

UNANNOTATED

CHAPTER 37

Limitation of Actions; Abatement and Revivor

ARTICLE 1

Limitations of Actions

37-1-1. [Generally.]

The following suits or actions may be brought within the time hereinafter limited, respectively, after their causes accrue, and not afterwards, except when otherwise specially provided.

History: Laws 1880, ch. 5, § 1; C.L. 1884, § 1860; C.L. 1897, § 2913; Code 1915, § 3346; C.S. 1929, § 83-101; 1941 Comp., § 27-101; 1953 Comp., § 23-1-1.

37-1-2. Judgments.

Actions founded upon a judgment of a court of the state may be brought within fourteen years from the date of the judgment and not afterward. Actions founded upon a judgment of a court of record of another state or territory of the United States, or of the federal courts, may be brought within the applicable period of limitation within that jurisdiction, not to exceed fourteen years from the date of the judgment, and not afterward. A judgment obtained through a common law action on a prior judgment or through any other means of revival of a prior judgment shall not be enforceable after fourteen years from the date of the original judgment upon which it is founded.

History: Laws 1891, ch. 53, § 2; C.L. 1897, § 2914; Code 1915, § 3347; C.S. 1929, § 83-102; 1941 Comp., § 27-102; 1953 Comp., § 23-1-2; Laws 1965, ch. 282, § 3; 1983, ch. 259, § 1; 2021, ch. 31, § 11.

37-1-3. Notes; written instruments; period of limitation; computation of period.

A. Actions founded upon any bond, promissory note, bill of exchange or other contract in writing shall be brought within six years.

If the payee of any bond, promissory note, bill of exchange or other contract in writing enters into any contract or agreement in writing to defer the payment thereof, or contracts or agrees not to assert any claim against the payor or against the assets of the payor until the happening of some contingency, the time during the period from the

execution of the contract or agreement and the happening of the contingency shall not be included in computing the six-year period of limitation provided in this subsection.

B. Actions against any banking or financial organization subject to the provisions of the Uniform Unclaimed Property Act (1995) [Chapter 7, Article 8A NMSA 1978] founded upon a bill of exchange shall be brought within ten years.

C. Actions founded upon a traveler's check shall be brought within fifteen years.

History: Laws 1880, ch. 5, § 3; C.L. 1884, § 1862; C.L. 1897, § 2915; Code 1915, § 3348; C.S. 1929, § 83-103; Laws 1939, ch. 89, § 1; 1941 Comp., § 27-103; 1953 Comp., § 23-1-3; Laws 1975, ch. 70, § 1; 2015, ch. 91, § 1.

37-1-4. [Accounts and unwritten contracts; injuries to property; conversion; fraud; unspecified actions.]

Those founded upon accounts and unwritten contracts; those brought for injuries to property or for the conversion of personal property or for relief upon the ground of fraud, and all other actions not herein otherwise provided for and specified within four years.

History: Laws 1880, ch. 5, § 4; C.L. 1884, § 1863; C.L. 1897, § 2916; Code 1915, § 3349; C.S. 1929, § 83-104; 1941 Comp., § 27-104; 1953 Comp., § 23-1-4.

37-1-5. Actions for wage and hour violations.

A civil action to enforce any provision of Chapter 50, Article 4 NMSA 1978 shall be commenced within three years after a violation last occurs. The three-year period shall be tolled during a labor relations division of the workforce solutions department investigation of an employer, but such an investigation shall not be deemed a prerequisite to a person bringing a civil action, nor shall it operate to bar a civil action brought pursuant to Chapter 50, Article 4 NMSA 1978.

History: 1941 Comp., § 27-125, enacted by Laws 1947, ch. 44, § 1; 1953 Comp., § 23-1-5; 2009, ch. 104, § 1.

37-1-6. [Accrual of cause of action on open accounts.]

Where there is an open current account the cause of action shall be deemed to have accrued upon the date of the last item therein, as proved on the trial.

History: Laws 1880, ch. 5, § 7; C.L. 1884, § 1866; C.L. 1897, § 2919; Code 1915, § 3351; C.S. 1929, § 83-106; 1941 Comp., § 27-105; 1953 Comp., § 23-1-6.

