Chapter 14

Records, Legal Notices and 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.

Cross-references. - As to state records administrator advising and assisting in programs for disposition of records, see 14-3-18 NMSA 1978. As to 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 §§ 10, 12, 34.

§ 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.

§ 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.

§ 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.

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.

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. 1947-48 Op. Att'y Gen. No. 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). 1955-56 Op. Att'y Gen. No. 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.

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.

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, 86 N.M. 198, 521 P.2d 1039 (Ct. App. 1974).

§ 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.

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. 1961-62 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 § 34.

§ 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.

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. 1961-62 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 citizen of this state has a right to inspect any public records of this state except:

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

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

C. letters or memorandums which are matters of opinion in personnel files or students' cumulative files;

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

E. 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.

I. General Consideration.
II. Records Subject to Inspection.
III. Exceptions.

I. General Consideration.

Cross-references. - For provisions of Arrest Record Information Act, see 29-10-1 to 29-10-8 NMSA 1978.

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. 1957-58 Op. Att'y Gen. No. 58-197.

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, 90 N.M. 790, 568 P.2d 1236 (1977).

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. 1953-54 Op. Att'y Gen. No. 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.

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.

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.

Definition of "public records" in Public Records Act does not apply to section, the "right-to-know law." Such definition is so broad that no reasonable interpretation of this section could possibly include all of the records that would be subject to inspection by public under that definition. State ex rel. Newsome v. Alarid, 90 N.M. 790, 568 P.2d 1236 (1977). See 14-3-1 to 14-3-16 NMSA 1978 for Public Records Act.

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.

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. 1963-64 Op. Att'y Gen. No. 63-55.

Provisions of section contemplate some exception to the Public Records Act, 14-3-1 NMSA 1978 et seq. 1963-64 Op. Att'y Gen. No. 64-19.

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, 90 N.M. 790, 568 P.2d 1236 (1977).

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, 103 N.M. 415, 708 P.2d 327 (1985).

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, 106 N.M. 769, 750 P.2d 469 (Ct. App. 1988).

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, 90 N.M. 790, 568 P.2d 1236 (1977).

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, 90 N.M. 790, 568 P.2d 1236 (1977).

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, 106 N.M. 1, 738 P.2d 119 (1987).

Transferring duty as custodian prohibited. - By reason of this section, the records of the director of the department of public health (now secretary of the health and environment department) 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. 1953-54 Op. Att'y Gen. No. 5943.

Imposing charge tantamount to denial of right to inspect. - 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. 1957-58 Op. Att'y Gen. No. 57-102.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 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.
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.
76 C.J.S. Records §§ 34 to 41.

II. Records Subject to Inspection.

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.

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

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. 1959-60 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. 1959-60 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.

For a discussion of whether certain specific documents found in workers' compensation claim files should be made available for public inspection, see 1988 Op. Att'y Gen. No. 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. 1951-52 Op. Att'y Gen. No. 5342.

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, 82 N.M. 445, 483 P.2d 500 (1971).

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. 1961-62 Op. Att'y Gen. No. 61-137.

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. 1961-62 Op. Att'y Gen. No. 61-137. See 14-2-3 NMSA 1978 as to penalties for violation.

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. 1959-60 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.

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, 90 N.M. 790, 568 P.2d 1236 (1977).

Salary information pertaining to state employee which is possessed by the state personnel office is a matter of public record. 1968 Op. Att'y Gen. No. 68-110.

Because 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, the salary of a state employee is a matter of public record. 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. 1953-54 Op. Att'y Gen. No. 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. 1961-62 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 14-2-2 NMSA 1978. 1964 Op. Att'y Gen. No. 64-109.

III. Exceptions.

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. 1961-62 Op. Att'y Gen. No. 61-137.

Nor are temporary or partial grades or records kept by individual teachers public records in nature. 1961-62 Op. Att'y Gen. No. 61-137.

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. University of N.M. Bd. of Regents, 107 N.M. 402, 759 P.2d 189 (1988).

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.

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. 1963-64 Op. Att'y Gen. No. 64-19.

Such as personnel records of state university employees pertaining to illness, etc. - 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, 90 N.M. 790, 568 P.2d 1236 (1977).

And 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.

Privilege of inquiry as to faculty salary matters must be suspended until the board of regents reaches its final conclusion, i.e., the culmination of the contract between the board and the individual. Sanchez v. Board of Regents, 82 N.M. 672, 486 P.2d 608 (1971).

Thought processes, or the offer of a contract, are not such a public record as would require public inspection. Sanchez v. Board of Regents, 82 N.M. 672, 486 P.2d 608 (1971).

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, 82 N.M. 672, 486 P.2d 608 (1971).

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. 1947-48 Op. Att'y Gen. No. 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.

Records of human services department. - 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. 1947-48 Op. Att'y Gen. No. 5032.

§ 14-2-2. [Officers to provide opportunity and facilities for inspection.]

All officers having the custody of any state, county, school, city or town records in this state shall furnish proper and reasonable opportunities for the inspection and examination of all the records requested of their respective offices and reasonable facilities for making memoranda abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them for any lawful purpose.

History: 1941 Comp., § 13-502, enacted by Laws 1947, ch. 130, § 2; 1953 Comp., § 71-5-2.

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. 1957-58 Op. Att'y Gen. No. 58-197.

Term "officer" as employed in this section, although having application to superintendents or administrative officials of school systems, does not apply to school teachers, school nurses or other school employees. 1961-62 Op. Att'y Gen. No. 61-137.

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. 1959-60 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 insure the integrity of the records and to preserve their availability for inspection by others. 1959-60 Op. Att'y Gen. No. 59-170.

Subject to reasonable restrictions and conditions, etc. - 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, 82 N.M. 445, 483 P.2d 500 (1971).

But 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. 1957-58 Op. Att'y Gen. No. 57-102.

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

Section does not require agencies furnishing information to abstract and copy records themselves. 1969 Op. Att'y Gen. No. 69-89.

County fair board records subject to inspection. - 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 14-2-1 NMSA 1978 and this section. 1964 Op. Att'y Gen. No. 64-109.

Privilege of inquiry as to faculty salary matters must be suspended until the board of regents reaches its final conclusion, i.e., the culmination of the contract between the board and the individual. Sanchez v. Board of Regents, 82 N.M. 672, 486 P.2d 608 (1971).

Thought processes, or the offer of a contract, are not such a public record as would require public inspection. Sanchez v. Board of Regents, 82 N.M. 672, 486 P.2d 608 (1971).

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, 82 N.M. 672, 486 P.2d 608 (1971).

§ 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.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 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 §§ 34 to 40.

§ 14-2-3. Public record inspection; mandamus.

If any officer having the custody of any state, county, school, city or town records in this state shall refuse to any citizen of this state the right to inspect any public records of this

state, as provided in Chapter 14, Article 2 NMSA 1978, the aggrieved citizen may petition the district court in the county where the officer maintains his principal office for a writ of mandamus to compel the production of public records. If the citizen prevails in the mandamus action, the district court shall award court costs, damages, and attorney's fees. Such costs and attorney's fees shall be paid from the funds of the agency responsible for custody of the records.

History: 1941 Comp., § 13-503, enacted by Laws 1947, ch. 130, § 3; 1953 Comp., § 71-5-3; Laws 1983, ch. 141, § 1.

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.

Article 3

Public Records

§ 14-3-1. Short title.

This act [14-3-1 to 14-3-16 NMSA 1978] may be cited as the "Public Records Act."

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

Cross-references. - As to Public Health Act records being confidential, see 24-1-20 NMSA 1978.

Names and charges of juvenile arrestees. - A law enforcement agency is not prohibited by the Children's Code, 32-1-1 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.

§ 14-3-2. Definitions.

As used in the Public Records Act [14-3-1 to 14-3-16 NMSA 1978]:

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

B. "administrator" means the state records administrator;

C. "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;

D. "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;

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

F. "microphotography system" means all microphotography equipment, services and supplies.

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

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, 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.

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. 1959-60 Op. Att'y Gen. No. 60-72.

Not applicable to "right-to-know law". - Definition of "public records" in Public Records Act, 14-3-1 NMSA 1978 et seq., does not apply to 14-2-1 NMSA 1978, the "right-to-know law." Such definition is so broad that no reasonable interpretation of 14-2-1 NMSA 1978 could possibly include all of the records that would be subject to inspection by public under that definition. State ex rel. Newsome v. Alarid, 90 N.M. 790, 568 P.2d 1236 (1977).

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. 1959-60 Op. Att'y Gen. No. 60-181.

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

Unless 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.

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. 1961-62 Op. Att'y Gen. No. 61-137.

Such as accident reports. - Accident reports made by police officers as a part of their regular course of duty are considered public records. 1959-60 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. 1961-62 Op. Att'y Gen. No. 61-137.

But not records kept for informational purposes or those containing data used in educating pupils. - 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. 1961-62 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.

Privilege of inquiry as to faculty salary matters must be suspended until the board of regents reaches its final conclusion, i.e., the culmination of the contract between the board and the individual. Sanchez v. Board of Regents, 82 N.M. 672, 486 P.2d 608 (1971).

Thought processes, or the offer of a contract, are not such a public record as would require public inspection. Sanchez v. Board of Regents, 82 N.M. 672, 486 P.2d 608 (1971).

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, 82 N.M. 672, 486 P.2d 608 (1971).

"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. 1959-60 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.
Meaning of term "agency" for purposes of Freedom of Information Act (5 USCS § 552), 57 A.L.R. Fed. 295.
76 C.J.S. Records § 1.

§ 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 state law librarian;

(4) the director of the museum of New Mexico;

(5) the state auditor;

(6) the attorney general; and

(7) a recognized, professionally trained historian in the field of New Mexico history, resident in New Mexico, appointed by the governor for a term of six years. Each member of the commission may designate an alternate to serve in his stead.

B. The commission shall elect one of its members to be chairman 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.

C. 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 chairman or when requested in writing by any two members of the commission. Four members of the commission shall constitute a quorum.

D. 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.

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

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. 69-3.

§ 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 [14-3-1 to 14-3-16 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 [14-3-1 to 14-3-16 NMSA 1978];

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.

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. 69-3.

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. 69-3.

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. 69-3.

§ 14-3-5. Gifts, donations and loans.

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. Funds thus received shall be administered by the commission separately from funds supplied by the state for the execution of this act [14-3-1 to 14-3-16 NMSA 1978], 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.

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 which 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.

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. 1961-62 Op. Att'y Gen. No. 61-7.

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. 1959-60 Op. Att'y Gen. No. 60-169.

§ 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 [14-3-1 to 14-3-16 NMSA 1978], 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.

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. 1959-60 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.

§ 14-3-8. 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.

Meaning of "effective date of this act." - 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. 1961-62 Op. Att'y Gen. No. 61-7.

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.

§ 14-3-9. 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.

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.

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.

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. 1959-60 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. 1961-62 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 [14-3-1 to 14-3-16 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.

Cross-references. - As to 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 § 34.

§ 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.

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. 1959-60 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. - 30 Am. Jur. 2d Evidence §§ 1011 to 1015. 32 C.J.S. Evidence §§ 626 to 665.

§ 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.

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.

Meaning of "effective date of this act". - 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.

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.

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

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

The state records commission [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 a cost plus a five percent handling charge. All receipts from such sales shall go into the special revolving fund established by Laws 1961, Chapter 111, which is hereby continued. In addition to any moneys in the special revolving fund, there is hereby appropriated the sum of five hundred dollars ($500).

