-1; 1991, ch. 234, § 1.

ANNOTATIONS

Compiler's notes. — Laws 1991, ch. 234, § 4 defined "leasehold" to mean an estate in real estate or real property held under a lease and validates as correct and legally effective filings or recordings to give constructive notice any actions taken prior to April 4, 1991 to file or record leases, memoranda, assignments or amendments thereto, leasehold mortgages or other writings affecting leaseholds or any interests in leaseholds in accordance with legal requirements for the filing or recording of writings affecting the title to real estate or real property.

Cross references. — For filing municipal assessment liens, *see* 3-36-1 NMSA 1978.

For notice of possession of public land of United States, *see* 19-3-1 NMSA 1978.

For townsite patents, *see* 19-4-1 to 19-4-3 NMSA 1978.

For recording assignment of mortgages, *see* 48-7-2 NMSA 1978.

For record of survey requirements, *see* 61-23-28.2 NMSA 1978.

For filing and recording of changes of ownership in water rights, *see* 72-1-2.1.

The 1991 amendment, effective April 4, 1991, added the catchline; inserted "leases of an initial term plus option terms in excess of five years, or memoranda of the material terms of such leases, assignments or amendments to such leases, leasehold mortgages" in the first sentence; and added the second sentence.

I. GENERAL CONSIDERATION.

Purpose. — Sections 14-9-1 and 14-9-3 NMSA 1978 are not intended to protect creditors of the owners of property, but to impart information to those dealing with the property respecting its transfer and encumbrances. *First Nat'l Bank v. Haverkampf*, 1911-NMSC-053, 16 N.M. 497, 121 P. 31, *aff'd*, 235 U.S. 689, 35 S. Ct. 204, 59 L. Ed. 426 (1914); *Ilfeld v. de Baca*, 1905-NMSC-007, 13 N.M. 32, 79 P. 723, *rev'd on other grounds*, 1907-NMSC-014, 14 N.M. 65, 89 P. 244 (decided prior to 1923 amendment of 14-9-3 NMSA 1978).

Function of recording statutes. — In loans of money secured by property, recording statutes provide for notice to other potential lenders and indicate the upper limits of financing. *New Mexico Bank & Trust Co. v. Lucas Bros.*, 1978-NMSC-062, 92 N.M. 2, 582 P.2d 379.

Certainty afforded by recording. — Because potential lenders rely upon recorded mortgages to determine whether to make other loans, there must be certainty as to the extent to which a mortgage encumbers property. *New Mexico Bank & Trust Co. v.*

Lucas Bros., 1978-NMSC-062, 92 N.M. 2, 582 P.2d 379 (decided on facts which occurred prior to passage of 48-7-9 NMSA 1978).

No time requirement for recording instruments. — There is no requirement that an instrument be recorded within a particular period of time; the order in which deeds appear on the record is not important in a notice jurisdiction. *Angle v. Slayton*, 1985-NMSC-032, 102 N.M. 521, 697 P.2d 940.

II. APPLICABILITY TO PARTICULAR INSTRUMENTS.

The recording act applies to tax deeds. The recording act does not apply to tax liens. *Cano v. Lovato*, 1986-NMCA-043, 105 N.M. 522, 734 P.2d 762, cert. denied, 104 N.M. 246, 716 P.2d 1267, cert. quashed, 105 N.M. 438, 733 P.2d 1321 (1987).

The recording act does not apply to tax liens. *Cano v. Lovato*, 1986-NMCA-043, 105 N.M. 522, 734 P.2d 762, cert. denied, 104 N.M. 246, 716 P.2d 1267, cert. quashed, 105 N.M. 438, 733 P.2d 1321 (1987).

Provisions applicable to Mexican land grants. — This article applies to Mexican land grants. *Yeast v. Pru*, 292 F. 598 (D.N.M. 1923).

Provisions applicable to mortgages. — Mortgages affecting real estate are governed by this section. *Shafer v. McCulloh*, 1934-NMSC-012, 38 N.M. 179, 29 P.2d 486.

Provisions not applicable to assignments of mortgages. — Sections 14-9-1 to 14-9-3 NMSA 1978 do not require the recordation of an assignment of a mortgage securing the payment of a negotiable promissory note, to protect the holder from payments made by the mortgagor, or subsequent purchaser, to the original mortgagee. *Hayden v. Speakman*, 1914-NMSC-077, 20 N.M. 513, 150 P. 292.

Assignment of unrecorded land contract. — The assignment of an unrecorded land contract, which assignment was neither acknowledged nor proven in any form to entitle it to be recorded, is not such an instrument as this section requires to be placed of record. *Early Times Distillery Co. v. Zeiger*, 1902-NMSC-001, 11 N.M. 221, 67 P. 734.

Executory contracts entitled to record. — An executory contract of sale of real estate, when duly executed and acknowledged, is a writing entitled to record. *McBee v. O'Connell*, 1911-NMSC-049, 16 N.M. 469, 120 P. 734, appeal after remand 1914-NMSC-088, 19 N.M. 565, 145 P. 123

Applicability to revocable trusts. — The protection afforded by the New Mexico recording acts is inapplicable to a revocable trust that does not affect the title to the original property. *Withers v. Board of Cnty. Comm'rs*, 1981-NMCA-032, 96 N.M. 71, 628 P.2d 316.

Restrictive covenant running with the land shall be enforced. — Where venture company owned 116 acres of property and split the property into four tracts, imposing identical restrictive covenants upon each tract when it was sold that prohibited each tract from being divided into parcels of less than five acres and that specifically stated that the restrictive covenant ran with the land, and where defendants purchased a five-acre parcel within one of the four tracts and sold two and one-half acres of their five-acre parcel, the district court did not err in enforcing the restrictive covenant on behalf of adjacent landowners, because a restrictive covenant that runs with the land binds the covenantor's successors in interest and applying the general rule that covenants burdening land sold under a general plan of restriction can be enforced by one landowner against another within a subdivision. *Cobb v. Gammon*, 2017-NMCA-022.

Law reviews. — For article, "Survey of New Mexico Law, 1979-80: Property," see 11 N.M. L. Rev. 203 (1981).

For annual survey of New Mexico Law of Property, see 20 N.M.L. Rev. 373 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 66 Am. Jur. 2d Records and Recording Laws §§ 1, 54 to 68, 73.

Covenant or easement affecting another parcel owned by grantor, record of deed or contract for conveyance of one parcel with, as constructive notice to subsequent purchaser or encumbrance of second parcel, 16 A.L.R. 1013.

Rights as between purchaser of timber under recorded instrument and subsequent vendee of land, 18 A.L.R. 1162.

Effect of failure to record executory contracts for sale of real estate, 26 A.L.R. 1552.

Grantee or mortgagee by quitclaim deed or mortgage in quitclaim form as within protection of recording laws, 59 A.L.R. 632.

Effect of actual notice of unrecorded instrument to purchaser from one without notice, 63 A.L.R. 1367.

Recovery of tax or assessment paid to procure recording of deed, 64 A.L.R. 117, 84 A.L.R. 294.

Right of one claiming through heir, devisee, or personal representative to protection against unrecorded conveyance or mortgagor by ancestor or testator, 65 A.L.R. 360.

Necessity of recording tax deed to protect title as against interest derived from former owner, 65 A.L.R. 1015.

Alteration in deed or mortgage with consent of parties thereto after acknowledgment or attestation as affecting notice from record thereof, 67 A.L.R. 366.

Right to compensation for improvements as affected by constructive notice by record of true title or interest, 68 A.L.R. 288, 82 A.L.R. 921.

Subrogation to prior lien of one who advances money to discharge it and takes new mortgage as affected by recording of intervening lien, 70 A.L.R. 1407.

Assignment of future rents as within recording laws, 75 A.L.R. 270.

Necessity of recording extension of mortgage or deed of trust by subsequent agreement to cover additional indebtedness, 76 A.L.R. 589.

Registration as notice to creditor of fraudulent conveyance, which will start running of limitation, 76 A.L.R. 869, 100 A.L.R.2d 1094.

Bankruptcy as invalidating, as against all creditors, instrument executed by bankrupt which under state law is valid as to creditors becoming such after record but invalid as to creditors prior to record, 76 A.L.R. 1200.

Title lost by failure to record as cloud on title, 78 A.L.R. 116.

Rights of vendee under executory land contract not recorded as against subsequent deed or mortgage by vendor, 87 A.L.R. 1515.

Right of seller of fixtures retaining title thereto, or a lien thereon, as against prior mortgagee of realty as affected by record of the mortgage, 88 A.L.R. 1335, 111 A.L.R. 362, 141 A.L.R. 1283.

Recording laws as applied to assignment of mortgages on real estate, 89 A.L.R. 171, 104 A.L.R. 1301.

Right of executor or administrator of insolvent estate to take advantage of failure to record or file or refile conveyance or mortgage executed by his decedent, 91 A.L.R. 299.

Who may take advantage of failure to renew real estate mortgage as provided by statute, 97 A.L.R. 739.

Nonpayment of all or part of consideration at time of receiving notice, actual or constructive, of a prior instrument, as affecting right of one otherwise protected by recording law against prior unrecorded deed or mortgage, 109 A.L.R. 163.

Validity of statute requiring recordation of tax certificate within designated time, 111 A.L.R. 258.

Recording of life tenant's deed purporting to convey fee as rendering vendee's possession adverse to remainderman during life estate, 112 A.L.R. 1047.

Power of attorney under which deed or mortgage is executed, as instrument entitled to record, 114 A.L.R. 660.

Fraudulent misrepresentation or concealment, public records as constructive notice of, so as to start running of statute of limitations against action for fraud, 152 A.L.R. 461.

Restrictions in lessor's record title as to use of premises as affecting rights between lessee and lessor, 165 A.L.R. 1178.

Purchase-money mortgage as within provision of statute defeating or postponing lien of unrecorded or unfiled mortgage, 168 A.L.R. 1164.

Statutes precluding enforcement of mortgage unless holder complies with conditions respecting recording of amount remaining unpaid, 174 A.L.R. 652.

Record of instrument which comprises or includes an interest or right that is not a proper subject of record, 3 A.L.R.2d 577.

Omission from deed of restrictive covenant imposed by general plan of subdivision, 4 A.L.R.2d 1364.

Agreement between real estate owners restricting use of property as within contemplation of recording laws, 4 A.L.R.2d 1419.

Validity and construction of regulations as to subdivision maps or plats, 11 A.L.R.2d 524.

Relative rights to real property as between purchasers from or through decedent's heirs and devisees under will subsequently sought to be established, 22 A.L.R.2d 1107.

Personal covenant in recorded deed as enforceable against grantee's lessee or successor, 23 A.L.R.2d 520.

Effect of recording instrument on determination of its character as a will or deed, 31 A.L.R.2d 532.

Adverse possession by one claiming under or through deed by cotenant as affected by record of deed, 32 A.L.R.2d 1214.

Necessity that mortgage covering oil and gas lease be recorded as real estate mortgage, and/or filed or recorded as chattel mortgage, 34 A.L.R.2d 902.

What acts, claims, circumstances, instruments, color of title, judgment, or thing of record will ground adverse possession in a life tenant as against remaindermen or reversioners, 58 A.L.R.2d 299.

Record of instrument without sufficient acknowledgment as notice, 59 A.L.R.2d 1299.

Solid mineral royalty as real or personal property, 68 A.L.R.2d 728.

Priority as between mechanic's lien and purchase-money mortgage as affected by recording, 73 A.L.R.2d 1407.

Record of deed to cotenant as notice to other cotenants of adverse character of grantee's possession, 82 A.L.R.2d 5.

Trustee's duty to record mortgage securing bondholders, 90 A.L.R.2d 501.

Construction and effect of "marketable record title" statutes, 31 A.L.R.4th 11.

Oil and gas royalty as real or personal property, 56 A.L.R.4th 539.

26 C.J.S. Deeds § 73; 59 C.J.S. Mortgages § 201.

14-9-2. [Constructive notice of contents.]

Such records shall be notice to all the world of the existence and contents of the instruments so recorded from the time of recording.

History: Laws 1886-1887, ch. 10, § 2; C.L. 1897, § 3954; Code 1915, § 4787; C.S. 1929, § 118-109; 1941 Comp., § 13-202; 1953 Comp., § 71-2-2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For recording assignment of royalties, *see* 70-1-1, 70-1-2 NMSA 1978.

I. GENERAL CONSIDERATION.

False or void instruments. — Only valid instruments are authorized to be filed or recorded, of which purchasers are charged with notice and if a false or void instrument purporting upon its face to be conveyance is recorded, the record, like the instrument, is void and does not protect a purchaser. *Mosley v. Magnolia Petroleum Co.*, 1941-NMSC-028, 45 N.M. 230, 114 P.2d 740.

Purpose. — Sections 14-9-1 and 14-9-3 NMSA 1978 are not intended to protect creditors of the owners of property, but to impart information to those dealing with the property respecting its transfer and encumbrances. *First Nat'l Bank v. Haverkampf*, 1911-NMSC-053, 16 N.M. 497, 121 P. 31, *aff'd*, 235 U.S. 689, 35 S. Ct. 204, 59 L. Ed.

426 (1914); *Ilfeld v. de Baca*, 1905-NMSC-007, 13 N.M. 32, 79 P. 723, *rev'd on other grounds*, 1907-NMSC-014, 14 N.M. 65, 89 P. 244 (decided prior to 1923 amendment of 14-9-3 NMSA 1978).

A deed recorded in a county where the property is not located is ineffective as constructive notice. *Christmas v. Cowden*, 1940-NMSC-051, 44 N.M. 517, 105 P.2d 484.

Seller under real estate contract holds perfected interest in property by virtue of recording his interest pursuant to this article. *Connelly v. Wertz*, 1993-NMCA-090, 115 N.M. 803, 858 P.2d 1282, *overruled on other grounds*, *Southwest Land Inv., Inc. v. Hubbart*, 1993-NMSC-072, 116 N.M. 742, 867 P.2d 412.

All documents affecting title to real property recorded in county records are constructive notice to the world of their existence from the time of recordation. *Brown v. Behles & Davis*, 2004-NMCA-028, 135 N.M. 180, 86 P.3d 605.

No time requirement for recording instruments. — There is no requirement that an instrument be recorded within a particular period of time; the order in which deeds appear on the record is not important in a notice jurisdiction. *Angle v. Slayton*, 1985-NMSC-032, 102 N.M. 521, 697 P.2d 940.

Construed in pari materia. — This section must be considered with 14-9-3 NMSA 1978, with which it is in pari materia. *Romero v. Sanchez*, 1971-NMSC-129, 83 N.M. 358, 492 P.2d 140.

Necessity of notice. — To bind a purchaser of a servient estate by a servitude charged thereon, he must have notice thereof, either actual or constructive, as in case of other encumbrances upon land. *Southern Union Gas Co. v. Cantrell*, 1952-NMSC-024, 56 N.M. 184, 241 P.2d 1209.

Service by publication against "unknown claimants of interest" in quiet title action does not affect the title of a person whose deed to that property is on record in the deed records of the county in which the real estate in question is located. *Houchen v. Hubbell*, 1969-NMSC-162, 80 N.M. 764, 461 P.2d 413.

Constructive service proper where names and addresses of defendants are not reasonably ascertainable. — In a collateral attack on a 1948 quiet title judgment in San Juan county, in which service of process was accomplished by publication in a weekly newspaper, and where the plaintiffs in the 1948 complaint alleged that after diligent search and inquiry, they had been unable to learn or determine the names, places of residence, addresses and whereabouts of any unknown heirs of any deceased defendants or if any defendants were still living and residing in New Mexico, they could not be located because they had secreted themselves so that personal service of process could not be effected, and where the return of service completed by the sheriff of San Juan county indicated that after diligent search and inquiry, any

predecessors-in-interest could not be located and personally served with process, the district court correctly found that the suit in this case constituted an improper collateral attack on the 1948 judgment quieting title in defendants' predecessors-in-interest, because constructive notice given in the underlying case was sufficiently reasonably calculated under the circumstances as they existed in 1948; constructive service of process by publication satisfies due process if the names and addresses of the defendants to be served are not reasonably ascertainable. *T.H. McElvain Oil & Gas Ltd. P'ship v. Benson-Montin-Greer Drilling Corp.*, 2017-NMSC-004, *rev'g* 2015-NMCA-004, 340 P.3d 1277.

Lack of notice. — This section does not impose a duty upon the owner of an interest in real property to constantly peruse the records of the county clerk to determine whether he or she has been divested of his or her property right in a lawsuit of which he or she was not notified. *T.H. McElvain Oil & Gas Ltd. P'ship v. Benson-Montin-Greer Drilling Corp.*, 2015-NMCA-004, cert. granted, 2014-NMCERT-012.

Quiet title action. — In quiet title action, where defendants failed to undertake a diligent and good faith effort to personally serve the owners of an interest in real property with adequate notice of quiet title suit, constructive notice was not constitutionally adequate. *T.H. McElvain Oil & Gas Ltd. P'ship v. Benson-Montin-Greer Drilling Corp.*, 2015-NMCA-004, cert. granted, 2014-NMCERT-012.

Appropriations for judicial salaries are subject to governor's veto power. — Judicial salaries must annually be established by the legislature in an appropriations act, as set forth in Subsection E of 34-1-9 NMSA 1978, and are subject to the governor's partial veto authority. *State ex rel. Cisneros v. Martinez*, 2015-NMSC-001.

Governor's partial veto must eliminate the whole of an item to be valid. — Where the legislature provided for two separate judicial raises in two separate appropriations, the governor's partial veto of one appropriation failed to eliminate the second appropriation providing for judicial raises. *State ex rel. Cisneros v. Martinez*, 2015-NMSC-001.

Fraud. — The recording of a deed must be accompanied by other circumstances sufficient to put a reasonable person upon inquiry in order for the recording to act as constructive notice of fraud. *Romero v. Sanchez*, 1971-NMSC-129, 83 N.M. 358, 492 P.2d 140.

Failure to record mortgage promptly does not constitute a fraud in law as to subsequent creditors. *First Nat'l Bank v. Haverkampf*, 1911-NMSC-053, 16 N.M. 497, 121 P. 31, *aff'd*, 235 U.S. 689, 35 S. Ct. 204, 59 L. Ed. 426 (1914).

Date of recording tax sale certificate does not affect period of redemption. *Hiltscher v. Jones*, 1917-NMSC-089, 23 N.M. 674, 170 P. 884, appeal dismissed, 251 U.S. 545, 40 S. Ct. 218, 64 L. Ed. 407 (1920).

Recorded deed of trust was superior to the unrecorded interest of an investor who admitted he had actual notice of the recorded interest, and the existing priorities were not affected by the appointment of a receiver. *Kuntsman v. Guaranteed Equities, Inc.*, 1986-NMSC-083, 105 N.M. 49, 728 P.2d 459.