37-1-7. [Accrual of cause of actions for fraud or mistake, injuries or conversion of property.]

In actions for relief, on the ground of fraud or mistake, and in actions for injuries to, or conversion of property, the cause of action shall not be deemed to have accrued until the fraud, mistake, injury or conversion complained of, shall have been discovered by the party aggrieved.

History: Laws 1880, ch. 5, § 6; C.L. 1884, § 1865; C.L. 1897, § 2918; Code 1915, § 3366; C.S. 1929, § 83-123; 1941 Comp., § 27-106; 1953 Comp., § 23-1-7.

37-1-8. Actions against sureties on fiduciary bonds; injuries to person or reputation.

Actions must be brought against sureties on official bonds and on bonds of guardians, conservators, personal representatives and persons acting in a fiduciary capacity, within two years after the liability of the principal or the person for whom they are sureties is finally established or determined by a judgment or decree of the court, and for an injury to the person or reputation of any person, within three years.

History: Laws 1880, ch. 5, § 5; C.L. 1884, § 1864; C.L. 1897, § 2917; Laws 1909, ch. 60, § 1; Code 1915, § 3350; C.S. 1929, § 83-105; 1941 Comp., § 27-107; 1953 Comp., § 23-1-8; Laws 1975, ch. 257, § 8-115; 1976, ch. 58, § 25.

37-1-9. [Effect of absence from state or concealment of debtor.]

If, at any time after the incurring of an indebtedness or liability or the accrual of a cause of action against him or the entry of judgment against him in this state, a debtor shall have been or shall be absent from or out of the state or concealed within the state, the time during which he may have been or may be out of or absent from the state or may have concealed or may conceal himself within the state shall not be included in computing any of the periods of limitation above provided.

History: Laws 1880, ch. 5, § 9; C.L. 1884, § 1868; C.L. 1897, § 2921; Laws 1903, ch. 62, § 1; Code 1915, § 3352; C.S. 1929, § 83-107; 1941 Comp., § 27-108; 1953 Comp., § 23-1-9.

37-1-10. Minors; incapacitated persons.

The times limited for the bringing of actions by the preceding provisions of this chapter shall, in favor of minors and incapacitated persons, be extended so that they shall have one year from and after the termination of such incapacity within which to commence said actions.

History: Laws 1880, ch. 5, § 10; C.L. 1884, § 1869; C.L. 1897, § 2922; Code 1915, § 3353; C.S. 1929, § 83-108; 1941 Comp., § 27-109; 1953 Comp., § 23-1-10; Laws 1975, ch. 257, § 8-116.

37-1-11. [Effect of death.]

If the person entitled to a cause of action die within one year next previous to the expiration of the limitation above provided, the representatives of such persons shall have one year after such death within which to commence said action.

History: Laws 1880, ch. 5, § 11; C.L. 1884, § 1870; C.L. 1897, § 29-23; Code 1915, § 3354; C.S. 1929, § 83-109; 1941 Comp., § 27-110; 1953 Comp., § 23-1-11.

37-1-12. [When commencement of action stayed or prevented.]

When the commencement of any action shall be stayed or prevented by injunction order or other lawful proceeding, the time such injunction order or proceeding shall continue in force shall not be counted in computing the period of limitation.

History: Laws 1880, ch. 5, § 15; C.L. 1884, § 1875; C.L. 1897, § 2928; Code 1915, § 3358; C.S. 1929, § 83-113; 1941 Comp., § 27-111; 1953 Comp., § 23-1-12.

37-1-13. [When action deemed commenced.]

The filing in the proper clerk's office of the petition, declaration, bill or affidavit, upon the filing of which process is authorized by law to be issued, with intent that process shall issue immediately thereupon, which intent shall be presumed, unless the contrary appear, shall be deemed a commencement of the action.

History: Laws 1880, ch. 5, § 8; C.L. 1884, § 1867; C.L. 1897, § 2920; Code 1915, § 3367; C.S. 1929, § 83-124; 1941 Comp., § 27-112; 1953 Comp., § 23-1-13.