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

Repeals and reenactments. - Laws 1968, ch. 14, § 1, repeals 71-6-18, 1953 Comp., relating to purchase by state records commission of storage equipment, etc., for resale, and enacts the above section.

Compiler's notes. - Laws 1961, Chapter 111, referred to in this section, which was compiled as former 71-6-18, 1953 Comp., was repealed by Laws 1968, ch. 14, § 1. See catchline, "Repeals and reenactments," in notes to this section.

§ 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.

"Effective date of this section". - 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, 95 N.M. 427, 622 P.2d 1047 (Ct. App. 1980).

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, 95 N.M. 427, 622 P.2d 1047 (Ct. App. 1980).

§ 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 procedure 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.

Cross-references. - For provisions of the State Rules Act, see 14-3-24, 14-3-25 and 14-4-1 to 14-4-9 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 [this section] 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.

§ 14-3-24. 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.

Cross-references. - For other provisions of the State Rules Act, see 14-3-25 and 14-4-1 to 14-4-9 NMSA 1978.

§ 14-3-25. [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.

Cross-references. - For other provisions of the State Rules Act, see 14-3-24 and 14-4-1 to 14-4-9 NMSA 1978.

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.

Cross-references. - As to public records generally, see 14-3-1 NMSA 1978 et seq.

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.

This act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978] may be cited as the "State Rules Act."

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

State corporation 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 this article and 14-3-24 and 14-3-25 NMSA 1978, unless and until the legislature were to place the state corporation commission under the Administrative Procedures Act, 12-8-1 NMSA 1978 et seq. 1969 Op. Att'y Gen. No. 69-100.

This act is inapplicable to interstate agreements. State v. Ellis, 95 N.M. 427, 622 P.2d 1047 (Ct. App. 1980).

Interstate contract is not similar to rules, reports and notices issued by state agencies. State v. Ellis, 95 N.M. 427, 622 P.2d 1047 (Ct. App. 1980).

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).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 2 Am. Jur. 2d Administrative Law § 287. 73 C.J.S. Public Administrative Law and Procedure §§ 112, 114.

§ 14-4-2. Definitions.

As used in the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978]:

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 and corporations; and

C. "rule" means any rule, regulation, order, standard, statement of policy, including amendments thereto or repeals thereof issued or promulgated by any agency and purporting to affect one or more agencies besides the agency issuing such rule or to affect persons not members or employees of such 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 such a rule nor shall it constitute specific adoption thereof by the agency. Such term shall not include rules relating to the management, confinement, discipline or release of inmates of any penal or charitable institution, the Springer Boys' School, the Girls' Welfare Home, of any hospital nor to rules made relating to the management of any particular educational institution, whether elementary or otherwise, nor to rules made relating to admissions, discipline, supervision, expulsion or graduation of students therefrom.

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

Compiler's notes. - The New Mexico boys' school at Springer and the girls' welfare home, referred to in the last sentence of Subsection C, were provided for in Chapter 33, Article 4 and Chapter 33, Article 5 NMSA 1978, respectively. Both of those Articles were repealed by Laws 1988, ch. 101, § 51.

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, 93 N.M. 546, 603 P.2d 285 (1979).

Orders and decisions excluded by definition from class of rules to which this article and 14-3-24 and 14-3-25 NMSA 1978 apply 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. 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.

Each agency issuing any rule shall place the rule in the format and style required by rule of the records center and shall cause seven copies to be delivered to the records center. The records center shall note thereon the date and hour of filing. The records center shall deliver one copy to the issuing agency, one copy to the university of New Mexico law library and three copies to the state library. Two copies shall remain in the custody of the records center; one of these two copies shall remain in the records center as a permanent record and shall be open to public inspection during office hours.

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

The 1987 amendment, effective June 19, 1987, in the third sentence substituted "one copy to the university of New Mexico law library and three copies to the state library" for "and three copies to the state library" and made minor stylistic changes in the first and second sentences.

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. 78-7.

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. 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. [Filing and distribution of publications and reports; 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.

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 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, 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. 1953-54 Op. Att'y Gen. No. 5814.

Actual notice of rule does not dispel necessity of compliance with this article and 14-3-24 and 14-3-25 NMSA 1978. State v. Joyce, 94 N.M. 618, 614 P.2d 30 (Ct. App. 1980).

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

§ 14-4-5. [Filing and compliance required for valid rule.]

No rule shall be valid or enforceable until it is so filed and shall only be valid and enforceable upon such filing and compliance with any other law.

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

What and with whom matters to be filed. - See same catchline in notes to 14-4-4 NMSA 1978.

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. 78-7.

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

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 this article and 14-3-24 and 14-3-25 NMSA 1978. Johnson v. Francke, 105 N.M. 564, 734 P.2d 804 (Ct. App. 1987).

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, 98 N.M. 685, 652 P.2d 235 (1982).

Actual notice of rule does not dispel necessity of compliance with this article and 14-3-24 and 14-3-25 NMSA 1978. State v. Joyce, 94 N.M. 618, 614 P.2d 30 (Ct. App. 1980).

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, 101 N.M. 592, 686 P.2d 934 (1984).

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, 63 N.M. 447, 321 P.2d 631 (1958).

And effect of departure from procedures and regulations prescribed. - Local board's failure to give timely notice constituted a substantial departure from the procedures and regulations prescribed by the state board, and state board's finding that teacher was not prejudiced by this departure was prejudicial. Tate v. New Mexico State Bd. of Educ., 81 N.M. 323, 466 P.2d 889 (Ct. App. 1970).

Where teacher with tenure rights was only given two days' notice - excluding the date of service - before the end of the school year and under the regulations prescribed by the state board, she was entitled to no less than 14 days' notice before the end of the school year, the conduct of the local board in failing to follow the regulation amounted to unfairness, an issue which may properly be raised in a proceeding of this nature, and although teacher may have known her principal was going to recommend to the local board that she not be reemployed, this placed no burden upon her to employ an attorney, or to otherwise begin the preparation of her defense, in anticipation of the ruling of the local board. She was entitled, insofar as statute and rule permitted, to a timely notice, pursuant to the requirements of the rule. Brininstool v. New Mexico State Bd. of Educ., 81 N.M. 319, 466 P.2d 885 (Ct. App. 1970).

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, 98 N.M. 685, 652 P.2d 235 (1982).

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 this article and 14-3-24 and 14-3-25 NMSA 1978. State v. Joyce, 94 N.M. 618, 614 P.2d 30 (Ct. App. 1980).

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

§ 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.

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

§ 14-4-7. [Listing of current rules; transfers by supreme court librarian.]

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

All pamphlets, reports, proclamations or similar instruments which are filed with the librarian of the supreme court 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.

The records center shall be furnished a reasonable opportunity to obtain copies of all rules, as herein defined, filed with the librarian of the supreme court of the state of New Mexico on the effective date of the State Rules Act. The librarian of the supreme court shall not be required to retain more than the original or one copy thereof.

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

"Effective date of the State Rules Act". - 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.

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, this article and 14-3-24 and 14-3-25 NMSA 1978. State v. Ellis, 95 N.M. 427, 622 P.2d 1047 (Ct. App. 1980).

Interstate contract is not instrument similar to rules, reports and notices issued by state agencies. State v. Ellis, 95 N.M. 427, 622 P.2d 1047 (Ct. App. 1980).

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, if economically feasible, for development and publication of a New Mexico register at least twice a month after January 1, 1990. 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. The register may include the text of any or all proposed rules and adopted rules, including emergency rules, in full or in part at the discretion and agreement of the issuing agency and the state records administrator.

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 it deems 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.

Cross-references. - As to publication of rules by the state records administrator, see 12-8-6 NMSA 1978.

Effective dates. - Laws 1989, ch. 38 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

§ 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 [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

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

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 [14-5-1 to 14-5-10 NMSA 1978]:

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 [14-5-1 to 14-5-10 NMSA 1978] 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 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.

Compiler's notes. - 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 [14-5-1 to 14-5-10 NMSA 1978] 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 [14-5-1 to 14-5-10 NMSA 1978] 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.

Cross-references. - As to 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).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 81 Am. Jur. 2d Witnesses §§ 230 to 283, 301, 302.
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 [health and environment department].

History: 1953 Comp., § 12-34-24, enacted by Laws 1977, ch. 371, § 1.

Health and social services department abolished. - Laws 1977, ch. 253, § 5, abolishes the health and social services department, and Laws 1977, ch. 253, § 4, establishes the health and environment department. See 9-7-4 NMSA 1978.

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.

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 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.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Administrative Law §§ 85 to 91.
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 clerk as ex-officio recorder.]

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.

Compiler's notes. - The 1915 Code compilers substituted the words "county clerks" for the words "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.

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 § 17.

§ 14-8-2. [Duties of recorder.]

It shall be the duty of the county clerk to record in a book of good size, which he shall keep in his office for this purpose, all land titles and other papers which 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.

Cross-references. - As to durability of records, see 14-8-7, 14-8-8 NMSA 1978.

Compiler's notes. - The 1915 Code compilers substituted the words "county clerk" for the word "recorder." See compiler's note to 14-8-1 NMSA 1978.

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 §§ 15, 17.

§ 14-8-3. Recording books.

When used in Articles 1 to 5 and 8 to 10 of Chapter 14 NMSA 1978, "book" includes microfilm.

History: 1953 Comp., § 71-1-2.1, enacted by Laws 1963, ch. 52, § 1.

Cross-references. - As to 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.

§ 14-8-4. Acknowledgment necessary for recording; decrees; exceptions.

Any instrument of writing, duly acknowledged and certified, may be filed and recorded. Any instrument of writing, not duly acknowledged and certified, may not be filed and recorded, nor considered of record, though so entered; provided, however, that judicial decrees or certified copies, patents, land office receipts, certified copies of foreign wills duly authenticated and instruments of writing in any manner affecting lands in the state, when these instruments have been duly executed by an authorized public officer, need not be acknowledged but may be filed and recorded; provided further, 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; and provided further, that 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.

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. 1961-62 Op. Att'y Gen. No. 62-1.

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.

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, 30 N.M. 249, 231 P. 631 (1924).

Necessity for acknowledgment. - Laws 1874, ch. 14 (now superseded), 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. New Mexico Town Co., 3 N.M. (Gild.) 427, 5 P. 709 (1885). 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, 30 N.M. 249, 231 P. 631 (1924).

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, 16 N.M. 469, 120 P. 734 (1911).

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, 36 N.M. 273, 13 P.2d 877 (1932).

A chattel mortgage or sales contract, if not properly acknowledged, should not be filed and indexed by the county clerk. 1937-38 Op. Att'y Gen. 137.

Absent valid acknowledgment, instrument may not be treated as recorded. New Mexico Properties, Inc. v. Lennox Indus., Inc., 95 N.M. 64, 618 P.2d 1228 (1980); F & S Co. v. Gentry, 103 N.M. 54, 702 P.2d 999 (1985).

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. 1961-62 Op. Att'y Gen. No. 62-1 (opinion rendered prior to 1967 amendment adding second proviso to section).

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, 90 N.M. 38, 559 P.2d 415 (1977).

An unacknowledged mortgage is not entitled to record and gives no constructive notice. Vorenberg v. Bosserman, 17 N.M. 433, 130 P. 438 (1913).

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, 95 N.M. 450, 623 P.2d 570 (1981); Germany v. Murdock, 99 N.M. 679, 662 P.2d 1346 (1983).