Estoppel. — Where defendant and her husband had entered into a property settlement agreement which provided that after-acquired property would belong exclusively to the acquiring party and such recorded agreement was later repudiated by defendant in a recorded affidavit, but later ratified and confirmed in another recorded affidavit, plaintiffs, who had purchased property from husband, were innocent purchasers for value and entitled to rely on the record, and defendant was estopped by her conduct from asserting the invalidity of the property settlement. *Allison v. Curtis*, 1957-NMSC-036, 62 N.M. 387, 310 P.2d 1042.

Priority of interests in bankruptcy. — Since priority of interest of competing lienholders is determined by the date of recording under New Mexico's recording statutes (Sections 14-9-1 to 14-9-3 NMSA 1978), the second mortgage on debtor's property, as the only recorded lien of record, had priority over the trustee's interest as unperfected lienholder after avoidance of first mortgage holder's unrecorded and therefore unperfected security interest. *In re Beltramo*, 367 B.R. 825 (Bankr. D.N.M. 2007).

II. PERSONS CHARGED WITH NOTICE.

Land ownership and well-sharing agreement. — Where the owners of adjoining ranches entered into a written land ownership and well-sharing agreement to clarify the ownership of certain property and to provide for sharing of water from two wells; the agreement was recorded in each county in which the land and wells were located; and one landowner sold the landowner's ranch to a third party and orally advised the buyer of the existence of the agreement, the buyer had constructive notice of the agreement and had a duty to inquire about the agreement. *Skeen v. Boyles*, 2009-NMCA-080, 146 N.M. 627, 213 P.3d 531.

Constructive notice of restrictive covenant in deed. — Because a deed containing a restrictive covenant was recorded, the defendant had constructive notice of the covenant. *Lex Pro Corp. v. Snyder Enters., Inc.*, 1983-NMSC-073, 100 N.M. 389, 671 P.2d 637.

Constructive notice in recorded deed of trust. — Pursuant to the policy underlying the recording statutes, Sections 14-9-1 and -2 NMSA 1978, priority in the proceeds of collateral underlying petitioners' loans would be determined by the order in which the deeds of trust were recorded; there was no question that the "master" deed of trust issued to Group I was duly recorded first and that the latter deeds were expressly made subject to it, so the investors in Group II and Group III thus had record notice of the existence of the first deed of trust, in addition to actual notice in some cases. *McInerny v. Peterson*, 1986-NMSC-099, 105 N.M. 207, 730 P.2d 1189.

"All the world" means those bound to search record. — "All the world" has been limited to mean those persons who are bound to search the record, and it is to such persons only that the law imputes constructive notice; subsequent purchasers are charged with such notice. *Angle v. Slayton*, 1985-NMSC-032, 102 N.M. 521, 697 P.2d 940.

Constructive notice to subsequent purchasers. — Subsequent purchasers are charged with such constructive notice of the contents of recorded instruments pursuant to Section 14-9-2 NMSA 1978, since the term "all the world" has been limited to mean persons who are bound to search the record, and it is only these persons that the law imputes with constructive notice. *Allen v. Timberlake Ranch Landowners Ass'n*, 2005-NMCA-115, 138 N.M. 318, 119 P.3d 743.

Constructive notice to laborers. — Claimants had constructive notice that title to the real estate upon which they allegedly performed labor had been previously conveyed to the grantee, where two deeds given to the grantee were both filed and recorded. *In re Estates of Salas*, 1987-NMCA-018, 105 N.M. 472, 734 P.2d 250.

Record of instrument is constructive notice to subsequent purchasers and encumbrancers only and does not affect prior parties. *Romero v. Sanchez*, 1971-NMSC-129, 83 N.M. 358, 492 P.2d 140.

Who bound to search. — Those who, by the terms of the recording laws, are charged with constructive notice of the record of an instrument affecting land are, therefore, those who are bound to search the records for that particular instrument. *Romero v. Sanchez*, 1971-NMSC-129, 83 N.M. 358, 492 P.2d 140.

Jury question. — If, considering all the surrounding facts and circumstances, a reasonably prudent person in the exercise of ordinary diligence would have made inquiry as to the state of the record, he is chargeable with knowledge that such inquiry would have revealed from the time that it ought to have been made. This raises a factual issue for resolution by the trier of the facts. *Romero v. Sanchez*, 1971-NMSC-129, 83 N.M. 358, 492 P.2d 140.

III. SCOPE OF NOTICE.

Scope of notice. — Where information of a specific claim or right is given to a person or to the world by recordation of an instrument manifesting such claim or right, the information contained therein is operative only in respect to the particular facts communicated thereby, and it will not serve to put the parties charged with such notice upon inquiry as to any other or different right. *Zumwalt v. Goodwin*, 133 F.2d 984 (10th Cir. 1943).

"Knowledge" does not necessarily mean "actual knowledge," but means knowledge of such circumstances as would ordinarily lead to a knowledge of the actual facts. In its broadest interpretation, it means constructive notice. Recitals in a quitclaim deed of

existence of agreements, rights of redemption and mortgages charged the grantee with notice of an unrecorded warranty deed. *Taylor v. Hanchett Oil Co.*, 1933-NMSC-099, 37 N.M. 606, 27 P.2d 59.

Person who files and records leases long after others sued to foreclose vendor's lien for balance of the purchase price and filed lis pendens notice in same county clerk's office is deemed to have notice that his interest was attacked in the action, and his interest is inferior to the lien of the vendor. *Logan v. Emro Chem. Corp.*, 1944-NMSC-044, 48 N.M. 368, 151 P.2d 329.

Effect of recording agreement. — Purchaser's written agreement to execute a second mortgage on property when buildings were constructed on the land, or within one year from date of sale, when filed for record, constituted constructive notice to all the world of its existence and contents. *Zumwalt v. Goodwin*, 133 F.2d 984 (10th Cir. 1943).

An agreement as notice of a vendor's lien. — Vendor's recordation of agreement with buyer of vacant land that when buildings were erected or in one year after date of sale buyer was to give vendor a second mortgage on the property did not give constructive notice to a surety on the buyer's note of the vendor's intention to reserve a vendor's lien, and a mortgage executed to the surety to secure his signature to a renewal note had priority over the vendor's lien. *Zumwalt v. Goodwin*, 133 F.2d 984 (10th Cir. 1943).

Recording of short form memorandum of agreement gave notice that defendant was claiming some right to real estate under this section. *Bingaman v. Cook*, 1968-NMSC-187, 79 N.M. 627, 447 P.2d 507.

Reference in contract to improvement agreement. — An unrecorded improvement agreement, referred to in a recorded contract of sale, is in the chain of title. *Camino Real Enters., Inc. v. Ortega*, 1988-NMSC-061, 107 N.M. 387, 758 P.2d 801.

Recorded chattel mortgage of crops to be raised is constructive notice of the existence and contents of the mortgage, even though the land is generally but not particularly described, where description could be aided by reasonable inquiry. *Security State Bank v. Clovis Mill & Elevator Co.*, 1937-NMSC-029, 41 N.M. 341, 68 P.2d 918.

Reliance on record. — An investigator may rely upon the truth of recitals contained in the record when they are specific. *Smith & Ricker v. Hill Bros.*, 1913-NMSC-004, 17 N.M. 415, 134 P. 243.

Priority of claims in bankruptcy. — Pursuant to New Mexico recordation statute (Section 14-9-1 NMSA 1978), the ownership interests of the debtor and his wife as to good faith purchasers and judgment lien creditors were delineated by the recorded deed stating that they owned the subject property as joint tenants. *In re Beery*, 295 B.R. 385 (Bankr. D.N.M. 2003).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 28 Am. Jur. 2d Estoppel and Waiver §§ 90, 96; 66 Am. Jur. 2d Records and Recording Laws §§ 88, 102 to 155; 77 Am. Jur. 2d Vendor and Purchaser §§ 663 to 669.

14-9-3. Unrecorded instruments; effect.

No deed, mortgage or other instrument in writing not recorded in accordance with Section 14-9-1 NMSA 1978 shall affect the title or rights to, in any real estate, of any purchaser, mortgagee in good faith or judgment lien creditor, without knowledge of the existence of such unrecorded instruments. Possession alone based on an unrecorded executory real estate contract shall not be construed against any subsequent purchaser, mortgagee in good faith or judgment lien creditor either to impute knowledge of or to impose the duty to inquire about the possession or the provisions of the instruments.

History: Laws 1886-1887, ch. 10, § 3; C.L. 1897, § 3955; Code 1915, § 4788; Laws 1923, ch. 11, § 1; C.S. 1929, § 118-110; 1941 Comp., § 13-203; 1953 Comp., § 71-2-3; Laws 1990, ch. 72, § 1.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, substituted "Section 14-9-1 NMSA 1978" for "Section 4786" in the first sentence and added the second sentence.

I. GENERAL CONSIDERATION.

Applicability. — This section is applicable only in situations where two deeds purport to convey the same property. *Grammer v. New Mexico Credit Corp.*, 1957-NMSC-018, 62 N.M. 243, 308 P.2d 573.

This section applies to tax deeds. *Cano v. Lovato*, 1986-NMCA-043, 105 N.M. 522, 734 P.2d 762.

Inapplicability to tax liens. — A tax lien is not within the class of written instruments governed by this section. *Cano v. Lovato*, 1986-NMCA-043, 105 N.M. 522, 734 P.2d 762.

Construed in pari materia. — Section 14-9-2 NMSA 1978 must be considered with this section with which it is in pari materia. *Romero v. Sanchez*, 1971-NMSC-129, 83 N.M. 358, 492 P.2d 140.

Applicability to revocable trusts. — The protection afforded by the New Mexico recording acts is inapplicable to a revocable trust that does not affect the title to the original property. *Withers v. Board of Cnty. Comm'rs*, 1981-NMCA-032, 96 N.M. 71, 628 P.2d 316.

Word "purchaser" has two well defined meanings, the common and popular meaning being that he is one who obtains title to real estate in consideration of the payment of money or its equivalent, and the other being technical and including all persons who acquire real estate otherwise than by descent, which includes acquisition by devise, and the word is used in the recording statute in its popular sense. *Arias v. Springer*, 1938-NMSC-025, 42 N.M. 350, 78 P.2d 153; Withers v. Board of Cnty. Comm'rs, 96 N.M. 71, 628 P.2d 316.

Intermittent or occasional use of land is insufficient to operate as notice to a purchaser. *Ortiz v. Jacquez*, 1966-NMSC-243, 77 N.M. 155, 420 P.2d 305.

Any conflict between 40-3-13 NMSA 1978, requiring joinder of spouses, and this section should be resolved in favor of this section which protects the rights of innocent purchasers for value without notice of unrecorded instruments. *Jeffers v. Martinez*, 1979-NMSC-083, 93 N.M. 508, 601 P.2d 1204, appeal after remand, 1982-NMSC-116, 99 N.M. 351, 658 P.2d 426.

Section does not require deeds to be acknowledged. *Garcia v. Leal*, 1924-NMSC-078, 30 N.M. 249, 231 P. 631.

Acknowledgment is not essential to validity of deed of conveyance as between its parties. *Kitchen v. Canavan*, 1932-NMSC-037, 36 N.M. 273, 13 P.2d 877.

Verbal consent to assignment. — A party's verbal consent to an assignment of an interest in a real estate contract is not a substitute for perfection of that interest by recording. *Mazer v. Jones*, 184 B.R. 377 (Bankr. D.N.M. 1995).

Priority of recorded judgment lien. — Although it has been held that the 1923 amendment of this section did not affect the priority of an unrecorded mortgage over a recorded judgment lien, yet as between them taking effect simultaneously, since the law of 1923 took effect, the recorded judgment lien has priority. *Fulghum v. Madrid*, 1927-NMSC-064, 33 N.M. 303, 265 P. 454.

Effect of failure to record. — A deed of land, though not recorded, is good between grantor and grantee, and divests the title of the former, so that it does not pass to a subsequent grantee, or mortgagee, who takes only the estate which belongs to the grantor at the time. *Ames v. Robert*, 1913-NMSC-021, 17 N.M. 609, 131 P. 994.

Requirement tax deeds to be recorded not applicable. — Where a deed issued by state tax commission to an individual conveyed land which had previously been conveyed by the county treasurer to the state in pursuance of a tax sale to the state, the deed from the tax commission is not a tax deed and the requirement that tax deeds must be recorded within a year after their issuance is not applicable thereto. *Hargrove v. Lucas*, 1952-NMSC-043, 56 N.M. 323, 243 P.2d 623.

II. PERSONS PROTECTED.

Effect of correction deeds referencing easement extinguishment agreement. — Where a five-acre tract was burdened by an access easement that benefitted an adjoining twenty-two acre tract; the original owner of both tracts sold the five-acre tract to defendants and on March 5, 2001, the original owner executed an extinguishment agreement terminating the easement across the five-acre tract; the extinguishment agreement provided that it would be effective upon recordation in the county records; two days later, on March 7, defendants recorded the deed to the five-acre tract which described the land as burdened by the easement; the original owner sold the twenty-two acre tract to a third party; on April 25, the third party recorded its deed; on April 30, defendants recorded the extinguishment agreement; the third party was a bona fide purchaser without notice of the extinguishment agreement; two years later, the third party sold the twenty-two acre tract to plaintiff; and at plaintiff's insistence, corrected deeds between the original owner and the third party, and the third party and plaintiff incorporated by reference the extinguishment agreement, the extinguishment agreement was valid when recorded and by correcting its deeds to incorporate the extinguishment agreement, plaintiff forfeited its protection under the recording statutes and its right to the easement across the five-acre tract. *Amethyst Land Co., Inc. v. Terhune*, 2014-NMSC-015, *rev'g* 2013-NMCA-059, 304 P.3d 434.

Failure to promptly record extinguishment of easement. — Where access to plaintiff's 22 acre tract was provided by a forty foot roadway easement on an adjoining five acre tract that was owned by defendants; on February 16, 2001, the common owner of both tracts signed a warranty deed conveying the five acre tract to defendants, expressly subject to the forty foot easement, on March 5, 2001, the common owner signed an extinguishment agreement to terminate the forty foot easement; on March 7, 2001, defendants' warranty deed was recorded; on March 20, 2011, the common owner gave a special warranty deed to the 22 acre tract to plaintiff's predecessor in title which did not mention the forty foot easement or the extinguishment agreement; on April 12, 2001, defendants signed the extinguishment agreement; on April 25, 2001, plaintiff's predecessor recorded the special warranty deed to the 22 acre tract; on April 30, 2001, defendants recorded the extinguishment agreement; two years later, plaintiff acquired the 22 acre tract by quitclaim deed which plaintiff recorded on April 30, 2003; and plaintiff's predecessor did not have actual or inquiry notice of the extinguishment agreement when the predecessor acquired the 22 acre tract, plaintiff's predecessor was a bona fide purchaser without notice of the extinguishment agreement and acquired title to the 22 acre tract free of the extinguishment agreement, the 22 acre tract continued to be benefitted by the forty foot easement, plaintiff acquired the property interests and rights of its predecessor, including the forty foot easement, and the extinguishment agreement was ineffective against plaintiff. *Amethyst Land Co., Inc. v. Terhune*, 2013-NMCA-059, 304 P.3d 434, *rev'd*, 2014-NMSC-015.

Correction deeds referencing an ineffective easement extinguishment agreement did not revive the easement. — Where access to plaintiff's 22 acre tract was provided by a forty foot roadway easement on an adjoining five acre tract that was owned by defendants; when defendants acquired the five acre tract, the common owner of both tracts signed an extinguishment agreement to terminate the forty foot easement; before

the extinguishment agreement was recorded, the common owner sold the 22 acre tract to plaintiff's predecessor in title who was unaware of the extinguishment agreement and who later sold the 22 acre tract to plaintiff; plaintiff's predecessor and plaintiff acquired title to the 22 acre tract free of the extinguishment agreement; and after plaintiff acquired the 22 acre tract, plaintiff's attorney searched the record and prepared correction deeds from the common owner to plaintiff's predecessor and from plaintiff's predecessor to plaintiff which expressly included the forty foot easement and stated that the easement was partially vacated by the extinguishment agreement, the correction deeds did not revive the extinguishment agreement or otherwise terminate the forty foot easement. *Amethyst Land Co., Inc. v. Terhune*, 2013-NMCA-059, 304 P.3d 434, *rev'd*, 2014-NMSC-015.

Purchases and mortgages. — Prior to the amendment of 1923, the recording laws were for the protection of purchasers and mortgagees only. *Wells v. Dice*, 1929-NMSC-008, 33 N.M. 647, 275 P. 90.

Attachment creditors. — An unrecorded conveyance protected only subsequent purchasers and mortgagees in good faith and without notice, but did not protect attachment creditors. *Chetham-Strode v. Blake*, 1914-NMSC-067, 19 N.M. 335, 142 P. 1130.

Investors and judgment creditors. — The object of the recording statute is to prevent injustice by protecting those who, without knowledge of infirmities in the title, invest money in property or mortgage loans and those who have acquired judgment liens without such knowledge. *Arias v. Springer*, 1938-NMSC-025, 42 N.M. 350, 78 P.2d 153.

Purchaser, mortgagee, or judgment creditor. — In order to avail himself of the protection of this section, a party must be a purchaser, mortgagee in good faith, or a judgment lien creditor of the land in question. *Withers v. Board of Cnty. Comm'rs*, 1981-NMCA-032, 96 N.M. 71, 628 P.2d 316.

Gift recipients. — Because persons who have not given consideration in exchange for the title to property cannot invoke the recording statute, summary judgment in an action involving defendant's claim of title to property pursuant to the recording statute was in error where plaintiff raised the factual issue of whether the defendant acquired the property by gift. *Valencia v. Lundgren*, 2000-NMCA-045, 129 N.M. 57, 1 P.3d 975.

Test whether one had implied knowledge is whether he exercised the ordinary care of a purchaser of a federal oil and gas lease. *O'Kane v. Walker*, 561 F.2d 207 (10th Cir. 1977).

Oil and gas lease. — Purchaser exercised the ordinary care expected of a purchaser of a federal oil and gas lease where careful investigation of the records showed record title in the offeror, the price was low, but not unreasonably so in view of the short remaining lease term and the highly speculative nature of the investment, and purchaser was a bona fide purchaser, without actual or implied knowledge of any facts

which would have put him on notice of an unrecorded conveyance. *O'Kane v. Walker*, 561 F.2d 207 (10th Cir. 1977).

Equitable principles require that innocent purchaser should prevail over one who negligently fails to record a deed upon which he seeks to rely. *Jeffers v. Martinez*, 1979-NMSC-083, 93 N.M. 508, 601 P.2d 1204, appeal after remand, 1982-NMSC-116, 99 N.M. 351, 658 P.2d 426.