37-1-14. [When second suit deemed continuation of first action.]

If, after the commencement of an action, the plaintiff fail therein for any cause, except negligence in its prosecution, and a new suit be commenced within six months thereafter, the second suit shall, for the purposes herein contemplated, be deemed a continuation of the first.

History: Laws 1880, ch. 5, § 12; C.L. 1884, § 1872; C.L. 1897, § 2925; Code 1915, § 3355; C.S. 1929, § 83-110; 1941 Comp., § 27-113; 1953 Comp., § 23-1-14.

37-1-15. [Setoffs or counterclaims not barred; defendant not to receive excess.]

A setoff or counterclaim may be pleaded as a defense to any cause of action, notwithstanding such setoff or counterclaim may be barred by the preceding provisions of this chapter, if such setoff or counterclaim so pleaded was the property or right of the party pleading the same at the time it became barred and at the time of the

commencement of the action, and the same was not barred at the time the cause of action sued for accrued or originated; but no judgment for any excess of such setoff or counterclaim over the demand of the plaintiff as proved shall be rendered in favor of the defendant.

History: Laws 1880, ch. 5, § 14; C.L. 1884, § 1874; C.L. 1897, § 2927; Code 1915, § 3357; C.S. 1929, § 83-112; 1941 Comp., § 27-114; 1953 Comp., § 23-1-15.

37-1-16. Revival of causes of action.

Causes of action founded upon contract shall be revived by the making of any partial or installment payment thereon or by an admission that the debt is unpaid, as well as by a new promise to pay the same; but such admission or new promise must be in writing, signed by the party to be charged therewith. Such a cause of action shall be deemed to have accrued upon the date of such partial or installment payment, admission of indebtedness or promise to pay. Provided, that no admission that the debt is unpaid or new promise to pay the same shall be effective to extend the lien of any mortgage upon real estate or any interest therein given to secure the original indebtedness, unless the payment is accompanied by an admission or promise and unless such admission that the debt is unpaid or new promise to pay the same, signed by the party to be charged therewith and acknowledged by such party in the form prescribed by law for the acknowledgments of instruments affecting real estate, shall be filed for record in the office of the county clerk where said original mortgage is of record, prior to the date when any action to foreclose said mortgage lien would otherwise be barred under existing law; and provided further, that the foregoing proviso shall not be applicable to any recorded mortgage upon real estate or any interest therein until after three months from the effective date of this act.

History: Laws 1880, ch. 5, § 13; C.L. 1884, § 1873; C.L. 1897, § 2926; Code 1915, § 3356; C.S. 1929, § 83-111; Laws 1939, ch. 71, § 1; 1941 Comp., § 27-115; 1953 Comp., § 23-1-16; Laws 1957, ch. 170, § 1.

37-1-17. [Other statutes prescribing limitations unaffected.]

None of the provisions of this chapter shall apply to any action or suit which, by any particular statute of this state, is limited to be commenced within a different time, nor shall this chapter be construed to repeal any existing statute of the state which provides a limitation of any action; but in such cases the limitation shall be as provided by such statutes.

History: Laws 1880, ch. 5, § 16; C.L. 1884, § 1876; C.L. 1897, § 2929; Code 1915, § 3359; C.S. 1929, § 83-114; 1941 Comp., § 27-116; 1953 Comp., § 23-1-17.

37-1-18. [Limitations not to run against trust actions fraudulently concealed.]

None of the provisions of this chapter shall run against causes of actions originating in or arising out of trusts, when the defendant has fraudulently concealed the cause of action, or the existence thereof from the party entitled or having the right thereto.

History: Laws 1880, ch. 5, § 17; C.L. 1884, § 1877; C.L. 1897, § 2930; Code 1915, § 3360; C.S. 1929, § 83-115; 1941 Comp., § 27-117; 1953 Comp., § 23-1-18.

37-1-19. [Applicability of limitations.]

The above limitations and provisions shall not apply to evidences of debt intended to circulate as money; but shall, in other respects, be applicable in all other actions brought by or against all bodies corporate or politic, except when otherwise expressly declared.