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, 95 N.M. 450, 623 P.2d 570 (1981).

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, 30 N.M. 249, 231 P. 631 (1924).

Certificate of acknowledgment is not conclusive and may be contested. Garcia v. Leal, 30 N.M. 249, 231 P. 631 (1924).

But 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, 30 N.M. 249, 231 P. 631 (1924).

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, 30 N.M. 249, 231 P. 631 (1924).

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 to 6; 66 Am. Jur. 2d Records and Recording Laws § 77.

Record of instrument without acknowledgment or insufficiently acknowledged as notice, 19 A.L.R. 1074; 72 A.L.R. 1039; 59 A.L.R.2d 1299.
Sufficiency of certificate of acknowledgment, 25 A.L.R.2d 1124.
1A C.J.S. Acknowledgments § 7; 76 C.J.S. Records § 10.

§ 14-8-5. [Mining location notices; recording.]

All recordings of unacknowledged mining location notices and amended or additional notices made pursuant to Section 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.

Compiler's notes. - Section 69-3-21 NMSA 1978, referred to in the first sentence, was repealed by Laws 1981, ch. 310, § 7.

§ 14-8-6. [Endorsement on receipt of documents; constructive notice of contents.]

When any land title, or other document, shall be delivered to the county clerk to be recorded, it shall be his duty to endorse immediately on that document, or other paper, the day, month and year in which he received it, and he shall record it in the book of record as soon as possible, and the said 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.

Cross-references. - As to recording assignment of royalties, see 70-1-1, 70-1-2 NMSA 1978.

Compiler's notes. - The 1915 Code compilers substituted the words "county clerk" for the word "recorder." See compiler's note to 14-8-1 NMSA 1978.

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 § 18.

§ 14-8-7. [Durability of records; required inks and ribbons.]

It shall be the duty of county clerks in this state to use either a good grade of nonfadeable permanent black ink or a good grade of black record typewriter ribbon in recording all instruments of writing which by law they are required to record.

History: Laws 1923, ch. 114, § 1; C.S. 1929, § 118-114; 1941 Comp., § 13-105; 1953 Comp., § 71-1-5.

Cross-references. - As to protection of records, see 14-3-13 NMSA 1978. For provision that recording books include microfilm, see 14-8-3 NMSA 1978.

Legislative intent. - The legislature in enacting this section intended merely to require that recording be done by a method insuring permanency and durability. A recording by photographic copy if legible and durable would not constitute a violation of this section. 1939-40 Op. Att'y Gen. 148.

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 § 12.

§ 14-8-8. [Noncompliance with durability requirements; penalty.]

Any county clerk who shall fail to comply with the provisions of this act [14-8-7, 14-8-8 NMSA 1978], upon conviction thereof, shall be fined not less than fifty dollars [($50.00)] nor more than five hundred dollars [($500)].

History: Laws 1923, ch. 114, § 2; C.S. 1929, § 118-115; 1941 Comp., § 13-106; 1953 Comp., § 71-1-6.

§ 14-8-9. [Security of books of record; delivery to successors.]

It shall be the duty of the county clerks to keep their books of record well secured, and when they go out of office as such clerks, they shall deliver them complete to their successors.

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.

Compiler's notes. - The 1915 Code compilers substituted the words "county clerks" for the word "recorders" and the words "such clerks" for the words "clerks of the probate court." See compiler's note to 14-8-1 NMSA 1978.

§ 14-8-10. County clerks; failure to perform duties as recorder; fees.

A. For failure to comply with Sections 14-8-1 through 14-8-9 NMSA 1978, each county clerk is responsible on his official bond for all damages suffered by the injured party.

B. Each county clerk shall collect:

(1) ten cents ($.10) for every hundred words recorded in accordance with Sections 14-8-1 through 14-8-9 NMSA 1978;

(2) one dollar ($1.00) for each certificate and seal to documents recorded except marriage licenses; and

(3) one dollar and fifty cents ($1.50) for each certificate and seal to marriage licenses recorded.

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.

Cross-references. - For provision requiring fees to be paid in advance of filing or recording, see 14-8-15 NMSA 1978.

Section determines fee by the clerk for filing a lis pendens. 1921-22 Op. Att'y Gen. 67.

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. 1943-44 Op. Att'y Gen. No. 4221.

§ 14-8-11. [Standard form of instruments; supplies.]

The state comptroller, with the approval of the attorney general, shall select the form of instrument which shall be considered as the New Mexico standard form of such instrument for purposes of determining fees to be charged for recordation, and county clerks are hereby empowered and directed to purchase printed forms for recording in record books of warranty, quitclaim and mortgage deeds, transcripts of judgment, bills of sale, releases and such other ordinary instruments as are in common use in New Mexico.

History: Laws 1939, ch. 179, § 1; 1941 Comp., § 13-109; 1953 Comp., § 71-1-9.

Office of state comptroller abolished. - The office of state comptroller has been abolished, and all records have been transferred to the department of finance or the state auditor. See Laws 1957, ch. 251, § 9, compiled as 11-1-34, 1953 Comp., and repealed by Laws 1977, ch. 26, § 1.

Filing or recording bill of sale not required. - There is no statute which requires the filing or recording of a bill of sale, although such an instrument is entitled to be recorded if in proper form. Garrison Gen. Tire Serv., Inc. v. Montgomery, 75 N.M. 321, 404 P.2d 143 (1965).

§ 14-8-12. Recording fees; when instrument not photocopied.

A. County clerks shall receive for recording the following fees when the instrument is not photocopied:

USE THE ZOOM COMMAND TO VIEW THE FOLLOWING FORM:

standard form of deeds
.....$1.75
nonstandard form of deeds
.....2.00
standard form of mortgage deeds
.....2.00

nonstandard form of mortgage deeds
.....2.25
standard form of amortization mortgage, long form
.....2.75
standard form of amortization mortgage, short form
.....2.25
nonstandard form of amortization mortgage, long form
.....3.25
nonstandard form of amortization mortgage, short form
.....2.75
standard form assignment of mortgage
.....1.50
nonstandard form assignment of mortgage
.....1.75
standard form oil and gas mining leases
.....1.75
nonstandard form oil and gas mining leases
.....2.00
standard form assignment of oil and gas mining leases
.....1.50
nonstandard form assignment of oil and gas mining leases
.....1.75
standard form release of oil and gas lease
.....1.25
nonstandard form release of oil and gas lease
.....1.50
for release of each recorded mortgage or deed of trust
.....1.00
deed of trust
.....2.25
bill of sale
.....1.00
affidavits
.....1.00
notary bond and oath
.....2.00
notary commission
.....2.00
filing chattel mortgages or conditional sale contracts with or without assignments
..... .50
filing separate assignment of chattel mortgage conditional sale contract
..... .25
for release of each filed chattel mortgage conditional sale contract
..... .25
official bonds

.....2.50
notice of mining location or proof of labor
.....1.25
abstractor's bond
.....2.25
abstractor's continuation certificate
.....1.25
mechanic's lien
.....1.75
issuing transcript of judgment
..... .75
recording transcript of judgment
.....1.25
tax sale certificate or an assignment of the certificate
.....1.25
redemption of tax sale certificate
.....1.25
patents
.....1.75

B. For each instrument recorded, the recording fee for which is not fixed in Subsection A of this section, and when the instrument is not photocopied, the recording fee shall be one dollar seventy-five cents ($1.75) for the first seven hundred words or less and twenty-five cents ($.25) for each additional hundred words or fraction thereof.

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.

Cross-references. - As to payment of fees before filing or recording, see 14-8-15 NMSA 1978.

Strictly construed. - It is generally recognized that statutes authorizing clerks to collect fees for their services are strictly construed. 1961-62 Op. Att'y Gen. No. 62-33.

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. 1961-62 Op. Att'y Gen. No. 62-20.

This section and 14-8-13 NMSA 1978 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. 1961-62 Op. Att'y Gen. No. 62-20.

Fee for recording articles of incorporation determined by section. - Section 76-12-8 NMSA 1978 and this section are not in conflict. Section 76-12-8 NMSA 1978 demands that the articles of incorporation be recorded and filed. That section then sets a filing fee, but it is silent upon the fees to be charged for the recording of the articles of incorporation by the county clerk. To determine the correct recording fees one must turn to this section. 1966 Op. Att'y Gen. No. 66-132.

Filing or recording bill of sale not required. - There is no statute which requires the filing or recording of a bill of sale, although such an instrument is entitled to be recorded if in proper form. Garrison Gen. Tire Serv., Inc. v. Montgomery, 75 N.M. 321, 404 P.2d 143 (1965).

Releases of tax warrants issued by unemployment compensation commission under 51-1-36 NMSA 1978 are not subject to filing fee when filed by the commission. 1941-42 Op. Att'y Gen. No. 3715.

Short forms adopted by legislature are nonstandard forms until such time as they have been adopted by the state comptroller (now state auditor) and approved by the attorney general. 1947-48 Op. Att'y Gen. No. 5030.

Where federal form is not same as standard form of oil and gas lease, the charge for the nonstandard form is applicable thereto, plus a charge for each 100 words in excess of the standard form. 1947-48 Op. Att'y Gen. No. 4989.

Where county clerk must do more than fill in blanks in his printed recording book, the deed is not in standard form and the charge for recording nonstandard forms becomes applicable. 1941-42 Op. Att'y Gen. No. 4195.

Multiple releases. - The $1.00 fee for recording the release of a recorded mortgage will not take care of releasing several mortgages even though all the releases are effected by the same mortgagee by means of one release. 1943-44 Op. Att'y Gen. No. 4434.

It was not the intent of the legislature to require a county clerk to record several releases of oil and gas leases for a single fee merely because they are all placed on one form, but the clerk may charge a fee for each lease released. 1953-54 Op. Att'y Gen. No. 5808.

Recording of assignment of mortgage is necessary to protect assignee whose rights in the mortgage would otherwise be void against a subsequent purchaser. 1980 Op. Att'y Gen. No. 80-12.

Recording of assignment of oil or gas lease is necessary under New Mexico law in order to be effective against subsequent assignees or purchasers. 1980 Op. Att'y Gen. No. 80-12.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 66 Am. Jur. 2d Records and Recording Laws §§ 47, 80.
76 C.J.S. Records §§ 19, 20.

§ 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.

Cross-references. - As to effect of filing for record, see 14-9-4 NMSA 1978.

Compiler's notes. - 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.

"Effective date of this act". - The phrase "effective date of the act" means February 28, 1980, Chapter 48.

§ 14-8-12.2. Recording fee; when instrument is photocopied.

For each instrument recorded and where the instrument is photocopied, the county clerk shall charge a recording fee of five dollars ($5.00) for the first page and two dollars ($2.00) for each additional page or portion thereof of the same instrument.

History: 1978 Comp., § 14-8-12.2, enacted by Laws 1985, ch. 122, § 2; 1987, ch. 288, § 1.

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. Recording fee; assignments or releases of interest in property.

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

A. more than one deed, mortgage, lease or other instrument which created the interest;

or

B. an instrument which describes more than one deed, mortgage, lease or other instrument as creating the interests in property;

there shall be an additional recording fee of five dollars ($5.00) for each such reference.

History: 1978 Comp., § 14-8-12.3, enacted by Laws 1985, ch. 122, § 3; 1987, ch. 288, § 2.

The 1987 amendment, effective June 19, 1987, increased the fee from three dollars to five dollars.