Equitable principles require that innocent purchaser should prevail over one who negligently fails to record a deed upon which he seeks to rely. *Jeffers v. Martinez*, 1979-NMSC-083, 93 N.M. 508, 601 P.2d 1204, appeal after remand, 1982-NMSC-116, 99 N.M. 351, 658 P.2d 426.

Unrecorded chattel mortgage. — A chattel mortgage is good between the parties and against purchasers with notice although unrecorded. *Kitchen v. Schuster*, 1907-NMSC-021, 14 N.M. 164, 89 P. 261.

Unrecorded plat. — Where the developer submitted a preliminary plat that described a ten-acre parcel as open space; the municipality instructed the developer to designate the parcel as a "drainage easement" as a surrogate term for "open space" and the municipality relied on the developer's representation that the parcel would be set aside as open space in perpetuity; the preliminary plat was not recorded; the final recorded plat designated the parcel as a drainage easement; and the developer sold the parcel to a buyer who had no knowledge of the unrecorded interest of the municipality, the recorded plat unambiguously granted the municipality an easement for the specific purpose of drainage thereby extinguishing any unrecorded interests and relieving the subsequent buyer, who was a good faith purchaser for value, from the duty to diligently investigate whether the municipality had other adverse claims to the property title. *City of Rio Rancho v. Amrep Sw., Inc.*, 2011-NMSC-037, 260 P.3d 414, *aff'g in part*, *rev'g in part* 2010-NMCA-075, 148 N.M. 542, 238 P.3d 911.

Quiet title suit. — In suit to quiet title, where plaintiff and defendant both derive their titles from the same grantor, and defendant purchased in good faith, for value and had no knowledge of the outstanding unrecorded deed of his grantor to plaintiff's grantor, defendant had the better title, notwithstanding the fact that he took a quitclaim deed. *Mabie-Lowrey Hdwe. Co. v. Ross*, 1920-NMSC-026, 26 N.M. 51, 189 P. 42.

Oral agreement. — If one is a bona fide purchaser for value without notice of another's claimed interest, then the oral agreement would be of no effect as to him even if it be treated as an enforceable agreement as between the other person and the vendor. *Ortiz v. Jacquez*, 1966-NMSC-243, 77 N.M. 155, 420 P.2d 305.

III. PARTICULAR CASES.

Deeds. — Where land conveyed by unrecorded deed was within larger tract subsequently conveyed by grantor to another and was not specifically excepted from

operation of later deed, both deeds purported to convey same land and this section was applicable, and later grantee did not have constructive notice of unrecorded deed. *Grammer v. New Mexico Credit Corp.*, 1957-NMSC-018, 62 N.M. 243, 308 P.2d 573.

Residuary legatee. — Where grantor delivered deed to third party with instructions to retain the same in her possession until grantor died, and then to deliver it to grantee, and imposed no conditions, retained no right to recall the deed and exercised no control over it thereafter, grantor's residuary legatee and devisee was not a purchaser within meaning of recording statute, and could not claim title as against the deed, though unrecorded. *Arias v. Springer*, 1938-NMSC-025, 42 N.M. 350, 78 P.2d 153.

Constructive notice. — A lien on real estate resulting from a recorded transcript of judgment does not have priority over the interest of purchasers under an earlier executed but unrecorded contract, where the lienholder has constructive notice of the purchasers' interest through the purchasers' actual possession of the property. *Citizens Bank v. Hodges*, 1988-NMCA-001, 107 N.M. 329, 757 P.2d 799, cert. denied, 107 N.M. 74, 752 P.2d 789.

Partnership certificate as constructive notice. — In the absence of a recorded deed at the time plaintiff’s judgment lien attached, defendant’s partnership's certificate could not function as constructive notice to plaintiff of plaintiff’s conveyance of the realty at issue to a partnership he formed with another party, since the partnership certificate at issue was filed with records other than those relating to property transfers, and defendant’s name was not associated with the partnership in the index to those records. *F & S Co. v. Gentry*, 1985-NMSC-065, 103 N.M. 54, 702 P.2d 999.

Reversionary interest. — Where a mortgagor entered into an executory contract to sell his land nearly six years prior to his execution of the mortgage, so that the only interest he still owned in such real estate involved a possibility of a reverter to him in the event of a default in payment of the real estate contract, the mortgagee's bank had actual notice of the facts and did not assign to the bank any interest in the unpaid balance of the real estate contract, the trial court properly concluded, as a matter of law, that the only lien the bank acquired was on the possible reversionary interest, and accordingly, since the mortgage did not "attach to" the real property, the trial court correctly concluded that the bank was not entitled to foreclose the mortgage. *First Nat'l Bank v. Luce*, 1974-NMSC-098, 87 N.M. 94, 529 P.2d 760.

Reformation of deed not to affect rights of innocent purchaser. — Because there was no evidence that a judgment lienholder had any notice of a claimed mistake in a deed until she attempted to execute her judgment, the court was correct in ruling that any reformation of the deed was not effective against her rights. *Ruybalid v. Segura*, 1988-NMCA-084, 107 N.M. 660, 763 P.2d 369.

Acknowledgment of assignment on back of executory contract for sale of real estate, to which the assignment refers for particular description, is not an acknowledgment of the contract, and although the contract was copied into the record,

that did not make it of record, nor constructive notice to a subsequent purchaser having no actual knowledge of it. *McBee v. O'Connell*, 1911-NMSC-049, 16 N.M. 469, 120 P. 734, appeal after remand, 1914-NMSC-088, 19 N.M. 565, 145 P. 123.

Innocent purchaser for value. — Plaintiff was an innocent purchaser for value, under 14-9-1 to 14-9-3 NMSA 1978, of oil and gas lease interests since the records at the federal land office did not constitute constructive notice or prior assignment which plaintiff had no knowledge of, and the assignment was not recorded in the appropriate county clerk's office, as required by 70-1-1 and 70-1-2 NMSA 1978. *Bolack v. Underwood*, 340 F.2d 816 (10th Cir. 1965).

Rights of a judgment lien creditor were held fixed by condition of affairs as they existed at time of inception of his lien. They were not affected by a subsequent conveyance which debtor could not have been coerced by courts to make. *Sylvanus v. Pruett*, 1932-NMSC-002, 36 N.M. 112, 9 P.2d 142.

Judgment lien was held superior to alleged mortgage lien claimed under altered warranty deed by party whose name had been inserted as grantee therein. S*cheer v. Stolz*, 1937-NMSC-070, 41 N.M. 585, 72 P.2d 606.

Prescriptive title cannot be obtained by adverse user based on a written, but unrecorded, grant. *Southern Union Gas Co. v. Cantrell*, 1952-NMSC-024, 56 N.M. 184, 241 P.2d 1209.

Gas easement. — Where gas company acquired easement for right-of-way by written instrument which was not recorded and the easement was not visible or open, a third-party purchaser, without knowledge of the easement, was not bound thereby, since gas company did not have prescriptive easement in the land. *Southern Union Gas Co. v. Cantrell*, 1952-NMSC-024, 56 N.M. 184, 241 P.2d 1209.

Law reviews. — For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources J. 75 (1962).

For 1986-88 survey of New Mexico law of real property, 19 N.M.L. Rev. 751 (1990).

For article, "Legislature Tampers With Recording Act," see 20 N.M.L. Rev. 235 (1990).

For annual survey of New Mexico Law of Property, see 20 N.M.L. Rev. 373 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 66 Am. Jur. 2d Records and Recording Laws §§ 156 to 193.

Rights as between purchaser of timber and subsequent vendee of land, 18 A.L.R.2d 1150.

Relative rights to real property as between purchasers from or through decedent's heirs and devisees under will subsequently sought to be established, 22 A.L.R.2d 1107.

Relative rights in real property as between purchasers from or through decedent's heirs or devisees and unknown surviving spouse, 39 A.L.R.2d 1082.

14-9-4. Filing for record; effect; reception book.

The time of the recording of an instrument shall be the time of its deposit in the office of the county clerk and his entry thereof in the reception book as herein provided. It shall be the duty of every county clerk immediately on the receipt for record of any deed, mortgage or other writing affecting the title to real estate, to enter the same by the name of the grantor, mortgagor or other persons [person] whose title is affected thereby, in a proper book, arranged in alphabetical or numerical order, to be known as the reception book, together with the date, hour and minute of such record. Any county clerk failing to make such entry immediately, shall be punished by a fine of one hundred dollars [($100)], and shall also be liable for damages to any person injured by such neglect, to the extent of such injury.

History: Laws 1886-1887, ch. 10, § 4; C.L. 1897, § 3956; Laws 1899, ch. 22, § 1; 1913, ch. 84, § 1; Code 1915, § 4789; C.S. 1929, § 118-111; Laws 1939, ch. 179, § 3; 1941 Comp., § 13-204; 1953 Comp., § 71-2-4.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and it is not part of the law.

Compiler's notes. — The 1915 Code compilers substituted "county clerk" for "probate clerk."

14-9-5. Repealed.

ANNOTATIONS

Repeals. — Laws 1987, ch. 218, § 1 repealed 14-9-5 NMSA 1978, as enacted by Laws 1886-1887, ch. 10, § 5, relating to deed and mortgage records, effective June 19, 1987.

14-9-6. [Wills not affected.]

None of the provisions of this chapter shall be so construed as to extend to last wills and testaments.

History: Laws 1851-1852, p. 376; C.L. 1865, ch. 44, § 23; C.L. 1884, § 2770; C.L. 1897, § 3967; Code 1915, § 4794; C.S. 1929, § 118-118; 1941 Comp., § 13-208; 1953 Comp., § 71-2-8.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The words "this chapter" were substituted for the words "this act" by the 1915 Code compilers and refer to chapter 97 of the 1915 Code, including §§ 4779 to 4803 thereof, compiled herein as 14-8-1, 14-8-2, 14-8-4 to 14-8-6, 14-8-9, 14-8-10, 14-8-14, 14-8-15, 14-9-1 to 14-9-6, 14-9-8, and 14-10-1 to 14-10-5 NMSA 1978.

14-9-7. Conveyances to state and public corporations; recording; filing in lieu of recording; maximum fee.

A. The state, the public boards and commissions thereof, municipalities, districts and subdivisions of the state, including conservancy and irrigation districts, shall be entitled to have instruments affecting real estate which have been made to them as grantees or vendees, including rights-of-way for roads, easements or other instruments affecting real estate, to be duly recorded in the offices of the county clerks and ex officio recorders of the various counties in which the real estate is situated.

B. The state, the public boards or commissions thereof, municipalities, districts or subdivisions of the state, including conservancy and irrigation districts, may file the original instruments affecting such real estate with the county clerk and ex officio recorder in the county where the property is situated, and such filings shall be properly indexed by the county clerk and ex officio recorder in the county, and such filings shall have the full legal effect of recording and be legal notice of the rights of the public entities or districts in and to said rights-of-way, easements or other interests conveyed or granted by the instruments affecting the real estate.

C. The county clerks and ex officio recorders shall be paid the statutory recording fee for each instrument recorded or filed and indexed under the terms of this section.

History: Laws 1931, ch. 137, § 1; 1941 Comp., § 13-209; 1953 Comp., § 71-2-9; Laws 1961, ch. 77, § 1; 1987, ch. 233, § 1.

ANNOTATIONS

The 1987 amendment, effective June 19, 1987, in Subsection C, substituted "the statutory recording fee" for "one dollar or one-half the statutory recording fee whichever is greater" and made minor language changes throughout the section.

Highway grants held properly filed. — Grants to the state highway and transportation department [department of transportation] were properly filed with the full legal effect of a recording, even though the county clerk did not enter in the index book page numbers for the filings or otherwise record the grants as the clerk does for real estate

transactions where the recording party is someone other than the state. *Lone Butte Corp. v. State*, 1991-NMSC-077, 112 N.M. 483, 816 P.2d 1105.

Warrants of employment security commission are not instruments made to commission as grantee or vendee. They are instruments made by the commission as claimant of a lien. This section does not apply to warrants of the employment security commission. 1961 Op. Att'y Gen. No. 61-51.

14-9-8. [Lost patent; recording certified copy; effect.]

Any person or persons who have acquired and hold any real estate by purchase or otherwise, and have lost or are unable to procure the original patent issued by the United States for such real estate, and such patent never having been recorded in the office of the county clerk of the county wherein such real estate is situated, may procure a certified copy of such patent from the recorder of the general land office of the United States, and have the same recorded in the same manner as the original patent therefor might have been recorded. And the record of such certified copy of the patent issued for such lands shall have the same force and effect as if the original patent therefor had been recorded.

History: Laws 1909, ch. 18, § 1; Code 1915, § 4796; C.S. 1929, § 118-120; 1941 Comp., § 13-210; 1953 Comp., § 71-2-10.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

14-9-9. [Federal court judgment; county for filing; lien against realty.]

A transcript of any money judgment obtained in the United States district court for the district of New Mexico, may be filed in the office of the county clerk of any county, wherein the judgment debtor or debtors have property, and when so filed and entered in the judgment lien record of said county shall be a lien against the real estate of such judgment debtor or debtors within said county from the date of such filing and entry in such judgment lien record.

History: Laws 1923, ch. 123, § 1; C.S. 1929, § 76-112; 1941 Comp., § 13-211; 1953 Comp., § 71-2-11.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Only transcript of judgment docket, not of judgment, to be filed. — The legislature meant a transcript of the judgment docket should be filed in the office of the county clerk, to be recorded by him in the judgment docket record in his office. It did not intend that a transcript of the judgment rendered by the United States district court should be filed. *Scott v. United States*, 1949-NMSC-072, 54 N.M. 34, 213 P.2d 216.

ARTICLE 9A
Uniform Real Property Electronic Recording Act

14-9A-1. Short title.

This act [14-9A-1 to 14-9A-7 NMSA 1978] may be cited as the "Uniform Real Property Electronic Recording Act".

History: Laws 2007, ch. 261, § 1.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 261, § 8 made the Uniform Real Property Electronic Recording Act effective July 1, 2007.

14-9A-2. Definitions.

As used in the Uniform Real Property Electronic Recording Act:

A. "document" means information that is:

(1) inscribed on a tangible medium or that is stored in an electronic or other medium and that is retrievable in perceivable form; and

(2) eligible to be recorded in the land records maintained by a county clerk;

B. "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;

C. "electronic document" means a document that is received by a county clerk in an electronic form;

D. "electronic signature" means an electronic sound, symbol or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document;

E. "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; and

F. "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.

History: Laws 2007, ch. 261, § 2.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 261, § 8 made the Uniform Real Property Electronic Recording Act effective July 1, 2007.

14-9A-3. Validity of electronic documents.

A. If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium or be in writing, the requirement is satisfied by an electronic document satisfying the Uniform Real Property Electronic Recording Act.

B. If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

C. A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed or made under oath is satisfied if the electronic signature of the person authorized to perform that act and all other information required to be included is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression or seal need not accompany an electronic signature.

History: Laws 2007, ch. 261, § 3.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 261, § 8 made the Uniform Real Property Electronic Recording Act effective July 1, 2007.

14-9A-4. Recording of documents.

A. In this section, "paper document" means a document that is received by the county clerk in a form that is not electronic.

B. A county clerk:

(1) who implements any of the functions listed in this section shall do so in compliance with standards established by the information technology commission and

the state commission of public records, in consultation with the county clerks of New Mexico, pursuant to Section 5 [14-9A-5 NMSA 1978] of the Uniform Real Property Electronic Recording Act;

(2) may receive, index, store, archive and transmit electronic documents;

(3) may provide for access to and for search and retrieval of documents and information by electronic means;

(4) who accepts electronic documents for recording shall continue to accept paper documents as authorized by state law and shall place entries for both types of documents in the same index;

(5) may convert paper documents accepted for recording into electronic form;

(6) may convert into electronic form information recorded before the county clerk began to record electronic documents;

(7) may accept electronically any fee that the county clerk is authorized to collect; and

(8) may agree with other officials of a state, of a political subdivision of a state or of the United States on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees.

History: Laws 2007, ch. 261, § 4.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 261, § 8 made the Uniform Real Property Electronic Recording Act effective July 1, 2007.

14-9A-5. Administration and standards.

A. The information technology commission and the state commission of public records, in consultation with the county clerks of New Mexico, shall adopt standards to implement the Uniform Real Property Electronic Recording Act.

B. To keep the standards and practices of county clerks in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially the Uniform Real Property Electronic Recording Act and to keep the technology used by county clerks in this state compatible with technology used by recording offices in other jurisdictions that enact substantially the Uniform Real Property Electronic Recording Act, the information technology commission and the state commission of public records, in consultation with the county clerks of New Mexico, so

far as is consistent with the purposes, policies and provisions of the Uniform Real Property Electronic Recording Act, in adopting, amending and repealing standards shall consider:

(1) standards and practices of other jurisdictions;

(2) the most recent standards promulgated by national standard-setting bodies, such as the property records industry association;

(3) the views of interested persons and governmental officials and entities;

(4) the needs of counties of varying size, population and resources; and

(5) standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved and resistant to tampering.

C. The secretary of state may adopt and promulgate rules to implement the provisions of Subsection C of Section 14-9A-3 NMSA 1978 by providing for the electronic notarization, acknowledgment, verification, swearing or affirming under oath and other notarial acts by notaries public with respect to a document or signature.

History: Laws 2007, ch. 261, § 5; 2008, ch. 28, § 1.

ANNOTATIONS

The 2008 amendment, effective May 14, 2008, in Subsection C, changed the reference from "Section 3 of the Uniform Electronic Recording Act" to "Section 14-9A-3 NMSA 1978".

14-9A-6. Uniformity of application and construction.

In applying and construing the Uniform Real Property Electronic Recording 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.

History: Laws 2007, ch. 261, § 6.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 261, § 8 made the Uniform Real Property Electronic Recording Act effective July 1, 2007.

14-9A-7. Relation to Electronic Signatures in Global and National Commerce Act.

The Uniform Real Property Electronic Recording 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.

History: Laws 2007, ch. 261, § 7.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 261, § 8 made the Uniform Real Property Electronic Recording Act effective July 1, 2007.

Cross references. — For the federal Electronic Signatures in Global and National Commerce Act, *see* 15 U.S.C. § 7001.

ARTICLE 10
Index of Records

14-10-1. Index.

For the convenience of the public and the better preservation of titles to real property, there shall be a complete and accurate county recording index made of all instruments of record affecting real property made by the county clerk of each county.