History: Laws 1880, ch. 5, § 19; C.L. 1884, § 1879; C.L. 1897, § 2932; Code 1915, § 3361; C.S. 1929, § 83-116; 1941 Comp., § 27-118; 1953 Comp., § 23-1-19.

37-1-20. [No sale upon mortgages, etc., when action barred.]

No lands, tenements, hereditaments, goods or chattels shall be sold under any power of sale contained in any mortgage, deed of trust or other written instrument of like effect, where an action or suit upon the indebtedness secured thereby is barred by the provisions of Chapter 68, New Mexico Code of 1915.

History: Laws 1927, ch. 10, § 1; C.S. 1929, § 83-120; 1941 Comp., § 27-119; 1953 Comp., § 23-1-20.

37-1-21. Repealed.

History: Laws 1857-1858, p. 64; C.L. 1865, ch. 73, § 1; C.L. 1884, § 1880; C.L. 1897, § 2937; Laws 1899, ch. 63, § 1; Code 1915, § 3364; C.S. 1929, § 83-119; 1941 Comp., § 27-120; 1953 Comp., § 23-1-21; Laws 1973, ch. 138, § 14; 1979, ch. 354, § 1; 1978 Comp., § 37-1-21 repealed by Laws 2007, ch. 266, § 1.

37-1-22. Title in fee simple by adverse possession; action after ten years barred; definition; payment of taxes.

In all cases where any person or persons, their children, heirs or assigns, shall have had adverse possession continuously and in good faith under color of title for ten years of any lands, tenements or hereditaments and no claim by suit in law or equity effectually prosecuted shall have been set up or made to the said lands, tenements or hereditaments, within the aforesaid time of ten years, then and in that case, the person or persons, their children, heirs or assigns, so holding adverse possession as aforesaid, shall be entitled to keep and hold in possession such quantity of lands as shall be specified and described in some writing purporting to give color of title to such adverse

occupant, in preference to all, and against all, and all manner of person or persons whatsoever; and any person or persons, their children or their heirs or assigns, who shall neglect or who have neglected for the said term of ten years, to avail themselves of the benefit of any title, legal or equitable, which he, she or they may have to any lands, tenements or hereditaments, within this state, by suit of law or equity effectually prosecuted against the person or persons so as aforesaid in adverse possession, shall be forever barred, and the person or persons, their children, heirs or assigns so holding or keeping possession as aforesaid for the term of ten years shall have a good and indefeasible title in fee simple to such lands, tenements or hereditaments; provided, that if any person entitled to commence or prosecute such suit or action is or shall be, at the time the cause of action therefor first accrued, imprisoned, of unsound mind or under the age of majority, then the time for commencing such action shall in favor of such persons be extended so that they shall have one year after the termination of such disability to commence such action; but no cumulative disability shall prevent the bar of the above limitation, and this proviso shall only apply to those disabilities which existed when the cause of action first accrued and to no other. "Adverse possession" is defined to be an actual and visible appropriation of land, commenced and continued under a color of title and claim of right inconsistent with and hostile to the claim of another; provided, however that in the case of severed mineral interests the possession by the party in possession of the surface shall be considered as the constructive possession of such mineral claimant until actual possession shall have been taken by such mineral claimant; and provided further in no case must "adverse possession" be considered established within the meaning of the law, unless the party claiming adverse possession, his predecessors or grantors, have for the period mentioned in this section continuously paid all the taxes, state, county and municipal, which during that period have been assessed against the property.

History: Laws 1857-1858, p. 64; C.L. 1865, ch. 73, § 2; C.L. 1884, § 1881; C.L. 1897, § 2938; Laws 1899, ch. 63, § 2; 1905, ch. 76, § 1; Code 1915, § 3365; C.S. 1929, § 83-122; 1941 Comp., § 27-121; Laws 1947, ch. 145, § 1; 1953 Comp., § 23-1-22; Laws 1973, ch. 138, § 15.

37-1-23. Contractual liability; statute of limitations.

A. Governmental entities are granted immunity from actions based on contract, except actions based on a valid written contract.

B. Every claim permitted by this section shall be forever barred unless brought within two years from the time of accrual.