"Assignment". - An assignment may be properly defined as an intentional transfer of certain defined property interests from one party to another. 1979 Op. Att'y Gen. No. 79-39.

Fee payable for each recording. - Where a release of a mortgage must be recorded more than once because it refers to more than one parcel, the $3.00 fee must be paid for each time it is recorded. 1980 Op. Att'y Gen. No. 80-12.

§ 14-8-12.4. Recording fee; more than two acknowledgments; more than two hundred words; when number of words is in excess of standard form.

For each instrument recorded having more than two acknowledgments, an additional fee of fifty cents ($.50) shall be charged by the county clerk for each additional acknowledgment; and for each instrument containing more than two hundred words in the description of the property contained in the instrument, an additional charge shall be made of twenty-five cents ($.25) for each additional one hundred words. This additional charge shall not be made in cases when the instrument is photocopied or when the recordation of the instrument is determined by the number of words contained in the instrument and not by a flat fee fixed in this article. In all cases where standard forms are prescribed and where nonstandard forms of instruments for which a flat fee is fixed are recorded, a charge of twenty-five cents ($.25) shall be made for each additional one hundred words or portion thereof in excess of the length of the standard form prescribed, except when the instrument is photocopied.

History: 1978 Comp., § 14-8-12.4, enacted by Laws 1985, ch. 122, § 4.

§ 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.

Cross-references. - As to payment of fees before filing or recording, see 14-8-15 NMSA 1978.

Compiler's notes. - Many of the provisions in this section appear to be superseded by other statutes. See 14-8-12 and 34-7-14 to 34-7-16 NMSA 1978.

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.

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 County Comm'rs, 15 N.M. 376, 110 P. 509 (1910).

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. 1961-62 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. 1961-62 Op. Att'y Gen. No. 62-20.

No charge for comparing registration lists. - No county clerk has any right to charge for comparing registration lists during his office hours. 1935-36 Op. Att'y Gen. 35.

§ 14-8-14. [Searching records; fees.]

County clerks shall be entitled to receive as fees for searching their records and certifying the result, five cents [($.05)] for each year for each name searched against for deeds, and the same for mortgages, and twenty-five cents [($.25)] for a search for judgments or for mechanic's lien.

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.

Cross-references. - As to delivery of certified copies by county clerk, see 4-40-5 NMSA 1978.

Compiler's notes. - The 1915 Code compilers substituted the words "county clerks" for the words "probate clerks." See compiler's note to 14-8-1 NMSA 1978.

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.]

No county clerk of any county shall receive any instrument of writing for filing or record unless his legal fees for such filing and recording shall have first been paid.

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.

Cross-references. - As to deduction from salary for failure to collect fees to be paid in advance, see 4-44-29 NMSA 1978.

Compiler's notes. - As originally enacted, this section read: "No clerk shall be compelled to receive any instrument of writing for filing or record until his legal fees for such filing and record have first been paid." Under the 1909 amendment, the first words of the section were "No probate clerk and ex-officio recorder of any county," but these were changed by the compilers of the 1915 Code. See compiler's note to 14-8-1 NMSA 1978.

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 to 21.

§ 14-8-16. Filings of legal descriptions and plats of real property authorized; recording; fees.

A. Any person owning real property that is subject to property taxation under the Property Tax Code [Articles 35 to 38 of Chapter 7 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. To be eligible for recording, the legal description or plat must 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. To be eligible for recording, the legal description or plat must be certified by a professional surveyor licensed in the state and must 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 and the time of filing and shall make proper entries in his reception book and in his index to general real estate records.

D. The county clerk shall record descriptions and plats filed under this section in the same manner as other similar instruments affecting real property are recorded. The county clerk shall charge a fee of two dollars and fifty cents ($2.50) for filing and recording each description or plat. If the county clerk uses a post binder with transparent protective pages for the protection of the plats, he shall charge a fee of five dollars ($5.00) for filing and recording each unit of a plat that is eighteen inches by twenty-four inches or part thereof.

E. All plats to be recorded under this section 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.

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.

Article 9

Records Affecting Real Property

§ 14-9-1. [Recording deeds, mortgages and patents.]

All deeds, 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.

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.

Cross-references. - As to filing municipal assessment liens, see 3-36-1 NMSA 1978. As to notice of possession of public land of United States, see 19-3-1 NMSA 1978. As to townsite patents, see 19-4-1 to 19-4-3 NMSA 1978. As to recording assignment of mortgages, see 48-7-2 NMSA 1978.

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, 16 N.M. 497, 121 P. 31 (1911), aff'd, 235 U.S. 689, 35 S. Ct. 204, 59 L. Ed. 426 (1914); Ilfeld v. de Baca, 13 N.M. 32, 79 P. 723 (1905), rev'd, 14 N.M. 65, 89 P. 244 (1907); (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., 92 N.M. 2, 582 P.2d 379 (1978).

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., 92 N.M. 2, 582 P.2d 379 (1978) (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, 102 N.M. 521, 697 P.2d 940 (1985).

Provisions applicable to Mexican land grants. - This article applies to Mexican land grants. Yeast v. Pru, 292 F. 598 (D.N.M. 1923).

To mortgages. - Mortgages affecting real estate are governed by this section. Shafer v. McCulloh, 38 N.M. 179, 29 P.2d 486 (1934).

But not to assignments thereof. - 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, 20 N.M. 513, 150 P. 292 (1914).

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, 11 N.M. 221, 67 P. 734 (1902) But see; McBee v. O'Connell, 16 N.M. 469, 120 P. 734 (1911).

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, 16 N.M. 469, 120 P. 734 (1911).

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 County Comm'rs, 96 N.M. 71, 628 P.2d 316 (Ct. App. 1981).

Ordinary care exercised by purchaser. - 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). See also catchline, "Test whether one had implied knowledge," in notes to 14-9-3 NMSA 1978.

Law reviews. - For article, "Survey of New Mexico Law, 1979-80: Property," see 11 N.M. L. Rev. 203 (1981).

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.
Grantee from whose deed restrictive covenant imposed by general plan of subdivision, has been omitted, 4 A.L.R.2d 1368.
Agreement between real estate owners restricting use of property as within contemplation of recording laws, 4 A.L.R.2d 1419.
Regulation as to filing or recording of subdivision maps or plats, 11 A.L.R.2d 532, 542.
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.
Public records as notice of adverse possession in life tenant as against remaindermen

or reversioners, 58 A.L.R.2d 309.
Record of instrument without sufficient acknowledgment as notice, 59 A.L.R.2d 1299.
Solid mineral royalty as real or personal property for recording purposes, 68 A.L.R.2d 735.
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.

Cross-references. - As to recording assignment of royalties, see 70-1-1, 70-1-2 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, 102 N.M. 521, 697 P.2d 940 (1985).

"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, 102 N.M. 521, 697 P.2d 940 (1985).

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, 83 N.M. 358, 492 P.2d 140 (1971).

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, 56 N.M. 184, 241 P.2d 1209 (1952).

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, 80 N.M. 764, 461 P.2d 413 (1969).

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).

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. Garcia v. Garcia, 105 N.M. 472, 734 P.2d 250 (Ct. App. 1987).

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, 83 N.M. 358, 492 P.2d 140 (1971).

Record of instrument is constructive notice to subsequent purchasers and encumbrancers only and does not affect prior parties. Romero v. Sanchez, 83 N.M. 358, 492 P.2d 140 (1971).

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., 48 N.M. 368, 151 P.2d 329 (1944).

Date of recording tax sale certificate does not affect period of redemption. Hiltscher v. Jones, 23 N.M. 674, 170 P. 884 (1917), appeal dismissed, 251 U.S. 545, 40 S. Ct. 218, 64 L. Ed. 407 (1920).

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 to give second mortgage which was recorded cannot be treated as notice of a vendor's lien. Zumwalt v. Goodwin, 133 F.2d 984 (10th Cir. 1943).

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).

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., 105 N.M. 49, 728 P.2d 459 (1986).

And recording of short form memorandum of agreement gave notice that defendant was claiming some right to real estate under this section. Bingaman v. Cook, 79 N.M. 627, 447 P.2d 507 (1968).

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, 107 N.M. 387, 758 P.2d 801 (1988).

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., 41 N.M. 341, 68 P.2d 918 (1937).

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, 83 N.M. 358, 492 P.2d 140 (1971).

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., 17 N.M. 415, 134 P. 243 (1913).

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).

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, 62 N.M. 387, 310 P.2d 1042 (1957).

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, 83 N.M. 358, 492 P.2d 140 (1971).

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.

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.

Purpose. - See same catchline in notes to 14-9-1 NMSA 1978.

Prior to the amendment of 1923, the recording laws were for the protection of purchasers and mortgagees only. Wells v. Dice, 33 N.M. 647, 275 P. 90 (1929).

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, 19 N.M. 335, 142 P. 1130 (1914).

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, 42 N.M. 350, 78 P.2d 153 (1938). See catchline, "Priority of recorded judgment lien" in notes to this section.

Applicability. - This section is applicable only in situations where two deeds purport to convey the same property. Grammer v. New Mexico Credit Corp., 62 N.M. 243, 308 P.2d 573 (1957).

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., 62 N.M. 243, 308 P.2d 573 (1957).

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 County Comm'rs, 96 N.M. 71, 628 P.2d 316 (Ct. App. 1981).

This section applies to tax deeds. Cano v. Lovato, 105 N.M. 522, 734 P.2d 762 (Ct. App. 1986).

Inapplicability to tax liens. - A tax lien is not within the class of written instruments governed by this section. Cano v. Lovato, 105 N.M. 522, 734 P.2d 762 (Ct. App. 1986).

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, 83 N.M. 358, 492 P.2d 140 (1971).

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 County Comm'rs, 96 N.M. 71, 628 P.2d 316 (Ct. App. 1981).

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, 42 N.M. 350, 78 P.2d 153 (1938); Withers v. Board of County Comm'rs, 96 N.M. 71, 628 P.2d 316 (Ct. App. 1981).

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, 42 N.M. 350, 78 P.2d 153 (1938).

"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., 37 N.M. 606, 27 P.2d 59 (1933).

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).

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).

Intermittent or occasional use of land is insufficient to operate as notice to a purchaser. Ortiz v. Jacquez, 77 N.M. 155, 420 P.2d 305 (1966).

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, 107 N.M. 329, 757 P.2d 799 (Ct. App. 1988).

Actual notice. - 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, 87 N.M. 94, 529 P.2d 760 (1974).

Any conflict between 40-3-13 NMSA 1978 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, 93 N.M. 508, 601 P.2d 1204 (1979).

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, 107 N.M. 660, 763 P.2d 369 (Ct. App. 1988).

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, 93 N.M. 508, 601 P.2d 1204 (1979).

Section does not require deeds to be acknowledged. Garcia v. Leal, 30 N.M. 249, 231 P. 631 (1924).

Acknowledgment is not essential to validity of deed of conveyance as between its parties. Kitchen v. Canavan, 36 N.M. 273, 13 P.2d 877 (1932).

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, 16 N.M. 469, 120 P. 734 (1911).

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, 33 N.M. 303, 265 P. 454 (1927).

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, 36 N.M. 112, 9 P.2d 142 (1932).

Judgment lien was held superior to alleged mortgage lien claimed under altered warranty deed by party whose name had been inserted as grantee therein. Scheer v. Stolz, 41 N.M. 585, 72 P.2d 606 (1937).