History: Laws 1903, ch. 87, § 1; Code 1915, § 4798; C.S. 1929, § 118-122; 1941 Comp., § 13-301; 1953 Comp., § 71-3-1; 2013, ch. 214, § 5.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, required county clerks to maintain a county recording index; added the title; at the beginning of the section, deleted "That whenever in the opinion of the board of county commissioners of any county in the state it is necessary"; after "titles to real property", deleted "to have" and added "there shall be"; after "accurate", added "county recording"; and after "affecting real property", deleted "they are hereby authorized to have such index".

Private individual not authorized to make index. — Under this section, county commissioners are not authorized to employ a private individual to make the index. *Fancher v. Board of Comm'rs*, 1921-NMSC-039, 28 N.M. 179, 210 P. 237.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 66 Am. Jur. 2d Records and Recording Laws §§ 89 to 96.

76 C.J.S. Records § 9 et seq.

14-10-2. Index books.

For the purpose of the county recording index created pursuant to Section 14-10-1 NMSA 1978, the county clerk shall maintain a searchable database, which may include index books, and all instruments affecting title to real estate shall be indexed.

History: Laws 1903, ch. 87, § 2; Code 1915, § 4799; C.S. 1929, § 118-123; 1941 Comp., § 13-302; 1953 Comp., § 71-3-2; 2013, ch. 214, § 6.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, required county clerks to maintain a searchable database, including index books; added the title; after "purpose of the", added "county recording"; after "county recording index", deleted "mentioned in the preceding" and added "created pursuant to", after "Section", deleted "there shall be provided index books" and added "14-10-1 NMSA 1978, the county clerk shall maintain a searchable database, which may include index books"; and after "shall be indexed", deleted "in their regular order alphabetically arranged, as well as in their reverse order in the same manner".

Am. Jur. 2d, A.L.R. and C.J.S. references. — Failure to properly index conveyance or mortgage of realty as affecting constructive notice, 63 A.L.R. 1057.

76 C.J.S. Records § 9 et seq.

14-10-3. County recording index; required fields.

The county recording index shall contain, at a minimum:

A. the following administrative fields:

(1) the book and page or instrument number; and

(2) the date and time of recordation; and

B. the following descriptive fields:

(1) the name of the grantor or grantors;

(2) the name of the grantee or grantees; and

(3) legal descriptions, references to recorded instruments in the county containing legal descriptions and miscellaneous information.

History: Laws 1903, ch. 87, § 3; Code 1915, § 4800; C.S. 1929, § 118-124; 1941 Comp., § 13-303; 1953 Comp., § 71-3-3; 2013, ch. 214, § 7.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, standardized county recording indexes; added the title; at the beginning of the section, after "The", deleted "said" and added "county recording"; after "index shall", deleted "be ruled and headed in the same manner and form substantially as shown on the following form"; deleted the model form and added "contain, at a minimum"; and added Subsections A and B.

14-10-4. Entries to the index; description of lands.

Each name, descriptor or reference placed in a descriptive field constitutes a separate entry in the county recording index. All real property or lands shall be entered and described in the county recording index in the manner indicated, according to numbers, metes or bounds; provided that where this is impossible from the nature of the description, the tract or tracts may be described by some appropriate title.

History: Laws 1903, ch. 87, § 4; Code 1915, § 4801; C.S. 1929, § 118-125; 1941 Comp., § 13-304; 1953 Comp., § 71-3-4; 2013, ch. 214, § 8.

ANNOTATIONS

Cross references. — For record of survey requirements, *see* Section 61-23-28.2 NMSA 1978.

The 2013 amendment, effective June 14, 2013, standardized county recording procedures; added the title; added the first sentence; in the second sentence, at the beginning of the sentence, after "All", deleted "town" and added "real"; after "described in the", deleted "said" and added "county recording"; and after "some appropriate title", deleted "or the owner's name".

14-10-5. Standard form.

The form of county recording index provided in Chapter 14, Article 10 NMSA 1978 shall be the standard form of index and shall be used throughout the state.

History: Laws 1903, ch. 87, § 5; Code 1915, § 4802; C.S. 1929, § 118-126; 1941 Comp., § 13-305; 1953 Comp., § 71-3-5; 2013, ch. 214, § 9.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, standardized county recording forms; added the title; at the beginning of the section, after "The form of ", added "county recording"; and after "provided in", deleted "the two preceding Sections" and added "Chapter 14, Article 10 NMSA 1978".

ARTICLE 11
Publication of Notice

14-11-1. "Legal notices and advertisements" defined.

Any notice or other written matter whatsoever required to be published in a newspaper by any law of this state, or by the order of any court of record of this state, shall be deemed and held to be a legal notice or advertisement within the meaning of this act [14-11-1 to 14-11-4, 14-11-7, 14-11-8 NMSA 1978].

History: Laws 1937, ch. 167, § 1; 1941 Comp., § 12-201; 1953 Comp., § 10-2-1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 58 Am. Jur. 2d Notice § 23.

Validity of legislation relating to publication of legal notices, 26 A.L.R.2d 655.

66 C.J.S. Notice § 2.

14-11-2. Requirement for publication of legal notice or advertisement.

Any and every legal notice or advertisement shall be published in a daily, tri-weekly, a semi-weekly or a weekly newspaper of general circulation that can be obtained by single copy and that is entered under the second class postage privilege in the county in which the notice or advertisement is required to be published; which newspaper, if published tri-weekly, semi-weekly or weekly, shall have been so published in the county continuously and uninterruptedly during the period of at least twenty-six consecutive weeks next prior to the first issue thereof containing any such notice or advertisement, and which newspaper, if published daily, shall have been so published in the county uninterruptedly and continuously during the period of at least six months next prior to the first issue thereof containing any such notice or advertisement; provided that the mere change in the name of any newspaper or the removal of the principal business office or seat of publication of any newspaper from one place to another in the same county shall not break or affect the continuity in the publication of any such newspaper if the newspaper is in fact continuously and uninterruptedly printed and published within the county as provided in this section; provided further that a newspaper shall not lose its rights as a legal publication if it fails to publish one or more of its issues by reason of fire, flood, accident, transportation embargo or tie-up or other casualty beyond the control of the publisher; provided further that any legal notice which fails of publication for the required number of insertions by reasons beyond the control of the publisher shall not be declared illegal if the publication has been made in one issue of the publication; and provided further that if in any county in this state there has not been published any newspaper for the prescribed period at the time when any such notice or

advertisement is required to be published, the notice or advertisement may be published in any newspaper having a general circulation or published and printed in whole or in part in that county and that can be obtained by single copy in that county.

History: Laws 1937, ch. 167, § 2; 1941 Comp., § 12-202; 1953 Comp., § 10-2-2; 1999, ch. 63, § 1.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, added the section heading; deleted "only" following "be published", deleted "paid" preceding "circulation" in two places; inserted "can be purchased by single copy and that"; added "and that can be obtained by single copy in that county"; and made minor stylistic changes.

Purpose. — The primary purpose of this section is to give notice to the citizens, with provisions relating to publication, printing and mailing privileges referring merely to the method of carrying out the intent of the statute, i.e., notice. *State ex rel. Sun Co. v. Vigil*, 1965-NMSC-012, 74 N.M. 766, 398 P.2d 987.

"Published." — The proper and correct meaning of the word "published" is that the notice must be inserted for the required time in a newspaper that will make the matter thereof a public matter or known to the people in the place affected. *State ex rel. Sun Co. v. Vigil*, 1965-NMSC-012, 74 N.M. 766, 398 P.2d 987.

"Publication." — Any means which would give notice to the public of any matter desired to be brought to their knowledge would be classed as publication. *State ex rel. Sun Co. v. Vigil*, 1965-NMSC-012, 74 N.M. 766, 398 P.2d 987.

Publication and printing distinguished. — Publication means to make known, a notification to the public at large, either by words, writing or printing. Printing means the impress of letters or characters upon paper or upon other substance; printing implies the mechanical art by which type is imprinted upon the paper, whereas publishing means the conveying of knowledge of notices. *State ex rel. Sun Co. v. Vigil*, 1965-NMSC-012, 74 N.M. 766, 398 P.2d 987.

Requirement of second-class postal privilege. — Among other requirements for a legal newspaper is that the newspaper must be entered under the second-class postal privilege in the county in which said notice or advertisement is required to be published. 1960 Op. Att'y Gen. No. 60-46.

The provision relating to second-class mailing privilege is merely directory and the absence of the privilege will not defeat legal publication. 1981 Op. Att'y Gen. No. 81-13.

Use of newspaper having general paid circulation, etc. — Only where no newspaper is published within the county meeting the requirements of this section may

items be published in any newspaper having a general paid circulation and/or printed in whole or in part in said county. 1964 Op. Att'y Gen. No. 64-12.

Publication in New Mexico register. — A notice published in the New Mexico register would not fulfill the requirements for legal publication under 14-11-1 to 14-11-8 NMSA 1978 because the register is not a newspaper of general paid circulation. 1993 Op. Att'y Gen. No. 93-02.

Legislative intent. — It was the intention of the legislature that legal notices be published in newspapers located within the county. 1964 Op. Att'y Gen. No. 64-12.

Only publishing required. — In order for a newspaper to be "legal" for publication of notices, it does not have to be both published and printed within the county, but only published within the county. 1964 Op. Att'y Gen. No. 64-12.

A newspaper may be published within a county and thus be a legal newspaper though its actual printing is done outside the county. 1948 Op. Att'y Gen. No. 48-5146.

A newspaper published in Window Rock, Arizona, and mailed to subscribers in San Juan and McKinley counties in New Mexico, is not "published" in these counties for purposes of this section even though it is the chief newspaper within the Navajo tribe. 1964 Op. Att'y Gen. No. 64-12.

"Publication" contemplates that the paper issue to its subscribers from the county. 1964 Op. Att'y Gen. No. 64-12.

Law reviews. — For article, "Approaching Statutory Interpretation in New Mexico," see 8 Nat. Resources J. 689 (1968).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 58 Am. Jur. 2d Newspapers, Periodicals, and Press Associations §§ 33 to 38, 42, 43, 45, 46, 48, 49.

Rights and duties of parties to conditional sales contract as to resale of repossessed property, 49 A.L.R.2d 15.

Application of requirement that newspaper be locally published for official notice publication, 85 A.L.R.4th 581.

66 C.J.S. Newspapers § 3.

14-11-3. [Frequency of newspaper's publication; effect.]

Except as otherwise provided by law in express terms or by necessary implication, daily, weekly, semiweekly and triweekly newspapers shall all be equally competent as media for the publication of all legal notices and advertisements.

History: Laws 1937, ch. 167, § 4; 1941 Comp., § 12-203; 1953 Comp., § 10-2-3.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

14-11-4. Proof of publication.

Proof of the publication of any such legal notice or advertisement may be made by the affidavit of the printer, business manager, editor, publisher or proprietor of the newspaper in which the publication is made, or by any other competent person who has personal knowledge of the essential facts, which affidavit, in addition to the other matters required by law to be set forth therein, shall state that such notice or advertisement was published in a newspaper duly qualified for that purpose within the meaning of this act [14-11-1 to 14-11-4, 14-11-7, 14-11-8 NMSA 1978], and that payment therefore has been made or assessed as court costs.

History: Laws 1937, ch. 167, § 3; 1941 Comp., § 12-204; 1953 Comp., § 10-2-4.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 58 Am. Jur. 2d Newspapers, Periodicals, and Press Associations § 54.

66 C.J.S. Newspapers § 19.

14-11-5. [Affidavit of proof; contents.]

Proof of the publication of any notice required by law to be published shall be made by the publisher, editor or business manager of the newspaper in which said notice is published, making an affidavit, which affidavit shall recite the name of the newspaper in which said notice is published and the date or dates upon which said publication is made; there shall also be attached to said affidavit a copy of the notice as published, which copy when so attached to said affidavit shall be taken and considered as part of the affidavit of publication.

History: Laws 1931, ch. 120, § 1; 1941 Comp., § 12-205; 1953 Comp., § 10-2-5.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The initial language of this section may be superseded by Laws 1937, ch. 167, § 3. *See* 14-11-4 NMSA 1978.

14-11-6. [Filing affidavit of publication; evidential value.]

Any officer, board, commission or party to any legal proceeding required to publish any notice required by law shall obtain and file in his or its office, or with the clerk of the court in which any suit or legal proceeding is pending, as the case may require, the affidavit of publication referred to in Section one [14-11-5 NMSA 1978] hereof. Such affidavit so filed shall be prima facie evidence of the facts therein stated as to such publication.

History: Laws 1931, ch. 120, § 2; 1941 Comp., § 12-206; 1953 Comp., § 10-2-6.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

14-11-7. Rates for legal notice or advertisement; costs.

For publication of all legal notices or advertisements that a governmental entity is required by law or the order of any court of record in this state to publish in newspapers, the publishers shall be paid a reasonable rate, to be set by rule or regulation of the secretary of general services. Changes in economic conditions within the newspaper industry, the general economy and inflation shall be considered in determining a reasonable rate.

The clerk of any court in the state or any public trustee, county treasurer or other public officer required by law to publish legal notices or advertisements shall tax the cost of publishing notices or advertisements, as prescribed in this section, as part of the costs of the cause or proceeding and shall collect for publication before the cause or proceeding is closed and shall remit to the publisher the proper cost of the legal notices or advertisements.

History: Laws 1937, ch. 167, § 5; 1941 Comp., § 12-207; Laws 1947, ch. 188, § 1; 1953 Comp., § 10-2-7; Laws 1957, ch. 103, § 1; 1965, ch. 62, § 1; 1975, ch. 238, § 1; 1980, ch. 149, § 1; 1981, ch. 202, § 1; 1991, ch. 207, § 1; 1993, ch. 35, § 1.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted the language beginning "paid a reasonable rate" at the end of the first paragraph for provisions specifying the rates allowed to be charged.

The 1991 amendment, effective June 14, 1991, amended the section to restrict its scope to legal advertisements and notices of governmental entities.

Generally. — A newspaper was permitted a maximum charge of 12 cents a column line for the first publication whether this was the only publication or merely the first in a series of publications, and, of course, a charge of 10 cents a line after the first publication, whether there be one or more such subsequent publications. 1958 Op. Att'y Gen. No. 58-04.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 58 Am. Jur. 2d Newspapers, Periodicals, and Press Associations § 60.

20 C.J.S. Costs § 94 et seq.; 66 C.J.S. Newspapers § 20.

14-11-8. [Violation of legal publication law; penalty.]

Violation of any of the foregoing provisions [14-11-1 to 14-11-4, 14-11-7 NMSA 1978] shall be deemed a misdemeanor and upon conviction thereof, such violator or violators shall be punished by a fine of not less than $100, nor more than $500.

History: Laws 1937, ch. 167, § 6; 1941 Comp., § 12-208; 1953 Comp., § 10-2-8.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 66 C.J.S. Newspapers § 22.

14-11-9. [Legal publications by county, municipality or school district; payment.]

All publications required to be made by any county or incorporated city, town or village, or by any board of education or school directors, or by any officer thereof, shall be paid for out of the general fund of such county, city, town or village. Provided: that the cost of such publications pertaining to school matters shall be paid out of school funds.

History: Laws 1912, ch. 49, § 10; Code 1915, § 4652; C.S. 1929, § 113-108; 1941 Comp., § 12-209; 1953 Comp., § 10-2-9.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For publication of municipal and school board expenditures, *see* 10-17-3 NMSA 1978.

14-11-10. Litigation; publication of notice; posting.

Except as provided in the [Uniform] Probate Code [Chapter 45 NMSA 1978], all legal notices in connection with suits in the district courts, including notices of sale of property under any writ of execution, judgment, decree or other process issued out of the district court, and any notice of sale of personal property by virtue of any security interest, except as provided by the Uniform Commercial Code [Chapter 55 NMSA 1978], where the amount involved, including interest and costs, exceeds three hundred dollars ($300), shall be published in the English language in some newspaper of general circulation published in the county where such publication is required to be made, once each week for four consecutive weeks. If such publication shall be the notice of the pendency of a suit in the district court, the last insertion shall be at least twenty days before the date on or before which the defendant is notified to appear. In all other cases, the last insertion shall be at least three days before the date fixed in such notice for the taking of the action concerning which the publication is made. In case there be no newspaper published in the county where such publication is required, then publication shall be made by posting notice in at least six conspicuous places within the county for and during the period of time specified in the case of newspaper publications.

History: Laws 1931, ch. 150, § 1; 1937, ch. 113, § 1; 1941 Comp., § 12-210; 1953 Comp., § 10-2-10; Laws 1961, ch. 96, § 11-101; 1978, ch. 159, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Former requirements. — Section 4647, 1915 Code (similar to this section) did not require that four full weeks elapse between the first insertion of the notice in the newspaper and the day of sale, but the sale could be had any time not less than three days after the fourth and last insertion. *Dewitz v. Joyce-Pruitt Co.*, 1915-NMSC-064, 20 N.M. 572, 151 P. 237.

Laws 1899, ch. 22, § 15 (now repealed), was complied with by publication of notice of sale on same day of the week for four consecutive weeks when the last publication was more than 30 days prior to the date of sale. *De Graftenreid v. Casaus*, 1920-NMSC-046, 26 N.M. 216, 190 P. 728.

Generally. — Where the value of the property exceeds $300, agent must publish in the county where the sale is to be made once each week for four consecutive weeks. And the last publication must be at least three days before the sale. The sale must be conducted between the hours of 9:00 in the morning and the setting of the sun on the same day, and the time and place where the sale is to be made and a full description of the property shall be contained in that notice. 1956 Op. Att'y Gen. No. 56-6518.

Law reviews. — For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources J. 75 (1962).

For article, "The Use of Revocable Inter Vivos Trusts in Estate Planning," see 1 N.M. L. Rev. 143 (1971).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Service of process upon dissolved domestic corporation in absence of express statutory direction, 75 A.L.R.2d 1399.

What is "public place" within requirements as to posting of notices, 90 A.L.R.2d 1210.

7 C.J.S. Attachment § 280; 33 C.J.S. Executions § 211; 33 C.J.S. Executors and Administrators § 70; 34 C.J.S. Executors and Administrators §§ 411, 904; 39 C.J.S. Guardian and Ward § 154; 50 C.J.S. Judicial Sales § 10; 79 C.J.S. Secured Transactions § 34 et seq.

14-11-10.1. Legal notices; simple description also required.

In order to allow the general public to determine the location of real property being described in a legal notice, all legal notices containing a legal description of real property shall also contain a simple description of the real property in commonly used terms sufficient to indicate its location in relation to roads, towns, streets, neighborhoods, or other fixed objects.

History: 1978 Comp., § 14-11-10.1, enacted by Laws 1987, ch. 28, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Boundaries §§ 6 to 9.

11 C.J.S. Boundaries § 23 et seq.

14-11-10.2. Electronic posting of legal notices.