History: 1953 Comp., § 22-23-1, enacted by Laws 1976, ch. 58, § 24.

37-1-24. Suits against municipalities or their officers.

No suit, action or proceeding at law or equity for the recovery of judgment upon, or the enforcement or collection of, any sum of money claimed due from any city, town or

village in this state, or from any officer of any city, town or village in this state, arising out of or founded upon any ordinance, trust relation or contract, or any appropriation of or conversion of any real or personal property, shall be commenced except within three years next after the date of the act of omission or commission giving rise to the cause of action, suit or proceeding. No suit, action or proceeding to recover damages for personal injury or death resulting from the negligence of any city, town or village or any officer thereof shall be commenced except within two years next after the date of the injury. All such suits, proceedings or actions not so commenced shall be forever barred.

History: Laws 1941, ch. 181, § 1; 1941 Comp., § 27-122; 1953 Comp., § 23-1-23; 2011, ch. 153, § 1.

37-1-25. [Suit, etc., on municipal and other local governmental bonds or coupons.]

No suit, action or proceeding at law or equity, for the recovery of judgment upon, or the enforcement or collection of, any bond of any county, city, town, school district or other municipality in this state, or upon any coupon thereto attached, shall be commenced except within ten years next after the date of the maturity of such bond or coupon, and all such suits or action not so commenced shall be forever barred.

History: Laws 1907, ch. 68, § 1; Code 1915, § 3362; C.S. 1929, § 83-117; 1941 Comp., § 27-123; 1953 Comp., § 23-1-24.

37-1-26. [Questioning of privilege or franchise granted by municipal corporation.]

No action or suit shall be brought to call in question any privilege or franchise granted by any municipal corporation, unless the same shall be brought within six years after the same shall have been granted, or claimed to have been granted, and any such privilege or franchise heretofore granted by any municipal corporation shall, after six years from the date of the granting of the same, or within six years after the same shall have been claimed to have been granted, shall [sic] be deemed valid in all respects.

History: Laws 1893, ch. 47, § 1; C.L. 1897, § 2918; Code 1915, § 3363; C.S. 1929, § 83-118; 1941 Comp., § 27-124; 1953 Comp., § 23-1-25.

37-1-27. Construction projects; limitation on actions for defective or unsafe conditions.

No action to recover damages for any injury to property, real or personal, or for injury to the person, or for bodily injury or wrongful death, arising out of the defective or unsafe condition of a physical improvement to real property, nor any action for contribution or indemnity for damages so sustained, against any person performing or furnishing the construction or the design, planning, supervision, inspection or administration of

construction of such improvement to real property, and on account of such activity, shall be brought after ten years from the date of substantial completion of such improvement; provided this limitation shall not apply to any action based on a contract, warranty or guarantee which contains express terms inconsistent herewith. The date of substantial completion shall mean the date when construction is sufficiently completed so that the owner can occupy or use the improvement for the purpose for which it was intended, or the date on which the owner does so occupy or use the improvement, or the date established by the contractor as the date of substantial completion, whichever date occurs last.

History: 1953 Comp., § 23-1-26, enacted by Laws 1967, ch. 193, § 1.

37-1-28. Real estate; limitation on actions for defects of title.

A. After fifteen years from the date an instrument affecting title to real estate is recorded, no action shall be brought for recovery of the real estate because:

- (1) the instrument was not signed by the proper officer of a corporation;
- (2) the record does not show any authorization for the instrument by the board of directors or stockholders, or both, of a corporation;
- (3) the instrument was executed by a corporation:
 - (a) that had been dissolved;
 - (b) whose articles of incorporation had expired;
 - (c) whose certificate of incorporation had been cancelled or revoked; or
 - (d) whose certificate of authority to transact business in this state had been revoked or withdrawn;
- (4) the executor, administrator, guardian, assignee, receiver, master, agent or trustee or other agency making the instrument signed or acknowledged it individually rather than in his representative or official capacity;
- (5) the instrument was executed by a trustee without record of judicial or other determination of his authority or of the verity of the facts recited in the instrument;
- (6) the officer, who took the acknowledgment of the instrument and who had an official seal, did not affix his seal or show the date of the expiration of his commission on the certificate of acknowledgment; or
- (7) the wording of the consideration in the instrument may or might create an implied lien, other than an express vendor's lien, in favor of the grantor.