Failure to record mortgage promptly does not constitute a fraud in law as to subsequent creditors. First Nat'l Bank v. Haverkampf, 16 N.M. 497, 121 P. 31 (1911), aff'd, 235 U.S. 689, 35 S. Ct. 204, 59 L. Ed. 426 (1914).

Unrecorded chattel mortgage. - A chattel mortgage is good between the parties and against purchasers with notice although unrecorded. Kitchen v. Schuster, 14 N.M. 164, 89 P. 261 (1907).

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, 17 N.M. 609, 131 P. 994 (1913).

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, 26 N.M. 51, 189 P. 42 (1920).

Prescriptive title cannot be obtained by adverse user based on a written, but unrecorded, grant. Southern Union Gas Co. v. Cantrell, 56 N.M. 184, 241 P.2d 1209

(1952).

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, 56 N.M. 184, 241 P.2d 1209 (1952).

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, 77 N.M. 155, 420 P.2d 305 (1966).

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, 56 N.M. 323, 243 P.2d 623 (1952).

Law reviews. - For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources J. 75 (1962).

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 under unrecorded instrument and subsequent vendee of land, 18 A.L.R.2d 1162.
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.

Compiler's notes. - The 1915 Code compilers substituted the words "county clerk" for the words "probate clerk."

§ 14-9-5. Repealed.

Repeals. - Laws 1987, ch. 218, § 1 repeals 14-9-5 NMSA 1978, as enacted by Laws 1886-1887, ch. 10, § 5, relating to deed and mortgage records, effective June 19, 1987. For provisions of former section, see 1978 Original Pamphlet.

§ 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.

Meaning of "this chapter". - 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.

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.

Section requires county clerks to accept for filing easements for right-of-way for state highway purposes. 1935-36 Op. Att'y Gen. 82.

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. 1961-62 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.

§ 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.

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, 54 N.M. 34, 213 P.2d 216 (1949).

Article 10

Index of Records

§ 14-10-1. [Authority for index.]

That whenever, in the opinion of the board of county commissioners of any county in the state, it is necessary for the convenience of the public and the better preservation of titles to real property, to have a complete and accurate index made of all instruments of record affecting real property, they are hereby authorized to have such index made by the county clerk of said county.

History: Laws 1903, ch. 87, § 1; Code 1915, § 4798; C.S. 1929, § 118-122; 1941 Comp., § 13-301; 1953 Comp., § 71-3-1.

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, 28 N.M. 179, 210 P. 237 (1921).

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 § 16.

§ 14-10-2. [Index books; alphabetical and reverse order arrangement.]

For the purpose of the index mentioned in the preceding section [14-10-1 NMSA 1978] there shall be provided index books, and all instruments affecting title to real estate shall

be indexed in their regular order alphabetically arranged, as well as in their reverse order in the same manner.

History: Laws 1903, ch. 87, § 2; Code 1915, § 4799; C.S. 1929, § 118-123; 1941 Comp., § 13-302; 1953 Comp., § 71-3-2.

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 § 16.

§ 14-10-3. [Form of index.]

The said index shall be ruled and headed in the manner and form substantially as shown on the following form:

PLEASE REFER TO NEW MEXICO STATUTES 1978 FOR THE CORRECT FORM.

History: Laws 1903, ch. 87, § 3; Code 1915, § 4800; C.S. 1929, § 118-124; 1941 Comp., § 13-303; 1953 Comp., § 71-3-3.

§ 14-10-4. [Description of lands.]

All town property or lands shall be entered and described in the said index in the manner indicated, according to numbers, metes or bounds: but, provided, that where this is impossible from the nature of the description then the tract or tracts may be described by some appropriate title, or the owner's name.

History: Laws 1903, ch. 87, § 4; Code 1915, § 4801; C.S. 1929, § 118-125; 1941 Comp., § 13-304; 1953 Comp., § 71-3-4.

§ 14-10-5. [Standard form; use required.]

The form of index provided in the two preceding sections [14-10-3, 14-10-4 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.

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.

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. ["Legal newspaper" defined.]

Any and every legal notice or advertisement shall be published only in a daily, a triweekly, a semiweekly or a weekly newspaper of general paid circulation, which is entered under the second-class postal privilege in the county in which said notice or advertisement is required to be published; which said newspaper, if published triweekly, semiweekly or weekly, shall have been so published in such 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 said newspaper, if published daily, shall have been so published in such 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 same is in fact continuously and uninterruptedly printed and published within such county as herein provided; provided, further, that a newspaper shall not lose its rights as a legal publication if it should fail to publish one or more of its issues by reason of fire, flood, accident, transportation embargo or tieup, 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 publication has been made in one issue of said publication; provided, further, that if in any county in this state there shall not have been published therein any newspaper or newspapers for the prescribed period at the time when any such notice or advertisement is required to be published then such notice or advertisement may be published in any newspaper or newspapers having a general paid circulation and/or published and printed in whole or in part in said county.

History: Laws 1937, ch. 167, § 2; 1941 Comp., § 12-202; 1953 Comp., § 10-2-2.

Purpose of section is to give the public the opportunity to read the legal publication. This is the mandatory portion of this section, and the provision for the second-class mailing privilege is of relatively small importance in relation to the general object intended by the statute and is merely directory. State ex rel. Sun. Co. v. Virgil, 74 N.M. 766, 398 P.2d 987 (1965); 1981 Op. Att'y Gen. No. 81-13.

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, 74 N.M. 766, 398 P.2d 987 (1965).

Legislative intent. - It was the intention of the legislature that legal notices be published in newspapers located within the county. 1963-64 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. 1963-64 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. 1947-48 Op. Att'y Gen. No. 5146.

Word "published" in this section is not synonymous with the word "printed." State ex rel. Sun Co. v. Vigil, 74 N.M. 766, 398 P.2d 987 (1965).

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, 74 N.M. 766, 398 P.2d 987 (1965).

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. 1963-64 Op. Att'y Gen. No. 64-12.

"Publication" contemplates that the paper issue to its subscribers from the county. 1963-64 Op. Att'y Gen. No. 64-12.

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, 74 N.M. 766, 398 P.2d 987 (1965).

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. State ex rel. Sun Co. v. Vigil, 74 N.M. 766, 398 P.2d 987 (1965).

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, 74 N.M. 766, 398 P.2d 987 (1965).

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. 1959-60 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. 1963-64 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.
Newspapers within statutes as to publication of notices for resale of repossessed property by conditional vendors, 49 A.L.R.2d 41.
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.

§ 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 therefor has been made or assessed as court costs.

History: Laws 1937, ch. 167, § 3; 1941 Comp., § 12-204; 1953 Comp., § 10-2-4.

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.

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.

§ 14-11-7. Rates for legal notice or advertisement; costs.

For publication of all legal notices or advertisements required by law or the order of any court of record in this state to be published in newspapers, the publishers thereof shall be entitled to receive twenty-seven cents ($.27) for each column line of eight point or smaller type, for the first insertion, and twenty-two cents ($.22) per line for each subsequent insertion. All emblems, display headings, rule work and necessary blank space shall be calculated as solid type, and shall be counted and paid for as such.

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.

Generally. - A newspaper is permitted a maximum charge of 12 (now 27) cents a column line for the first publication whether this is the only publication or merely the first in a series of publications, and, of course, a charge of 10 (now 22) cents a line after the first publication, whether there be one or more such subsequent publications. 1957-58 Op. Att'y Gen. No. 58-4.

Under Laws 1909, ch. 79 (now repealed), no printer was compelled to charge rate fixed in the statute, but was only prohibited from charging a higher rate, and county commissioners and corporate authorities could bargain for publication at lower rates. 1909-12 Op. Att'y Gen. 16.

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 § 250; 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.

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.

Cross-references. - As to 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 Probate Code, 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.

Probate Code. - See 45-1-101 NMSA 1978 and notes thereto.

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. 1955-56 Op. Att'y Gen. No. 6518.

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., 20 N.M. 572, 151 P. 237 (1915).

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, 26 N.M. 216, 190 P. 728 (1920).

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 by publication upon dissolved domestic corporation in absence of express statutory direction, 75 A.L.R.2d 1407.
What is "public place" within requirements as to posting of notices, 90 A.L.R.2d 1210.
7 C.J.S. Attachment § 280; 14 C.J.S. Chattel Mortgages § 370; 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.

§ 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.

Effective dates. - Laws 1987, ch. 28 contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective on June 19, 1987.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 12 Am. Jur. 2d Boundaries §§ 6 to 9.
11 C.J.S. Boundaries §§ 19 to 23.

§ 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.

Proceedings of boards of education or school directors. - 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.

Generally. - This section merely limits the publication of the proceedings of the county commissioners in English to one publication, and in counties where a newspaper of general circulation is published, and 30 percent of the reading matter is in Spanish, the proceedings may be published also in Spanish. This is also true of delinquent tax lists. 1912-13 Op. Att'y Gen. 120, 122.

Publication in weekly newspaper. - Publication of minutes of city council in a weekly newspaper was legal although there was a daily newspaper published in the city. 1909-12 Op. Att'y Gen. 131.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 20 C.J.S. Counties § 91; 62 C.J.S. Municipal Corporations § 409; 78 C.J.S. Schools and School Districts § 125.

§ 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.

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 New Mexican and the Santa Fe News, both published at Santa Fe, El Hispano published at Albuquerque, the Alpha News published at Las Vegas, the Rio Grande Sun published at Espanola and the Taos News published at Taos 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.

Article 12

Notaries Public

§ 14-12-1. Notaries; powers and duties.

The office of "notary public" is established. At any place within the state, a notary public may:

A. administer oaths;

B. take and certify acknowledgments of instruments in writing;

C. take and certify depositions;

D. make declarations and protests; and

E. perform other duties as provided by law.

History: 1953 Comp., § 35-1-1, enacted by Laws 1969, ch. 168, § 1.

Cross-references. - As to acknowledgments and oaths generally, see 14-13-1 to 14-13-23 NMSA 1978.

Compiler's notes. - Laws 1969, ch. 168, § 12, repealed former 35-1-1 to 35-1-8, 1953 Comp. (Laws 1909, ch. 55, §§ 1 to 7, 23; Code 1915, §§ 3924 to 3931; C.S. 1929, §§ 94-101 to 94-108; 1941 Comp., §§ 11-101 to 11-108; Laws 1961, ch. 56, § 1; 1961, ch. 107, § 1). New 35-1-1 to 35-1-8, 1953 Comp., were enacted by Laws 1969, ch. 168, §§ 1 to 8. See also compiler's note to 14-12-13 NMSA 1978.

Generally. - Laws 1909, ch. 55 (35-1-1 to 35-1-23, 1953 Comp.), in terms, repealed §§ 2617 to 2627, 1897 Comp., which authorized the appointment of notaries and, in part, prescribed their duties and obligations, but did not terminate the official existence of notaries. 1909-12 Op. Att'y Gen. 38.

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.

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. 1953-54 Op. Att'y Gen. No. 5659.

Notary public may use his seal and perform official acts in any county in the state. 1912-13 Op. Att'y Gen. 35.

A notary public may use his seal and take acknowledgments and administer oaths in any county of the state. However, in moving from one county to another, he must cause his bond, commission and oath of office to be filed with the county recorder. 1912-13 Op. Att'y Gen. 35; 1915-16 Op. Att'y Gen. 209; 1937-38 Op. Att'y Gen. 70; 1939-40 Op. Att'y Gen. 53. See 14-12-14 NMSA 1978.

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, 34 N.M. 486, 285 P. 490 (1930).