A. Legal notices and advertisements of a state agency shall be posted on the state agency's web site. If a county, municipality, board of education or other political subdivision of the state has a web site, it shall post its legal notices and advertisements on its web site. Electronic posting is not a substitute for required publication of legal notices and advertisements, and failure to electronically post shall not constitute grounds to challenge, void, set aside or otherwise delay a proceeding properly noticed and advertised pursuant to nonelectronic notice requirements.

B. Electronically posted legal notices and advertisements shall be indexed in such a way that the general public is able to easily find a particular legal notice or advertisement by subject.

History: Laws 2003, ch. 186, § 1.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 186 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

14-11-11. [County and municipal boards and officers; publication of proceedings; language requirements.]

All publications of proceedings of boards of county commissioners, city and town councils, boards of trustees, boards of education or school directors and of all other officers of any county, municipality, district or other subdivision of the state, which are required by law to be made shall be published once only. In all counties, cities or towns, in which the publication [population] is not less than seventy-five percent English speaking, the publication of such notices in English shall be sufficient; that in all counties, cities and towns, in which the population is not less than seventy-five percent Spanish speaking, the publication of such notices in the Spanish language shall be sufficient; that in all counties, cities and towns, in which the publication [population] using either language is between twenty-five percent and seventy-five percent of the whole, such notices shall be published in both English and Spanish, provided, there be legal newspapers published in both languages in the county, city or town, by different publishers, otherwise, publication in either language shall be sufficient. And, provided further, that in case of question, or disagreement, as to the percentage of the population of any county, city or town, using either language, the district judge of the judicial district of which such county, city or town, is a part, shall determine such percentage upon such information as he may have, without special investigation in the matter, and his opinion and determination thereon shall be conclusive.

History: Laws 1912, ch. 49, § 6; Code 1915, § 4648; Laws 1919, ch. 72, § 1; 1923, ch. 148, § 1431; C.S. 1929, § 113-104; 1941 Comp., § 12-212; 1953 Comp., § 10-2-11.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — That part of this section which concerns the publication of school board proceedings was repealed by Laws 1923, ch. 148, § 1431. *But see* N.M. Const., art. IV, § 18, requiring that each section revised, amended or extended be set out in full.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 20 C.J.S. Counties §§ 73, 74; 62 C.J.S. Municipal Corporations § 409; 78 C.J.S. Schools and School Districts §§ 153, 154.

14-11-12. [Publication in lieu of posting.]

All legal process against nonresidents, unknown or absent parties, notices of sale of real estate under foreclosure of mortgages or executions, trespass warnings and other documents, the publication of which is required by law to be made by posting written or printed notices in public places, may be published instead of being pasted up, in English and Spanish, in some newspaper published in the county, if there be one, if not, then in some newspaper published in some other county of the state for the same length of time it may be required to be posted, and when so published it shall not be necessary to post such notices in public places: provided, that the person who may have to pay for such publication shall have the right to designate the newspaper in which the same may be published: and provided, further, that no newspaper shall be allowed to charge more than the price fixed by law to be charged for legal advertisements.

History: Laws 1891, ch. 46, § 1; C.L. 1897, § 3114a; Code 1915, § 2197; C.S. 1929, § 46-108; 1941 Comp., § 12-213; 1953 Comp., § 10-2-12.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — This section may be superseded for the most part by 14-11-10 NMSA 1978, but trespass notices, at least, are probably still subject to its provisions.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 58 Am. Jur. 2d Notice § 38.

66 C.J.S. Notice § 18.

14-11-13. Official Spanish newspapers.

For the purpose of publishing legal notices in Spanish as required by law for any agencies of the state, the *Santa Rosa News* published at Santa Rosa, the *Santa Fe New Mexican* and the *Santa Fe News*, both published at Santa Fe, *El Hispano* and *El Semanario de Nuevo Mexico*, both published at Albuquerque, the *Alpha News* published at Las Vegas, the *Rio Grande Sun* published at Espanola, the *Taos News* published at Taos and *Mas New Mexico* published at Santa Fe and Albuquerque are recognized as official Spanish language newspapers of this state.

History: 1953 Comp., § 10-2-13, enacted by Laws 1965, ch. 254, § 1; 1967, ch. 114, § 1; 2009, ch. 77, § 1; 2011, ch. 43, § 1.

ANNOTATIONS

The 2011 amendment, effective July 1, 2011, added the *El Semanario de Nuevo Mexico* to the list of official Spanish language newspapers.

The 2009 amendment, effective June 19, 2009, added "and *Mas New Mexico* published at Santa Fe and Albuquerque".

ARTICLE 12
Notaries Public (Repealed.)

14-12-1 to 14-12-20. Repealed.

ANNOTATIONS

Repeals. — Laws 2003, ch. 286, § 27 repealed 14-12-1 to 14-12-20 NMSA 1978, effective July 1, 2003, relating to notaries public. For provisions of former sections, *see* the 2002 NMSA 1978 on *NMOneSource.com*. For similar present provisions, *see* 14-12A-1 NMSA 1978 et seq.

ARTICLE 12A
Notary Public

14-12A-1. Short title.

This act [14-12A-1 to 14-12A-26 NMSA 1978] may be cited as the "Notary Public Act".

History: Laws 2003, ch. 286, § 1.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 286, § 28 Laws 2003, ch. 286, § 1 effective July 1, 2003.

Cross references. — For acknowledgments and oaths generally, *see* 14-13-1 to 14-13-23 and 14-14-1 to 14-14-11 NMSA 1978.

New notary public law created. — With some exceptions, the 1969 act created an entirely new notary public law. 1969 Op. Att'y Gen. No. 69-79.

14-12A-2. Definitions.

As used in the Notary Public Act:

A. "acknowledgment" means a notarial act in which a person at a single time and place:

(1) appears in person before the notary public and presents a document;

(2) is personally known to the notary public or identified by the notary public through satisfactory evidence; and

(3) indicates to the notary public that the signature on the document was voluntarily affixed by the person for the purposes stated within the document and, if applicable, that the person had due authority to sign in a particular representative capacity;

B. "affirmation" means a notarial act that is legally equivalent to an oath and in which a person at a single time and place:

(1) appears in person before the notary public;

(2) is personally known to the notary public or identified by the notary public through satisfactory evidence; and

(3) makes a vow of truthfulness or fidelity on penalty of perjury, based on personal honor and without invoking a deity or using any form of the word "swear";

C. "commission" means both to empower to perform notarial acts and the written evidence of authority to perform those acts;

D. "copy certification" means a notarial act in which a notary public:

(1) is presented with a document that is neither a vital record, a public record nor publicly recordable;

(2) copies or supervises the copying of the document using a photographic or electronic copying process;

(3) compares the document to the copy; and

(4) determines that the copy is accurate and complete;

E. "credible witness" means an honest, reliable and impartial person who personally knows the person appearing before a notary public and takes an oath or affirmation from the notary to vouch for that person's identity;

F. "jurat" means a notarial act in which a person at a single time and place:

(1) appears in person before the notary public and presents a document;

(2) is personally known to the notary public or identified by the notary public through satisfactory evidence;

(3) signs the document in the presence of the notary public; and

(4) takes an oath or affirmation from the notary public that the person is voluntarily affixing his signature and vouching for the truthfulness or accuracy of the signed document;

G. "notarial act" means any act that a notary public or other person is empowered to perform pursuant to the Notary Public Act or the Uniform Law on Notarial Acts [14-14-1 to 14-14-11 NMSA 1978];

H. "notarial certificate" means the part of, or attachment to, a notarized document that is completed by the notary public, bears the notary public's signature and seal and states the facts attested by the notary public in a particular notarization;

I. "notary public" means any person commissioned by the governor to perform official acts pursuant to the Notary Public Act;

J. "oath" means a notarial act that is legally equivalent to an affirmation and in which a person at a single time and place:

(1) appears in person before the notary public;

(2) is personally known to the notary public or identified by the notary public through satisfactory evidence; and

(3) makes a vow of truthfulness or fidelity on penalty of perjury while invoking a deity or using any form of the word "swear";

K. "official misconduct" means:

(1) a notary public's performance of an act prohibited, or failure to perform an act mandated, by the Notary Public Act or by any other law in connection with a notarial act by the notary public; or

(2) a notary public's performance of an official act in a manner found by the governor to be negligent or against the public interest;

L. "personal appearance" means that the principal and the notary public are physically close enough to see, hear, communicate with and give identification documents to each other;

M. "personally known" means familiarity with a person resulting from interactions with that person over a period of time sufficient to dispel any reasonable uncertainty that the person has the identity claimed;

N. "principal" means:

(1) a person whose signature is notarized; or

(2) a person, other than a credible witness, taking an oath or affirmation from the notary public;

O. "satisfactory evidence of identity" means identification of a person based on:

(1) at least one current document issued by a federal, state or tribal government agency bearing the photographic image of the person's face and signature and a physical description of the person, though a properly stamped passport without a physical description is acceptable; or

(2) the oath or affirmation of one credible witness unaffected by the document or transaction who is personally known to the notary public and who personally knows the person, or of two credible witnesses unaffected by the document or transaction who each personally knows the person and shows to the notary public documentary identification as described in Paragraph (1) of this subsection; and

P. "seal" means a device, including a rubber stamp, for affixing on a paper document an image containing the notary public's name, the words "State of New Mexico" and, in the case of a rubber stamp, the commission expiration date.

History: Laws 2003, ch. 286, § 2.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 286, § 28 Laws 2003, ch. 286, § 2 effective July 1, 2003.

14-12A-3. Qualifications.

A notary public shall:

A. be a resident of New Mexico;

B. be at least eighteen years of age;

C. be able to read and write the English language;

D. not have pleaded guilty or nolo contendere to a felony or been convicted of a felony; and

E. not have had a notary public commission revoked during the past five years.

History: Laws 2003, ch. 286, § 3.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 286, § 28 Laws 2003, ch. 286, § 3 effective July 1, 2003.

Cross references. — For right of women to hold office of notary public, *see* N.M. Const., art. XX, § 11.

No citizenship requirement. — There is no longer an express citizenship requirement in the New Mexico notary statutes, and any attempt to impose a citizenship requirement would be unconstitutional. 1989 Op. Att'y Gen. No. 89-16.

Residency. — There is no requirement that a person be a New Mexico resident for any particular time before qualifying as a notary public. 1989 Op. Att'y Gen. No. 89-16.

Residency criteria. — For the purpose of the notary statutes, residency constitutes the fact of an abode in New Mexico coupled with the intent of remaining in the state for at least an indefinite period of time. 1989 Op. Att'y Gen. No. 89-16.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 66 C.J.S. Notaries § 2.

14-12A-4. Application.

An applicant for appointment as a notary public shall submit to the secretary of state:

A. an application for appointment on a form prescribed by the secretary of state that includes a statement by the applicant certifying that the applicant is qualified, contains evidence of the applicant's good moral character as shown by signatures of two residents of this state and the oath prescribed by the constitution of New Mexico for state officers;

B. a bond in the amount of ten thousand dollars ($10,000) executed by a licensed surety for a term of four years commencing on the commission's effective date and terminating on its expiration date;

C. an application that is signed by the applicant using the applicant's surname and one given name, plus an initial or additional name if the applicant so desires, or surname and at least two initials; and

D. an application fee in the amount of twenty dollars ($20.00).

History: Laws 2003, ch. 286, § 4.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 286, § 28 Laws 2003, ch. 286, § 4 effective July 1, 2003.

14-12A-5. Appointment; term.

Upon receipt of the completed application for appointment and the application fee, and upon approval of the applicant's bond, the secretary of state shall notify the governor, who shall appoint the applicant as a notary public for a term of four years from the date of appointment unless sooner removed by the governor. The secretary of state shall issue a certificate of appointment to each notary public commissioned by the governor. A certificate of appointment shall not be possessed or used by any other person or surrendered to an employer upon termination of employment.

History: Laws 2003, ch. 286, § 5.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 286, § 28 Laws 2003, ch. 286, § 5 effective July 1, 2003.

Date of commission. — A notary's commission dates from the time of appointment and not from the date of qualification. 1945 Op. Att'y Gen. No. 45-4757.

Signing of renewal applications when appointment begins following year. — As the initial appointment is merely one step in the process of becoming a notary and, further, does not become effective until certain other acts are fulfilled, the present governor may sign notary public renewal applications even though the term of appointment begins next year. 1958 Op. Att'y Gen. No. 58-240.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 58 Am. Jur. 2d Notaries Public §§ 5, 6, 10, 11.

66 C.J.S. Notaries §§ 3, 4.

14-12A-6. Reappointment.

At least thirty days before expiration of each notary public term, the secretary of state shall mail a notice of expiration to the notary public's mailing address of record. A notary public may be reappointed upon making application in the same manner as required for an original application.

History: Laws 2003, ch. 286, § 6.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 286, § 28 Laws 2003, ch. 286, § 6 effective July 1, 2003.

14-12A-7. Powers and prohibitions.

A. A notary public is empowered to perform the following notarial acts:

(1) acknowledgments;

(2) oaths and affirmations;

(3) jurats;

(4) copy certifications; and

(5) any other act so authorized by the law of this state.

B. A notary public shall not perform a notarial act if the principal:

(1) is not in the notary public's presence at the time of notarization;

(2) is not personally known to the notary public or identified by the notary public through satisfactory evidence of identity;

(3) shows a demeanor that causes the notary public to have a compelling doubt about whether the principal knows the consequences of the transaction requiring a notarial act; or

(4) in the notary public's judgment, is not acting of his own free will.

C. A notary public may certify the affixation of a signature by mark on a document presented for notarization if:

(1) the mark is affixed in the presence of the notary public and of two credible witnesses unaffected by the document;

(2) both witnesses sign their own names beside the mark;

(3) the notary public writes below the mark: "Mark affixed by (name of signer by mark) in presence of (names of witnesses) and undersigned notary public pursuant to Subsection C of Section 7 [14-12A-7 NMSA 1978] of the Notary Public Act"; and

(4) the notary public notarizes the signature by mark through an acknowledgment or jurat.

D. A notary public may sign the name of a person physically unable to sign or make a mark on a document presented for notarization if:

(1) the person directs the notary public to do so in the presence of two credible witnesses unaffected by the document;

(2) the notary public signs the person's name in the presence of the person and the witnesses;

(3) both witnesses sign their own names beside the signature;

(4) the notary public writes below the signature: "Signature affixed by notary public in the presence of (names and addresses of person and two witnesses) pursuant to Subsection D of Section 7 [14-12A-7 NMSA 1978] of the Notary Public Act"; and

(5) the notary public notarizes the signature through an acknowledgment or jurat.

History: Laws 2003, ch. 286, § 7.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 286, § 28 Laws 2003, ch. 286, § 7 effective July 1, 2003.

Notary public may administer oath in another county. — A notary public appointed in one county is authorized to administer an oath for verification of felony information in another county in this state. *State v. Parker*, 1930-NMSC-004, 34 N.M. 486, 285 P. 490.

Taking of acknowledgments. — The duties performed by an officer in taking an acknowledgment in this state are ministerial in character rather than judicial. *Garcia v. Leal*, 1924-NMSC-078, 30 N.M. 249, 231 P. 631.

Impeachment. — A certificate of acknowledgment duly executed as required by law is prima facie evidence of execution of the instrument it acknowledges, and should be impeached only by clear and convincing evidence. *Garcia v. Leal*, 1924-NMSC-078, 30 N.M. 249, 231 P. 631.

Authority "anywhere in the state". — This section reflects the clear intent of the legislature to provide for the appointment of notaries public in each county of the state. Other sections of the act provide that the bond of the notaries shall be filed with the secretary of state, but also provide that through the recording of the commissions, seals, signatures and bonds, each county clerk shall have a record of qualified notaries resident in his county. Certainly there is nothing which abrogates the unequivocal language in this section that each notary shall have authority "anywhere in the state" to perform his duties. 1953 Op. Att'y Gen. No. 53-5659.

Name of county. — The blank space before the wording "County of . . . ." which is to be filed by a notary should contain the name of the county where he is taking the acknowledgment and not the name of the county where his commission as a notary is recorded. 1955 Op. Att'y Gen. No. 55-6228.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 58 Am. Jur. 2d Notaries Public §§ 12, 13, 27 to 30, 33 to 38.

Measure of damages for false or incomplete certificate by notary public, 13 A.L.R.3d 1039.

Liability of notary public or his bond for negligence in performance of duties, 44 A.L.R.3d 555.

66 C.J.S. Notaries § 6.

14-12A-8. Refusal to notarize.

A. A notary public shall not refuse to perform a notarial act based on a principal's race, age, gender, sexual orientation, religion, national origin, health or disability or status as a non-client or non-customer of the notary public or the notary public's employer.

B. A notary public shall perform a notarial act for a person requesting such an act who tenders the appropriate fee, unless:

(1) the notary public knows or has good reason to believe that the notarial act or the associated transaction is unlawful;

(2) the act is prohibited; or

(3) the number of notarial acts requested practicably precludes completion of all acts at once, in which case the notary public shall arrange for later completion of the remaining acts.

History: Laws 2003, ch. 286, § 8.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 286, § 28 Laws 2003, ch. 286, § 8 effective July 1, 2003.

14-12A-9. Surety bond and duties of surety.

A. A commission shall not be issued until an oath of office and a ten-thousand-dollar ($10,000) bond have been provided on the application for appointment and approved by the secretary of state. The bond shall be executed by a licensed surety, for a term of four years commencing on the commission's effective date and terminating on its expiration date, with payment of bond funds to any person conditioned upon the notary public's misconduct.

B. A person damaged by an unlawful act, negligence or misconduct of a notary public in his official capacity may bring a civil action on the notary public's official bond.

C. The surety for a notary public bond shall report all claims against the bond to the secretary of state.

D. If a notary public bond has been exhausted by claims paid out by the surety, the governor shall suspend the notary public's commission until:

(1) a new bond in the amount of ten thousand dollars ($10,000) is obtained by the notary public; and

(2) the notary public's fitness to serve the remainder of the commission is determined by the governor.

E. In the event of a suspension of a notary public's commission by the governor, the notary public shall not perform any notarial acts until the requirements of Subsection D of this section have been fulfilled and the governor removes the notary public's suspension.

History: Laws 2003, ch. 286, § 9.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 286, § 28 Laws 2003, ch. 286, § 9 effective July 1, 2003.

Filing of bond and oath as condition precedent. — The filing of a notary's bond and oath with the secretary of state is a condition precedent to the lawful and valid exercise of the duties of a notary public. 1962 Op. Att'y Gen. No. 62-18.

14-12A-10. Avoidance of influence.

A. A notary public shall not influence a person either to enter into or avoid a transaction involving a notarial act by the notary public, except that the notary public may advise against a transaction if the notary public knows or has good reason to believe that the notarial act or the associated transaction is unlawful.