B. If the action is not barred by limitation or otherwise and if the instrument is of record fourteen years or more prior to the effective date of this section, no action for the recovery of real estate because of any defect listed in Subsection A shall be brought after one year from the effective date of this section.

C. If any person, who is entitled to bring an action for the recovery of real estate is imprisoned, of unsound mind or under the age of majority when the cause of action first accrues, the time for commencing the action by such person is extended one year after the termination of the disability. No cumulative disability shall prevent the bar of the limitation of this section. This subsection applies only to disabilities that existed when the cause of action first accrued.

D. This section does not apply to:

- (1) forged instruments; or
- (2) instruments given by any community land grant corporation, as defined by law; or
- (3) actions that were pending or that were determined prior to July 1, 1971.

History: 1953 Comp., § 23-1-27, enacted by Laws 1971, ch. 313, § 1; 1973, ch. 138, § 16.

37-1-29. Limitation [on parent-child relationship determination].

An action to determine a parent and child relationship shall be brought no later than three years after the child has reached the age of majority.

History: 1978 Comp., § 37-1-29, enacted by Laws 1985, ch. 105, § 18.

37-1-30. Action for damages due to childhood sexual abuse; limitation on actions.

A. An action for damages based on personal injury caused by childhood sexual abuse shall be commenced by a person before the latest of the following dates:

- (1) the first instant of the person's twenty-fourth birthday; or
- (2) three years from the date that a person first disclosed the person's childhood sexual abuse to a licensed medical or mental health care provider in the context of receiving health care from the provider.

B. As used in this section, "childhood sexual abuse" means conduct that, if prosecuted in a criminal matter, would constitute a violation of:

- (1) Section 30-9-11 NMSA 1978, regarding criminal sexual penetration of a minor;
 - (2) Section 30-9-13 NMSA 1978, regarding criminal sexual contact of a minor;
- or
- (3) the Sexual Exploitation of Children Act [Chapter 30, Article 6A NMSA 1978].

C. The provisions of Section 37-1-8 NMSA 1978 and any statutes of limitation therein shall not apply to causes of action for childhood sexual abuse.

History: Laws 1993, ch. 136, § 1; 1995, ch. 63, § 1; 2017, ch. 77, § 1.

ARTICLE 2

Abatement and Revivor

37-2-1. What causes of action survive.

In addition to the causes of action which survive at common law, causes of action for mesne profits, or for an injury to real or personal estate, or for any deceit or fraud, shall also survive, and the action may be brought, notwithstanding the death of the person entitled or liable to the same. The cause of action for wrongful death and the cause of action for personal injuries, shall survive the death of the party responsible therefor.

History: Laws 1884, ch. 5, § 1; C.L. 1884, § 2138; C.L. 1897, § 3087; Code 1915, § 4264; C.S. 1929, § 105-1202; Laws 1941, ch. 79, § 1; 1941 Comp., § 19-701; 1953 Comp., § 21-7-1.

37-2-2. [Transfer pendente lite; no abatement.]

No action shall abate by the transfer of any interest therein during its pendency.

History: Laws 1880, ch. 6, § 9; C.L. 1884, § 2155; C.L. 1897, § 3104; Code 1915, § 4281; C.S. 1929, § 105-1219; 1941 Comp., § 19-702; 1953 Comp., § 21-7-2.

37-2-3. [Marriage; conviction of crime; suit against prisoner.]

No action shall abate by the marriage or conviction of crime of a party, if the cause of action survive or continue, but the court may order the same to proceed, and an action may be brought or prosecuted to final judgment against any person in prison for crime, regardless of such imprisonment.

History: Laws 1897, ch. 73, § 130; C.L. 1897, § 2685 (130); Code 1915, § 4263; C.S. 1929, § 105-1201; 1941 Comp., § 19-703; 1953 Comp., § 21-7-3.

37-2-4. [Death of party to pending action; no abatement; exceptions.]