Or take acknowledgments. - A notary public may take acknowledgments in other counties than that of his residence, if his bond, commission and oath of office are filed there. 1919-20 Op. Att'y Gen. 84; 1937-38 Op. Att'y Gen. 70.

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, 30 N.M. 249, 231 P. 631 (1924).

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. 1955-56 Op. Att'y Gen. No. 6228.

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, 30 N.M. 249, 231 P. 631 (1924).

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.
Power of notary to take affidavit as basis for warrant of arrest, 16 A.L.R. 924.
Liability of notary drawing invalid will to beneficiary named therein, 65 A.L.R.2d 1363.
Measure of damages for false or incomplete certificate by notary public, 13 A.L.R.3d 1039.
Liability of notary public, 44 A.L.R.3d 555, 1243.
66 C.J.S. Notaries § 6.

§ 14-12-2. Notaries; qualifications.

Each 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 been convicted of a felony; and

E. not have had a notary public commission revoked during the past five years.

History: 1953 Comp., § 35-1-2, enacted by Laws 1969, ch. 168, § 2; 1981, ch. 214, § 1.

Cross-references. - As to 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.

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.

§ 14-12-3. Notaries; application.

Each 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 which includes a statement of the applicant's qualification and contains evidence of his good moral character as shown by signatures of two citizens of this state;

B. the oath prescribed by the constitution for state officers and an official bond to the state, with two sureties, in the amount of five hundred dollars ($500) conditioned for the faithful discharge of duties as a notary public;

C. an application which is made by and signed by the applicant using his surname and one given name, plus an initial or additional name, if he so desires, or surname and at least two initials; and

D. an application fee in the amount of ten dollars ($10.00).

History: 1953 Comp., § 35-1-3, enacted by Laws 1969, ch. 168, § 3; 1981, ch. 214, § 2.

Recording fees. - In the absence of a specific fee for recording the oath and bond, resort must be had to 14-8-13 NMSA 1978, where the fee for copying any record, order or paper is set forth. 1914 Op. Att'y Gen. 52; 1935-36 Op. Att'y Gen. 35.

Acceptance of certified photostatic reproduction of bond recorded in county clerk's office. - In such instances wherein the applicant may have recorded the bond required by statute with the county clerk of the county wherein he resides, but has failed to forward the bond to the office of the secretary of state for filing, because such original bond has been lost, then, in such event, the secretary of state may accept, for filing in the office of secretary of state, a certified photostatic reproduction of such bond recorded in the office of the county clerk. 1961-62 Op. Att'y Gen. No. 62-18.

§ 14-12-4. Notaries; 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 commission to each notary public appointed by the governor.

History: 1953 Comp., § 35-1-4, enacted by Laws 1969, ch. 168, § 4.

Date of commission. - A notary's commission dates from the time of appointment and not from the date of qualification. 1945-46 Op. Att'y Gen. No. 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. 1957-58 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.

§ 14-12-5. Notaries; seal or stamp.

Each notary shall provide himself with a notarial seal or stamp containing his name and the words "NOTARY PUBLIC - STATE OF NEW MEXICO," and shall authenticate his official acts and acknowledgments with the seal or stamp.

History: 1953 Comp., § 35-1-5, enacted by Laws 1969, ch. 168, § 5; 1979, ch. 272, § 1.

Seal containing name of county in addition to state. - See same catchline in notes to 14-12-6 NMSA 1978.

Indentation, rather than imprinting, required. - See same catchline in notes to 14-12-6 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 Am. Jur. 2d Notaries Public §§ 42, 46 to 49, 51 to 57.
Necessity and sufficiency of officer's jurat or certificate as to oath, 1 A.L.R. 1568; 116 A.L.R. 587.
What amounts to notary's seal, 7 A.L.R. 1663.
66 C.J.S. Notaries § 8.

§ 14-12-6. Notarial seal.

Each notary shall authenticate his official acts and acknowledgments with a notarial seal or stamp which, if a seal, shall contain his name and the words "NOTARY PUBLIC - STATE OF NEW MEXICO," and which if a stamp, shall be in substantially the following

form:

"SEAL

STATE OF

NEW MEXICO

USE THE ZOOM COMMAND TO VIEW THE FOLLOWING FORM:

OFFICIAL SEAL
.....
(name of notary printed)
NOTARY PUBLIC - STATE OF NEW MEXICO
My Commission Expires ....."
(date)

History: 1953 Comp., § 35-1-5.1, enacted by Laws 1977, ch. 106, § 1; 1979, ch. 272, § 2.

Seal containing name of county in addition to state. - A notary public reappointed to that office after June 20, 1969, may continue to use his notary seal for official acts even if the seal contains the name of a New Mexico county in addition to the words New Mexico or abbreviation thereof. 1969 Op. Att'y Gen. No. 69-79.

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. 1949-50 Op. Att'y Gen. No. 5304.

§ 14-12-7. Notaries; certification.

Upon request, the secretary of state shall certify to official acts of a notary public.

History: 1953 Comp., § 35-1-6, enacted by Laws 1969, ch. 168, § 6.

§ 14-12-8. Notaries; action on bond.

Any 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.

History: 1953 Comp., § 35-1-7, enacted by Laws 1969, ch. 168, § 7.

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. 1961-62 Op. Att'y Gen. No. 62-18.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 Am. Jur. 2d Notaries Public §§ 74 to 76.
Liability of notary drawing invalid will to beneficiary named therein, 65 A.L.R.2d 1363.
Measure of damages for false or incomplete certificate by notary public, 13 A.L.R.3d 1039.
Liability of notary public, 44 A.L.R.3d 555; 44 A.L.R.3d 760; 44 A.L.R.3d 1243.
66 C.J.S. Notaries § 12.

§ 14-12-9. Notaries; reappointment.

At least thirty days before expiration of each notary public term, the secretary of state shall mail a notice of the expiration to the notary public's address of record. A notary public may be reappointed upon making application in the same manner as required for an original application.

History: 1953 Comp., § 35-1-8, enacted by Laws 1969, ch. 168, § 8.

§ 14-12-10. [Protesting bills and notes; notice.]

Each notary public when any bill of exchange, promissory note or other written instrument shall be by such notary protested for nonacceptance or nonpayment shall give notice in writing thereof to the maker and to each and every endorser of such bill of exchange, and to the maker of each security, or the endorsers of any promissory note or other written instrument, immediately after such protest shall have been made.

History: Laws 1909, ch. 55, § 8; Code 1915, § 3935; C.S. 1929, § 94-112; 1941 Comp., § 11-109; 1953 Comp., § 35-1-9.

Cross-references. - For protest of commercial paper, see 55-3-509 NMSA 1978. As to civil and criminal liability for false certificate as to protest, see 56-5-4 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 11 Am. Jur. 2d Bills and Notes § 797.
Validity and effect of agreement to give bank all, or part of fees of notary for protesting paper, 25 A.L.R. 170.
10 C.J.S. Bills and Notes § 374.

§ 14-12-11. [Service of notice of protest.]

Each notary public may serve notice personally upon each person protested against by delivering to such person a notice in writing, or he may make such service by placing

such notice in a sealed envelope with sufficient postage thereon addressed to the person to be charged, at his last place of residence, according to the best information that the person giving the notice may obtain, and by depositing such envelope containing such notice in the United States mail or post office.

History: Laws 1909, ch. 55, § 9; Code 1915, § 3936; C.S. 1929, § 94-113; 1941 Comp., § 11-110; 1953 Comp., § 35-1-10.

§ 14-12-12. [Recording protest notices; use as evidence.]

Each notary public shall keep record of all protest notices and of the time and manner in which the same were served and of the names of all persons to whom the same were directed. Also the description and the amount of the instrument protested, which record, or a copy thereof certified by the notary public under seal, shall at all times be competent evidence to prove such notice in any court of this state.

History: Laws 1909, ch. 55, § 10; Code 1915, § 3937; C.S. 1929, § 94-114; 1941 Comp., § 11-111; 1953 Comp., § 35-1-11.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 11 Am. Jur. 2d Bills and Notes § 798; 12 Am. Jur. 2d Bills and Notes § 1237.

§ 14-12-13. Notaries; 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 which contains a false statement;

(2) is or has been convicted of any 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 notary's commission may be revoked under the provisions of this section only if action is taken subject to the rights of the notary public to notice, hearing, adjudication and appeal.

History: 1953 Comp., § 35-1-12, enacted by Laws 1969, ch. 168, § 9; 1981, ch. 214, § 3.

Compiler's notes. - Laws 1969, ch. 168, § 12, repealed former 35-1-12 to 35-1-14, 1953 Comp. (Laws 1909, ch. 55, §§ 11 to 13; Code 1915, §§ 3938 to 3940; C.S. 1929, §§ 94-115 to 94-117; 1941 Comp., §§ 11-112 to 11-114). New 35-1-12 to 35-1-14, 1953 Comp., were enacted by Laws 1969, ch. 168, §§ 9 to 11. See also compiler's notes to 14-12-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 Am. Jur. 2d Notaries Public § 26. 66 C.J.S. Notaries § 4.

§ 14-12-14. Notaries; change of address.

Each notary public shall promptly notify the secretary of state of any change of his mailing address.

History: 1953 Comp., § 35-1-13, enacted by Laws 1969, ch. 168, § 10.

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. 1951-52 Op. Att'y Gen. No. 5538.

§ 14-12-15. Notaries; change of name.

Upon any change of his name, a notary public shall promptly 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. Upon receipt of the completed application, the secretary of state shall issue a corrected commission showing the notary public's new name. The corrected commission expires on the same date as the original certificate it replaces.

History: 1953 Comp., § 35-1-14, enacted by Laws 1969, ch. 168, § 11.

Commission of female notary who marries. - No provision was made for amending a commission of a female notary who has married and changed her name, but she could continue to act under her current commission until its expiration. 1921-22 Op. Att'y Gen. 51.

§ 14-12-16. [Endorsing expiration date of commission.]

Every notary public certifying to any acknowledgment, oath or other matter shall, immediately opposite or following his signature to the jurat or certificate of

acknowledgment, endorse the date of the expiration of such commission; such endorsement may be legibly written, stamped or printed upon the instrument, but must be disconnected from the seal and shall be substantially in the following form:

"My commission expires (stating date of expiration of commission)."

History: Laws 1909, ch. 55, § 18; Code 1915, § 3945; C.S. 1929, § 94-122; 1941 Comp., § 11-119; 1953 Comp., § 35-1-19.

§ 14-12-17. [Disqualified notary exercising powers; penalty.]

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 thereof shall be punished by a fine of one hundred dollars [($100)] and shall be removed from office by the governor.

History: Laws 1909, ch. 55, § 20; Code 1915, § 3947; C.S. 1929, § 94-124; 1941 Comp., § 11-121; 1953 Comp., § 35-1-21.

§ 14-12-18. [False certificate; authenticating documents in absence of proper party; penalty.]

If any notary public, or any other officer authorized by law to make or give any certificate or other writing shall make or deliver as true any certificate or writing containing statements which he knows to be false, or appends his official signature to acknowledgments or other documents when the parties executing same have not appeared in person before him shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding two hundred dollars [($200)], or by imprisonment for a period not exceeding three months, or both such fine and imprisonment.

History: Laws 1909, ch. 55, § 21; Code 1915, § 3948; C.S. 1929, § 94-125; 1941 Comp., § 11-122; 1953 Comp., § 35-1-22.