B. A notary public has neither the duty nor the authority to investigate, ascertain or attest to the lawfulness, propriety, accuracy or truthfulness of a document or transaction involving a notarial act.

History: Laws 2003, ch. 286, § 10.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 286, § 28 Laws 2003, ch. 286, § 10 effective July 1, 2003.

14-12A-11. False or incomplete certificate, authenticating documents in absence of principal.

A. If a notary public or any other officer authorized by law to make or give a certificate or other writing makes or delivers as true a certificate or writing containing statements that he knows to be false, or appends his official signature to acknowledgments or other documents when the principals executing the documents have not appeared in person before him, is guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment for a period not exceeding six months, or both.

B. A notary public shall not affix an official signature or seal on a notarial certificate that is incomplete.

C. A notary public shall not provide or send a signed or sealed notarial certificate to another person with the understanding that it will be completed or attached to a document outside of the notary public's presence.

History: Laws 2003, ch. 286, § 11.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 286, § 28 Laws 2003, ch. 286, § 11 effective July 1, 2003.

14-12A-12. Improper documents.

A. A notary public shall not notarize a signature:

(1) on a blank or incomplete document; or

(2) on a document without notarial certificate wording.

B. A notary public shall neither certify nor authenticate a photograph.

History: Laws 2003, ch. 286, § 12.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 286, § 28 Laws 2003, ch. 286, § 12 effective July 1, 2003.

14-12A-13. Intent to deceive.

A notary public shall not perform any official action with the intent to deceive or defraud.

History: Laws 2003, ch. 286, § 13.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 286, § 28 Laws 2003, ch. 286, § 13 effective July 1, 2003.

14-12A-14. Testimonials.

A notary public shall not use the official notary public title or seal to endorse, promote, denounce or oppose any product, service, contest, candidate or other offering.

History: Laws 2003, ch. 286, § 14.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 286, § 28 Laws 2003, ch. 286, § 14 effective July 1, 2003.

14-12A-15. Unauthorized practice of law.

A. If notarial certificate wording is not provided or indicated for a document, a non-attorney notary public shall not determine the type of notarial act or certificate to be used.

B. A non-attorney notary public shall not assist another person in drafting, completing, selecting or understanding a document or transaction requiring a notarial act.

C. This section does not preclude a notary public who is duly qualified, trained or experienced in a particular industry or professional field from selecting, drafting, completing or advising on a document or certificate related to a matter within that industry or field.

D. A notary public shall not claim to have powers, qualifications, rights or privileges that the office of notary public does not provide, including the power to counsel on immigration matters.

E. A notary public shall not use the term "notario publico" or any equivalent non-English term in any business card, advertisement, notice or sign.

History: Laws 2003, ch. 286, § 15.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 286, § 28 Laws 2003, ch. 286, § 15 effective July 1, 2003.

14-12A-16. Fees.

A. For performing a notarial act, a notary public may charge the maximum fee specified in this section, charge less than the maximum fee or waive the fee.

B. A notary public shall not discriminate by conditioning the fee for a notarial act on the attributes of the principal.

C. An employer shall not establish fees for notarial services that are in excess of those specified in this section nor on the attributes of the principal as delineated.

D. The maximum fees that may be charged by a notary public for notarial acts are:

(1) for acknowledgments, five dollars ($5.00) per acknowledgment;

(2) for oaths or affirmations without a signature, five dollars ($5.00) per person;

(3) for jurats, five dollars ($5.00) per jurat; and

(4) for copy certifications, fifty cents ($.50) per page with a minimum total charge of five dollars ($5.00).

E. A notary public may charge a travel fee not to exceed thirty cents ($.30) per mile when traveling to perform a notarial act if:

(1) the notary public and the person requesting the notarial act agree upon the travel fee in advance of the travel; and

(2) the notary public explains to the person requesting the notarial act that the travel fee is separate from the notarial fees and not mandated by law.

History: Laws 2003, ch. 286, § 16.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 286, § 28 Laws 2003, ch. 286, § 16 effective July 1, 2003.

14-12A-17. Official signature.

In notarizing a paper document, a notary public shall:

A. sign by hand on the notarial certificate exactly and only the name indicated on the notary public's seal or stamp;

B. not sign using a facsimile stamp or an electronic or other printing method; and

C. affix the official signature only at the time the notarial act is performed.

History: Laws 2003, ch. 286, § 17.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 286, § 28 Laws 2003, ch. 286, § 17 effective July 1, 2003.

14-12A-18. Official seal or stamp.

A. A notary public shall keep an official seal or stamp that is the exclusive property of the notary public. The seal or stamp shall not be possessed or used by any other person or surrendered to an employer upon termination of employment.

B. A notarial seal or stamp shall contain the exact name of the notary public as it appears on the application for appointment and the words "NOTARY PUBLIC - STATE OF NEW MEXICO" and shall authenticate official acts with the seal or stamp.

C. Each notary public shall authenticate official acts with a notarial seal or stamp that, if a seal, shall contain the notary public's name and the words "NOTARY PUBLIC - STATE OF NEW MEXICO" and that if a stamp, shall be in substantially the following form:

"SEAL

STATE OF

NEW MEXICO

OFFICIAL SEAL

_____

(name of notary public printed)".

D. An impression or image of the seal or stamp shall be affixed only at the time the notarial act is performed.

E. When not in use, the seal or stamp shall be kept secure and accessible only to the notary public.

F. Within ten days after the seal or stamp of a notary public is stolen, lost, damaged or otherwise rendered incapable of affixing a legible impression or image, the notary public, after informing the appropriate law enforcement agency in the case of theft or vandalism, shall notify the secretary of state by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, and also provide a copy of any pertinent police report.

G. As soon as reasonably practicable after resignation, revocation, change of name, expiration of a commission or death of the notary public, the seal or stamp shall be destroyed or defaced so that it may not be misused.

History: Laws 2003, ch. 286, § 18.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 286, § 28 Laws 2003, ch. 286, § 18 effective July 1, 2003.

Indentation, rather than imprinting, required. — The notary's seal must be one which indents the words required by the statute upon the paper, and it is not permissible to use one which merely imprints, though clearly, the same words. 1950 Op. Att'y Gen. No. 50-5304.

14-12A-19. Endorsing date of commission.

Upon performance of any notarial act, the notary public shall, immediately opposite or following the notary public's signature, endorse the date of the expiration of commission. The endorsement may be legibly written, stamped or printed upon the instrument and shall be substantially in the following form:

"My commission expires (stating date of expiration of commission)".

History: Laws 2003, ch. 286, § 19.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 286, § 28 Laws 2003, ch. 286, § 19 effective July 1, 2003.

14-12A-20. Change of name.

A. Upon any change of a notary public's name, the notary public shall, within ten days of such change, make application to the secretary of state for issuance of a corrected commission. The application shall be on a form prescribed by the secretary of state and shall contain an impression or image of the new seal or stamp bearing the new name of the notary public exactly as it appears on the application. Upon receipt of the completed application, the secretary of state shall issue a corrected certificate of appointment showing the notary public's new name. The commission on the corrected certificate of appointment expires on the same date as the commission on the certificate of appointment it replaces.

B. The notary public shall notify the surety for the notary public's bond in writing within ten days of a change of name and provide the surety with the new name of the notary public exactly as it was provided to the secretary of state. Within ten days of the notice from the notary public, the surety shall issue a rider to the notary public's bond and distribute a copy of the rider to the notary public and the secretary of state.

History: Laws 2003, ch. 286, § 20.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 286, § 28 Laws 2003, ch. 286, § 20 effective July 1, 2003.

14-12A-21. Change of address.

A. A notary public shall notify the secretary of state in writing of a change of the notary public's residence, business or mailing address within ten days after such change.

B. A notary public shall notify the surety for the notary public's bond in writing within ten days of a change of residence, business or mailing address.

History: Laws 2003, ch. 286, § 21.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 286, § 28 Laws 2003, ch. 286, § 21 effective July 1, 2003.

Effect of changing residence. — A notary public who qualifies in one county of New Mexico can administer oaths, certify to acknowledgments and perform any other duties required of him by law anywhere in the state of New Mexico; however, should he change residence from the county in which he qualified, he must, before performing any official act in the county to which he has moved, have his bond, commission and oath of office filed in the office of the county recorder. 1952 Op. Att'y Gen. No. 52-5538.

14-12A-22. Certification.

Upon request, the secretary of state shall certify to a notary public's commission.

History: Laws 2003, ch. 286, § 22.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 286, § 28 Laws 2003, ch. 286, § 22 effective July 1, 2003.

14-12A-23. Resignation.

A. A notary public who resigns his commission shall send to the secretary of state by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, a signed notice indicating the effective date of resignation.

B. A notary public who ceases to reside in New Mexico, or who becomes permanently unable to perform notarial duties, shall resign his commission.

History: Laws 2003, ch. 286, § 23.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 286, § 28 Laws 2003, ch. 286, § 23 effective July 1, 2003.

14-12A-24. Disposition of the seal and stamp.

A. When a notary public commission expires or is resigned or revoked, the notary public shall, as soon as reasonably practicable, destroy or deface all notary seals and stamps so that they may not be misused.

B. If a notary public dies during the term of commission or before fulfilling the requirement stipulated in Subsection A of this section, the notary public's personal representative shall notify the secretary of state of the death in writing and, as soon as reasonably practicable, destroy or deface all notary seals and stamps so that they may not be misused.

History: Laws 2003, ch. 286, § 24.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 286, § 28 Laws 2003, ch. 286, § 24 effective July 1, 2003.

14-12A-25. Disqualified notary public exercising powers.

Any notary public who exercises the duties of his office with the knowledge that his commission has expired or that he is otherwise disqualified is guilty of a misdemeanor and upon conviction shall be punished by a fine of five hundred dollars ($500) and shall be removed from office by the governor.

History: Laws 2003, ch. 286, § 25.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 286, § 28 Laws 2003, ch. 286, § 25 effective July 1, 2003.

14-12A-26. Removal from office.

A. The governor may revoke the commission of any notary public who:

(1) submits an application for appointment as a notary public that contains a false statement;

(2) is or has pleaded guilty or nolo contendere to a felony or been convicted of a felony or of a misdemeanor arising out of a notarial act performed by him;

(3) engages in the unauthorized practice of law;

(4) ceases to be a New Mexico resident; or

(5) commits a malfeasance in office.

B. A commission may be revoked pursuant to the provisions of this section only if action is taken subject to the rights of the notary public to notice, hearing, adjudication and appeal.

C. Resignation or expiration of a commission does not terminate or preclude an investigation into the notary public's conduct by the governor or by the attorney general, a district attorney or any law enforcement agency of this state, who may pursue the investigation to a conclusion, whereupon it shall be made a matter of public record whether or not the finding would have been grounds for revocation.

D. In lieu of revocation, the governor may deliver a written official warning to cease misconduct to any notary public whose actions are judged to be official misconduct.

History: Laws 2003, ch. 286, § 26.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 286, § 28 Laws 2003, ch. 286, § 26 effective July 1, 2003.

ARTICLE 13
Acknowledgments and Oaths

14-13-1. [Administration of oath.]

Whenever any person shall be required to take an oath before he enters upon the discharge of any office, place or business, or on any lawful occasion, any person administering the oath shall do so in the following form, viz: the person swearing shall, with his right hand uplifted, follow the words required in the oath as administered, beginning: I do solemnly swear, and closing: so help me God.

History: Laws 1893, ch. 42, § 1; C.L. 1897, § 2559; Code 1915, § 3933; C.S. 1929, § 94-110; 1941 Comp., § 46-101; 1953 Comp., § 43-1-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For Uniform Laws on Notarial Acts, *see* 14-14-1 to 14-14-11 NMSA 1978.

Sufficiency of oath or affirmation. — Signers of an election petition did not "swear or affirm" that they were residents of the area proposed to be incorporated since the petition did not contain any language indicating that persons who provide false information on the petition might be subject to the penalty of perjury, which is required for a sworn or affirmed statement. *Citizens for Incorporation, Inc. v. Board of Cnty. Comm'rs*, 1993-NMCA-069, 115 N.M. 710, 858 P.2d 86.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 58 Am. Jur. 2d Oath and Affirmation §§ 11 to 19, 21 to 24.

Acknowledgment or oath over telephone, 12 A.L.R. 538, 58 A.L.R. 604.

67 C.J.S. Oaths and Affirmations §§ 5, 6.

14-13-2. [Administration of affirmation in lieu of oath.]

Whenever any person is required to take or subscribe an oath and shall have conscientious scruples against taking the same, he shall be permitted, instead of such oath, to make a solemn affirmation, with uplifted right hand, in the following form, viz: you do solemnly, sincerely and truly declare and affirm, and close with: and this I do

under the pains and penalties of perjury, which affirmation shall be equally valid as if such person had taken an oath in the usual form; and every person guilty of falsely, willfully or corruptly declaring as aforesaid, shall be liable to punishment for the same as for perjury.

History: Laws 1893, ch. 42, § 2; C.L. 1897, § 2560; Code 1915, § 3934; C.S. 1929, § 94-111; 1941 Comp., § 46-102; 1953 Comp., § 43-1-2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For Uniform Laws on Notarial Acts, *see* 14-14-1 to 14-14-11 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 58 Am. Jur. 2d Oath and Affirmation §§ 11, 14, 15, 17 to 19, 22 to 24.

67 C.J.S. Oaths and Affirmations § 6.

14-13-3. Oaths; power to administer.

The secretary of state of New Mexico, county clerks, clerks of probate courts, clerks of district courts, clerks of magistrate courts if the magistrate court has a seal, and all duly commissioned and acting notaries public, are hereby authorized and empowered to administer oaths and affirmations in all cases where magistrates and other officers within the state authorized to administer oaths may do so, under existing laws, and with like effect.

History: Laws 1882, ch. 28, § 1; C.L. 1884, § 1742; C.L. 1897, § 2558; Code 1915, § 3932; Laws 1929, ch. 78, § 1; C.S. 1929, § 94-109; 1941 Comp., § 46-103; 1953 Comp., § 43-1-3; Laws 1977, ch. 98, § 1.

ANNOTATIONS

Cross references. — For notarial acts in this state, *see* 14-14-3 NMSA 1978.

For administering of oaths by chairman of board of county commissioners, *see* 4-38-11 NMSA 1978.

Section authorizes verification of information for murder before a notary public. *State v. Parker*, 1930-NMSC-004, 34 N.M. 486, 285 P. 490.

Section authorizes verification of affidavit in attachment. — This section includes verification by notary of affidavit in proceeding by attachment made by plaintiff's agent. *Robinson v. Hesser*, 1887-NMSC-023, 4 N.M. (Gild.) 282, 13 P. 204.

Administration of oath of office. — State judges have the authority to administer an oath of office to an elected official. 2009 Op. Att'y Gen. No. 09-03.

Administration over telephone. — Generally, a court reporter may not administer oaths over the telephone. Rule 1-030B(7) does not change the general rule, and the court reporter must administer the oath and take the deposition in the witness' presence. 1988 Op. Att'y Gen. No. 88-81.

Law reviews. — For article, "Attachment in New Mexico - Part I," see 1 Nat. Resources J. 303 (1961).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Qualification of stockholder of a corporation or member of association to take acknowledgment of, or attest as notary an instrument to which corporation or association is a party, 51 A.L.R. 1529.

Joining in instrument as ratification of or estoppel as to prior ineffective instrument affecting real property, 7 A.L.R.2d 294.

Relationship of attorney to person taking oath or making acknowledgment, as disqualifying official empowered to administer oaths or take acknowledgments, 21 A.L.R.3d 483.

Liability of notary public or his bond for negligence in performance of duties, 44 A.L.R.3d 555.

67 C.J.S. Oaths and Affirmations § 4.

14-13-4 to 14-13-10. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 281, § 12 repealed 14-13-4 through 14-13-10 NMSA 1978, as amended or enacted by Laws 1929, ch. 13, § 1, Laws 1901, ch. 62, § 15, Laws 1939, ch. 124, § 1, Laws 1945, ch. 4, § 1, Laws 1851-1852, p. 374, Laws 1889, ch, 46, § 1, and Laws 1939, ch. 124, § 2, relating to acknowledgments, effective July 1, 1993. For provisions of former sections, *see* the 1992 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* 14-14-1 NMSA 1978 et seq.

14-13-11. Wage and salary assignments.

A. All assignments of wages or salaries due or to become due to any person, in order to be valid, shall be acknowledged by the party making the assignment before a

notary public or other officer authorized to take acknowledgments. The assignment shall be recorded in the office of the county clerk of the county in which the money is to be paid and a copy served upon the employer or person who is to make payment.

B. Any assignment of wages or salary is void if it provides for an assignment of more than twenty-five percent of the assignor's disposable earnings for any pay period. As used in this section, "disposable earnings" means that part of the assignor's wage or salary remaining after deducting the amounts which are required by law to be withheld.

History: Laws 1929, ch. 128, § 1; C.S. 1929, § 8-101; 1941 Comp., § 46-111; 1953 Comp., § 43-1-12; Laws 1971, ch. 172, § 1.

ANNOTATIONS

Cross references. — For exemption of disposable wages from garnishment, *see* 35-12-7 NMSA 1978.

For assignment of wages to director of labor and industrial division of labor department, *see* 50-4-11 NMSA 1978.

For Uniform Commercial Code exclusion for wage assignments, *see* 55-9-104 NMSA 1978.

Withholding of funds from monthly salary checks already earned is legal and valid if made in statutory form. 1960 Op. Att'y Gen. No. 60-33.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 6 Am. Jur. 2d Assignments for Benefit of Creditors § 29.

6A C.J.S. Assignments §§ 51, 52.

14-13-12. [Instrument needs no acknowledgment in absence of statutory requirement.]

An acknowledgment of an instrument of writing shall not be necessary to its execution unless expressly so provided by statute.

History: Laws 1901, ch. 62, § 17; Code 1915, § 1; C.S. 1929, § 1-101; 1941 Comp., § 46-112; 1953 Comp., § 43-1-13.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For provision that acknowledgment is necessary for recording of instruments, *see* 14-8-4 NMSA 1978.

For oil and gas leases on state lands to be acknowledged, *see* 19-10-32 NMSA 1978.

For voluntary assignments for benefit of creditors to be acknowledged, *see* 56-9-10 NMSA 1978.

For articles of incorporation of waterworks companies to be acknowledged, *see* 62-2-1 NMSA 1978.

For articles of incorporation of rural electric cooperatives to be acknowledged, *see* 62-15-6 NMSA 1978.

For bill of sale of animals to be acknowledged, *see* 77-9-21 to 77-9-24 NMSA 1978.

For provisions relating to herd law districts, *see* 77-12-3 NMSA 1978.