No action pending in any court shall abate by the death of either, or both, the parties thereto, except an action for libel, slander, malicious prosecution, assault or assault and battery, for a nuisance or against a justice of the peace [magistrate] for misconduct in office, which shall abate by the death of the defendant.

History: Laws 1884, ch. 5, § 2; C.L. 1884, § 2139; C.L. 1897, § 3088; Code 1915, § 4265; C.S. 1929, § 105-1203; 1941 Comp., § 19-704; 1953 Comp., § 21-7-4.

37-2-5. [Death or cessation of power; procedure when right of action survives to or against coparty.]

Where there are several plaintiffs or defendants in an action, and one of them dies, or his powers as a personal representative cease, if the right of action survives to or against the remaining parties, the action may proceed, the death of the party or the cessation of his powers being stated on the record.

History: Laws 1884, ch. 5, § 3; C.L. 1884, § 2140; C.L. 1897, § 3089; Code 1915, § 4266; C.S. 1929, § 105-1204; 1941 Comp., § 19-705; 1953 Comp., § 21-7-5.

37-2-6. [Proceeding with remaining parties when no survival of action.]

Where one of several plaintiffs or defendants dies, or his powers as a personal representative cease, if the cause of action do [does] not admit of survivorship, and the court is of opinion that the merits of the controversy can be properly determined, and the principles applicable to the case fully settled, it may proceed to try the same as between the remaining parties, but the judgment shall not prejudice any who were not parties at the time of the trial.

History: Laws 1884, ch. 5, § 4; C.L. 1884, § 2141; C.L. 1897, § 3090; Code 1915, § 4267; C.S. 1929, § 105-1205; 1941 Comp., § 19-706; 1953 Comp., § 21-7-6.

37-2-7. [Revivor in name of representative or successor authorized.]

When one of the parties to an action dies, or his powers as a personal representative cease before the judgment, if the right of action survive in favor of or against his representative or successor, the action may be revived and proceed in their names.

History: Laws 1884, ch. 5, § 5; C.L. 1884, § 2142; C.L. 1897, § 3091; Code 1915, § 4268; C.S. 1929, § 105-1206; 1941 Comp., § 19-707; 1953 Comp., § 21-7-7.

37-2-8. [Order of revivor.]

The revivor shall be by a conditional order of the court, if made in term, or by a judge thereof if in vacation, that the action be revived in the names of the representatives or successor of the party who died, or whose powers ceased, and proceed in favor of or against them.

History: Laws 1884, ch. 5, § 6; C.L. 1884, § 2143; C.L. 1897, § 3092; Code 1915, § 4269; C.S. 1929, § 105-1207; 1941 Comp., § 19-708; 1953 Comp., § 21-7-8.

37-2-9. [Publication of notice where representatives of defendant nonresidents, etc.; when action revived.]

When the plaintiff shall make an affidavit that the representatives of the defendant, or any of them, in whose name the action may be ordered to be revived, are nonresidents of the state, or have left the same to avoid the service of the order, or so concealed themselves that the order cannot be served upon them or that the names and residence of the heirs or devisees of the person against whom the action may be ordered to be revived, or some of them are unknown to the affiant, a notice may be published as provided in Chapter XCIV, notifying them to appear on a day therein named and show cause why the action should not be revived against them, and if sufficient cause be not shown to the contrary, the action shall stand revived.

History: Laws 1884, ch. 5, § 9; C.L. 1884, § 2146; C.L. 1897, § 3095; Code 1915, § 4272; C.S. 1929, § 105-1210; 1941 Comp., § 19-709; 1953 Comp., § 21-7-9.

37-2-10. [Revivor on death of plaintiff.]

Upon the death of the plaintiff in an action, it may be revived in the names of his representatives to whom his rights have passed; where his right has passed to his personal representatives the revivor shall be in his name; where it has passed to his heirs or devisees who could support the action if brought anew, the revivor may be in their names.

History: Laws 1884, ch. 5, § 10; C.L. 1884, § 2147; C.L. 1897, § 3096; Code 1915, § 4273; C.S. 1929, § 105-1211; 1941 Comp., § 19-710; 1953 Comp., § 21-7-10.