Cross-references. - For criminal and civil liability as to false certificate of protest, see 56-5-4 NMSA 1978.

Presence required for acknowledgment. - A notary is not authorized to take an acknowledgment of a person not present before him. 1921-22 Op. Att'y Gen. 47.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 Am. Jur. 2d Notaries Public § 73. Measure of damages for false or incomplete certificate by notary public, 13 A.L.R.3d 1039.

Liability of notary public, 44 A.L.R.3d 555, 760, 1243.
66 C.J.S. Notaries § 13.

§ 14-12-19. Fees.

A. Every notary public in this state shall be entitled to collect the following fees for his services:

USE THE ZOOM COMMAND TO VIEW THE FOLLOWING FORM:

(1) for each act of protest and certificate thereof
..... $2.00
(2) for each notice of protest prepared and mailed to the parties in interest
..... .25
(3) for any certificate under seal
..... 1.00
(4) for each acknowledgment to deed or other document
..... 1.00
(5) for administering or certifying to any oath
..... 1.00
B. Whenever a notary shall be authorized by proper process to take testimony or depositions and report the same to the proper authority without making findings of fact or law, such notary public shall be entitled to collect the following fees for his services:
(1) for noting each meeting to take testimony
..... $1.00
(2) for noting each adjournment from one day to another
..... 1.00
(3) for swearing each witness
..... .25
(4) for certifying and transmitting the record
..... 1.50
(5) for transcribing or reducing to writing testimony, per folio of one hundred words, original
..... .15
(6) for each additional copy of same, per folio
..... .05
And every notary in addition to collecting fees when called from his office shall be entitled to ten cents ($.10) per mile.

History: Laws 1909, ch. 55, § 22; 1913, ch. 47, § 1; Code 1915, § 3949; C.S. 1929, § 94-126; 1941 Comp., § 11-123; Laws 1947, ch. 137, § 1; 1953 Comp., § 35-1-23; Laws 1973, ch. 188, § 1.

Right to mileage. - A notary public is not entitled to any greater fee when called from his office to take an acknowledgment, but he is entitled to the mileage allowed by the section. 1921-22 Op. Att'y Gen. 27.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 Am. Jur. 2d Notaries Public §§ 23, 24. 66 C.J.S. Notaries § 14.

§ 14-12-20. [Notary affiliated with bank or corporation; power restricted.]

It shall be lawful for any notary public who is a stockholder, director, officer or employee of a bank or other corporation to take the acknowledgment of any party to any written instrument executed to or by such corporation, or to administer an oath to any other stockholder, director, officer, employee or agent of such corporation or to protest for nonacceptance or nonpayment bills of exchange, drafts, checks, notes and other negotiable instruments which may be owned or held for collection by such corporation; provided, it shall be unlawful for any notary public to take the acknowledgment of an instrument by or to a bank or other corporation of which he is a stockholder, director, officer or employee, where such notary is a party to such instrument, either individually or as a representative of such corporation, or to protest any negotiable instrument owned or held for collection by such corporation, where such notary is individually a party to such instrument.

History: Laws 1921, ch. 82, § 1; C.S. 1929, § 94-127; 1941 Comp., § 11-124; 1953 Comp., § 35-1-24.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 Am. Jur. 2d Notaries Public § 13.

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.

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.

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.

Cross-references. - As to 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, 34 N.M. 486, 285 P. 490 (1930).

And of affidavit in attachment. - This section includes verification by notary of affidavit in proceeding by attachment made by plaintiff's agent. Robinson v. Hesser, 4 N.M. (Gild.) 282, 13 P. 204 (1887).

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 instrument affecting real property ineffective for want, or insufficiency, of acknowledgment, 7 A.L.R.2d 300.
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 taking acknowledgment, 44 A.L.R.3d 555, 760, 1243.
67 C.J.S. Oaths and Affirmations § 4.

§ 14-13-4. [Officers authorized to take acknowledgments.]

The acknowledgment of any instrument of writing may be made within this state before either:

A. a clerk of the district court;

B. a judge or clerk of the probate court, using the probate seal;

C. a notary public;

D. a justice of the peace [magistrate];

E. a county clerk, using the county clerk seal.

History: Laws 1901, ch. 62, § 14; Code 1915, § 5; Laws 1929, ch. 13, § 1; C.S. 1929, § 1-108; 1941 Comp., § 46-104; 1953 Comp., § 43-1-4.

Cross-references. - As to fee of county clerk, see 14-8-13 NMSA 1978.

Office of justice of the peace abolished. - Laws 1968, ch. 62, § 40, abolishes the office of justice of the peace and transfers all jurisdiction, powers and duties to the magistrate court. See 35-1-38 NMSA 1978.

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 § 8; 23 Am. Jur. 2d Deeds § 106.
Construction of regulations as to subdivision maps or plats with respect to question who may take acknowledgment thereof, 11 A.L.R.2d 538.
1A C.J.S. Acknowledgments § 33.

§ 14-13-5. [Acknowledgments outside state.]

The acknowledgment of any instrument of writing may be made without this state, but within the United States or their territories, before either:

A. a clerk of some court of record having a seal;

B. a commissioner of deeds duly appointed under the laws of this state;

C. a notary public having a seal.

History: Laws 1901, ch. 62, § 15; Code 1915, § 6; C.S. 1929, § 1-109; 1941 Comp., § 46-105; 1953 Comp., § 43-1-5.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 1A C.J.S. Acknowledgments § 37.

§ 14-13-6. [Acknowledgments in foreign countries.]

The acknowledgment of any instrument of writing may be made without the United States before either:

A. a minister, commissioner or charge d'affaires of the United States, resident and accredited in the country where the acknowledgment is made;

B. a consul general, consul, vice consul, deputy consul or consular agent of the United States resident in the country where the acknowledgment is made, having a seal;

C. a notary public having a seal;

D. a commissioner of deeds duly appointed under the laws of this state.

History: Laws 1901, ch. 62, § 16; Code 1915, § 7; C.S. 1929, § 1-110; Laws 1939, ch. 124, § 1; 1941 Comp., § 46-106; 1953 Comp., § 43-1-6.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 1A C.J.S. Acknowledgments § 38.

§ 14-13-7. Military officers; power to take acknowledgments and administer oaths.

In addition to the acknowledgment of instruments and the performance of other notarial acts in the manner and form as otherwise authorized by law, instruments may be acknowledged, documents attested, oaths and affirmations administered, depositions and affidavits executed, and all notarial acts, authorized under the laws of the state of New Mexico to be performed by notaries public, may be performed before or by any commissioned officer in active service of the armed forces of the United States with the rank of second lieutenant or higher in the army or marine corps, or with the rank of ensign or higher in the navy or coast guard or with equivalent rank in any other component part of the armed forces of the United States, for any person who either:

A. is a member of the armed forces of the United States or the spouse of a member of the armed forces of the United States; or

B. is serving as a merchant seaman outside the limits of the United States included within the fifty states and the District of Columbia; or

C. is outside said limits by permission, assignment or direction of any department or official of the United States government, in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged.

Such acknowledgment of instruments, attestation of documents, administration of oaths and affirmations, execution of depositions and affidavits and performance of other notarial acts, heretofore or hereafter made or taken, are hereby declared legal, valid and binding, and instruments and documents so acknowledged, authenticated or sworn to shall be admissible in evidence and eligible to record in this state under the same circumstances, and with the same force and effect as if such acknowledgment, attestation, oath, affirmation, deposition, affidavit or other notarial act, had been made or taken within this state before or by a duly qualified officer or official as otherwise provided by law.

In the taking of acknowledgments and the performing of other notarial acts requiring certification, a certificate endorsed upon or attached to the instruments or documents, which shows the date of the notarial act, and which states, in substance, that the person appearing before the officer acknowledged the instrument as his act or made or signed the instrument or document under oath, shall be sufficient for all intents and purposes. The instrument or document shall not be rendered invalid by the failure to state the place of execution or acknowledgment.

If the signature, rank and branch of service, or subdivision thereof, of any such commissioned officer appear upon such instrument or document or certificate, no further proof of the authority of such officer so to act shall be required and such action by such commissioned officer shall be prima facie evidence that the person making such oath or acknowledgment is within the purview of this act [section], and that the signature of such person is genuine.

History: 1941 Comp., § 46-106a, enacted by Laws 1945, ch. 4, § 1; 1953 Comp., § 43-1-7; Laws 1975, ch. 56, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 1A C.J.S. Acknowledgments § 33; 2A C.J.S. Affidavits § 14; 67 C.J.S. Oaths and Affirmations § 5.

§ 14-13-8. [Contents of certificate of acknowledgment.]

The certificate of acknowledgment shall express the fact of the acknowledgment being made, and also, that the person making the same was personally known to at least one of the judges of the court, or to the officer granting the certificate, to be the person whose name is subscribed to the writing or a party to it, or that it was proven to be such person by the testimony of at least two reliable witnesses.

History: Laws 1851-1852, p. 374; C.L. 1865, ch. 44, § 8; C.L. 1884, § 2755; C.L. 1897, § 3949; Code 1915, § 8; C.S. 1929, § 1-111; 1941 Comp., § 46-107; 1953 Comp., § 43-1-8.

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, 95 N.M. 450, 623 P.2d 570 (1981).

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, 95 N.M. 450, 623 P.2d 570 (1981).

Sufficiency of acknowledgment. - Substantial compliance with this section in regard to acknowledgment is sufficient. Byers Bros. & Co. Live Stock Comm'n Corp. v. McKenzie, 30 N.M. 487, 239 P. 525 (1925).

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, 30 N.M. 487, 239 P. 525 (1925).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Acknowledgments § 32.
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.
Sufficiency of certificate of acknowledgment, 25 A.L.R.2d 1124.
1A C.J.S. Acknowledgments § 71.

§ 14-13-9. [Forms; instruments affecting real estate.]

That the following forms of acknowledgment may be used in the case of conveyances or other written instruments affecting real estate, and any acknowledgment so taken and certified shall be sufficient to satisfy all requirements of law relating to the execution or recording of such instruments:

A. in case of natural persons acting in their own right:

State of New Mexico,

County of . . . . . .

On this . . . . . day of . . . . . 19 . . ., before me personally appeared A. B. (or A. B. and C. D.) to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that he (or they) executed the same as his (or their) free act and deed;

B. in the case of natural persons acting by attorney:

State of New Mexico,

County of . . . . . .

On this . . . . . day of . . . . . 19 . . ., before me personally appeared A. B., to me known to be the person who executed the foregoing instrument in behalf of C. D., and acknowledged that he executed the same as the free act and deed of said C. D.;

C. in case of corporations or joint stock associations:

State of New Mexico,

County of . . . . . .

On this . . . . . day of . . . . . 19 . . ., before me appeared A. B., to me personally known, who, being by me duly sworn (or affirmed) did say that he is the president (or other officer or agent of the corporation or association) of (describing the corporation or

association), and that the seal affixed to said instrument is the corporate seal of said corporation (or association) and that said instrument was signed and sealed in behalf of said corporation (or association) by authority of its board of directors (or trustees), and said A. B. acknowledged said instrument to be the free act and deed of said corporation (or association).

In case the corporation or association has no corporate seal, omit the words: "the seal affixed to said instrument is the corporate seal of such corporation (or association), and that," and add at the end of the affidavit clause the words: "and that said corporation (or association) has no corporate seal."

In all cases add signature and title of the officer taking the acknowledgment.