Acknowledgment not part of instrument. — Although an acknowledgment is required before an instrument may be filed, in the absence of a statute so providing, an acknowledgment is not a part of an instrument, and is not necessary to its validity. *Garrett Bldg. Ctrs., Inc. v. Hale*, 1981-NMSC-009, 95 N.M. 450, 623 P.2d 570.

Deeds are required to be acknowledged for recordation and to protect the grantee against subsequent purchasers in good faith and without notice. *New Mexico Properties, Inc. v. Lennox Indus., Inc.*, 1980-NMSC-087, 95 N.M. 64, 618 P.2d 1228.

Deeds are not required to be acknowledged, except for recordation, and for the protection of the grantee against subsequent purchasers in good faith and without notice. *Garcia v. Leal*, 1924-NMSC-078, 30 N.M. 249, 231 P. 631.

Acknowledgment is not essential to validity of deed of conveyance as between its parties. *Kitchen v. Canavan*, 1932-NMSC-037, 36 N.M. 273, 13 P.2d 877.

Absence of valid acknowledgment does not render instrument void. *Vorenberg v. Bosserman*, 1913-NMSC-005, 17 N.M. 433, 130 P. 438.

Absence of acknowledgment does not affect conveyance between parties. — Absence of an acknowledgment to a deed or instrument of conveyance does not affect its validity or render it void as between parties. *New Mexico Properties, Inc. v. Lennox Indus., Inc.*, 1980-NMSC-087, 95 N.M. 64, 618 P.2d 1228.

Valid materialmen's lien does not affect conveyance between parties. — A valid materialmen's lien which lacked an acknowledgment, but had been filed and recorded, was valid and binding as between the parties to an action on the lien. *Garrett Bldg. Ctrs., Inc. v. Hale*, 1981-NMSC-009, 95 N.M. 450, 623 P.2d 570.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1A C.J.S. Acknowledgments § 7.

14-13-13. [Validation of former acknowledgments; 1951 act.]

All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof had been in the form prescribed by law.

History: 1941 Comp., § 46-114, enacted by Laws 1951, ch. 14, § 1; 1953 Comp., § 43-1-14.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Prior validating acts. — Laws 1873-1874, ch. 14, § 3; C.L. 1884, § 2773; C.L. 1897, § 3969; Code 1915, § 2; C.S. 1929, § 1-102.

Laws 1882, ch. 27, § 1; C.L. 1884, § 2741; C.L. 1897, § 3931; Code 1915, § 3; C.S. 1929, § 1-103.

Laws 1913, ch. 13, § 1; Code 1915, § 4; C.S. 1929, § 1-104.

Laws 1921, ch. 164, §§ 1, 2; C.S. 1929, §§ 1-105, 1-106.

Laws 1929, ch. 59, § 1; C.S. 1929, § 1-107.

Laws 1933, ch. 17, § 1.

Laws 1939, ch. 41, § 1; 1941 Comp., § 46-113.

Laws 1947, ch. 195, § 1.

Generally. — The act of 1874 curing defective acknowledgment did not supply the want nor obviate the necessity of an acknowledgment as between the parties thereto. *Armijo v. New Mexico Town Co.*, 1885-NMSC-026, 3 N.M. (Gild.) 427, 5 P. 709.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1 Am. Jur. 2d Acknowledgments § 78.

1A C.J.S. Acknowledgments §§ 83, 84.

14-13-14. [Validation of former acknowledgments; 1957 act.]

All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.

History: 1953 Comp., § 43-1-14.1, enacted by Laws 1957, ch. 110, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1 Am. Jur. 2d Acknowledgments § 78.

1A C.J.S. Acknowledgments §§ 83, 84.

14-13-15. [Validation of former acknowledgments; 1965 act.]

All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was

taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.

History: 1953 Comp., § 43-1-14.2, enacted by Laws 1965, ch. 186, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For prior validating acts, *see* 14-13-13, 14-13-14 NMSA 1978 and compiler's notes to 14-13-13 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1 Am. Jur. 2d Acknowledgments § 78.

1A C.J.S. Acknowledgments §§ 83, 84.

14-13-16. Validation of former acknowledgments; 1967 act.

All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.

History: 1953 Comp., § 43-1-14.3, enacted by Laws 1967, ch. 80, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For prior validating acts, *see* 14-13-13, 14-13-15 NMSA 1978 and compiler's notes to 14-13-13 NMSA 1978.

14-13-17. Validation of former acknowledgments; 1971 act.

All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.

History: 1953 Comp., § 43-1-14.4, enacted by Laws 1971, ch. 165, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For prior validating acts, *see* 14-13-13, 14-13-14, 14-13-15, 14-13-16 and compiler's notes to 14-13-13 NMSA 1978.

14-13-18. Validation of former acknowledgments; 1975 act.

All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married

woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.

History: 1953 Comp., § 43-1-14.5, enacted by Laws 1975, ch. 198, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For prior validating acts, *see* 14-13-13, 14-13-14, 14-13-15, 14-13-16, 14-13-17 NMSA 1978 and compiler's notes to 14-13-13 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1 Am. Jur. 2d Acknowledgments § 78.

1A C.J.S. Acknowledgments §§ 83, 84.

14-13-19 to 14-13-23. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 281, § 12 repealed 14-13-19 through 14-14-23 NMSA 1978, as enacted or amended by Laws 1955, ch. 82, §§ 1, 2, and 4, and Laws 1981, ch. 212, §§ 1 and 2, relating to short forms of acknowledgment, effective July 1, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* 14-14-8 NMSA 1978.

14-13-24. [Validation of certain prior acknowledgments.]

All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by either the laws of the jurisdiction where taken or the laws of this state to take such acknowledgments, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding the form of the certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledment [acknowledgment] was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though

said certificate of acknowledgment and the record thereof has been in the form prescribed by law.

History: Laws 1981, ch. 212, § 3.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For prior validating acts, *see* 14-13-13, 14-13-14, 14-13-15, 14-13-16, 14-13-17, 14-13-18 NMSA 1978 and compiler's notes to 14-13-13 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1 Am. Jur. 2d Acknowledgments § 78.

1A C.J.S. Acknowledgments §§ 83, 84.

14-13-25. Validation of certain prior acknowledgments.

All acknowledgments taken outside the state before any officer authorized by either the laws of the jurisdiction where taken or the laws of this state to take such acknowledgments, and all acknowledgments taken within this state before any officer authorized by law to take acknowledgments, that have been filed and are of record in the appropriate office as provided by law for a period of ten years or more without challenge to the form or content of the acknowledgment, are considered valid, notwithstanding the form of the certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom the acknowledgment was taken or the failure to show that the seal of the officer was affixed to the instrument acknowledged, and notwithstanding the failure of the acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978 if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though the certificate of acknowledgment and the record thereof had been in the form prescribed by law.

History: Laws 1991, ch. 92, § 1.

ANNOTATIONS

Cross references. — For acknowledgment necessary for recording, decrees, and exceptions, *see* 14-8-4.

ARTICLE 14
Uniform Law on Notarial Acts

14-14-1. Definitions.

As used in the Uniform Law on Notarial Acts [14-14-1 to 14-14-11 NMSA 1978]:

A. "notarial act" means any act that a notary public of this state is authorized to perform and includes taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy and noting a protest of a negotiable instrument;

B. "acknowledgment" means a declaration by a person that the person has executed an instrument for the purposes stated therein and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified therein;

C. "verification upon oath or affirmation" means a declaration that a statement is true made by a person upon oath or affirmation;

D. "in a representative capacity" means:

(1) for and on behalf of a corporation, partnership, trust or other entity, as an authorized officer, agent, partner, trustee or other representative;

(2) as a public officer, personal representative, guardian or other representative, in the capacity recited in the instrument;

(3) as an attorney in fact for a principal; or

(4) in any other capacity as an authorized representative of another; and

E. "notarial officer" means a notary public or other officer authorized to perform notarial acts.

History: Laws 1993, ch. 281, § 1.

ANNOTATIONS

Cross references. — For administration of oath, *see* 14-13-1 NMSA 1978.

For administration of affirmation in lieu of oath, *see* 14-13-2 NMSA 1978.

For form of oath to jurors on voir dire in civil cases, *see* UJI 13-102 NMRA.

For form of oath to jurors on voir dire in criminal cases, *see* UJI 14-122 NMRA.

For form of oath to impaneled jurors in criminal cases, *see* UJI 14-123 NMRA.

Law reviews. — For article, "Attachment in New Mexico - Part I," see 1 Nat. Resources J. 303 (1961).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1 Am. Jur. 2d Acknowledgments § 4; 23 Am. Jur. 2d Deeds § 106.

1A C.J.S. Acknowledgments §§ 33, 37 and 38.

14-14-2. Notarial acts.

A. In taking an acknowledgment, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the acknowledgment is the person whose true signature is on the instrument.

B. In taking a verification upon oath or affirmation, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the verification is the person whose true signature is on the statement verified.

C. In witnessing or attesting a signature the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the officer and named therein.

D. In certifying or attesting a copy of a document or other item, the notarial officer shall determine that the proffered copy is a full, true and accurate transcription or reproduction of the one that was copied.

E. In making or noting a protest of a negotiable instrument the notarial officer shall determine the matters set forth in Section 55-3-505 NMSA 1978.

F. A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document if that person is:

(1) personally known to the notarial officer;

(2) identified upon the oath or affirmation of a credible witness personally known to the notarial officer; or

(3) identified on the basis of identification documents.

History: Laws 1993, ch. 281, § 2.

14-14-3. Notarial acts in this state.

A. A notarial act may be performed within this state by the following persons:

(1) a notary public of this state;

(2) a judge, clerk or deputy clerk of any court of this state; or

(3) a person authorized by the law of this state to administer oaths.

B. Notarial acts performed within this state under federal authority as provided in Section 5 [14-14-5 NMSA 1978] of the Uniform Law on Notarial Acts have the same effect as if performed by a notarial officer of this state.

C. The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

History: Laws 1993, ch. 281, § 3.

ANNOTATIONS

Cross references. — For power to administer oath, *see* 14-13-3 NMSA 1978.

14-14-4. Notarial acts in other jurisdictions of the United States.

A. A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state, if performed in another state, commonwealth, territory, district or possession of the United States by any of the following persons:

(1) a notary public of that jurisdiction;

(2) a judge, clerk or deputy clerk of a court of that jurisdiction; or

(3) any other person authorized by the law of that jurisdiction to perform notarial acts.

B. Notarial acts performed in other jurisdictions of the United States under federal authority as provided in Section 5 [14-14-5 NMSA 1978] of the Uniform Law on Notarial Acts have the same effect as if performed by a notarial officer of this state.

C. The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

D. The signature and indicated title of an officer listed in Paragraph (1) or (2) of Subsection A of this section conclusively establish the authority of a holder of that title to perform a notarial act.

History: Laws 1993, ch. 281, § 4.

14-14-5. Notarial acts under federal authority.

A. A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if performed anywhere by any of the following persons under authority granted by the law of the United States:

(1) a judge, clerk or deputy clerk of a court;

(2) a commissioned officer on active duty in the military service of the United States;

(3) an officer of the foreign service or consular officer of the United States; or

(4) any other person authorized by federal law to perform notarial acts.

B. The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

C. The signature and indicated title of an officer listed in Paragraph (1), (2) or (3) of Subsection A of this section conclusively establish the authority of a holder of that title to perform a notarial act.

History: Laws 1993, ch. 281, § 5.

14-14-6. Foreign notarial acts.

A. A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multinational or international organization by any of the following persons:

(1) a notary public or notary;

(2) a judge, clerk or deputy clerk of a court of record; or

(3) any other person authorized by the law of that jurisdiction to perform notarial acts.

B. An "apostille" in the form prescribed by the Hague Convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

C. A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed or a certificate by a foreign service or consular officer of that nation stationed in the United States conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate.

D. An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the indicated title.

E. An official stamp or seal of an officer listed in Paragraph (1) or (2) of Subsection A of this section is prima facie evidence that a person with the indicated title has authority to perform notarial acts.

F. If the title of office and indication of authority to perform notarial acts appears either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

History: Laws 1993, ch. 281, § 6.

14-14-7. Certificate of notarial acts.

A. A notarial act shall be evidenced by a certificate signed and dated by a notarial officer. The certificate shall include identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer and may include the official stamp or seal of office. If the officer is a notary public, the certificate shall also indicate the date of expiration, if any, of the commission of office, but omission of that information may subsequently be corrected. If the officer is a commissioned officer on active duty in the military service of the United States, it shall also include the officer's rank.

B. A certificate of a notarial act is sufficient if it meets the requirements of Subsection A of this section and it:

(1) is in the short form set forth in Section 8 [14-14-8 NMSA 1978] of the Uniform Law on Notarial Acts;

(2) is in a form otherwise prescribed by the law of this state;

(3) is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or

(4) sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

C. By executing a certificate of a notarial act, the notarial officer certifies that he has made the determinations required by Section 2 [14-14-2 NMSA 1978] of the Uniform Law on Notarial Acts.

History: Laws 1993, ch. 281, § 7.

ANNOTATIONS

Cross references. — For provisions relating to conveyances generally, *see* 47-1-1 NMSA 1978 et seq.

Acknowledgment not part of instrument. — Although an acknowledgment is required before an instrument may be filed, in the absence of a statute so providing, an acknowledgment is not a part of an instrument and is not necessary to its validity. *Garrett Bldg. Ctrs., Inc. v. Hale*, 1981-NMSC-009, 95 N.M. 450, 623 P.2d 570.

Recorded and filed lien, lacking acknowledgment, valid and binding. — A valid materialmen's lien which lacked an acknowledgment, but had been filed and recorded, was valid and binding as between the parties to an action on the lien. *Garrett Bldg. Ctrs., Inc. v. Hale*, 1981-NMSC-009, 95 N.M. 450, 623 P.2d 570.

Sufficiency of acknowledgment. — Substantial compliance with this section in regard to acknowledgment is sufficient. *Byers Bros. & Co. Live Stock Comm'n Corp. v. McKenzie*, 1925-NMSC-015, 30 N.M. 487, 239 P. 525.

The acknowledgment of a member of a copartnership was sufficient where form used expressed fact of acknowledgment being made, and also that the person making it was known to the official making the acknowledgment. *Byers Bros. & Co. Live Stock Comm'n Corp. v. McKenzie*, 1925-NMSC-015, 30 N.M. 487, 239 P. 525.

Substantial compliance. — Mortgagee substantially complied with the requirements for acknowledgment of a mortgage where the mortgage showed the name of the corporation appearing just above the form of acknowledgment and the only information not appearing was the state of incorporation of the acknowledging corporation. *Security Fed. Sav. & Loan Ass'n v. Commercial Inv., Ltd.*, 92 B.R. 488 (Bankr. D.N.M. 1988).

Insufficient compliance. — An acknowledgment in the following form: "This mortgage was acknowledged before me by O.G. Keysor, this 11th day of April, 1911," was invalid. It was not a substantial compliance with the statutory requirements. *Vorenberg v. Bosserman*, 1913-NMSC-005, 17 N.M. 433, 130 P. 438.

Missing recitals. — Where there was no recital that the mortgagor acknowledged that he executed the instrument, or that the person who appeared before the notary was the person described in and who executed the instrument, the acknowledgment was insufficient. *Vorenberg v. Bosserman*, 1913-NMSC-005, 17 N.M. 433, 130 P. 438.

Absence of confirmation of correctness. — Where claim of mechanic's lien filed by plumbing company was signed in the name of the company by a partner, an acknowledgment to the claim in the form provided was an insufficient compliance with the requirements of verification under 48-2-6 NMSA 1978 where there was a total absence of any words confirming correctness, truth or authenticity by affidavit, oath, deposition or otherwise. *Home Plumbing & Contracting Co. v. Pruitt*, 1962-NMSC-075, 70 N.M. 182, 372 P.2d 378.

Limitation on acknowledgment to mechanic's lien. — Acknowledgment to a mechanic's lien in the form provided by this section insufficient to comply with the verification requirement of 48-2-6 NMSA 1978. *N.M. Properties, Inc. v. Lennox Indus., Inc.*, 1980-NMSC-087, 95 N.M. 64, 618 P.2d 1228.

Law reviews. — For article, "Attachment in New Mexico - Part I," see 1 Nat. Resources J. 303 (1961).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1 Am. Jur. 2d Acknowledgments § 26; 23 Am. Jur. 2d Deeds § 106.

Necessity and sufficiency of officer's jurat or certificate as to oath, 1 A.L.R. 1568, 116 A.L.R. 587.

Proof of identity upon which officer certifying to an acknowledgment is justified in acting, 10 A.L.R. 871.

Formal acknowledgment of instrument by one whose name is signed thereto by another as an adoption of the signature, 57 A.L.R. 525.

Option in lease for extension of term or for a new lease as creating necessity for acknowledgment, 161 A.L.R. 1094.

Sufficiency of certificate of acknowledgment, 25 A.L.R.2d 1124.

1A C.J.S. Acknowledgments §§ 6, 69, 71.

14-14-8. Certificates of notarial acts; short forms.

The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by Subsection A of Section 7 [14-14-7 NMSA 1978] of the Uniform Law on Notarial Acts:

A. for an acknowledgment in an individual capacity:

State of _____

(County) of _____

This instrument was acknowledged before me on (date) by (name(s) of person(s))

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)

[My commission expires: _____];

B. for an acknowledgment in a representative capacity:

State of _____

(County) of _____

This instrument was acknowledged before me on (date) by (name(s) of person(s))

as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed.)

(Signature of notarial officer)

(Seal, if any) Title (and Rank)

[My commission expires: _____];

C. for a verification upon oath or affirmation:

State of _____

(County) of _____

Signed and sworn to (or affirmed) before me on (date) by (name(s) of person(s) making statement).

(Signature of notarial officer)

(Seal, if any) Title (and Rank)

[My commission expires: _____];

D. for witnessing or attesting a signature:

State of _____

(County) of _____

Signed or attested before me on date by (names(s) of person(s)).

(Signature of notarial officer)

(Seal, if any) Title (and Rank)

[My commission expires: _____];

and

E. for attestation of a copy of a document:

State of _____

(County) of _____

I certify that this is a true and correct copy of a document in the possession of _____. Dated _____

(Signature of notarial officer)

(Seal, if any) Title (and Rank)

[My commission expires: _____].

History: Laws 1993, ch. 281, § 8.

14-14-9. Notarial acts affected by the uniform law on notarial acts.

The Uniform Law on Notarial Acts [14-14-1 to 14-14-11 NMSA 1978] applies to notarial acts performed on or after its effective date.

History: Laws 1993, ch. 281, § 9.

14-14-10. Uniformity of application and construction.