37-2-11. [Revivor on death of defendant.]

Upon the death of a defendant in an action, wherein the right of any part thereof survives against his personal representatives, the revivor shall be against him, and it may also be against the heirs or devisees of the defendant, or both, when the right of action or any part thereof survives against them.

History: Laws 1884, ch. 5, § 11; C.L. 1884, § 2148; C.L. 1897, § 3097; Code 1915, § 4274; C.S. 1929, § 105-1212; 1941 Comp., § 19-711; 1953 Comp., § 21-7-11.

37-2-12. [Revivor of action concerning real estate on death of defendant.]

Upon the death of a defendant in an action for the recovery of real property only, or which concerns only his rights or claims to such property, the action may be revived against his heirs or devisees, or both; and an order therefor may be forthwith made, in the manner directed in the preceding sections [37-2-5, 37-2-7 to 37-2-9, 37-2-11 NMSA 1978].

History: Laws 1884, ch. 5, § 12; C.L. 1884, § 2149; C.L. 1897, § 3098; Code 1915, § 4275; C.S. 1929, § 105-1213; 1941 Comp., § 19-712; 1953 Comp., § 21-7-12.

37-2-13. [Consent required for revivor against defendant's representative or successor; exception.]

An order to revive an action against the representatives or successor of a defendant, shall not be made without the consent of such representative or successor, unless in one year from the time it could have been first made.

History: Laws 1884, ch. 5, § 13; C.L. 1884, § 2150; C.L. 1897, § 3099; Code 1915, § 4276; C.S. 1929, § 105-1214; 1941 Comp., § 19-713; 1953 Comp., § 21-7-13.

37-2-14. [Revivor in name of plaintiff's representative or successor; revivor on both sides.]

An order to revive an action in the names of the representatives or successor of a plaintiff may be made forthwith, but shall not be made without the consent of the defendant, after the expiration of one year from the time the order might have been first made; but where the defendant shall also have died, or his power have ceased in the meantime, the order of revivor on both sides may be made in the period limited in the last section [37-2-13 NMSA 1978].

History: Laws 1884, ch. 5, § 14; C.L. 1884, § 2151; C.L. 1897, § 3100; Code 1915, § 4277; C.S. 1929, § 105-1215; 1941 Comp., § 19-714; 1953 Comp., § 21-7-14.

37-2-15. [When action to be stricken from docket.]

When it appears to the court by affidavit that either party to an action has been dead, or where a party sues, or is sued as a personal representative, that his powers have ceased for a period so long that the action cannot be revived in the names of his representatives or successor, without the consent of both parties, it shall order the action to be stricken from the docket.

History: Laws 1884, ch. 5, § 15; C.L. 1884, § 2152; C.L. 1897, § 3101; Code 1915, § 4278; C.S. 1929, § 105-1216; 1941 Comp., § 19-715; 1953 Comp., § 21-7-15.

37-2-16. [Death of plaintiff; procedure by defendant to obtain revivor or dismissal.]

At any term of the court succeeding the death of the plaintiff, while the action remains on the docket, the defendant having given to the plaintiff's proper representative, in whose names the action might be revived, ten days' notice of the application therefor, may have an order to strike the action from the docket, and for costs against the estate of the plaintiff, unless the action is forthwith revived.

History: Laws 1884, ch. 5, § 16; C.L. 1884, § 2153; C.L. 1897, § 3102; Code 1915, § 4279; C.S. 1929, § 105-1217; 1941 Comp., § 19-716; 1953 Comp., § 21-7-16.

37-2-17. [No postponement of trial upon revivor.]

When, by the provisions of the preceding sections of this article, an action stands revived, the trial thereof shall not be postponed by reason of the revivor, if the action would have stood for trial at the term the revivor is complete, had not death or cessation of powers taken place.

History: Laws 1884, ch. 5, § 17; C.L. 1884, § 2154; C.L. 1897, § 3103; Code 1915, § 4280; C.S. 1929, § 105-1218; 1941 Comp., § 19-717; 1953 Comp., § 21-7-17.