History: Laws 1889, ch. 46, § 1; C.L. 1897, § 3945; Code 1915, § 9; C.S. 1929, § 1-112; 1941 Comp., § 46-108; 1953 Comp., § 43-1-9.

Cross-references. - For provisions relating to conveyances generally, see 47-1-1 NMSA 1978 et seq.

None of forms provided by section relates to partnerships. Byers Bros. & Co. Live Stock Comm'n Corp. v. McKenzie, 30 N.M. 487, 239 P. 525 (1925).

Substantial compliance. - A substantial compliance with this section in the form of acknowledgment is sufficient. Byers Bros. & Co. Live Stock Comm'n Corp. v. McKenzie, 30 N.M. 487, 239 P. 525 (1925).

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 Bankr. 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, 17 N.M. 433, 130 P. 438 (1913).

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, 17 N.M. 433, 130 P. 438 (1913).

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 by this section 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, 70 N.M. 182, 372 P.2d 378 (1962).

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. New Mexico Properties, Inc. v. Lennox Indus., Inc., 95 N.M. 64, 618 P.2d 1228 (1980).

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. - 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.
Option in lease for extension of term or for a new lease as creating necessity for acknowledgment, 161 A.L.R. 1094.
Construction of regulations as to subdivision maps or plats with respect to question who may take acknowledgment thereof, 11 A.L.R.2d 538.
Sufficiency of certificate of acknowledgment, 25 A.L.R.2d 1124.
1A C.J.S. Acknowledgments §§ 6, 69.

§ 14-13-10. [Acknowledgment by married woman.]

When a married woman unites with her husband in the execution of any such instrument and acknowledges the same in one of the forms sanctioned, she shall be described in the acknowledgment as his wife, but in all other respects her acknowledgment shall be taken and certified as if she were sole.

History: Laws 1889, ch. 46, § 2; C.L. 1897, § 3946; Code 1915, § 10; C.S. 1929, § 1-113; Laws 1939, ch. 124, § 2; 1941 Comp., § 46-109; 1953 Comp., § 43-1-10.

Cross-references. - As to joinder of minor spouse in conveyances, mortgages and leases, see 40-3-15 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Acknowledgments § 2.
1 C.J.S. Acknowledgments § 101.

§ 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.

Withholding of funds from monthly salary checks already earned is legal and valid if made in statutory form. 1959-60 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.

Cross-references. - For provision that acknowledgment is necessary for recording of instruments, see 14-8-4 NMSA 1978. As to oil and gas leases on state lands to be acknowledged, see 19-10-32 NMSA 1978. As to voluntary assignments for benefit of creditors to be acknowledged, see 56-9-10 NMSA 1978. As to articles of incorporation of waterworks companies to be acknowledged, see 62-2-1 NMSA 1978. As to articles of incorporation of rural electric cooperatives to be acknowledged, see 62-15-6 NMSA 1978. As to bill of sale of animals to be acknowledged, see 77-9-21 to 77-9-25 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. Centers, Inc. v. Hale, 95 N.M. 450, 623 P.2d 570 (1981).

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., 95 N.M. 64, 618 P.2d 1228 (1980).

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, 30 N.M. 249, 231 P. 631 (1924).

Acknowledgment is not essential to validity of deed of conveyance as between its parties. Kitchen v. Canavan, 36 N.M. 273, 13 P.2d 877 (1932).

Absence of valid acknowledgment does not render instrument void. Vorenberg v. Bosserman, 17 N.M. 433, 130 P. 438 (1913).

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., 95 N.M. 64, 618 P.2d 1228 (1980).

Nor valid materialmen's lien. - 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, 95 N.M. 450, 623 P.2d 570 (1981).

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.

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., 3 N.M. (Gild.) 427, 5 P. 709 (1885).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Acknowledgments §§ 112 to 116.
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.

Prior validating acts. - See 14-13-13 NMSA 1978 and same catchline in notes thereto.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Acknowledgments §§ 112 to 116.
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.

Prior validating acts. - See 14-13-13, 14-13-14 NMSA 1978 and same catchline in notes to 14-13-13 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Acknowledgments §§ 112 to 116.
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.

Prior validating acts. - See 14-13-13, 14-13-14, 14-13-15 NMSA 1978 and same catchline in 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.

Prior validating acts. - See 14-13-13, 14-13-14, 14-13-15, 14-13-16 NMSA 1978 and same catchline in 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.

Prior validating acts. - See 14-13-13, 14-13-14, 14-13-15, 14-13-16, 14-13-17 NMSA 1978 and same catchline in notes to 14-13-13 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Acknowledgments §§ 112 to 116.
1A C.J.S. Acknowledgments §§ 83, 84.

§ 14-13-19. [Short forms for acknowledgments authorized.]

The forms of acknowledgment set forth in the appendix [14-13-23 NMSA 1978] to this act may be used and shall be sufficient for their respective purposes. They shall be known as "statutory forms of acknowledgment" and may be referred to as such. They may be altered as circumstances require; and the authorization of such forms shall not prevent the use of other forms. Marital status or other status of a person or persons may be shown if desired after the name of such person or persons.

History: 1953 Comp., § 43-1-15, enacted by Laws 1955, ch. 82, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Acknowledgments § 34.
Sufficiency of certificate of acknowledgment, 25 A.L.R.2d 1124.
1A C.J.S. Acknowledgments § 69.

§ 14-13-20. [Application of act.]

For the purpose of avoiding the unnecessary use of words in acknowledgments whether said statutory form or other form is used, the rules and definitions contained in this act [14-13-19 to 14-13-23 NMSA 1978] shall apply to all instruments executed or delivered on or after the effective date of this act.

History: 1953 Comp., § 43-1-16, enacted by Laws 1955, ch. 82, § 2.

"Effective date of this act". - The phrase "effective date of this act" means June 10, 1955, the effective date of Laws 1955, Chapter 82.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Acknowledgments § 4.
1A C.J.S. Acknowledgments §§ 6, 69.

§ 14-13-21. Definition.

In the forms of acknowledgment provided by Sections 14-13-19 through 14-13-23 NMSA 1978, the words "was acknowledged" shall mean:

A. in the case of a natural person acknowledging that such person personally appeared

before the officer taking the acknowledgment and acknowledged that he executed the acknowledged instrument as his free act and deed for the uses and purposes therein set forth;

B. in the case of a person acknowledging as principal by an attorney-in-fact, that such attorney-in-fact appeared personally before the officer taking the acknowledgment and that the attorney-in-fact acknowledged that he executed the acknowledged instrument as the free act and deed of the principal for the uses and purposes therein set forth;

C. in the case of a partnership acknowledging by a partner or partners, that such partner or partners personally appeared before the officer taking the acknowledgment and that he or they acknowledged that he or they executed the acknowledged instrument as the free act and deed of the partnership for the uses and purposes therein set forth;

D. in the case of a limited partnership acknowledging by a general partner or general partners, that such partner or partners appeared before the officer taking the acknowledgment and that he or they acknowledged that he or they executed the acknowledged instrument as the free act and deed of the limited partnership for the uses and purposes therein set forth; and

E. in the case of a corporation or incorporated association acknowledging by an officer or agent of the corporation or incorporated association, that such acknowledging officer or agent personally appeared before the officer taking the acknowledgment; that the seal affixed to the instrument is the corporate seal of the corporation or association, that the instrument was signed and sealed on behalf of the corporation or association by authority of its board of directors, and that the acknowledging officer or agent acknowledged that the acknowledged instrument was the free act and deed of such corporation or association for the uses and purposes therein set forth. In case a corporation or association has no corporate seal, this fact can be indicated by adding to the form provided for in Subsection E of Section 14-13-23 NMSA 1978 the words "The corporation (or association) has no corporate seal."

History: 1953 Comp., § 43-1-17, enacted by Laws 1955, ch. 82, § 3; 1981, ch. 212, § 1.

Law reviews. - 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 Acknowledgments § 4.
1A C.J.S. Acknowledgments §§ 2, 4.

§ 14-13-22. [Prima facie evidence of execution.]

Any acknowledgment taken and certified as provided by law shall be prima facie

evidence of the execution of the instrument by the parties acknowledging the same, in all of the courts of this state.

History: 1953 Comp., § 43-1-18, enacted by Laws 1955, ch. 82, § 4.

Generally. - Acknowledgment affords prima facie evidence of execution. Kitchen v. Canavan, 36 N.M. 273, 13 P.2d 877 (1932).

Duties ministerial. - The duties performed by an officer in taking an acknowledgment in this state are ministerial in character rather than judicial. Garcia v. Leal, 30 N.M. 249, 231 P. 631 (1924).

Impeach only by clear and convincing evidence. - A certificate of acknowledgment duly executed should be impeached only by clear and convincing evidence. Garcia v. Leal, 30 N.M. 249, 231 P. 631 (1924).

Where evidence for plaintiff is to the effect that a deed had not been consciously executed by the grantor and that the notary's certificate of acknowledgment was false is clear and convincing, a judgment setting aside such deed will not be disturbed on appeal although evidence on behalf of the defendants may be in direct conflict therewith. Garcia v. Leal, 30 N.M. 249, 231 P. 631 (1924).

Deed executed by using hand of person to make his mark thereon is void where the grantor does not consciously assent to the signature, nor afterwards ratify it, and a certificate of acknowledgment does not render such conveyance valid. Garcia v. Leal, 30 N.M. 249, 231 P. 631 (1924).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Acknowledgments §§ 81, 92. 1A C.J.S. Acknowledgments §§ 20, 72, 85, 91 to 104.

§ 14-13-23. Short forms of acknowledgment.

A. For a natural person acting in his own right:

USE THE ZOOM COMMAND TO VIEW THE FOLLOWING FORM:

State of
.....
County of
.....
The foregoing instrument was acknowledged before me this (date) by (name or names of person or persons acknowledging).
Signature of officer
.....

(Title of Officer)
My commission expires:
B. For a natural person as principal acting by attorney-in-fact:
State of
.....
County of
.....
The foregoing instrument was acknowledged before me this (date) by (name of attorney-in-fact) as attorney-in-fact on behalf of (name of principal).
Signature of officer
.....
(Title of Officer)
My commission expires:
C. For a partnership acting by one or more partners:
State of
.....
County of
.....
The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or partners), partner(s) on behalf of (name of partnership), a partnership.
Signature of officer
.....
(Title of Officer)
My commission expires:
D. For a limited partnership acting by one or more general partners:
State of
.....
County of
.....
The foregoing was acknowledged before me this (date) by (name of acknowledging general partner or partners), partner(s), on behalf of (name of limited partnership), a limited partnership.
Signature of officer
.....
(Title of Officer)
My commission expires:
E. For a corporation or incorporated association:
State of
.....
County of
.....
The foregoing instrument was acknowledged before me this (date) by (name of officer), (title of officer) of (name of corporation acknowledging), a (state or county of incorporation) corporation, on behalf of the corporation.
Signature of officer

.....
(Title of Officer)
My commission expires:

History: 1953 Comp., § 43-1-19, enacted by Laws 1955, ch. 82, Appx.; 1981, ch. 212, § 2.

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 Bankr. 488 (Bankr. D.N.M. 1988).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Acknowledgments § 40.
1A C.J.S. Acknowledgments § 69.

§ 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 [14-13-21, 14-13-23, 14-13-24 NMSA 1978], 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.

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 same catchline in notes to 14-13-13 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Acknowledgments §§ 112 to 116.
1A C.J.S. Acknowledgments §§ 83, 84.