The Uniform Law on Notarial Acts shall be applied and construed to effectuate its general purpose to make uniform the law with respect to its subject among states enacting it.

History: Laws 1993, ch. 281, § 10.

14-14-11. Short title.

This act [14-14-1 to 14-14-11 NMSA 1978] may be cited as the "Uniform Law on Notarial Acts".

History: Laws 1993, ch. 281, § 11.

ARTICLE 15
Electronic Authentication of Documents

14-15-1. Short title.

This act [14-15-1 to 14-15-6 NMSA 1978] may be cited as the "Electronic Authentication of Documents Act".

History: Laws 1996, ch. 11, § 1.

ANNOTATIONS

Cross references. — For electronic authentication as substitution for a signature on any document, *see* 14-3-15.2 NMSA 1978.

14-15-2. Purpose.

The purpose of the Electronic Authentication of Documents Act is to:

A. provide a centralized technical approach to authenticating electronic documents;

B. promote electronic commerce by eliminating barriers resulting from uncertainties over signature requirements and promoting the development of the legal and business infrastructure necessary to implement secure electronic commerce;

C. facilitate electronic filing of documents with government agencies and promote efficient delivery of government services by means of reliable, secure electronic records and document transactions;

D. establish a coherent approach to rules and standards regarding the authentication of electronic records; and

E. promote technological neutrality in electronic authentication.

History: Laws 1996, ch. 11, § 2; 1999, ch. 32, § 1; 2001, ch. 69, § 1.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, rewrote Subsection A, which formerly read "proved a centralized public sector electronic registry for authenticating electronic documents by means of a public and private key system"; in Subsection D, deleted "and integrity" following "authentication" and deleted "that can serve as a model to be adopted by other states and help to promote uniformity among the various states" following "electronic records"; and added Subsection E.

The 1999 amendment, effective June 18, 1999, inserted "sector" in Subsection A; in Subsection B inserted "electronic" and added the language beginning "by eliminating" to the end; substituted the language beginning "filing of documents" through "electronic records" for "information" in Subsection C; and added Subsection D.

14-15-3. Definitions.

As used in the Electronic Authentication of Documents Act:

A. "authenticate" means to ascertain the identity of the originator, verify the integrity of the electronic data and establish a link between the data and the originator;

B. "document" means an identifiable collection of words, letters or graphical knowledge representations, regardless of the mode of representation. "Document" includes correspondence, agreements, invoices, reports, certifications, maps, drawings and images in both electronic and hard copy formats;

C. "electronic authentication" means the electronic signing of a document that establishes a verifiable link between the originator of a document and the document by means of optical, electrical, digital, magnetic, electromagnetic, wireless, telephonic, biological, a public key and private key system or other technology providing similar capabilities;

D. "office" means the information technology management office;

E. "originator" means the person who signs a document electronically;

F. "person" means an individual or entity, including:

(1) an estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture or syndicate; and

(2) any federal, state or local governmental unit or subdivision or any agency, department or instrumentality thereof;

G. "signed" or "signature" means a symbol executed or adopted or a security procedure employed or adopted using electronic means or otherwise, by or on behalf of a person with the intent to authenticate a record; and

H. "technological neutrality" means the methods selected to carry out electronic authentication that do not require or accord greater legal status or effect to the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating or authenticating electronic records or electronic signatures.

History: Laws 1996, ch. 11, § 3; 1999, ch. 32, § 2; 2001, ch. 69, § 2.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, deleted former Subsections A, C, D, G, H, L, M, N, O, P and Q, which contained definitions for "archival listing", "certificate", "digital signature", "key pair", "message digest function", "private key", "public key", "public and private key system", "register", "revocation" and "secretary", respectively, and renumbered the remaining subsections accordingly; in Subsection C, inserted "optical, electrical, digital, magnetic, electromagnetic, wireless telephonic, biological" and "or other technology providing similar capabilities"; substituted "information technology management office" for "office of electronic documentation" in Subsection D; and added Subsection H.

The 1999 amendment, effective June 18, 1999, added Subsections C, D, and H; redesignated former Subsections C to E, F to K, and M to O as Subsections E to G, I to N, and O to Q, respectively; inserted "in a public and private key system" following "means" in Subsection G; substituted "a digital signature" for "an electronic authentication" at the end of Subsections L and M; substituted "message digest function" for "secure hash code" at the end of Subsection N(2); deleted former Subsection L, which defined "record abstraction"; substituted the language beginning "a system for" to the end for "a database or other electronic structure that binds a person's name or other identity to a public key" in Subsection O; deleted former Subsection P, which defined "secure hash code"; deleted former Subsection Q, which defined "sign" or "signing"; and made minor stylistic changes.

14-15-4. Repealed.

ANNOTATIONS

Repeals. — Laws 2001, ch. 69, § 5 repealed 14-15-4 NMSA 1978, as enacted by Laws 1996, ch. 11, § 4, regarding the office of electronic documentation, effective July 1, 2001. For provisions of former section, *see* the 2000 NMSA 1978 on *NMOneSource.com*.

14-15-5. Rules.

A. The information technology commission shall adopt rules and standards to accomplish the purposes of the Electronic Authentication of Documents Act.

B. The rules shall address circumstances under which standards other than adopted standards may be used.

History: Laws 1996, ch. 11, § 5; 2001, ch. 69, § 3.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, rewrote the section, which formerly authorized the secretary of state to issue regulations to accomplish the purposes of the act.

14-15-6. Contracting services.

The office may contract with a private, public or quasi-public organization for the provision of services under the Electronic Authentication of Documents Act. A contract for services shall comply with rules adopted pursuant to the Electronic Authentication of Documents Act and the provisions of the Public Records Act [Chapter 14, Article 3 NMSA 1978] and the Procurement Code [13-1-28 to 13-1-199 NMSA 1978].

History: Laws 1996, ch. 11, § 6; 2001, ch. 69, § 4.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, substituted "office" for "secretary" and substituted "rules" for "regulations".

ARTICLE 16
Uniform Electronic Transactions

14-16-1. Short title.

Chapter 14, Article 16 NMSA 1978 may be cited as the "Uniform Electronic Transactions Act".

History: Laws 2001, ch. 131, § 1; 2013, ch. 30, § 1; 2013, ch. 68, § 1.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, changed "This act" to "Chapter 14, Article 16 NMSA 1978".

Laws 2013, ch. 30, § 1 and Laws 2013, ch. 68, § 1, both effective June 14, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 68, § 1. *See* 12-1-8 NMSA 1978.

14-16-2. Definitions.

As used in the Uniform Electronic Transactions Act:

(1) "agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules and procedures given the effect of agreements under laws otherwise applicable to a particular transaction;

(2) "automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract or fulfilling an obligation required by the transaction;

(3) "computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result;

(4) "contract" means the total legal obligation resulting from the parties' agreement as affected by the Uniform Electronic Transactions Act and other applicable law;

(5) "electronic" means relating to technology having electrical, digital, magnetic, wireless, telephonic, optical, electromagnetic or similar capabilities;

(6) "electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances, in whole or in part, without review or action by an individual;

(7) "electronic record" means a record created, generated, sent, communicated, received or stored by electronic means;

(8) "electronic signature" means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record;

(9) "governmental agency" means an executive, legislative or judicial agency, department, board, commission, authority, institution or instrumentality of the federal government or of a state or of a county, municipality or other political subdivision of a state;

(10) "information" means data, text, images, sounds, codes, computer programs, software, databases or the like;

(11) "information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying or processing information;

(12) "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity;

(13) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in a perceivable form;

(14) "security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, callback or other acknowledgment procedures;

(15) "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. The term includes an Indian tribe, an Indian band or an Alaskan native village, which is recognized by federal law or formally acknowledged by a state; and

(16) "transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial affairs or governmental affairs.

History: Laws 2001, ch. 131, § 2.

14-16-3. Scope.

A. Except as otherwise provided in Subsection B of this section, the Uniform Electronic Transactions Act applies to electronic records and electronic signatures relating to a transaction.

B. The Uniform Electronic Transactions Act does not apply to:

(1) a transaction to the extent it is governed by:

(a) a law governing the creation and execution of wills, codicils or testamentary trusts;

(b) the Uniform Commercial Code [Chapter 55 NMSA 1978], other than Chapter 55, Articles 2 and 2A NMSA 1978; or

(c) court orders, notices or official court documents, including briefs, pleadings and other records, required to be executed in connection with court proceedings;

(2) a notice concerning:

(a) the cancellation or termination of utility services, including water, gas, heat or power services;

(b) default, acceleration, repossession, foreclosure, eviction or the right to cure, under a credit agreement secured by or a rental agreement for a primary residence of an individual; or

(c) the cancellation or termination of health insurance or benefits or life insurance or benefits, but not including annuities; or

(3) any document required to accompany any transportation or handling of hazardous materials, pesticides or other toxic or dangerous materials.

C. The Uniform Electronic Transactions Act applies to an electronic record or electronic signature otherwise excluded from the application of that act under Subsection B of this section to the extent it is governed by a law other than those specified in Subsection B of this section.

D. A transaction subject to the Uniform Electronic Transactions Act is also subject to other applicable substantive law.

History: Laws 2001, ch. 131, § 3; 2007, ch. 323, § 27; 2013, ch. 137, § 1.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, clarified the applicability of the Uniform Commercial Code to a remittance transfer as defined in the federal Electronic Fund Transfer Act of 1978; in Subparagraph (b) of Paragraph (1) of Subsection A, after "other than", deleted "Sections 55-1-107 and 55-1-206 NMSA 1978"; and in Subparagraph (a) of Paragraph (2) of Subsection A, after "water" added "gas".

The 2007 amendment, effective July 1, 2007, added Subparagraph (iii) of Paragraph (1) of Subsection (b) and added Paragraph (3) of Subsection (b) and eliminated the provision that the Uniform Electronic Transactions Act does not apply to a transaction that is governed by the Uniform Anatomical Gift Act, Uniform Health-Care Decisions Act or a law that governs adoption, divorce or family law matters.

14-16-4. Prospective application.

The Uniform Electronic Transactions Act applies to any electronic record or electronic signature created, generated, sent, communicated, received or stored on or after the effective date of that act.

History: Laws 2001, ch. 131, § 4.

14-16-5. Use of electronic records and electronic signatures; variation by agreement.

(a) The Uniform Electronic Transactions Act does not require a record or signature to be created, generated, sent, communicated, received, stored or otherwise processed or used by electronic means or in electronic form.

(b) The Uniform Electronic Transactions Act applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(c) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

(d) Except as otherwise provided in the Uniform Electronic Transactions Act, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of the Uniform Electronic Transactions Act of the words "unless otherwise

agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(e) Whether an electronic record or electronic signature has legal consequences is determined by the Uniform Electronic Transactions Act and other applicable law.

History: Laws 2001, ch. 131, § 5.

14-16-6. Construction and application.

The Uniform Electronic Transactions Act must be construed and applied:

(1) to facilitate electronic transactions consistent with other applicable law;

(2) to be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

(3) to effectuate its general purpose to make uniform the law with respect to the subject of the Uniform Electronic Transactions Act among states enacting it.

History: Laws 2001, ch. 131, § 6.

14-16-7. Legal recognition of electronic records, electronic signatures and electronic contracts.

(a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(c) If a law requires a record to be in writing, an electronic record satisfies the law.

(d) If a law requires a signature, an electronic signature satisfies the law.

History: Laws 2001, ch. 131, § 7.

14-16-8. Provision of information in writing; presentation of records.

(a) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or

its information processing system inhibits the ability of the recipient to print or store the electronic record.

(b) If a law other than the Uniform Electronic Transactions Act requires a record (i) to be posted or displayed in a certain manner, (ii) to be sent, communicated or transmitted by a specified method, or (iii) to contain information that is formatted in a certain manner, the following rules apply:

(1) The record must be posted or displayed in the manner specified in the other law.

(2) Except as otherwise provided in Subsection (d)(2), the record must be sent, communicated or transmitted by the method specified in the other law.

(3) The record must contain the information formatted in the manner specified in the other law.

(c) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(d) The requirements of this section may not be varied by agreement, but:

(1) to the extent a law other than the Uniform Electronic Transactions Act requires information to be provided, sent or delivered in writing but permits that requirement to be varied by agreement, the requirement under Subsection (a) that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(2) a requirement under a law other than the Uniform Electronic Transactions Act to send, communicate or transmit a record by first-class mail, postage prepaid or regular United States mail, may be varied by agreement to the extent permitted by the other law.

History: Laws 2001, ch. 131, § 8.

14-16-9. Attribution and effect of electronic record and electronic signature.

(a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of an electronic record or electronic signature attributed to a person under Subsection (a) is determined from the context and surrounding circumstances at

the time of its creation, execution or adoption, including the parties' agreement, if any, and otherwise as provided by law.

History: Laws 2001, ch. 131, § 9.

14-16-10. Effect of change or error.

If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(A) promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(B) takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(C) has not used or received any benefit or value from the consideration, if any, received from the other person.

(3) If neither Paragraph (1) nor Paragraph (2) applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

(4) Paragraphs (2) and (3) may not be varied by agreement.

History: Laws 2001, ch. 131, § 10.

14-16-11. Notarization and acknowledgment.

If a law requires a signature or record to be notarized, acknowledged, verified or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be

included by other applicable law, is attached to or logically associated with the signature or record.

History: Laws 2001, ch. 131, § 11.

14-16-12. Retention of electronic records; originals.

(a) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

(1) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(2) remains accessible for later reference.

(b) A requirement to retain a record in accordance with Subsection (a) does not apply to any information the sole purpose of which is to enable the record to be sent, communicated or received.

(c) A person may satisfy Subsection (a) by using the services of another person if the requirements of that subsection are satisfied.

(d) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with Subsection (a).

(e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with Subsection (a).

(f) A record retained as an electronic record in accordance with Subsection (a) satisfies a law requiring a person to retain a record for evidentiary, audit or like purposes, unless a law enacted after the effective date of the Uniform Electronic Transactions Act specifically prohibits the use of an electronic record for the specified purpose.

(g) This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

History: Laws 2001, ch. 131, § 12.

14-16-13. Admissibility in evidence.

In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

History: Laws 2001, ch. 131, § 13.

14-16-14. Automated transaction.

In an automated transaction, the following rules apply:

(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

(3) The terms of the contract are determined by the substantive law applicable to it.

History: Laws 2001, ch. 131, § 14.

14-16-15. Time and place of sending and receipt.

(a) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(1) is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(2) is in a form capable of being processed by that system; and

(3) enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

(b) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(1) it enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(2) it is in a form capable of being processed by that system.

(c) Subsection (b) applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under Subsection (d).

(d) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

(1) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.

(2) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(e) An electronic record is received under Subsection (b) even if no individual is aware of its receipt.

(f) Receipt of an electronic acknowledgment from an information processing system described in Subsection (b) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(g) If a person is aware that an electronic record purportedly sent under Subsection (a), or purportedly received under Subsection (b), was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

History: Laws 2001, ch. 131, § 15.

14-16-16. Transferable records.

(a) As used in this section, "transferable record" means an electronic record that:

(1) would be a note under Chapter 55, Article 3 NMSA 1978 or a document under Chapter 55, Article 7 NMSA 1978 if the electronic record were in writing; and

(2) the issuer of the electronic record expressly has agreed is a transferable record.

(b) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) A system satisfies Subsection (b), and a person is deemed to have control of a transferable record, if the transferable record is created, stored and assigned in such a manner that:

(1) a single authoritative copy of the transferable record exists which is unique, identifiable and, except as otherwise provided in Paragraphs (4), (5) and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as:

(A) the person to which the transferable record was issued; or

(B) if the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in Section 55-1-201 NMSA 1978, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code [Chapter 55 NMSA 1978], including, if the applicable statutory requirements under Sections 55-3-302, 55-7-501 or 55-9-308 NMSA 1978 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated or a purchaser, respectively. Delivery, possession and indorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the Uniform Commercial Code.

(f) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to

review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

History: Laws 2001, ch. 131, § 16.

14-16-17. Creation and retention of electronic records and conversion of written records by governmental agencies.

Each governmental agency of this state shall determine whether, and the extent to which, it will create and retain electronic records and convert written records to electronic records.

History: Laws 2001, ch. 131, § 17.

14-16-18. Acceptance and distribution of electronic records by governmental agencies.

The state records administrator shall issue rules for the implementation of the provisions of the Uniform Electronic Transactions Act that shall apply to all governmental agencies; provided that a governmental agency, giving due consideration to security, may instead issue its own rules that specify:

A. the manner and format in which the electronic records must be created, generated, sent, communicated, received and stored and the systems established for those purposes;

B. if electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;

C. control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality and auditability of electronic records; and

D. any other required attributes for electronic records that are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

History: Laws 2001, ch. 131, § 18; 2013, ch. 214, § 10.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, made governmental agencies subject to the Uniform Electronic Transactions Act; deleted former Subsection (a), which gave governmental agencies the option to use electronic records; in former Subsection (b),

deleted "To the extent that a governmental agency uses electronic records and electronic signatures under Subsection (a), the"; at the beginning of the introductory sentence, added "The state records administrator shall issue rules for the implementation of the provisions of the Uniform Electronic Transactions Act that shall apply to all governmental agencies; provided that" and after "consideration to security, may", added "instead issue its own rules that"; and deleted former Subsection (c), which provided that the Uniform Electronic Transactions Act did not require governmental agencies to use electronic records or signatures.

14-16-19. Interoperability.

The governmental agency of this state which adopts standards pursuant to Section 18 [14-16-18 NMSA 1978] may encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this and other states and the federal government and nongovernmental persons interacting with governmental agencies of this state. If appropriate, those standards may specify differing levels of standards from which governmental agencies of this state may choose in implementing the most appropriate standard for a particular application.

History: Laws 2001, ch. 131, § 19.

ANNOTATIONS

Severability. — Laws 2001, ch. 131, § 20 provided that if any provision of the Uniform Electronic Transactions Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.

14-16-20. Electronic certifications, permits, registrations and licenses.

A governmental agency may provide by rule the manner by which an applicant may satisfy by electronic means all agency requirements relating to certifications, permits, registrations, and licenses including but not limited to obtaining, renewing, reactivating, and reinstating, a professional or occupational certification, permit, registration or license.

History: Laws 2013, ch. 30, § 2.

ANNOTATIONS

Effective dates. — Laws 2013, ch. 30 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

14-16-21. Electronic certifications, permits, registrations and licenses.

A governmental agency may provide by rule the manner by which an applicant may satisfy by electronic means all agency requirements to obtain, renew, reactivate and reinstate a professional or occupational certification, permit, registration or license.

History: Laws 2013, ch. 68, § 2.

ANNOTATIONS

Effective dates. — Laws 2013, ch. 68 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.